

Financial Services and Markets Act 2000

2000 CHAPTER 8

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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:—

Extent

Preamble: United Kingdom

PART I

THE REGULATOR

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

1.— [...]¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Other Application

As part of the substitution of a new Part 1A and in relation to the application of that new Part 1A as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: ss 1-18 are repealed.[...]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

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The Authority's general duties

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 Repealed

England, Scotland and Wales

2.— [...] ¹

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Other Application

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The regulatory objectives

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R Repealed

England, Scotland and Wales

3.— [...]¹

Notes

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 Repealed

4.— [...]¹

Notes

- ¹ Repealed by Financial Services Act 2010 c. 28 s.2(3) (October 12, 2010)
-

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R Repealed

England, Scotland and Wales

5.— [...]¹

Notes

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Other Application

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[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

6.— [...]¹

Notes

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Other Application

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[Enhancing public understanding of financial matters etc]¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 s.2(5) (April 8, 2010)

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[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

6A [...]¹

Notes

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Other Application

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Corporate governance

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

7. [...]¹

Notes

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Arrangements for consulting practitioners and consumers

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[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

8. [...] ¹

Notes

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R Repealed

England, Scotland and Wales

9.— [...]¹

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R Repealed

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10.— [...]¹

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R Repealed

England, Scotland and Wales

11.— [...]¹

Notes

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Reviews

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[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

12.— [...]¹

Notes

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As part of the substitution of a new Part 1A and in relation to the application of that new Part 1A as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: ss 1-18 are repealed.[...]¹

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Inquiries

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

14.— [...]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Other Application

As part of the substitution of a new Part 1A and in relation to the application of that new Part 1A as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: ss 1-18 are repealed.[...]¹

Notes

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R Repealed

England, Scotland and Wales

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Notes

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Other Application

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[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

16.— [...]¹

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Other Application

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[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

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Notes

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The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

18.— [...]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Other Application

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**[PART 1A
THE REGULATORS**

]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

**[CHAPTER 1
THE FINANCIAL CONDUCT AUTHORITY]¹**

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

[The Financial Conduct Authority]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 for provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Law In Force

[1A The Financial Conduct Authority

- (1) The body corporate previously known as the Financial Services Authority is renamed as the Financial Conduct Authority.
- (2) The Financial Conduct Authority is in this Act referred to as “the FCA”.
- (3) The FCA is to have the functions conferred on it by or under this Act.
- (4) The FCA must comply with the requirements as to its constitution set out in Schedule 1ZA.
- (5) Schedule 1ZA also makes provision about the status of the FCA and the exercise of certain of its functions.
- (6) References in this Act or any other enactment to functions conferred on the FCA by or under this Act include references to functions conferred on the FCA by or under—
- (a) the Insolvency Act 1986,
 - (b) the Banking Act 2009,

- (c) the Financial Services Act 2012 , [...] ²
 [(ca) the Alternative Investment Fund Managers Regulations 2013, or] ²
 (d) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

] ¹**Notes**

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 for provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)
- ² Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.2 (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Extent

Pt IA c. 1 s. 1A(1)-(6)(d): United Kingdom

*[The FCA's general duties] ¹***Notes**

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 in so far as it is relevant to other provisions of 2012 c.21 which are in force as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

 Law In Force
[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: ensuring that the relevant markets (see section 1F) function well.
- (3) The FCA's operational objectives are—
- (a) the consumer protection objective (see section 1C);
 - (b) the integrity objective (see section 1D);
 - (c) the competition objective (see section 1E).
- (4) The FCA must, so far as is compatible with acting in a way which advances the consumer protection objective or the integrity objective, discharge its general functions in a way which promotes effective competition in the interests of consumers.
- (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) For the purposes of this Chapter, 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 under this Act.
- (7) Except to the extent that an order under section 50 of the Financial Services Act 2012 (orders relating to mutual societies functions) so provides, the FCA's general functions do not include functions that are transferred functions within the meaning of section 52 of that Act.
- (8) "General guidance" has the meaning given in section 139B(5).
-] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 in so far as it is relevant to other provisions of 2012 c.21 which are in force as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Extent

Pt IA c. 1 s. 1B(1)-(8): United Kingdom

Law In Force

[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) the needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose;
 - (d) the general principle that consumers should take responsibility for their decisions;
 - (e) the general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate having regard to the degree of risk involved in relation to the investment or other transaction and the capabilities of the consumers in question;
 - (f) the differing expectations that consumers may have in relation to different kinds of investment or other transaction;

- (g) any information which the consumer financial education body has provided to the FCA in the exercise of the consumer financial education function;
- (h) any information which the scheme operator of the ombudsman scheme has provided to the FCA pursuant to section 232A.

]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 in so far as it is relevant to other provisions of 2012 c.21 which are in force as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Extent

Pt IA c. 1 s. 1C(1)-(2)(h): United Kingdom

 Law In Force
[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 a purpose connected with financial crime,
 - (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.

]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 in so far as it is relevant to other provisions of 2012 c.21 which are in force as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Extent

Pt IA c. 1 s. 1D(1)-(2)(e): United Kingdom

 Law In Force
[1E The competition objective

- (1) The competition objective is: promoting effective competition in the interests of consumers in the markets for—
 - (a) regulated financial services, 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.

(2) The matters to which the FCA may have regard in considering the effectiveness of competition in the market for any services mentioned in subsection (1) include—

- (a) the needs of different consumers who use or may use those services, including their need for information that enables them to make informed choices,
- (b) the ease with which consumers who may wish to use those services, including consumers in areas affected by social or economic deprivation, can access them,
- (c) the ease with which consumers who obtain those services can change the person from whom they obtain them,
- (d) the ease with which new entrants can enter the market, and
- (e) how far competition is encouraging innovation.

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 in so far as it is relevant to other provisions of 2012 c.21 which are in force as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Extent

Pt IA c. 1 s. 1E(1)-(2)(e): United Kingdom

*[Interpretation of terms used in relation to FCA's general duties]*¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Law In Force

[1F Meaning of “relevant markets” in strategic objective

In section 1B(2) “the relevant markets” means—

- (a) the financial markets,
- (b) the markets for regulated financial services (see section 1H(2)), and
- (c) the markets for services that are provided by persons other than authorised persons in carrying on regulated activities but are provided without contravening the general prohibition.

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 1 s. 1F(a)-(c): United Kingdom

☑ Law In Force

[1G Meaning of “consumer”

- (1) In sections 1B to 1E “consumers” means persons who—
- (a) use, have used or may use—
 - (i) regulated financial services, or
 - (ii) services that are provided by persons other than authorised persons but are provided in carrying on regulated activities,
 - (b) have relevant rights or interests in relation to any of those services,
 - (c) have invested, or may invest, in financial instruments, [...] ²
 - (d) have relevant rights or interests in relation to financial instruments [, or] ³
 - [(e) have rights, interests or obligations that are affected by the level of a regulated benchmark.] ³
- (2) A person (“P”) has a “relevant right or interest” in relation to any services within subsection (1)(a) 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.
- (3) If a person is providing a service within subsection (1)(a) 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.
- (4) A person who deals with another person (“B”) in the course of B providing a service within subsection (1)(a) is to be treated as using the service.
- (5) A person (“P”) has a “relevant right or interest” in relation to any financial instrument if P has—
- (a) a right or interest which is derived from, or is otherwise attributable to, investment in the instrument by others, or
 - (b) a right or interest which may be adversely affected by the investment in the instrument by persons acting on P's behalf or in a fiduciary capacity in relation to P.

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)
- ² Word repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013/655 Pt 2 art.3(2)(a) (April 2, 2013: repeal has effect subject to transitional provisions specified in SI 2013/655 Pt 4)
- ³ Added by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013/655 Pt 2 art.3(2)(b) (April 2, 2013: insertion has effect subject to transitional provisions specified in SI 2013/655 Pt 4)

Extent

Pt IA c. 1 s. 1G(1)-(5)(b): United Kingdom

✔ Law In Force

[1H Further interpretative provisions for sections 1B to 1G

- (1) The following provisions have effect for the interpretation of sections 1B to 1G.
- (2) “Regulated financial services” means services provided—
- (a) by authorised persons in carrying on regulated activities;
 - (b) [...]²
 - (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.
- (3) “Financial crime” includes any offence involving—
- (a) fraud or dishonesty,
 - (b) misconduct in, or misuse of information relating to, a financial market,
 - (c) handling the proceeds of crime, or
 - (d) the financing of terrorism.
- (4) “Offence” includes an act or omission which would be an offence if it had taken place in the United Kingdom.
- (5) “Issuer”, except in the expression “electronic money issuer”, has the meaning given in section 102A(6).
- (6) “Financial instrument” has the meaning given in section 102A(4).
- (7) “Securities” has the meaning given in section 102A(2).
- [(7A) “Regulated benchmark” means a benchmark, as defined in section 22(6), in relation to which any provision made under section 22(1A)(b) has effect.]³

(8) In this section—

[...]⁴

“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 as defined in regulation 2(1) of the Electronic Money Regulations 2011 other than a person falling within paragraph (f), (g) or (j) of the definition;

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

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

“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 as defined in regulation 2(1) of the Payment Services Regulations 2009 other than a person falling within paragraph (g) or (h) of the definition;

“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;

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

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)
- ² Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(2)(a) (July 26, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/1998 art.11(2))
- ³ Added by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013/655 Pt 2 art.3(3) (April 2, 2013: insertion has effect subject to transitional provisions specified in SI 2013/655 Pt 4)
- ⁴ Definitions repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(2)(b) (July 26, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/1998 art.11(2))

Extent

Pt IA c. 1 s. 1H(1)-(8) definition of "sponsor": United Kingdom

Law In Force

[1I Meaning of “the UK financial system”

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.

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 1 s. 1I(a)-(c): United Kingdom

[Power to amend objectives]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)
-

Law In Force

[1J Power to amend objectives

The Treasury may by order amend any of the following provisions—

- (a) in section 1E(1), paragraphs (a) and (b),
- (b) section 1G, and
- (c) section 1H(2) and (5) to (8).

]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 1 s. 1J(a)-(c): United Kingdom

[Guidance about objectives]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)
-

Law In Force

[1K Guidance about objectives

(1) The general guidance given by the FCA under section 139A must include guidance about how it intends to advance its operational objectives in discharging its general functions in relation to different categories of authorised person or regulated activity.

(2) Before giving or altering any guidance complying with subsection (1), the FCA must consult the PRA.

]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 1 s. 1K(1)-(2): United Kingdom

*[The Financial Conduct Authority]¹***Notes**

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Law In Force

[1L Supervision, monitoring and enforcement

- (1) The FCA must maintain arrangements for supervising authorised persons.
- (2) The FCA must maintain arrangements designed to enable it to determine whether persons other than authorised persons are complying—
- (a) with requirements imposed on them by or under this Act, in cases where the FCA is the appropriate regulator for the purposes of Part 14 (disciplinary measures), [...]²
 - [(aa) with requirements imposed on them by the Alternative Investment Fund Managers Regulations 2013, or]²
 - (b) with requirements imposed on them by any qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (3) The FCA must also maintain arrangements for enforcing compliance by persons other than authorised persons with relevant requirements, within the meaning of Part 14, in cases where the FCA is the appropriate regulator for the purposes of any provision of that Part.

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)
- ² Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.3 (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Extent

Pt IA c. 1 s. 1L(1)-(3): United Kingdom

*[Arrangements for consulting practitioners and consumers]¹***Notes**

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (February 19, 2013: substitution has effect on February 19, 2013 for the purposes of making appointments

as specified in SI 2013/113 art.2 and Sch.1 Pt 4 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

✔ Law In Force

[1M 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.]¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (February 19, 2013: substitution has effect on February 19, 2013 for the purposes of making appointments as specified in SI 2013/113 art.2 and Sch.1 Pt 4 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Extent

Pt IA c. 1 s. 1M: United Kingdom

✔ Law In Force

[1N The FCA Practitioner Panel

(1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as “the FCA Practitioner Panel”) to represent the interests of practitioners.

(2) The FCA must appoint one of the members of the FCA 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 FCA 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 FCA Practitioner Panel such other persons as it considers appropriate.

] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (February 19, 2013: substitution has effect on February 19, 2013 for the purposes of making appointments as specified in SI 2013/113 art.2 and Sch.1 Pt 4 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Extent

Pt IA c. 1 s. 1N(1)-(5): United Kingdom

✔ Law In Force

[10 The Smaller Business Practitioner Panel

- (1) Arrangements under section 1M 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.
- (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) give the Treasury a copy of the statement or revised statement without delay, and
 - (b) publish the statement as for the time being in force in such manner as it thinks fit.

]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (February 19, 2013: substitution has effect on February 19, 2013 for the purposes of making appointments as specified in SI 2013/113 art.2 and Sch.1 Pt 4 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Extent

Pt IA c. 1 s. 1O(1)-(9)(b): United Kingdom

✔ Law In Force

[1P The Markets Practitioner Panel

- (1) Arrangements under section 1M 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.

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (February 19, 2013: substitution has effect on February 19, 2013 for the purposes of making appointments as specified in SI 2013/113 art.2 and Sch.1 Pt 4 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Extent

Pt IA c. 1 s. 1P(1)-(6): United Kingdom

Law In Force

[1Q The Consumer Panel

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

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (February 19, 2013: substitution has effect on February 19, 2013 for the purposes of making appointments as specified in SI 2013/113 art.2 and Sch.1 Pt 4 subject to transitional provisions as specified in 2012 c.21 Sch.20

paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Extent

Pt IA c. 1 s. 1Q(1)-(6): United Kingdom

Law In Force

[1R 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 1M.

(2) The FCA must from time to time publish in such manner as it thinks fit responses to the representations.

] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 1 s. 1R(1)-(2): United Kingdom

[Reviews] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Law In Force

[1S 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 complying with its general duties under section 1B(1) and (4).

(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.

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 1 s. 1S(1)-(7): United Kingdom

Law In Force

[1T Right to obtain documents and information

(1) A person conducting a review under section 1S—

- (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.

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 1 s. 1T(1)-(3): United Kingdom

[CHAPTER 2

THE PRUDENTIAL REGULATION AUTHORITY] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 for provisions specified in SI 2013/113 art.2)

and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.6; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

[The Prudential Regulation Authority]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 for provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.6; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)
-

Law In Force

[2A The Prudential Regulation Authority

(1) The body corporate originally incorporated as the Prudential Regulation Authority Limited is renamed as the Prudential Regulation Authority.

(2) The Prudential Regulation Authority is in this Act referred to as “the PRA”.

(3) The PRA is to have the functions conferred on it by or under this Act.

(4) The PRA must comply with the requirements as to its constitution set out in Schedule 1ZB.

(5) 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.

(6) References in this Act or any other enactment to functions conferred on the PRA by or under this Act include references to functions conferred on the PRA by or under—

- (a) the Insolvency Act 1986,
- (b) the Banking Act 2009,
- (c) the Financial Services Act 2012, or
- (d) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 for provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.6; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Extent

Pt IA c. 2 s. 2A(1)-(6)(d): United Kingdom

[The PRA's general duties]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)
-

Law In Force

[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 advanced 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 PRAauthorised 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.
- (5) In this Act “PRA-authorised person” means an authorised person who has permission—
- (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 (see section 22A).
- (6) Subsection (1) is subject to sections 2C and 2D.

]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 in so far as it is relevant to other provisions of 2012 c.21 which are in force as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Extent

Pt IA c. 2 s. 2B(1)-(6): United Kingdom

Law In Force

[2C Insurance objective

- (1) In discharging its general functions so far as relating to a PRAregulated 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.
-] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 in so far as it is relevant to other provisions of 2012 c.21 which are in force as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Extent

Pt IA c. 2 s. 2C(1)-(3): United Kingdom

Law In Force

[2D Power to provide for additional objectives

- (1) Subsection (2) applies to an order under section 22A which—
- (a) is made at any time after the coming into force of the first order under that section, and
 - (b) contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order is that an activity would become a PRA-regulated activity.
- (2) An order to which this subsection applies 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”).
- (3) In discharging its general functions so far as relating to the additional activities or PRA-authorized persons carrying on those 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 advancing those objectives.
-] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 2 s. 2D(1)-(3)(b): United Kingdom

✔ Law In Force

[2E Strategy

- (1) The PRA must—
 - (a) determine its strategy in relation to its objectives, and
 - (b) from time to time review, and if necessary revise, the strategy.
- (2) Before determining or revising its strategy, the PRA must consult the court of directors of the Bank of England about a draft of the strategy or of the revisions.
- (3) The PRA must determine its strategy within 12 months of the coming into force of this section.
- (4) The PRA must carry out and complete a review of its strategy before the end of each relevant period.
- (5) The relevant period is 12 months beginning with the date on which the previous review was completed, except that in the case of the first review the relevant period is the period of 12 months beginning with the date on which the strategy was determined under subsection (3).
- (6) The PRA must publish its strategy.
- (7) If the strategy is revised the PRA must publish the revised strategy.
- (8) Publication under subsection (6) or (7) is to be in such manner as the PRA thinks fit.

] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 2 s. 2E(1)-(8): United Kingdom

✔ Law In Force

[2F 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—

- (a) so far as the function is exercisable in relation to the activity of effecting or carrying out contracts of insurance, or PRA-authorized 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 to which an objective specified by order by virtue of section 2D(2) relates, or PRA-authorized persons carrying on that activity, is a reference to its general objective and the objective specified by the order.

] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 2 s. 2F(a)-(b): United Kingdom

Law In Force

[2G Limit on effect of sections 2B to 2D

Nothing in sections 2B to 2D is to be regarded as requiring the PRA to ensure that no PRA-authorized person fails.]¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 2 s. 2G: United Kingdom

Law In Force

[2H Duty to have regard to regulatory principles

- (1) In discharging its general functions, the PRA must also have regard to—
- (a) the regulatory principles in section 3B, and
 - (b) the need to minimise any adverse effect on competition in the relevant markets that may result from the manner in which the PRA discharges those functions.
- (2) In subsection (1)(b) “the relevant markets” means the markets for services provided by PRA-authorized persons in carrying on regulated activities.
-] ¹
-

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 2 s. 2H(1)-(2): United Kingdom

Law In Force

[2I Guidance about objectives

- (1) The PRA must give, and from time to time review, guidance about how it intends to advance its objectives in discharging its general functions in relation to different categories of PRA-authorized person or PRA-regulated activity.
- (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.

] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 2 s. 2I(1)-(3): United Kingdom

Law In Force

[2J 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 under this Act.

(2) Except to the extent that an order under section 50 of the Financial Services Act 2012 (orders relating to mutual societies functions) so provides, the PRA's general functions do not include functions that are transferred functions within the meaning of section 52 of that Act.

(3) For the purposes of this Chapter, the cases in which a PRA-authorized 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.

(4) In subsection (3)(a) “insolvency” includes—

- (a) bankruptcy,
- (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.

] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 2 s. 2J(1)-(4)(h): United Kingdom

[Supervision]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)
-

Law In Force

[2K Arrangements for supervision of PRA-authorised persons

The PRA must maintain arrangements for supervising PRA-authorised persons.]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 2 s. 2K: United Kingdom

[Arrangements for consulting practitioners]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (February 19, 2013: substitution has effect on February 19, 2013 for the purposes of making appointments as specified in SI 2013/113 art.2 and Sch.1 Pt 4 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)
-

Law In Force

[2L The PRA's general duty to consult

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 2H.]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (February 19, 2013: substitution has effect on February 19, 2013 for the purposes of making appointments as specified in SI 2013/113 art.2 and Sch.1 Pt 4 subject to transitional provisions as specified in 2012 c.21 Sch.20

paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Extent

Pt IA c. 2 s. 2L: United Kingdom

Law In Force

[2M The PRA Practitioner Panel

- (1) Arrangements under section 2L must include the establishment and maintenance of a panel of persons (to be known as “the PRA Practitioner Panel”) to represent the interests of practitioners.
- (2) The PRA must appoint one of the members of the PRA Practitioner Panel to be its chair.
- (3) The Treasury's approval is required for the appointment or dismissal of the chair.
- (4) The PRA must appoint to the PRA Practitioner Panel such persons representing PRA-authorized persons as it considers appropriate.
- (5) The PRA may appoint to the PRA Practitioner Panel such other persons as it considers appropriate.

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (February 19, 2013: substitution has effect on February 19, 2013 for the purposes of making appointments as specified in SI 2013/113 art.2 and Sch.1 Pt 4 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Extent

Pt IA c. 2 s. 2M(1)-(5): United Kingdom

Law In Force

[2N Duty to consider representations

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

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 2 s. 2N(1)-(2): United Kingdom

*[Reviews]¹***Notes**

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Law In Force

[2O 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.
 - (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.
- ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 2 s. 2O(1)-(7): United Kingdom

Law In Force

[2P Right to obtain documents and information

- (1) A person conducting a review under section 2O—

- (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.

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 2 s. 2P(1)-(3): United Kingdom

[CHAPTER 3

FURTHER PROVISIONS RELATING TO FCA AND PRA] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

[*Introductory*] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Law In Force

[3A Meaning of “regulator”

- (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).

] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3A(1)-(3)(b): United Kingdom

[Regulatory principles]¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Law In Force

[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 2H(1)(a) 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 desirability of sustainable growth in the economy of the United Kingdom in the medium or long term;
- (d) the general principle that consumers should take responsibility for their decisions;
- (e) the responsibilities of the senior management of persons subject to requirements imposed by or under this Act, including those affecting consumers, in relation to compliance with those requirements;
- (f) the desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Act;
- (g) 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;
- (h) the principle that the regulators should exercise their functions as transparently as possible.

(2) “Consumer” has the meaning given in section 1G.

(3) “Objectives”, in relation to the FCA, means operational objectives.

(4) The Treasury may by order amend subsection (2).

] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3B(1)-(4): United Kingdom

[Corporate governance] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Law In Force

[3C Duty to follow principles of good governance

In managing its 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.] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3C: United Kingdom

[Relationship between FCA and PRA] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

✔ Law In Force

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

- (1) The regulators must co-ordinate the exercise of their respective functions conferred by or under this Act 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 function in a way that may have a material adverse effect on the advancement 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 the exercise of its functions in relation to matters of common regulatory interest in cases where the other regulator may be expected to have relevant information or relevant expertise;
 - (c) that where either regulator exercises functions in relation to matters of common regulatory interest, both regulators comply with their respective duties under section 1B(5)(a) or 2H(1)(a), 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 advancement by each regulator of any of its objectives, and
 - (b) does not impose a burden on the regulators that is disproportionate to the benefits of compliance.
- (3) A function conferred on either regulator by or under this Act 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 advancement by the other regulator of any of its objectives.
- (4) “Objectives”, in relation to the FCA, means operational objectives.
-] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3D(1)-(4): United Kingdom

✔ Law In Force

[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 functions conferred by or under this Act which 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-authorized person is a member of a group whose other members include one or more other authorised persons (whether or not PRA-authorized persons);
 - (f) functions under Schedule 3 (EEA passport rights) and Schedule 4 (Treaty rights);
 - (g) the making of rules;
 - (h) directions under section 138A (modification or waiver of rules);
 - (i) powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf;
 - (j) functions under Part 12 (control over authorised persons);
 - (k) functions under Part 13 (incoming firms: intervention by regulator);
 - (l) functions under Part 19 (Lloyd's);
 - (m) functions under section 347 (record of authorised persons etc.);
 - (n) functions under Part 24 (insolvency);
 - (o) fees payable to either regulator.
- (3) The memorandum must contain provision about the co-ordination by the regulators of—
- (a) the exercise of their functions relating to membership of, and 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),
 - (b) their relations with regulatory bodies outside the United Kingdom, 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 give 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) The reference in subsection (1)(a) to matters of common regulatory interest is to be read in accordance with section 3D(3).

]¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of memoranda as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20

paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Extent

Pt IA c. 3 s. 3E(1)-(9): United Kingdom

Law In Force

[3F With-profits insurance policies

- (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 functions conferred by or under this Act so far as they relate to withprofits insurers, and
 - (b) how the regulators intend to comply with section 3D in relation to the exercise of those functions so far as they relate to the effecting or carrying out of with-profits policies by with-profits insurers.
- (2) The memorandum required by this section may be combined with the memorandum required by section 3E.
- (3) If the memorandum required by this section is contained in a separate document, the PRA and the FCA must publish the memorandum as currently in force in such manner as they think fit.
- (4) Subsections (1) to (3) apply only if the effecting or carrying out of withprofits policies is a PRA-regulated activity.
- (5) For the purposes of this section—
 - (a) a “with-profits policy” is a contract of insurance under which the policyholder is eligible to receive a financial benefit at the discretion of the insurer;
 - (b) a “with-profits insurer” is a PRA-authorized person who has a Part 4A permission, or permission resulting from any other provision of this Act, relating to the effecting or carrying out of with-profits policies (whether or not the permission also relates to contracts of insurance of other kinds).
- (6) The Treasury may by order amend the definition of “with-profits policy” applying for the purposes of this section.

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of memoranda as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7 otherwise)

Extent

Pt IA c. 3 s. 3F(1)-(6): United Kingdom

✔ Law In Force

[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-authorized 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.

] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3G(1)-(2)(b): United Kingdom

✔ Law In Force

[3H Parliamentary control of orders under section 3G

(1) No order may be made under section 3G unless—

- (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
- (b) subsection (3) applies.

(2) Subsection (3) applies if an order under section 3G 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.

(3) Where this subsection applies 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 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) The “relevant period” is a period of 28 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 4 days.

] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3H(1)-(5): United Kingdom

*[Power of PRA to restrain proposed action by FCA]¹***Notes**

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Law In Force

[3I 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 the FCA is proposing—
- (a) to exercise any of its regulatory powers in relation to PRA authorised persons generally, a class of PRA-authorised persons or a particular PRA-authorised person, or
 - (b) to exercise any of its insolvency powers in relation to—
 - (i) a PRA-authorised person,
 - (ii) an appointed representative whose principal, or one of whose principals, is a PRA-authorised person, or
 - (iii) a person who is carrying on a PRA-regulated activity in contravention of the general prohibition.
- (3) In subsection (2)—
- (a) “regulatory powers”, in relation to the FCA, means its powers in relation to the regulation of authorised persons, other than its powers in relation to consent for the purposes of section 55F or 55I or its powers under Part 24;
 - (b) “insolvency powers”, in relation to the FCA, means its powers under Part 24.
- (4) 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.
- (5) 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 (4).
- (6) 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.
- (7) The direction may be expressed to have effect during a specified period or until revoked.
- (8) 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.

(9) The reference in subsection (4)(b) person is to be read in accordance with section 2J(3) and (4).
] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3I(1)-(9): United Kingdom

Law In Force

[3J Power of PRA in relation to with-profits policies

(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 the FCA is proposing to exercise any of its regulatory powers in relation to with-profits insurers, a class of withprofits insurers or a particular with-profits insurer.

(3) In subsection (2) “regulatory powers”, in relation to the FCA, means its powers in relation to the regulation of authorised persons, including its powers under Part 24 (insolvency) but not its powers in relation to consent for the purposes of section 55F or 55I.

(4) The second condition is that the proposed exercise of the power relates to the provision of financial benefits under with-profits policies at the discretion of the insurer, or affects or may affect the amount, timing or distribution of financial benefits that are so provided or the entitlement to future benefits that are so provided.

(5) The third condition is that the PRA is of the opinion that the giving of the direction is desirable in order to advance the PRA's general objective or its insurance objective.

(6) 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.

(7) The direction may be expressed to have effect during a specified period or until revoked.

(8) 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.

(9) Subsections (1) to (8) apply only if the effecting or carrying out of withprofits policies is a PRA-regulated activity.

(10) In this section “with-profits insurer” and “with-profits policy” have the same meaning as they have for the purposes of section 3F.

] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3J(1)-(10): United Kingdom

✔ Law In Force

[3K Revocation of directions under section 3I or 3J

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

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3K(1)-(2): United Kingdom

✔ Law In Force

[3L Further provisions about directions under section 3I or 3J

- (1) Before giving a direction under section 3I or 3J, the PRA must consult the FCA.
- (2) A direction under section 3I or 3J 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 3I or 3J must be given or confirmed in writing.
- (4) The PRA must—
 - (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 or a particular with-profits insurer, give a copy of the direction and statement, or the notice, to that person.
- (5) The PRA must give the Treasury a copy of—
 - (a) a direction under section 3I;
 - (b) a statement relating to such a direction;
 - (c) a notice revoking such a direction.
- (6) The Treasury must lay before Parliament any document received by them under subsection (5).
- (7) Subsection (4) does not apply where the PRA, after consulting the Treasury, decides that compliance with that subsection would be against the public interest, and at any time when this subsection excludes the application of subsection (4) in relation to a direction under section 3I, subsection (6) also does not apply.
- (8) Where the PRA decides that compliance with subsection (4) would be against the public interest, it must from time to time review that decision and if it subsequently decides that compliance is no longer against the public interest it must—

- (a) comply with that subsection, and
- (b) in the case of a direction under section 3I, notify the Treasury for the purposes of subsection (6).

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3L(1)-(8)(b): United Kingdom

[Directions relating to consolidated supervision]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)
-

Law In Force

[3M 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;
- (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 conferred by or 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 2I;
 - (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 3I or 3J.

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3M(1)-(11): United Kingdom

Law In Force

[3N Revocation of directions under section 3M

- (1) The supervising regulator may at any time by notice to the other regulator revoke a direction under section 3M.
- (2) The revocation of the direction does not affect the validity of anything previously done in accordance with it.
- (3) Expressions defined for the purposes of section 3M have the same meaning in this section.

] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3N(1)-(3): United Kingdom

Law In Force

[3O Further provisions about directions under section 3M

- (1) Before giving a direction under section 3M, the supervising regulator must consult the other regulator.
- (2) A direction under section 3M 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 3M must be given or confirmed in writing.
- (4) The regulator to which a direction under section 3M 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 subsection (4) or (5) does not apply in a case where the regulator on which the duty is imposed considers that compliance with that subsection would be against the public interest.
- (7) In a case where a regulator decides that compliance with subsection (4) or (5) would be against the public interest, the regulator must from time to time review that decision and if it subsequently decides that compliance is no longer against the public interest it must comply with the subsection.
- (8) Expressions defined for the purposes of section 3M have the same meaning in this section.
-] ¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3O(1)-(8): United Kingdom

Law In Force

[3P 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 directed regulator

must give the supervising regulator copies of any written representations received from the persons consulted.

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

] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3P(1)-(2): United Kingdom

*[Co-operation with Bank of England]*¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Law In Force

[3Q Co-operation by FCA and PRA with Bank of England

(1) Each regulator must take such steps as it considers appropriate to cooperate with the Bank of England in connection with—

- (a) the pursuit by the Bank of its Financial Stability Objective, and
- (b) the Bank's compliance with its duties under sections 58 and 59 of the Financial Services Act 2012 (duty to notify Treasury of possible need for public funds and of subsequent changes).

(2) Co-operation under subsection (1) may include the sharing of information that the regulator is not prevented from disclosing.

] ¹

Notes

¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3Q(1)-(2): United Kingdom

[Arrangements for provision of services]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)
-

Law In Force

[3R Arrangements for provision of services

- (1) The regulators may enter into arrangements with each other for the provision of services by one of them to the other.
- (2) Either regulator may enter into arrangements with the Bank of England for the provision of services—
- (a) by the Bank to the regulator, or
 - (b) by the regulator to the Bank.
- (3) Either regulator may enter into arrangements with any of the bodies specified in subsection (4) for the provision of services by the regulator to that body.
- (4) Those bodies are—
- (a) the consumer financial education body (see section 3S(2)),
 - (b) the scheme manager (see section 212(1)), and
 - (c) the scheme operator (see section 225(2)).
- (5) The FCA may enter into arrangements with—
- (a) a local weights and measures authority in England, Wales or Scotland, or
 - (b) the Department of Enterprise, Trade and Investment in Northern Ireland,
- for the provision by the authority or department to the FCA of services which relate to activities to which this subsection applies.
- (6) Subsection (5) applies to activities that are regulated activities by virtue of—
- (a) an order made under section 22(1) in relation to an investment of a kind falling within paragraph 23 or 23B of Schedule 2, or
 - (b) an order made under section 22(1A)(a).
- (7) Arrangements under this section are to be on such terms as may be agreed by the parties.
-]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3R(1)-(7): United Kingdom

[Enhancing public understanding of financial matters etc.]¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)
-

Law In Force

[3S The consumer financial education body

- (1) The consumer financial education body continues to have the consumer financial education function.
- (2) The “consumer financial education body” means the body corporate originally established by the Financial Services Authority under section 6A of this Act (as it had effect before the passing of the Financial Services Act 2012).
- (3) The consumer financial education function is to enhance—
- (a) the understanding and knowledge of members of the public of financial matters (including the UK financial system), and
 - (b) the ability of members of the public to manage their own financial affairs.
- (4) The consumer financial education function includes, in particular-
- (a) promoting awareness of the benefits of financial planning;
 - (b) promoting awareness of the financial advantages and disadvantages in relation to particular decisions relating to different kinds of goods or services;
 - (c) promoting awareness of the benefits and risks associated with different kinds of financial dealing (which includes informing the FCA and other bodies of those benefits and risks);
 - (d) the publication of educational materials or the carrying out of other educational activities;
 - (e) the provision of information and advice to members of the public;
 - (f) assisting members of the public with the management of debt;
 - (g) working with other organisations which provide debt services, with a view to improving—
 - (i) the availability to the public of those services;
 - (ii) the quality of the services provided;
 - (iii) consistency in the services available, in the way in which they are provided and in the advice given.
- (5) In subsection (4) “debt services” means debt advice or assistance with the management of debt.
- (6) Schedule 1A makes further provision about the consumer financial education body.

¹

Notes

- ¹ Existing ss 1-18 substituted for a new Part 1A consisting of ss 1A-3S by Financial Services Act 2012 c. 21 Pt 2 s.6(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 4 and 7)

Extent

Pt IA c. 3 s. 3S(1)-(6): United Kingdom

PART II**REGULATED AND PROHIBITED ACTIVITIES***The general prohibition*

Law In Force

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.

Commencement

Pt II s. 19(1)-(2): December 1, 2001 subject to transitional provisions as specified in SI 2001/2188 reg.15 (SI 2001/2188 Pt V reg. 15; SI 2001/3538 art. 2(1))

Extent

Pt II s. 19(1)-(2): United Kingdom

Requirement for permission

Law In Force

20.— Authorised persons acting without permission.

(1) If an authorised person [other than a PRA-authorised person]¹ 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]²
- (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]³ 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.

] ⁴

[(2) A contravention within subsection (1) or (1A)—

- (a) does not, except as provided by section 23(1A), make a person guilty of an offence,
- (b) does not, except as provided by section 26A, make any transaction void or unenforceable, and
- (c) does not, except as provided by subsection (3), give rise to any right of action for breach of statutory duty.

] ⁵

(3) In prescribed cases [a contravention within subsection (1) or (1A)] ⁶ 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.

[(4) Subsections (1) and (1A) are subject to section 39(1D).

(5) References in this Act to an authorised person acting in contravention of this section are references to the person acting in a way that results in a contravention within subsection (1) or (1A).] ⁷

Notes

- ¹ Words inserted by Financial Services Act 2012 c. 21 Sch.9(2) para.2(2)(a) (April 1, 2013)
- ² Substituted by Financial Services Act 2012 c. 21 Sch.9(2) para.2(2)(b) (April 1, 2013)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.9(2) para.2(2)(c) (April 1, 2013)
- ⁴ Added by Financial Services Act 2012 c. 21 Sch.9(2) para.2(3) (April 1, 2013)
- ⁵ Substituted by Financial Services Act 2012 c. 21 Sch.9(2) para.2(4) (April 1, 2013)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.9(2) para.2(5) (April 1, 2013)
- ⁷ Added by Financial Services Act 2012 c. 21 Sch.9(2) para.2(6) (April 1, 2013)

Commencement

Pt II s. 20(1)-(2)(c): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt II s. 20(3): February 25, 2001 for the purpose of making orders or regulations; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt II s. 20(1)-(5): United Kingdom

Financial promotion

Law In Force

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 –
- (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.

Commencement

Pt II s. 21(1)-(15): February 25, 2001 for the purposes of making orders or regulations; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt II s. 21(1)-(15): United Kingdom

Regulated activities

Law In Force

22.— [Regulated activities]¹

(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.

[(1A) An activity is also 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 relates to—

- (a) information about a person's financial standing, or
- (b) the setting of a specified benchmark.

] ²

(2) Schedule 2 makes provision supplementing this section.

(3) Nothing in Schedule 2 limits the powers conferred by subsection (1) [or (1A)] ³ .

(4) “Investment” includes any asset, right or interest.

(5) “Specified” means specified in an order made by the Treasury.

[(6) “Benchmark” means an index, rate or price that—

- (a) is determined from time to time by reference to the state of the market,
- (b) is made available to the public (whether free of charge or on payment), and
- (c) is used for reference for purposes that include one or more of the following—
 - (i) determining the interest payable, or other sums due, under loan agreements or under other contracts relating to investments;
 - (ii) determining the price at which investments may be bought or sold or the value of investments;
 - (iii) measuring the performance of investments.

] ⁴

Notes

¹ Heading substituted by Financial Services Act 2012 c. 21 Pt 2 s.7(1)(d) (January 24, 2013)

² Added by Financial Services Act 2012 c. 21 Pt 2 s.7(1)(a) (January 24, 2013)

³ Words inserted by Financial Services Act 2012 c. 21 Pt 2 s.7(1)(b) (January 24, 2013)

⁴ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(1)(c) (January 24, 2013)

Commencement

Pt II s. 22(1)-(5): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt II s. 22(1)-(6)(c)(iii): United Kingdom

Law In Force

[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 or either regulator;
- (c) authorise the making of rules or other instruments by either regulator 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 or either regulator is relevant for purposes of, or connected with, any relevant provision;
- (e) make such consequential, transitional, or supplemental provision as the Treasury consider 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.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.9 (January 24, 2013: insertion has effect subject to transitional provisions specified in 2012 c.21 Sch.20 paras 7 and 8)

Extent

Pt II s. 22A(1)-(4): United Kingdom

Law In Force

[22B Parliamentary control in relation to certain orders under section 22A

(1) This section applies to the first order made under section 22A(1).

(2) This section also applies to any subsequent order made under section 22A(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
 - (ii) that a PRA-regulated activity would become a regulated activity that is not a PRA-regulated activity, or
- (b) amends primary legislation.

- (3) No order to which this section applies may be made unless—
- (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
 - (b) subsection (5) applies.
- (4) Subsection (5) applies if an order to which this section applies 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.
- (5) Where this subsection applies 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 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).
- (6) The “relevant period” is 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 4 days.
-] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.9 (January 24, 2013: insertion has effect subject to transitional provisions specified in 2012 c.21 Sch.20 paras 7 and 8)

Extent

Pt II s. 22B(1)-(7): United Kingdom

Offences

Law In Force

23.— Contravention of the general prohibition [or section 20(1) or (1A)] ¹ .

- (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.

[(1A) An authorised person (“A”) is guilty of an offence if A carries on a credit-related 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.

(1B) In this Act “credit-related regulated activity” means a regulated activity of a kind designated by the Treasury by order.

(1C) The Treasury may designate a regulated activity under subsection (1B) only if the activity involves a person—

- (a) entering into or administering an agreement under which the person provides another person with credit,
- (b) exercising or being able to exercise the rights of the lender under an agreement under which another person provides a third party with credit, or
- (c) taking steps to procure payment of debts due under an agreement under which another person is provided with credit.

(1D) But a regulated activity may not be designated under subsection (1B) if the agreement in question is one under which the obligation of the borrower is secured on land.

(1E) “Credit” includes any cash loan or other financial accommodation.

(1F) A person guilty of an offence under subsection (1A) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding the applicable maximum term 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.

(1G) The “applicable maximum term” is—

- (a) in England and Wales, 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003);
- (b) in Scotland, 12 months;
- (c) in Northern Ireland, 6 months.

] ²

(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.

[(4) Subsection (1A) is subject to section 39(1D).

(5) No proceedings may be brought against a person in respect of an offence under subsection (1A) in a case where either regulator has taken action under section 205, 206 or 206A in relation to the alleged contravention within section 20(1) or (1A).] ³

Notes

¹ Words inserted by Financial Services Act 2012 c. 21 Sch.9(2) para.3(4) (April 1, 2013)

² Added by Financial Services Act 2012 c. 21 Sch.9(2) para.3(2) (April 1, 2013)

³ Added by Financial Services Act 2012 c. 21 Sch.9(2) para.3(3) (April 1, 2013)

Commencement

Pt II s. 23(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt II s. 23(1)-(5): United Kingdom

Law In Force

[23A Parliamentary control in relation to certain orders under section 23

(1) This section applies to the first order made under section 23(1B).

(2) This section also applies to any subsequent order made under section 23(1B) 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 would become a credit-related regulated activity.

(3) An order to which this section applies may not be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.9(2) para.4 (April 1, 2013: insertion has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Pt II s. 23A(1)-(3): United Kingdom

Law In Force

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.

(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.

Commencement

Pt II s. 24(1)-(4): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt II s. 24(1)-(4): United Kingdom

Law In Force

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.

Commencement

Pt II s. 25(1)-(2)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt II s. 25(1)-(2)(b): United Kingdom

Enforceability of agreements

✔ Law In Force

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.

Commencement

Pt II s. 26(1)-(4): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt II s. 26(1)-(4): United Kingdom

✔ Law In Force

[26A Agreements relating to credit

(1) An agreement that is made by an authorised person in contravention of section 20 is unenforceable against the other party if the agreement is entered into in the course of carrying on a credit-related regulated activity involving matters falling within section 23(1C)(a).

(2) The other party is entitled to recover—

- (a) any money or other property paid or transferred by that party under the agreement, and
- (b) compensation for any loss sustained by that party as a result of having parted with it.

(3) In subsections (1) and (2) “agreement” means an agreement—

- (a) which is made after this section comes into force, and
- (b) the making or performance of which constitutes, or is part of, the credit-related regulated activity.

(4) If the administration of an agreement involves the carrying on of a credit-related regulated activity, the agreement may not be enforced by a person for the time being exercising the rights of the lender under the agreement unless that person has permission, given under Part 4A or resulting from any other provision of this Act, in relation to that activity.

(5) If the taking of steps to procure payment of debts due under an agreement involves the carrying on of a credit-related regulated activity, the agreement may not be enforced by a person for the time being exercising the rights of the lender under the agreement unless the agreement is enforced in accordance with permission—

- (a) given under Part 4A to the person enforcing the agreement, or
- (b) resulting from any other provision of this Act.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.9(2) para.5 (April 1, 2013)

Extent

Pt II s. 26A(1)-(5)(b): United Kingdom

✔ Law In Force

27.— Agreements made through unauthorised persons.

[(1) This section applies to an agreement that—

- (a) is made by an authorised person (“the provider”) in the course of carrying on a regulated activity,
- (b) is not made in contravention of the general prohibition,
- (c) if it relates to a credit-related regulated activity, is not made in contravention of section 20, and
- (d) is made in consequence of something said or done by another person (“the third party”) in the course of—
 - (i) a regulated activity carried on by the third party in contravention of the general prohibition, or

(ii) a credit-related regulated activity carried on by the third party in contravention of section 20.

(1A) The agreement is unenforceable against the other party.]¹

(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.

Notes

¹ S.27(1) and (1A) substituted for s.27(1) by Financial Services Act 2012 c. 21 Sch.9(2) para.6 (April 1, 2013)

Commencement

Pt II s. 27(1)-(4): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt II s. 27(1)-(4): United Kingdom

Law In Force

28.— Agreements made unenforceable by section 26 or 27 [: general cases]¹ .

(1) This section applies to an agreement which is unenforceable because of section 26 or 27 [, other than an agreement entered into in the course of carrying on a credit-related regulated activity]² .

(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

(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.

Notes

- ¹ Words inserted by Financial Services Act 2012 c. 21 Sch.9(2) para.7(b) (April 1, 2013)
- ² Words inserted by Financial Services Act 2012 c. 21 Sch.9(2) para.7(a) (April 1, 2013)

Commencement

Pt II s. 28(1)-(9): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt II s. 28(1)-(9): United Kingdom

Law In Force

[28A Credit-related agreements made unenforceable by section 26, 26A or 27

- (1) This section applies to an agreement that—
- (a) is entered into in the course of carrying on a credit-related regulated activity, and
 - (b) is unenforceable because of section 26, 26A 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 specified in a written notice given by the FCA to the applicant.
- (3) If on application by the relevant firm the FCA is satisfied that it is just and equitable in the circumstances of the case, it may by written notice to the applicant allow—
- (a) the agreement to be enforced, or
 - (b) money paid or property 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 FCA must—
- (a) if the case arises as a result of section 26 or 26A, 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 relevant firm reasonably believed that by making the agreement the relevant firm was neither contravening the general prohibition nor contravening section 20.

(6) The issue is whether the provider knew that the third party was (in carrying on the credit-related regulated activity) either contravening the general prohibition or contravening section 20.

(7) An application to the FCA under this section by the relevant firm may relate to specified agreements or to agreements of a specified description or made at a specified time.

(8) “The relevant firm” means—

- (a) in a case falling within section 26, the person in breach of the general prohibition;
- (b) in a case falling within section 26A or 27, the authorised person concerned.

(9) If the FCA thinks fit, it may when acting under subsection (2)(b) or (3)—

- (a) limit the determination in its notice to specified agreements, or agreements of a specified description or made at a specified time;
- (b) make the determination in its notice conditional on the doing of specified acts by the applicant.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.9(2) para.8 (April 1, 2013)

Extent

Pt II s. 28A(1)-(9)(b): United Kingdom

Law In Force

[28B Decisions under section 28A: procedure

(1) A notice under section 28A(2)(b) or (3) must—

- (a) give the FCA's reasons for its determination, and
- (b) give an indication of—
 - (i) the right to have the matter referred to the Tribunal that is conferred by subsection (3), and
 - (ii) the procedure on such a reference.

(2) The FCA must, so far as it is reasonably practicable to do so, give a copy of the notice to any other person who appears to it to be affected by the determination to which the notice relates.

(3) A person who is aggrieved by the determination of an application under section 28A(2)(b) or (3) may refer the matter to the Tribunal.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.9(2) para.8 (April 1, 2013)

Extent

Pt II s. 28B(1)-(3): United Kingdom

✔ Law In Force

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).

(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.

Commencement

Pt II s. 29(1)-(5)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt II s. 29(1)-(5)(b): United Kingdom

✔ Law In Force

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.

(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.

Commencement

Pt II s. 30(1)-(13): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt II s. 30(1)-(13): United Kingdom

PART III

AUTHORISATION AND EXEMPTION

Authorisation

Law In Force

31.— Authorised persons.

(1) The following persons are authorised for the purposes of this Act—

- (a) a person who has a [Part 4A permission]¹ 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.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.11(1) (April 1, 2013)

Commencement

Pt III s. 31(1)-(1)(a), (1)(d)-(2): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt III s. 31(1)(b): February 25, 2001 for the purposes of making orders or regulations under Sch.3; June 18, 2001 for the purposes of making rules under Sch.3; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(3) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Pt III s. 31(1)(c): September 3, 2001 for the purposes of bringing 2000 c.8 Sch.4 into force to the extent specified in SI 2001/2632; December 1, 2001 otherwise (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt III s. 31(1)-(2): United Kingdom

Law In Force

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
- (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 [individual or]¹ firm which succeeds to the business of the dissolved firm.

[(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.]²

(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.

Notes

¹ Words inserted by Regulatory Reform (Financial Services and Markets Act 2000) Order 2007/1973 art.3(a) (July 12, 2007)

² Substituted by Regulatory Reform (Financial Services and Markets Act 2000) Order 2007/1973 art.3(b) (July 12, 2007)

Commencement

Pt III s. 32(1)-(5): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt III s. 32(1)-(5): United Kingdom

Ending of authorisation

Law In Force

33.— Withdrawal of authorisation [...] ¹ .

(1) This section applies if—

- (a) an authorised person's [Part 4A permission] ² is cancelled; and
- (b) as a result, there is no regulated activity for which he has permission.

(2) The [appropriate regulator] ³ must give a direction withdrawing that person's status as an authorised person.

[(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.

] ⁴

Notes

- ¹ Words repealed by Financial Services Act 2012 c. 21 Sch.18(1) para.2(5) (April 1, 2013)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.2(2) (April 1, 2013)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.2(3) (April 1, 2013)
- ⁴ Added by Financial Services Act 2012 c. 21 Sch.18(1) para.2(4) (April 1, 2013)

Commencement

Pt III s. 33(1)-(2): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt III s. 33(1)-(2A)(b): United Kingdom

Law In Force

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] ¹ 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.

] ²

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

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.4(3) para.27(2) (February 27, 2012: February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

² Added by Financial Services Act 2012 c. 21 Sch.4(3) para.27(3) (February 27, 2012: February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.4(3) para.27(4) (February 27, 2012: February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Commencement

Pt III s. 34(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt III s. 34(1)-(3): United Kingdom

Law In Force

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] ¹ 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.

] ²

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

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.4(3) para.28(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

² Added by Financial Services Act 2012 c. 21 Sch.4(3) para.28(3) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.4(3) para.28(4) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Commencement

Pt III s. 35(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt III s. 35(1)-(3): United Kingdom

Law In Force

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 [FCA]¹ 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 4A permission]², he does not cease to be an authorised person merely because he ceases to be a person so authorised.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.3(2) (April 1, 2013)

² Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.3(3) (April 1, 2013)

Commencement

Pt III s. 36(1)-(2): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt III s. 36(1)-(2): United Kingdom

Exercise of EEA rights by UK firms

Law In Force

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.

Commencement

Pt III s. 37: February 25, 2001 for the purposes of making orders or regulations under Sch.3; June 18, 2001 for the purposes of making rules under Sch.3; September 3, 2001 for the purposes of bringing Sch.3 Part III into force to the extent specified in SI 2001/2632; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(3) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt III s. 37: United Kingdom

Exemption

☑ Law In Force

38.— Exemption orders.

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

- (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 4A permission]¹ .

(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.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.4 (April 1, 2013)

Commencement

Pt III s. 38(1)-(4): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt III s. 38(1)-(4): United Kingdom

☑ Law In Force

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.

[(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
- (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 [FCA]² 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 [FCA]² by virtue of section 347(1)(ha).

] ¹

[(1C) Subsection (1D) applies where an authorised person (“A”)—

- (a) has permission under Part 4A, or permission resulting from any other provision of this Act, only in relation to one or more qualifying activities,
- (b) is a party to a contract with another authorised person (A's “principal”) which—
 - (i) permits or requires A to carry on business of a prescribed description (“the relevant business”), and
 - (ii) complies with such requirements as may be prescribed, and
- (c) is someone for whose activities in carrying on the whole or part of the relevant business A's principal has accepted responsibility in writing.

(1D) Sections 20(1) and (1A) and 23(1A) do not apply in relation to the carrying on by A of a relevant additional activity.

(1E) In subsections (1C) and (1D)—

- (a) “qualifying activity” means a regulated activity which is of a prescribed kind and relates—
 - (i) to rights under a contract of the kind mentioned in paragraph 23 of Schedule 2, other than one under which the obligation of the borrower to repay is secured on land, or
 - (ii) to rights under a contract of the kind mentioned in paragraph 23B of that Schedule;
- (b) “relevant additional activity” means a regulated activity which—
 - (i) is not one to which A's permission relates, and
 - (ii) is comprised in the carrying on of the business for which A's principal has accepted responsibility.

] ³

[(2) In this Act “appointed representative” means—

- (a) a person who is exempt as a result of subsection (1), or
- (b) a person carrying on a regulated activity in circumstances where, as a result of subsection (1D), sections 20(1) and (1A) and 23(1A) do not apply.

] ⁴

(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) a provision contained in or made under this Act, or
- (b) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order,

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

(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.

[(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—

“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.

] ⁶

Notes

¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.2(a) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.5(2) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

³ Added by Financial Services Act 2012 c. 21 Pt 2 s.10(2) (April 1, 2013)

⁴ Substituted by Financial Services Act 2012 c. 21 Pt 2 s.10(3) (April 1, 2013)

⁵ Substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.5(3) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

⁶ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.2(c) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

Commencement

Pt III s. 39(1)-(1)(b): February 25, 2001 for the purposes of making orders or regulations; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/3538 art. 2(1))

Pt III s. 39(2)-(6): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt III s. 39(1)-(8) definition of "relevant office" (b): United Kingdom

Law In Force

[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—

- (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 [FCA]² 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 [FCA]² 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.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.3 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.6 (April 1, 2013)

Extent

Pt III s. 39A(1)-(9) definition of "relevant office" (b): United Kingdom

PART IV

PERMISSION TO CARRY ON REGULATED ACTIVITIES

Application for permission

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

 Repealed

England, Scotland and Wales

40.— [...] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

41.— [...] ¹**Notes**

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Permission

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

42.— [...] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified

in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[England, Scotland and Wales](#) | [Other Application](#)

 Repealed

England, Scotland and Wales

43.— [...] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Variation and cancellation of Part IV permission

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

44.— [...] ¹**Notes**

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

45.— [...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

46.— [...]¹**Notes**

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

47.— [...]¹**Notes**

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

 Repealed

England, Scotland and Wales

48.— [...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified

in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Connected persons

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

49.— [...] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Additional permissions

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

50.— [...]¹**Notes**

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Procedure

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

51.— [...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

52.— [...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

53.— [...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

54.— [...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

[Notification]¹

Notes

- ¹ Added by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(2) (April 16, 2012)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

54A. [...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

54B.— [...]¹**Notes**

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

References to the Tribunal

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

55.— [...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 art.3 and Sch.1 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Other Application

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 3: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose and provision specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

As part of the substitution of a new Part 4A and in relation to the application of that new Part as brought in to force by SI 2013/113 art.2 and Sch.1 Pt 2: ss40-55 are repealed.[...]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

[PART 4A**PERMISSION TO CARRY ON REGULATED ACTIVITIES****]**¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7 otherwise)
-

*[Application for permission]*¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7 otherwise)
-

Law In Force

[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-authorized person otherwise than by virtue of a Part 4A permission;
 - (b) the FCA, in any other case.

(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”.

] ¹

Notes

¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55A(1)-(5): United Kingdom

Law In Force

[55B The threshold conditions

(1) “The threshold conditions”, in relation to a regulated activity, means the conditions set out in or specified under Schedule 6, as read with any threshold condition code made by either regulator under section 137O.

(2) Any reference in this Part to the threshold conditions for which either regulator is responsible is to be read as a reference to the conditions set out in or specified under Schedule 6 that are expressed to be relevant to the discharge by that regulator of its functions, as read with any threshold condition code made by that regulator under section 137O.

(3) In giving or varying permission, imposing or varying a requirement, or giving consent, under any provision of this Part, each regulator must ensure that the person concerned will satisfy, and continue to satisfy, in relation to all of the regulated activities for which the person has or will have permission, the threshold conditions for which that regulator is responsible.

(4) But the duty imposed by subsection (3) 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 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.

] ¹

Notes

¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55B(1)-(4)(b): United Kingdom

Law In Force

[55C Power to amend Schedule 6

(1) The Treasury may by order amend Parts 1 and 2 of Schedule 6 by altering, adding or repealing provisions, or by substituting for those Parts as they have effect for the time being provisions specified in the order.

(2) Different provision may be made under this section—

- (a) in relation to the discharge of the functions of each regulator;
- (b) in relation to different regulated activities;
- (c) in relation to persons who carry on, or seek to carry on, activities that consist of or include a PRA-regulated activity and in relation to other persons.

] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7 otherwise)

Extent

Pt IVA s. 55C(1)-(2)(c): United Kingdom

Law In Force

[55D Firms based outside EEA

(1) This section applies in relation to a person (“the non-EEA firm”)—

- (a) who is a body incorporated in, or formed under the law of, or is an individual who is a national of, any country or territory outside the EEA, and
- (b) who is carrying on a regulated activity in any country or territory outside the United Kingdom in accordance with the law of that country or territory (“the overseas state”).

(2) In determining whether the non-EEA firm is satisfying or will satisfy, and continue to satisfy, any one or more of the threshold conditions for which a UK regulator is responsible, the UK regulator may have regard to any opinion notified to it by a regulatory authority in the overseas state (“the overseas regulator”) which relates to the non-EEA firm and appears to the UK regulator to be relevant to compliance with those conditions.

(3) In considering how much weight (if any) to attach to the opinion, the UK regulator must have regard to the nature and scope of the supervision exercised in relation to the non-EEA firm by the overseas regulator.

(4) In this section “UK regulator” means the FCA or the PRA.

] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55D(1)-(4): United Kingdom

Law In Force

[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.

] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55E(1)-(5)(c): United Kingdom

Law In Force

[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.


] ¹

Notes

¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55F(1)-(6): United Kingdom

 Law In Force

[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 [any of subsections (2) to (3C) of section 285] ², 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 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.

] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
- ² Words substituted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(2) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)


Extent

Pt IVA s. 55G(1)-(6)(b): United Kingdom

*[Variation and cancellation of Part 4A permission]*¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

 Law In Force

[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-authorized 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 to which the permission relates;
- (b) removing a regulated activity from those to which the permission relates;
- (c) varying the description of a regulated activity to which the permission relates.
- (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 appears to it that it is desirable to do so in order to advance any of its operational objectives.

[(4A) The FCA may also refuse an application under this section if it appears to the FCA that the authorised person would not comply with requirements in Part 5 of the Alternative Investment Fund Managers Regulations 2013 (AIFs which acquire control of non-listed companies and issuers) that would apply to the authorised person.]²

(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.

] ¹

Notes

¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

² Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.4 (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Extent

Pt IVA s. 55H(1)-(7): United Kingdom

Law In Force

[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 to which the permission relates;
- (b) removing a regulated activity from those to which the permission relates;
- (c) varying the description of a regulated activity to which the permission relates.

(2) On the application of a PRA-authorised person with a Part 4A permission, the PRA may, after consulting the FCA, 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 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 one or more 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 by it 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)).]¹

Notes

¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55I(1)-(8): United Kingdom

Law In Force

[55J Variation or cancellation 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 for which the regulator is responsible,
- (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, [...] ²
- (c) it is desirable to exercise the power in order to advance—
 - (i) in the case of the FCA, one or more of its operational objectives,
 - (ii) in the case of the PRA, any of its objectives [, or] ³

[(d) in the case of the FCA, A has failed to comply with a requirement in Part 5 of the Alternative Investment Fund Managers Regulations 2013 (AIFs which acquire control of non-listed companies and issuers), or it is for some other reason desirable to exercise the power for the purposes of ensuring compliance with such a requirement.] ³

(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 to which the permission relates,
 - (ii) removing a regulated activity from those to which the permission relates, or
 - (iii) varying the description of a regulated activity to which the permission relates in a way which, if it is a PRA-regulated activity, does not, in the opinion of the FCA, widen the description, or
- (b) to cancel the Part 4A permission.

(3) The PRA's power under this section is the power—

- (a) 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;
- (b) in the case of an authorised person who is not a PRA-authorised person, to vary the Part 4A permission by adding a PRA-regulated activity to those to which the permission relates and, if the PRA does so, to vary the Part 4A permission in any of the other ways mentioned in section 55I(1).

(4) The FCA—

- (a) must consult the PRA before exercising its power under this section in relation to—
 - (i) a PRA-authorised person, or
 - (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) 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.

[(6A) Without prejudice to the generality of subsections (1) to (3), the FCA may, in relation to an authorised person who is a full-scope UK AIFM, exercise its power under this section to cancel the Part 4A permission if it appears to it that any of the following conditions is met—

- (a) the person has failed, during a period of at least six months, to carry on the regulated activity of managing an AIF;
- (b) the person obtained the Part 4A permission to carry on the regulated activity of managing an AIF by making a false statement or by any other irregular means;
- (c) in a case where the Part 4A permission includes permission to provide the discretionary portfolio management service referred to in Article 6.4(a) of the alternative investment fund managers directive, the person no longer complies with Directive 2006/49/EC of the European Parliament and of the Council on the capital adequacy of investment firms and credit institutions⁵;
- (d) the person no longer meets the conditions that a person must meet in order to obtain a Part 4A permission to carry on the regulated activity of managing an AIF;
- (e) the person has seriously or systematically infringed—
 - (i) any provision of the Alternative Investment Fund Managers Regulations 2013;
 - (ii) a provision of any directly applicable EU regulation made under the alternative investment fund managers directive; or
 - (iii) any provision made by or under this Act which implements that directive.

] ⁴

(7) Without prejudice to the generality of subsections (1) and (2), the FCA may, in relation to an authorised person who has permission to carry on the regulated activity specified in article 24A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (which relates to bids in emission allowance auctions), exercise its power under this section to vary the Part 4A

permission of the person concerned by removing that activity from those to which the permission relates if it appears to the FCA that the person has seriously and systematically infringed the provisions of paragraph 2 or 3 of Article 59 of the emission allowance auctioning regulation.

(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) Before cancelling under subsection (8) a Part 4A permission which relates to a person who (before the variation) was a PRA-authorised person, the regulator must consult the other regulator.

(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 to that regulator 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.

] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
- ² Word repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.5(a)(i) (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ³ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.5(a)(ii) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁴ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.5(b) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁵ OJ L 177, 30.6.2006, p.201.

Extent

Pt IVA s. 55J(1)-(12): United Kingdom

Law In Force

[55K Investment firms: particular conditions that enable cancellation

(1) The conditions referred to in section 55J(6) 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 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).

] ¹

Notes

¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55K(1)-(2): United Kingdom

[Imposition and variation of requirements]¹

Notes

¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Law In Force

[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 giving 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 for which the FCA is responsible,
- (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 one or more 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's power under subsection (3) is referred to in this Part as its own-initiative requirement power.
- (5) The FCA may, on the application of an authorised person with a Part 4A permission—
- (a) impose a new requirement,
 - (b) vary a requirement imposed by the FCA under this section, or
 - (c) cancel such a requirement.
- (6) The FCA may refuse an application under subsection (5) if it appears to it that it is desirable to do so in order to advance any of its operational objectives.
- (7) 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.

] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55L(1)-(7)(b): United Kingdom

Law In Force

[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
 - (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 giving 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 for which the PRA is responsible,
 - (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's power under subsection (3) is referred to in this Part as its own-initiative requirement power.

- (5) The PRA may, on the application of a PRA-authorized person with a Part 4A permission—
- (a) impose a new requirement,
 - (b) vary a requirement imposed by the PRA under this section, or
 - (c) cancel such a requirement.

(6) The PRA may refuse an application under subsection (5) if it appears to it that it is desirable to do so in order to advance any of its objectives.

(7) The PRA must consult the FCA before imposing or varying a requirement.

] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55M(1)-(7): United Kingdom

Law In Force

[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 may be expressed to expire at the end of such period as the regulator imposing it may specify, but the imposition of a requirement that expires at the end of a specified period 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.

] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

ExtentPt IVA s. 55N(1)-(6): United Kingdom

 Law In Force**[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-authorized 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.
-]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

ExtentPt IVA s. 55O(1)-(5): United Kingdom

 Law In Force**[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—
- (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).

] ¹

Notes

¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55P(1)-(12): United Kingdom

[Exercise of power in support of overseas regulator]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Law In Force

[55Q Exercise of power in support of overseas regulator

- (1) Either UK regulator's own-initiative powers 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 powers.
- (4) If a request to a UK regulator for the exercise of its own-initiative powers 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,
- 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 whether or not to do so, 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 powers, in response to a request, unless the overseas regulator concerned undertakes to make such contribution towards the cost of their 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 powers 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 powers”, in relation to the FCA or the PRA, means its own-initiative variation power and its own-initiative requirement power.

]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55Q(1)-(9)(c): United Kingdom

*[Connected persons]¹***Notes**

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Law In Force

[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)), or
- (b) cancelling or varying a Part 4A permission given to such a person,

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.

]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55R(1)-(3)(b): United Kingdom

[Additional permissions]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Law In Force

[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 a 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.

]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55S(1)-(2)(c): United Kingdom

[Persons whose interests are protected]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Law In Force

[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.]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55T: United Kingdom

[Procedure]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose of the giving of directions or the imposition of requirements as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7 otherwise)
-

Law In Force

[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.

- (3) An application for the variation of a requirement imposed under section 55L or 55M or for the imposition of a new requirement must contain a statement of the desired variation or requirement.
- (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 or, as the case requires, to decide whether to give consent.
- (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.

]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose of the giving of directions or the imposition of requirements as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7 otherwise)

Extent

Pt IVA s. 55U(1)-(9)(b): United Kingdom

✔ Law In Force

! Amendment(s) Pending

[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 end of 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 or cancellation of a Part 4A permission,

(c) for the variation or cancellation of a requirement imposed under section 55L or 55M, or

(d) for the imposition of a new requirement under either of those sections,

it must give the applicant written notice.

(6) The notice must state the date from which the permission, variation, cancellation or requirement has effect.

(7) A notice under this section which is given by the PRA and relates to the grant of an application for Part 4A permission or for the variation of a Part 4A permission must state that the FCA has given its consent to the grant of the application.

[(8) In the case of an application for permission under this Part which—

(a) relates to the regulated activity of managing an AIF, and

(b) would if granted result in the applicant becoming a full-scope UK AIFM,

this section has effect subject to regulation 5 of the Alternative Investment Fund Managers Regulations 2013 and, accordingly, subsections (1) to (3) do not apply.

]²

]¹

Notes

¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

² Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.6 (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Amendments Pending

Pt IVA s. 55V(8): words inserted by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 1 para. 1(2) (date to be appointed)

Extent

Pt IVA s. 55V(1)-(8)(b): United Kingdom

Law In Force

[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(5).

]¹

Notes

¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55W(a)-(c): United Kingdom

Law In Force

[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, or
- (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,

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 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.

] ¹

Notes

¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55X(1)-(4)(f): United Kingdom

Law In Force

[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 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,

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).

] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55Y(1)-(12): United Kingdom

Law In Force

[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.

] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55Z(1)-(2): United Kingdom

[Notification]¹**Notes**

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Law In Force

[55Z1 Notification of ESMA

A regulator must notify ESMA of—

- (a) the giving by it of a Part 4A permission to an investment firm, where the regulated activities to which the permission relates are investment services and activities,
- (b) the giving by it of a Part 4A permission to a management company (as defined in section 237(2)), where the regulated activities to which the permission relates fall within paragraph 8 of Schedule 2,
- (c) the cancellation by it of a Part 4A permission of a description falling within paragraph (b), or
- (d) the cancellation by it of a Part 4A permission under section 55J(6), in reliance on any one or more of the conditions in section 55K(1)(b) to (d).

] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55Z1(a)-(d): United Kingdom

Law In Force

[55Z2 Notification of EBA

(1) A regulator must notify EBA of—

- (a) the giving by it of a Part 4A permission to a credit institution, where the regulated activity to which the permission relates falls within paragraph 4 of Schedule 2, or
- (b) the cancellation by it of a Part 4A permission of a description falling within paragraph (a).

(2) “Credit institution” has the meaning given in section 1H(8).

] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55Z2(1)-(2): United Kingdom

[References to the Tribunal]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Law In Force

[55Z3 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.

] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55Z3(1)-(2): United Kingdom

[Interpretation]¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)
-

Law In Force

[55Z4 Interpretation of Part 4A

In this Part—

“own-initiative requirement power”, in relation to the FCA or the PRA, is to be read in accordance with section 55L(4) or 55M(4);

“own-initiative variation power”, in relation to the FCA or the PRA, is to be read in accordance with section 55J(12).

] ¹

Notes

- ¹ Existing ss 40-55 substituted for a new Part 4A consisting of ss 55A-55Z4 by Financial Services Act 2012 c. 21 Pt 2 s.11(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 paras 5 and 7)

Extent

Pt IVA s. 55Z4 definition of "own initiative requirement power"- definition of "own initiative variation power": United Kingdom

PART V**PERFORMANCE OF REGULATED ACTIVITIES***Prohibition orders*

Law In Force

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
- (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 PRAregulated activity carried on by the person.

] ¹

(2) [A “prohibition order” is an order] ² 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.] ³

[(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

(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)] ⁵ 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 regulator that has made [the order] ⁷] ⁶ may, on the application of the individual named in a prohibition 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-authorized person, or
- (b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.

(7C) The PRA must consult the FCA before varying or revoking a prohibition order.] ⁸

(8) [...] ⁹

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

Notes

¹ S.56(1) and (1A) substituted for s.56(1) by Financial Services Act 2012 c. 21 Pt 2 s.13(2) (April 1, 2013)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.13(3) (April 1, 2013)

³ Substituted by Financial Services Act 2012 c. 21 Pt 2 s.13(4) (April 1, 2013)

⁴ Added by Financial Services Act 2012 c. 21 Pt 2 s.13(5) (April 1, 2013)

⁵ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.13(6) (April 1, 2013)

⁶ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.13(7)(a) (April 1, 2013)

⁷ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.13(7)(b) (April 1, 2013)

⁸ Added by Financial Services Act 2012 c. 21 Pt 2 s.13(8) (April 1, 2013: insertion has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

⁹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.13(9) (April 1, 2013)

Commencement

Pt V s. 56(1)-(9): September 3, 2001 for the purposes of prohibition orders coming into force no sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt V s. 56(1)-(9): United Kingdom

Law In Force

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

(1) If [a regulator]¹ 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 [a regulator]¹ 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.

(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-authorized person, or
- (b) a person who is an exempt person in relation to a PRAregulated activity carried on by the person.

(8) The PRA must consult the FCA before giving a warning notice under this section.]²

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.13(11) (April 1, 2013)

² Added by Financial Services Act 2012 c. 21 Pt 2 s.13(12) (April 1, 2013: insertion has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Commencement

Pt V s. 57(1)-(5): September 3, 2001 for the purposes of prohibition orders coming into force no sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt V s. 57(1)-(8): United Kingdom

✔ Law In Force

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]¹ decides to grant the application, it must give the applicant written notice of its decision.
- (3) If the [appropriate regulator]¹ proposes to refuse the application, it must give the applicant a warning notice.
- (4) If the [appropriate regulator]¹ decides to refuse the application, it must give the applicant a decision notice.
- (5) If the [appropriate regulator]¹ gives the applicant a decision notice, he may refer the matter to the Tribunal.

[(6) “The appropriate regulator” means the regulator to which the application is made.]²

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.2(2) (April 1, 2013)

² Added by Financial Services Act 2012 c. 21 Sch.5 para.2(3) (April 1, 2013)

Commencement

Pt V s. 58(1)-(5): September 3, 2001 for the purposes of prohibition orders coming into force no sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt V s. 58(1)-(6): United Kingdom

Approval

✔ Law In Force

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]¹ 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]¹ 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) “The 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 with the consent of the FCA.

(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.]²

[(7C) A regulator may not exercise the power in subsection (3) so as to provide for a function to be a controlled function in relation to the carrying on of the regulated activity of managing an AIF by an AIFM which—

(a) is also an AIF;

(b) does not manage any AIF other than itself;

(c) is a body corporate; and

(d) is not a collective investment scheme.

] ³

(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 [or the emission allowance auctioning regulation] ⁴ to an authority in a country or territory outside the United Kingdom.

(9) [...] ⁵

(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.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.14(1)(a) (January 24, 2013 for the purpose of making arrangements under 2000 c.8 s.59B, the issue of statements of principle under 2000 c.8 s.64 and the making of rules as specified in SI 2013/13 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ² S.59(3)-(7B) substituted for s.59(3)-(7) by Financial Services Act 2012 c. 21 Pt 2 s.14(1)(b) (January 24, 2013: substitution has effect as SI 2013/113 for the purpose of making arrangements under 2000 c.8 s.59B, the issue of statements of principle under 2000 c.8 s.64 and the making of rules subject to transitional provisions specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)
- ³ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.7 (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁴ Words inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.3(4) (July 20, 2012)
- ⁵ Repealed by Financial Services Act 2012 c. 21 Sch.5 para.3 (April 1, 2013 as SI 2013/423)

Commencement

Pt V s. 59(1)-(11): June 18, 2001 for the purposes of making rules; September 3, 2001 for the purposes of approvals, and applications for approvals, coming into force no sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt V s. 59(1)-(11): United Kingdom

Law In Force

[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).

(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 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.

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.14(2) (January 24, 2013: insertion has effect as SI 2013/113 for the purpose of making arrangements under 2000 c.8 s.59B, the issue of statements of principle under 2000 c.8 s.64 and the making of rules subject to transitional provisions specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt V s. 59A(1)-(5): United Kingdom

Law In Force

[59B Role of FCA in relation to PRA decisions

- (1) The FCA may arrange with the PRA that in such cases as may be described in the arrangements the PRA may give approval under section 59 without obtaining the consent of the FCA.
- (2) Arrangements under this section must be in writing, and must specify the date on which they come into force.
- (3) The regulators must publish any arrangements under this section in such manner as they think fit.
- (4) Section 59(4)(b) has effect subject to any arrangements in force under this section.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.14(2) (January 24, 2013: insertion has effect as SI 2013/113 for the purpose of making arrangements under 2000 c.8 s.59B, the issue of statements of principle under 2000 c.8 s.64 and the making of rules subject to transitional provisions specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt V s. 59B(1)-(4): United Kingdom

Law In Force

60.— Applications for approval.

- (1) An application for the [appropriate regulator's] ¹ 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] ¹ may direct; and
 - (b) contain, or be accompanied by, such information as the [appropriate regulator] ¹ may reasonably require.

[(3) 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 or, as the case requires, to decide whether to give consent.] ²

(4) The [appropriate regulator]¹ 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]¹ 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]³ and will be the authorised person concerned if permission is given.

[(7) The PRA must consult the FCA before—

- (a) giving a direction under subsection (2)(a) in relation to a class of applicants, or
- (b) imposing a requirement under subsection (2)(b) on a class of applicants.

(8) The PRA must as soon as practicable notify the FCA of the receipt or withdrawal of an application to the PRA, unless the case is one in which by virtue of arrangements under section 59B the consent of the FCA is not required.

(9) “The appropriate regulator”—

- (a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA;
- (b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA, and for the purposes of subsection (3) also includes the FCA in cases where the consent of the FCA is required.

] ⁴

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.5 para.4(1) (January 24, 2013 for the purpose of giving directions or the imposition of requirements; April 1, 2013 otherwise)

² Substituted by Financial Services Act 2012 c. 21 Sch.5 para.4(2) (January 24, 2013 for the purpose of giving directions or the imposition of requirements; April 1, 2013 otherwise)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.4(3) (January 24, 2013 for the purpose of giving directions or the imposition of requirements; April 1, 2013 otherwise)

⁴ Added by Financial Services Act 2012 c. 21 Sch.5 para.4(4) (January 24, 2013: insertion has effect on January 24, 2013 for the purpose of giving directions or the imposition of requirements as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Commencement

Pt V s. 60(1)-(6): June 18, 2001 for the purposes of giving directions or imposing requirements as mentioned in 2000 c.8 s.60(2) or (4); September 3, 2001 for the purposes of approvals, and applications for approvals, coming into force no sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt V s. 60(1)-(9)(b): United Kingdom

✔ Law In Force

61.— Determination of applications.

(1) [The regulator to which an application is made under section 60 may grant the application]¹ 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 regulator]² 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 that regulator]³ in relation to persons performing functions of the kind to which the application relates.

[(2A) Subsections (1) and (2) apply in relation to the giving by the FCA of any required consent as they apply in relation to the grant of the application.]⁴

(3) [The regulator to which an application is made under section 60 must, before the end of the period for consideration, determine]⁵ 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 the application under section 60 is made by a person applying for permission under Part 4A (see section 60(6)), means whichever ends last of—

- (i) the period within which the 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 regulator receives the application under section 60, and

(b) in any other case, means the period of 3 months beginning with the date on which the regulator receives the application under section 60.

] ⁶

(4) If [a regulator]⁷ 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 [a regulator]⁷ ; or
- (b) if the information is not provided on a single day, on the last of the days on which it is received by [a regulator]⁷ .

(5) A person who makes an application under section 60 may withdraw his application by giving written notice to the [regulator to which the application was made]⁸ at any time before the [regulator]⁹ 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.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.5(2) (April 1, 2013 as SI 2013/423)

² Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.5(3)(a) (April 1, 2013 as SI 2013/423)

³ Words inserted by Financial Services Act 2012 c. 21 Sch.5 para.5(3)(b) (April 1, 2013 as SI 2013/423)

- ⁴ Added by Financial Services Act 2012 c. 21 Sch.5 para.5(4) (April 1, 2013 as SI 2013/423)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.5(5) (April 1, 2013 as SI 2013/423)
- ⁶ Added by Financial Services Act 2012 c. 21 Sch.5 para.5(6) (April 1, 2013 as SI 2013/423)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.5(7) (April 1, 2013 as SI 2013/423)
- ⁸ Word substituted by Financial Services Act 2012 c. 21 Sch.5 para.5(8)(a) (April 1, 2013 as SI 2013/423)
- ⁹ Word substituted by Financial Services Act 2012 c. 21 Sch.5 para.5(8)(b) (April 1, 2013 as SI 2013/423)

Commencement

Pt V s. 61(1)-(5)(b): September 3, 2001 for the purposes of approvals, and applications for approvals, coming into force no sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt V s. 61(1)-(5)(b): United Kingdom

Law In Force

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

- (1) [If the regulator to which an application is made under section 60 (“an application”) decides to grant the application, it]¹ must give written notice of its decision to each of the interested parties.
- (2) If [the regulator to which an application is made]² proposes to refuse [the application]³ , it must give a warning notice to each of the interested parties.
- (3) If [the regulator to which an application is made]² decides to refuse [the application]³ , it must give a decision notice to each of the interested parties.
- (4) If [the regulator to which an application is made]² decides to refuse [the application]³ , 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.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.6(2) (April 1, 2013 as SI 2013/423)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.6(3)(a) (April 1, 2013 as SI 2013/423)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.6(3)(b) (April 1, 2013 as SI 2013/423)

Commencement

Pt V s. 62(1)-(5)(c): September 3, 2001 for the purposes of approvals, and applications for approvals, coming into force no sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt V s. 62(1)-(5)(c): United Kingdom

✔ Law In Force

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) Before one regulator withdraws an approval given by the other regulator, it must consult the other regulator.]¹

(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]² 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 .

(3) If [a regulator]⁴ proposes to withdraw [an approval]⁵ , it must give each of the interested parties a warning notice.

(4) If [a regulator]⁴ decides to withdraw [an approval]⁵ , it must give each of the interested parties a decision notice.

(5) If [a regulator]⁴ decides to withdraw [an approval]⁵ , 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.

Notes

¹ S.63(1)-(1C) substituted for s.63(1) by Financial Services Act 2012 c. 21 Pt 2 s.14(3) (January 24, 2013: substitution has effect as SI 2013/113 for the purpose of making arrangements under 2000 c.8 s.59B, the issue of statements of principle under 2000 c.8 s.64 and the making of rules subject to transitional provisions specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

² Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.7(2)(a) (April 1, 2013 as SI 2013/423)

³ Words inserted by Financial Services Act 2012 c. 21 Sch.5 para.7(2)(b) (April 1, 2013 as SI 2013/423)

⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.7(3)(a) (April 1, 2013 as SI 2013/423)

⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.7(3)(b) (April 1, 2013 as SI 2013/423)

Commencement

Pt V s. 63(1)-(6)(c): September 3, 2001 for the purposes of approvals, and applications for approvals, coming into force no sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt V s. 63(1)-(6)(c): United Kingdom

*[Performance of controlled functions without approval]¹***Notes**¹ Added by Financial Services Act 2010 c. 28 s.11 (June 8, 2010)

Law In Force

[63A Power to impose penalties

- (1) If the [appropriate regulator]² 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]² 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]² knew that the person concerned had performed a controlled function without approval .
- (5) For this purpose the [appropriate regulator]² 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.
- [(5A) “The 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.
-]³
- (6) Any [other]⁴ expression which is used both in this section and section 59 has the same meaning in this section as in that section.
-]¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 s.11 (June 8, 2010)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.8(a) (April 1, 2013 as SI 2013/423)
- ³ Added by Financial Services Act 2012 c. 21 Sch.5 para.8(b) (April 1, 2013 as SI 2013/423)
- ⁴ Word inserted by Financial Services Act 2012 c. 21 Sch.5 para.8(c) (April 1, 2013 as SI 2013/423)

Extent

Pt V s. 63A(1)-(6): United Kingdom

Law In Force

[63B Procedure and right to refer to Tribunal

- (1) If [a regulator]² 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 [a regulator]² 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 [a regulator]² decides to impose a penalty on a person under section 63A, the person may refer the matter to the Tribunal.

]¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 s.11 (June 8, 2010)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.9 (April 1, 2013 as SI 2013/423)

Extent

Pt V s. 63B(1)-(5): United Kingdom

Law In Force

[63C Statement of policy

- (1) [Each regulator]² must 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) [Each regulator's]³ 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) [Each regulator's]³ 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 regulator that has issued the statement]⁴ 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 regulator]⁵ may at any time alter or replace a statement issued [by it]⁶ under this section.
- (6) If a statement issued under this section is altered or [replaced by a regulator, the regulator]⁷ must issue the altered or replaced statement.
- (7) [A regulator]⁸ must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (8) A statement issued under this section [by a regulator]⁹ must be published by the [regulator]¹⁰ in the way appearing to the [regulator]¹⁰ to be best calculated to bring it to the attention of the public.
- (9) The [regulator]¹¹ 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, [a regulator]¹² must have regard to any statement of policy published [by it]¹³ under this section and in force at a time when the person concerned performed a controlled function without approval.
-] ¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 s.11 (June 8, 2010)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.10(2) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.10(3) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.10(4) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.10(5)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁶ Words inserted by Financial Services Act 2012 c. 21 Sch.5 para.10(5)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.10(6) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁸ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.10(7) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁹ Words inserted by Financial Services Act 2012 c. 21 Sch.5 para.10(8)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)

- ¹⁰ Word substituted by Financial Services Act 2012 c. 21 Sch.5 para.10(8)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ¹¹ Word substituted by Financial Services Act 2012 c. 21 Sch.5 para.10(9) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ¹² Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.10(10)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ¹³ Words inserted by Financial Services Act 2012 c. 21 Sch.5 para.10(10)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)

Extent

Pt V s. 63C(1)-(10): United Kingdom

Law In Force

[63D Statement of policy: procedure

(1) Before [a regulator issues]² a statement under section 63C , the [regulator]³ must publish a draft of the proposed statement in the way appearing to the [regulator]³ 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]⁴ within a specified time.

(3) Before issuing the proposed statement, the [regulator]⁵ must have regard to any representations made to it in accordance with subsection (2).

(4) If the [regulator]⁵ 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]⁵ , significant, the [regulator]⁵ must (in addition to complying with subsection (4)) publish details of the difference.

(6) [A regulator]⁶ may charge a reasonable fee for providing a person with a copy of a draft published [by it]⁷ under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.11 (June 8, 2010)

² Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.11(2)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)

³ Word substituted by Financial Services Act 2012 c. 21 Sch.5 para.11(2)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)

- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.11(3) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁵ Word substituted by Financial Services Act 2012 c. 21 Sch.5 para.11(3) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.11(4)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁷ Words inserted by Financial Services Act 2012 c. 21 Sch.5 para.11(4)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)

Extent

Pt V s. 63D(1)-(7): United Kingdom

Conduct [of approved persons]¹

Notes

- ¹ Words inserted by Financial Services Act 2010 c. 28 Sch.2(1) para.7 (June 8, 2010)

Law In Force

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 either regulator 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-authorized persons of regulated activities.

(1B) A statement of principle issued by either regulator 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.

] ¹

(2) If [a regulator] ² issues a statement of principle under subsection (1) [or (1A)] ³, 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 [regulator issuing the code] ⁴, comply with a statement of principle;
- (b) descriptions of conduct which, in the opinion of the [regulator issuing the code] ⁴, do not comply with a statement of principle;

- (c) factors which, in the opinion of the [regulator issuing the code]⁴, are to be taken into account in determining whether or not a person's conduct complies with a statement of principle.
- (4) [A regulator]⁵ may at any time alter or replace a statement or code issued [by it]⁶ under this section.
- (5) If a statement or code is altered or replaced [by a regulator]⁷, the altered or replacement statement or code must be issued by the [regulator]⁸.
- (6) A statement or code issued under this section must be published by [the regulator that issued it]⁹ in the way appearing to [that regulator]¹⁰ 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 regulator]¹¹ must, without delay, give the Treasury a copy of any statement or code which it publishes under this section.
- (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(6)(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 2J(1)(a) as part of the PRA's rule-making functions (where the power is exercisable by the PRA).]¹²
- (12) [A regulator]¹³ may charge a reasonable fee for providing a person with a copy of a statement or code published [by it]¹⁴ under this section.
- [(13) Any expression which is used both in this section and section 59 has the same meaning in this section as in that section.]¹⁵

Notes

- ¹ S.64(1)-(1B) substituted for s.64(1) by Financial Services Act 2012 c. 21 Pt 2 s.14(4) (January 24, 2013 for the purpose of making arrangements under 2000 c.8 s.59B, the issue of statements of principle under 2000 c.8 s.64 and the making of rules as specified in SI 2013/13 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.12(2)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ³ Words inserted by Financial Services Act 2012 c. 21 Sch.5 para.12(2)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁴ Word substituted by Financial Services Act 2012 c. 21 Sch.5 para.12(3) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)

- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.12(4)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁶ Words inserted by Financial Services Act 2012 c. 21 Sch.5 para.12(4)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁷ Words inserted by Financial Services Act 2012 c. 21 Sch.5 para.12(5)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁸ Word substituted by Financial Services Act 2012 c. 21 Sch.5 para.12(5)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁹ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.12(6)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ¹⁰ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.12(6)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ¹¹ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.12(7) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ¹² Substituted by Financial Services Act 2012 c. 21 Sch.5 para.12(8) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ¹³ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.12(9)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ¹⁴ Words inserted by Financial Services Act 2012 c. 21 Sch.5 para.12(9)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ¹⁵ Substituted by Financial Services Act 2012 c. 21 Sch.5 para.12(10) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)

Commencement

Pt V s. 64(1)-(13): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt V s. 64(1)-(13): United Kingdom

Law In Force

65.— Statements and codes: procedure.

[(1) Before a regulator 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 (within the meaning of that section) in relation to the carrying on by PRA authorised persons of regulated activities.]¹

- (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 regulator publishing the draft]² within a specified time.
- (3) Before [a regulator issues]³ the proposed statement or code, [it]⁴ must have regard to any representations made to it in accordance with subsection (2)(b).
- (4) If [a regulator]⁵ 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 regulator issuing the statement or code]⁶, significant—
- (a) [the regulator]⁷ 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 regulator concerned]⁸ 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.
-]⁹
- (8) A statement or code must state that it is issued under section 64.
- (9) [A regulator]¹⁰ may charge a reasonable fee for providing a copy of a draft published [by it]¹¹ under subsection (1).
- (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.
- (11A) If, in the opinion of the regulator 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 regulator concerned and an explanation of it.
-]¹²

(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.

Notes

- ¹ S.65(1)-(1A) substituted for s.65(1) by Financial Services Act 2012 c. 21 Sch.5 para.13(2) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.13(3) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.13(4)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁴ Word substituted by Financial Services Act 2012 c. 21 Sch.5 para.13(4)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.13(5) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.13(6)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.13(6)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁸ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.13(7) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁹ Substituted by Financial Services Act 2012 c. 21 Sch.5 para.13(8) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ¹⁰ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.13(9)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ¹¹ Words inserted by Financial Services Act 2012 c. 21 Sch.5 para.13(9)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ¹² S.65(11)-(11A) substituted for s.65(11) by Financial Services Act 2012 c. 21 Sch.5 para.13(10) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)

Commencement

Pt V s. 65(1)-(12)(b): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt V s. 65(1)-(12)(b): United Kingdom

☑ Law In Force

66.— Disciplinary powers.

(1) [A regulator]¹ may take action against a person under this section [(whether or not it has given its approval in relation to the person)]² if—

- (a) it appears to the [regulator]³ that he is guilty of misconduct; and
- (b) the [regulator]³ 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—
 - (i) by or under this Act, [...]⁵
 - [(ia) by the Alternative Investment Fund Managers Regulations 2013, or]⁵
 - (ii) by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

(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—
 - (i) by or under this Act, or
 - (ii) by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

] ⁴

(3) If the [regulator]⁶ is entitled to take action under this section against a person, [it may do one or more of the following-]⁷

- (a) impose a penalty on him of such amount as it considers appropriate; [...]⁸
- [(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]⁸
- (b) publish a statement of his misconduct.

[(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 regulator taking action under this section]¹⁰ 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.

] ⁹

(4) [A regulator] ¹¹ may not take action under this section after the end of the period of [three years] ¹² beginning with the first day on which [the regulator] ¹³ 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 regulator] ¹⁴ 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).

[(5A) “Approval” means an approval given under section 59.] ¹⁵

[(6) “Approved person” means a person in relation to whom an approval is given under that section.] ¹⁶

(7) “Relevant authorised person”, in relation to an approved person, means the person on whose application approval [...] ¹⁷ was given.

[(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.] ¹⁸

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.14(2)(a)(i) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

² Words inserted by Financial Services Act 2012 c. 21 Sch.5 para.14(2)(a)(ii) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

³ Word substituted by Financial Services Act 2012 c. 21 Sch.5 para.14(2)(b) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

⁴ S.66(2) and (2A) substituted for s.66(2) by Financial Services Act 2012 c. 21 Sch.5 para.14(3) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

⁵ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.8 (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

⁶ Word substituted by Financial Services Act 2012 c. 21 Sch.5 para.14(4) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

⁷ Words substituted by Financial Services Act 2010 c. 28 s.12(2)(a) (June 8, 2010)

⁸ Added by Financial Services Act 2010 c. 28 s.12(2)(b) (June 8, 2010)

⁹ Added by Financial Services Act 2010 c. 28 s.12(3) (June 8, 2010)

¹⁰ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.14(5) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

¹¹ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.14(6)(a) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

¹² Words substituted by Financial Services Act 2010 c. 28 s.12(4) (June 8, 2010)

- ¹³ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.14(6)(b) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ¹⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.14(7) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ¹⁵ Added by Financial Services Act 2010 c. 28 Sch.2(1) para.8(2) (June 8, 2010)
- ¹⁶ Substituted by Financial Services Act 2012 c. 21 Sch.5 para.14(8) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ¹⁷ Words repealed by Financial Services Act 2010 c. 28 Sch.2(1) para.8(3) (June 8, 2010)
- ¹⁸ Added by Financial Services Act 2010 c. 28 Sch.2(1) para.8(4) (June 8, 2010)

Commencement

Pt V s. 66(1)-(7): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt V s. 66(1)-(9): United Kingdom

Law In Force

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

(1) If [a regulator]¹ proposes to take action against a person under section 66 , it must give him a warning notice [; 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 .

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

[(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

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

(4) If [a regulator]¹ decides to take action against a person under section 66 , it must give him a decision notice [; 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]⁴ .

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

[(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.

] ⁵

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

(7) If [a regulator]⁶ decides to take action against a person under section 66 , he may refer the matter to the Tribunal [; and if [the regulator]⁸ 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]⁷ .

[(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,]¹⁰ 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.

[...] ¹¹ .]⁹

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.15(2) (April 1, 2013 as SI 2013/423)

² Words inserted by Financial Services Act 2010 c. 28 Sch.2(1) para.9(2) (May 8, 2010)

³ Added by Financial Services Act 2010 c. 28 Sch.2(1) para.9(3) (May 8, 2010)

⁴ Words inserted by Financial Services Act 2010 c. 28 Sch.2(1) para.9(4) (May 8, 2010)

⁵ Added by Financial Services Act 2010 c. 28 Sch.2(1) para.9(5) (May 8, 2010)

⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.15(3)(a) (April 1, 2013 as SI 2013/423)

⁷ Words inserted by Financial Services Act 2010 c. 28 Sch.2(1) para.9(6) (May 8, 2010)

⁸ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.15(3)(b) (April 1, 2013 as SI 2013/423)

⁹ Added by Financial Services Act 2010 c. 28 Sch.2(1) para.9(7) (May 8, 2010)

¹⁰ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.15(4)(a) (April 1, 2013 as SI 2013/423)

¹¹ Words repealed by Financial Services Act 2012 c. 21 Sch.5 para.15(4)(b) (April 1, 2013 as SI 2013/423)

Commencement

Pt V s. 67(1)-(7): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt V s. 67(1)-(9)(b): United Kingdom

Law In Force

68. Publication.

After a statement under section 66 is published, [the regulator publishing it]¹ must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.16 (April 1, 2013 as SI 2013/423)

Commencement

Pt V s. 68: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt V s. 68: United Kingdom

Law In Force

69.— Statement of policy.

(1) [Each regulator must]¹ prepare and issue a statement of its policy with respect to—
 [(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
- (2) [A regulator's]³ 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,]⁴ 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 [the person against whom action is to be taken]⁵ is an individual.
- (3) [A regulator]⁶ may at any time alter or replace a statement issued [by it]⁷ under this section.
- (4) If a statement issued under this section is altered or [replaced by a regulator, the regulator]⁸ must issue the altered or replacement statement.
- (5) [A regulator]⁹ must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (6) A statement issued under this section [by a regulator]¹⁰ must be published by [the regulator]¹¹ in the way appearing to [the regulator]¹¹ to be best calculated to bring it to the attention of the public.
- (7) The [regulator]¹² 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, [a regulator]¹³ must have regard to any statement of policy published [by it]¹⁴ under this section and in force at the time when the misconduct in question occurred.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.17(2) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ² S.69(1)(a)-(c) substituted for s.69(1)(a)-(b) by Financial Services Act 2010 c. 28 Sch.2(1) para.10(2) (June 8, 2010)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.17(3) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁴ Words inserted by Financial Services Act 2010 c. 28 Sch.2(1) para.10(3)(a) (June 8, 2010)
- ⁵ Words substituted by Financial Services Act 2010 c. 28 Sch.2(1) para.10(3)(b) (June 8, 2010)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.17(4)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁷ Words inserted by Financial Services Act 2012 c. 21 Sch.5 para.17(4)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁸ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.17(5) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁹ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.17(6) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ¹⁰ Words inserted by Financial Services Act 2012 c. 21 Sch.5 para.17(7)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ¹¹ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.17(7)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)

- ¹² Word substituted by Financial Services Act 2012 c. 21 Sch.5 para.17(8) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ¹³ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.17(9)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ¹⁴ Words inserted by Financial Services Act 2012 c. 21 Sch.5 para.17(9)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)

Commencement

Pt V s. 69(1)-(8): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt V s. 69(1)-(8): United Kingdom

Law In Force

70.— Statements of policy: procedure.

- (1) Before [a regulator issues]¹ a statement under section 69, the [regulator]² must publish a draft of the proposed statement in the way appearing to the [regulator]² 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]³ within a specified time.
- (3) Before issuing the proposed statement, the [regulator]³ must have regard to any representations made to it in accordance with subsection (2).
- (4) If the [regulator]³ 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]³, significant, the [regulator]³ must (in addition to complying with subsection (4)) publish details of the difference.
- (6) [A regulator]⁴ may charge a reasonable fee for providing a person with a copy of a draft published [by it]⁵ under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.5 para.18(2)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.5 para.18(2)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.5 para.18(3) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)

- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.5 para.18(4)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)
- ⁵ Words inserted by Financial Services Act 2012 c. 21 Sch.5 para.18(4)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy, a statement of principle or a code of practice; April 1, 2013 otherwise)

Commencement

Pt V s. 70(1)-(7): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt V s. 70(1)-(7): United Kingdom

Breach of statutory duty

Law In Force

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.

Commencement

Pt V s. 71(1): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt V s. 71(2)-(3): February 25, 2001 for the purposes of making orders or regulations; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt V s. 71(1)-(3): United Kingdom

PART VI**OFFICIAL LISTING**

[...]¹

Notes

- ¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(a) (January 24, 2013)
-

R Repealed**72.— [...] ¹****Notes**¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(a) (January 24, 2013)**R** Repealed**73.— [...] ¹****Notes**¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(b) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)**✓** Law In Force**[73A Part 6 Rules****[Existing s.73A is not repealed but has been moved under a new heading entitled “Rules”.] ²] ¹****Notes**¹ Added by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 Sch.1 para.2 (March 17, 2005)² S.73A is moved under a new heading entitled "Rules" by Financial Services Act 2012 c. 21 Pt 2 s.16(4) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)**Extent**

Pt VI s. 73A(1)-(6): United Kingdom

*[Rules] ¹***Notes**¹ S.73A is moved under a new heading entitled "Rules" by Financial Services Act 2012 c. 21 Pt 2 s.16(4) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)**✓** Law In Force**[73A Part 6 Rules**(1) The [FCA] ² 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”.

(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.

(6) Transparency rules and corporate governance rules are not listing rules, disclosure rules or prospectus rules, but are Part 6 rules.

] ¹

Notes

¹ S.73A is moved under a new heading entitled "Rules" by Financial Services Act 2012 c. 21 Pt 2 s.16(4) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 73A(1)-(6): United Kingdom

The official list

Law In Force

74.— The official list.

(1) The [FCA] ¹ must maintain the official list.

(2) The [FCA] ¹ 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

(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) [...] ²

(5) In the following provisions of this Part—

[...] ³

“listing” means being included in the official list in accordance with this Part.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

² Repealed by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 Sch.1 para.3 (March 17, 2005)

³ Definition repealed by Prospectus Regulations 2005/1433 Sch.1 para.2 (July 1, 2005)

Commencement

Pt VI s. 74(1)-(3)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt VI s. 74(4)-(5) definition of "listing": June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt VI s. 74(1)-(5) definition of "listing": United Kingdom

Listing

✔ Law In Force

75.— Applications for listing.

- (1) Admission to the official list may be granted only on an application made to the [FCA]¹ in such manner as may be required by listing rules.
- (2) No application for listing may be entertained by the [FCA]¹ 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]¹ in respect of securities which are to be issued by a body of a prescribed kind.
- (4) The [FCA]¹ 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]¹ 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]¹ 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.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Commencement

Pt VI s. 75(1): June 18, 2001 for the purposes of making listing rules; December 1, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Pt VI s. 75(2), (4)-(6): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt VI s. 75(3): February 25, 2001 for the purposes of making orders or regulations; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt VI s. 75(1)-(6): United Kingdom

✔ Law In Force

76.— Decision on application.

- (1) The [FCA]¹ 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]¹ 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]¹ fails to comply with subsection (1), it is to be taken to have decided to refuse the application.
- (3) If the [FCA]¹ decides to grant an application for listing, it must give the applicant written notice.
- (4) If the [FCA]¹ proposes to refuse an application for listing, it must give the applicant a warning notice.
- (5) If the [FCA]¹ decides to refuse an application for listing, it must give the applicant a decision notice.
- (6) If the [FCA]¹ 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.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Commencement

Pt VI s. 76(1)-(7): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VI s. 76(1)-(7): United Kingdom

✔ Law In Force

77.— Discontinuance and suspension of listing.

- (1) The [FCA]¹ 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]¹ may, in accordance with listing rules, suspend the listing of any securities.
[(2A) The [FCA]¹ 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.]²
- (3) If securities are suspended under subsection (2) they are to be treated, for the purposes of [section 96 and paragraph 23(6) of Schedule 1ZA]³, as still being listed.

- (4) This section applies to securities whenever they were admitted to the official list.
- (5) If the [FCA]¹ discontinues or suspends the listing of any securities, [on its own initiative,]⁴ the issuer may refer the matter to the Tribunal.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ² Added by Regulatory Reform (Financial Services and Markets Act 2000) Order 2007/1973 art.5(a) (July 12, 2007)
- ³ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(5) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ⁴ Words inserted by Regulatory Reform (Financial Services and Markets Act 2000) Order 2007/1973 art.5(b) (July 12, 2007)

Commencement

Pt VI s. 77(1)-(2), (4): June 18, 2001 for the purposes of making listing rules; December 1, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Pt VI s. 77(3), (5): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VI s. 77(1)-(5): United Kingdom

Law In Force

78.— Discontinuance or suspension: procedure.

- (1) A discontinuance or suspension [by the [FCA]² on its own initiative]¹ 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 [on its own initiative]³ the [FCA]² –
- (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]² 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]² 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]² may extend the period within which representations may be made to it.
- (5) If, having considered any representations made by the issuer of the securities, the [FCA]² 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]² 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]² 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]² 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]² has suspended the listing of securities [on its own initiative]⁴ 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]² 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]² 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).

Notes

- ¹ Words inserted by Regulatory Reform (Financial Services and Markets Act 2000) Order 2007/1973 art.6(a) (July 12, 2007)
- ² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ³ Words inserted by Regulatory Reform (Financial Services and Markets Act 2000) Order 2007/1973 art.6(b) (July 12, 2007)
- ⁴ Words inserted by Regulatory Reform (Financial Services and Markets Act 2000) Order 2007/1973 art.6(c) (July 12, 2007)

Commencement

Pt VI s. 78(1)-(14): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VI s. 78(1)-(14): United Kingdom

☑ Law In Force

[78A.— Discontinuance or suspension at the request of the issuer: procedure

(1) A discontinuance or suspension by the [FCA]² on the application of the issuer of the securities takes effect—

- [(a) immediately, if the notification under subsection (2) so provides;
- (b) in any other case, on such date as may be provided for in that notification.]³

(2) If the [FCA]² 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)]⁴ .

[(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.

] ⁵

(4) If the [FCA]² 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]² 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]² 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]² 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]² 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]² 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).

] ¹

Notes

¹ Added by Regulatory Reform (Financial Services and Markets Act 2000) Order 2007/1973 art.7 (July 12, 2007)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

³ Substituted by Financial Services Act 2012 c. 21 Pt 2 s.17(2)(a) (March 19, 2013 for purposes of making rules; April 1, 2013 otherwise)

⁴ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.17(2)(b) (March 19, 2013 for purposes of making rules; April 1, 2013 otherwise)

- ⁵ Substituted by Financial Services Act 2012 c. 21 Pt 2 s.17(2)(c) (March 19, 2013 for purposes of making rules; April 1, 2013 otherwise)

Extent

Pt VI s. 78A(1)-(11): United Kingdom

Listing particulars

Law In Force

79.— Listing particulars and other documents.

(1) Listing rules may provide that securities [...] ¹ 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 [FCA] ² and published; or
- (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.

[(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.] ³

(4) Nothing in this section affects the [FCA's] ² general power to make listing rules.

Notes

¹ Words repealed by Prospectus Regulations 2005/1433 Sch.1 para.3(2) (July 1, 2005)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

³ Added by Prospectus Regulations 2005/1433 Sch.1 para.3(3) (July 1, 2005)

Commencement

Pt VI s. 79(1)-(2), (4): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Pt VI s. 79(3): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt VI s. 79(1)-(4): United Kingdom

✔ Law In Force

80.— General duty of disclosure in listing particulars.

- (1) Listing particulars submitted to the [FCA]¹ 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]¹,
- 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—
- (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.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Commencement

Pt VI s. 80(1)-(4)(d): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VI s. 80(1)-(4)(d): United Kingdom

✔ Law In Force

81.— Supplementary listing particulars.

- (1) If at any time after the preparation of listing particulars which have been submitted to the [FCA]¹ 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]¹, 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]¹, 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.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Commencement

Pt VI s. 81(1)-(1)(b), (5): June 18, 2001 for the purposes of making listing rules; December 1, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Pt VI s. 81(2)-(4): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VI s. 81(1)-(5): United Kingdom

Law In Force

82.— Exemptions from disclosure.

(1) The [FCA]¹ 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]¹ 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]¹ 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.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Commencement

Pt VI s. 82(1)-(1)(c), (5), (7): June 18, 2001 for the purposes of making listing rules; December 1, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Pt VI s. 82(2)-(4), (6): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VI s. 82(1)-(7): United Kingdom

 Repealed

83.— [...] ¹


Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.4 (July 1, 2005)

[Transferable securities: public offers and admission to trading]¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

 Law In Force

[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]² 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]² may be made available to the public;
 - (f) the disclosure, publication or other communication of such information as the [FCA]² 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) [...] ³
- (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.
- (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]² general power to make prospectus rules.
] ¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

³ Repealed by Prospectus Regulations 2012/1538 reg.3(1) (July 1, 2012)

Commencement

Pt VI s. 84(1)-(4): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt VI s. 84(1)-(7): United Kingdom

Law In Force

[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.

] ¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

Commencement

Pt VI s. 85(1)-(5): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VI s. 85(1)-(7): United Kingdom

☑ Law In Force

[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 [150 persons]², 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 [100,000 euros]³ (or an equivalent amount);
- (d) the transferable securities being offered are denominated in amounts of at least [100,000 euros]³ (or equivalent amounts); [...]⁴
- (e) the total consideration for the transferable securities being offered [in the EEA States]⁵ cannot exceed 100,000 euros (or an equivalent amount) [; or]⁶
- [(f) the offer falls within subsection (1A).]⁶

[(1A) An offer (“the current offer”) falls within this subsection if the transferable securities are being sold or placed through a financial intermediary where—

- (a) the transferable securities have previously been the subject of one or more offers to the public;
- (b) in respect of one or more of those previous offers any of paragraphs (a) to (e) of subsection (1) applied;
- (c) a prospectus is available for the securities which has been approved by the [FCA]⁸ [and meets either of the conditions in subsection (1B)]⁹; and
- (d) the issuer or other person who was responsible for drawing up the prospectus has given written consent to the use of the prospectus for the purpose of the current offer.

] ⁷

[(1B) The conditions referred to in subsection (1A)(c) are—

- (a) that the prospectus was approved by the FCA no earlier than 12 months before the date the current offer is made, and is supplemented by every supplementary prospectus which was required to be submitted under section 87G¹¹; or
- (b) in the case of non-equity transferable securities falling within Article 5(4)(b) of the prospectus directive, that the securities concerned have not ceased to be issued in a continuous or repeated manner.

] ¹⁰

(2) Where—

- (a) a person who is not a qualified investor (“the client”) has engaged a qualified investor falling within [point (1) of Section I of Annex II to the markets in financial instruments directive]¹² 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.

[(7) “Qualified investor”, in relation to an offer of transferable securities, means—

- (a) a person described in points (1) to (4) of Section I of Annex II to the markets in financial instruments directive, other than a person who, before the making of the offer, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive;
- (b) a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with Section II of Annex II to that directive and has not subsequently, but before the making of the offer, agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive;
- (c) a person who is an eligible counterparty in accordance with Article 24 of that directive and has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive; or
- (d) a person whom any relevant firm is authorised to continue to treat as a professional client in accordance with Article 71(6) of that directive.

] ¹³

[(8) In subsection (7) “relevant firm” means an investment firm or credit institution acting in connection with the offer.

(9) Investment firms and credit institutions which are authorised persons must communicate their classification of their clients as being or not being qualified investors on request to an issuer subject to complying with the Data Protection Act 1998 or any directly applicable EU legislation relating to data protection.

(10) In subsections (8) and (9), “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 one, its head office) in an EEA State.

] ¹⁴

] ¹

Notes

- ¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)
- ² Words substituted by Prospectus Regulations 2011/1668 reg.1(2) (July 31, 2011)
- ³ Words substituted by Prospectus Regulations 2012/1538 reg.2(1)(a) (July 1, 2012)
- ⁴ Word repealed by Prospectus Regulations 2012/1538 reg.2(1)(b) (July 1, 2012)
- ⁵ Words inserted by Prospectus Regulations 2012/1538 reg.2(1)(c) (July 1, 2012)
- ⁶ Added by Prospectus Regulations 2012/1538 reg.2(1)(d) (July 1, 2012)
- ⁷ Added by Prospectus Regulations 2012/1538 reg.2(2) (July 1, 2012)
- ⁸ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(b) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ⁹ Words substituted by Prospectus Regulations 2013/1125 reg.2(a) (May 31, 2013)
- ¹⁰ Added by Prospectus Regulations 2013/1125 reg.2(b) (May 31, 2013)
- ¹¹ Section 87G was substituted, together with sections 84 to 87, 87A to 87F and 87H to 87R, for sections 84 to 87 as originally enacted, by SI 2005/1433.R
- ¹² Words substituted by Prospectus Regulations 2012/1538 reg.3(2)(a) (July 1, 2012)
- ¹³ Substituted by Prospectus Regulations 2012/1538 reg.3(2)(b) (July 1, 2012)
- ¹⁴ Added by Prospectus Regulations 2012/1538 reg.3(2)(c) (July 1, 2012)

Commencement

Pt VI s. 86(1)-(2)(b): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt VI s. 86(1)-(10)(b): United Kingdom

Law In Force

[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.
]¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

Commencement

Pt VI s. 87(1)-(3)(b): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Pt VI s. 87(4)-(5): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt VI s. 87(1)-(5): United Kingdom

[Approval of prospectus]¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

Law In Force

[87A Criteria for approval of prospectus by [FCA]²

(1) The [FCA]³ 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.

[(2A) If, in the case of transferable securities to which section 87 applies, the prospectus states that the guarantor is a specified EEA State, the prospectus is not required to include other information about the guarantor.]⁴

(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 convey concisely, in non-technical language and in an appropriate structure, the key information relevant to the securities which are the subject of the prospectus and, when read with the rest of the prospectus, must be an aid to investors considering whether to invest in the securities.]⁵

(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, as soon as that element is finalised—]⁶

- [(a) inform, in writing, the [FCA]⁷ and any competent authority of any EEA State which the applicant has requested be supplied with a certificate of approval under section 87I; and
- (b) make that information available, in writing, to prospective investors.]⁶

[(7A) The document containing the final offer price or the amount of transferable securities to be offered to the public may only contain information that relates to the securities note and must not be used to supplement the prospectus.]⁸

(8) “Prospectus” (except in subsection (5)) includes a supplementary prospectus.

[(9) “the key information” means the information which is essential to enable investors to understand the transferable securities to which the prospectus relates and to decide whether to consider the offer further.

(10) The key information must include —

- (a) the essential characteristics of, and risks associated with, the issuer and any guarantor, including their assets, liabilities and financial positions;
- (b) the essential characteristics of, and risks associated with, investment in the transferable securities, including any rights attaching to the securities;
- (c) the general terms of the offer, including an estimate of the expenses charged to an investor by the issuer and the person offering the securities to the public, if not the issuer;
- (d) details of the admission to trading; and
- (e) the reasons for the offer and proposed use of the proceeds.

] ⁹
] ¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(6)(c) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

³ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(6)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

⁴ Added by Prospectus Regulations 2012/1538 reg.2(3) (July 1, 2012)

⁵ Substituted by Prospectus Regulations 2012/1538 reg.4(a) (July 1, 2012)

⁶ Words substituted by Prospectus Regulations 2012/1538 reg.4(b) (July 1, 2012)

⁷ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(6)(b) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

⁸ Added by Prospectus Regulations 2012/1538 reg.4(c) (July 1, 2012)

⁹ Added by Prospectus Regulations 2012/1538 reg.4(d) (July 1, 2012)

Extent

Pt VI s. 87A(1)-(10)(e): United Kingdom

 Law In Force
[87B Exemptions from disclosure

(1) The [FCA]² 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]² 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]² under prospectus rules.

(5) “Prospectus” includes a supplementary prospectus.

] ¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(c) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 87B(1)-(5): United Kingdom

 Law In Force
[87C Consideration of application for approval

(1) The [FCA]² 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]² 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]² 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]² of its functions in relation to the application.
- (7) The [FCA]² may require any information provided under this section to be provided in such form as it may reasonably require.
- (8) The [FCA]² 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]² 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]² 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.

]¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(c) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 87C(1)-(11)(b): United Kingdom

Law In Force

[87D Procedure for decision on application for approval

- (1) If the [FCA]² approves a prospectus, it must give the applicant written notice.
- (2) If the [FCA]² proposes to refuse to approve a prospectus, it must give the applicant written notice.

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

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(c) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 87D(1)-(7): United Kingdom

*[Transfer of application for approval of a prospectus]*¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

Law In Force

[87E Transfer by [FCA]² of application for approval

- (1) The [FCA]³ may transfer an application for the approval of a prospectus or a supplementary prospectus to the competent authority of another EEA State (“the transferee authority”).
- (2) Before doing so, the [FCA]⁴ must obtain the agreement of the transferee authority [and notify ESMA]⁵ .
- (3) The [FCA]⁴ 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]⁴ ceases to have functions under this Part in relation to the application transferred.
] ¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(7)(c) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

- ³ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(7)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(7)(b) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ⁵ Words inserted by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(3) (April 16, 2012)

Extent

Pt VI s. 87E(1)-(4): United Kingdom

Law In Force

[87F Transfer to [FCA]² of application for approval

(1) [Where the FCA]³ agrees to the transfer to it of an application for the approval of a prospectus made to the competent authority 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]⁴ 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]⁵ .

] ¹

Notes

- ¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)
- ² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(8)(c) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ³ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(8)(a)(i) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(8)(a)(ii) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(8)(b) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 87F(1)-(2): United Kingdom

[Supplementary prospectus]⁴

Notes

- ¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)
-

✔ Law In Force

[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.

(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]² 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.

[(3A) But where the prospectus relates both to an offer of transferable securities to the public and the admission of those securities to trading on a regulated market, subsection (3) does not apply and the relevant period begins when the prospectus is approved and ends with the later of—

- (a) the closure of the offer to the public to which the prospectus relates, or
- (b) the time when trading in those securities on a regulated markets begins.

]³

(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.

]¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(d) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

³ Added by Prospectus Regulations 2012/1538 reg.5(1) (July 1, 2012)

Extent

Pt VI s. 87G(1)-(7): United Kingdom

[*Passporting*]¹**Notes**

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

Law In Force

[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 [notified ESMA and]² provided the [FCA]³ with—

- (a) a certificate of approval;
- (b) a copy of the prospectus as approved; and
- (c) if requested by the [FCA]³, 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.

[(3A) The [FCA]⁵ must publish on its website a list of certificates of approval provided to it in accordance with this section.

(3B) The list referred to in subsection (3A) must—

- (a) be kept up-to-date,
- (b) retain items on it for a period of at least 12 months, and
- (c) include hyperlinks to any certificate of approval and prospectus published on the website of—
 - (i) the competent authority of the EEA State which provided the certificate,
 - (ii) the issuer, or
 - (iii) the regulated market where admission to trading is sought.

] ⁴

(4) “Prospectus” includes a supplementary prospectus.

] ¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

² Words inserted by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(4)(a) (April 16, 2012)

³ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(9)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

⁴ Added by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(4)(b) (April 16, 2012)

⁵ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(9)(b) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 87H(1)-(4): United Kingdom

Law In Force

[87I Provision of information to host Member State

(1) The [FCA]² 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 [FCA]³); and
- (c) a translation of the summary of the specified prospectus (if the request states that one has been requested by the [...] ⁴ competent authority).

[(1A) If the [FCA]⁶ supplies a certificate of approval to the competent authority of the specified EEA State, it must also supply a copy of that certificate [to—]⁷

- [(a) the person who made the request under this section; and
- (b) ESMA.]⁷

] ⁵

(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 [FCA]⁸ .

(4) A certificate of approval must state whether (and, if so, why) the [FCA]⁸ 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]⁸ 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 the request is received]⁹ ; 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.

] ¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(10)(a)(i) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

- ³ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(10)(a)(ii) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ⁴ Word repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(10)(a)(iii) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ⁵ Added by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(5) (April 16, 2012)
- ⁶ Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(10)(b) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ⁷ Words substituted by Prospectus Regulations 2012/1538 reg.6(a) (July 1, 2012)
- ⁸ Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(10)(c) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ⁹ Words substituted by Prospectus Regulations 2012/1538 reg.6(b) (July 1, 2012)

Extent

Pt VI s. 87I(1)-(7): United Kingdom

[Transferable securities: powers of [FCA]²]¹

Notes

- ¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)
- ² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(e) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Law In Force

[87J Requirements imposed as condition of approval

- (1) As a condition of approving a prospectus, the [FCA]² may by notice in writing—
- (a) require the inclusion in the prospectus of such supplementary information necessary for investor protection as the [FCA]² 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.

] ¹

Notes

- ¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)
- ² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(e) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

ExtentPt VI s. 87J(1)-(3): United Kingdom

✔ Law In Force

[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]² 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 FCA]² may specify to suspend any existing advertisement of the offer, for a period not exceeding 10 working days.

(3) If the [FCA]² 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]² 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.

] ¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(e) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

ExtentPt VI s. 87K(1)-(5)(c): United Kingdom

✔ Law In Force

[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]² 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 FCA]² may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.
- (3) If the [FCA]² 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 FCA]² may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.
- (4) If the [FCA]² 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.
-] ¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(e) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 87L(1)-(5)(c): United Kingdom

Law In Force

[87M Public censure of issuer

- (1) If the [FCA]² 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]² 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]² 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.

] ¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(e) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 87M(1)-(5): United Kingdom

Law In Force

[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.

] ¹

Notes

¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

Extent

Pt VI s. 87N(1)-(2): United Kingdom

Law In Force

[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] ² —

- (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 [FCA's] ² action or proposed action;
- (b) state the [FCA's] ² 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]² 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]² may extend the period within which representations may be made to it.
- (5) If, having considered any representations made to it, the [FCA]² 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.
-] ¹

Notes

- ¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)
- ² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(e) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 87O(1)-(8): United Kingdom

Law In Force

[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 competent authority makes a request that the [FCA]² 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.
- (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).

] ¹**Notes**

- ¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)
- ² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(11)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ³ Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(11)(b) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 87P(1)-(4): United Kingdom

[Rights of investors] ¹**Notes**

- ¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)

Law In Force

[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 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 [FCA] ² 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) A person (“P”) may withdraw P's acceptance of an offer of transferable securities to the public before the specified time where the conditions in subsection (5) are satisfied.] ³

[(5) The conditions are that—

- (a) a prospectus which relates to an offer of transferable securities to the public has been published;
- (b) a supplementary prospectus has been published;
- (c) prior to the publication of the supplementary prospectus, P agreed to buy or subscribe for transferable securities to which the offer relates; and
- (d) the significant new factor, material mistake or inaccuracy referred to in section 87G(1) which caused the supplementary prospectus to be published arose before delivery of the securities.

(6) The specified time is—

- (a) the end of the second working day after the day on which the supplementary prospectus was published; or
- (b) such later time as may be specified in the supplementary prospectus.

] ⁴

] ¹

Notes

- ¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)
- ² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(f) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ³ Substituted by Prospectus Regulations 2012/1538 reg.5(2)(a) (July 1, 2012)
- ⁴ Added by Prospectus Regulations 2012/1538 reg.5(2)(b) (July 1, 2012)

Extent

Pt VI s. 87Q(1)-(6)(b): United Kingdom

*[Registered investors]*¹

Notes

- ¹ Ss.84-87R substituted for ss.84-87 by Prospectus Regulations 2005/1433 Sch.1 para.5 (July 1, 2005)
-

R Repealed

87R [...]¹

Notes

- ¹ Repealed by Prospectus Regulations 2012/1538 reg.3(3) (July 1, 2012)
-

Sponsors

✓ Law In Force

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]¹ for the purposes of the rules .
- (3) Listing rules made by virtue of subsection (1) may—
 - (a) provide for the [FCA]¹ 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 [;]²

- [(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.]²

(4) If the [FCA]¹ proposes—

- (a) to refuse a person's application [under sponsor rules]³ , [...]⁴

[(aa) to impose limitations or other restrictions on the services to which a person's approval relates, or]⁴

- (b) to cancel a person's approval as a sponsor [otherwise than at his request]⁵ ,

it must give him a warning notice.

(5) If, after considering any representations made in response to the warning notice, the [FCA]¹ decides—

- (a) to grant the application [under sponsor rules]⁶ , [...]⁷

[(aa) not to impose limitations or other restrictions on the services to which a person's approval relates, or]⁷

- (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]¹ decides—

- (a) to refuse to grant the application [under sponsor rules]⁸ , [...]⁹

[(aa) to impose limitations or other restrictions on the services to which a person's approval relates, or]⁹

- (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.

] ¹⁰

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(f) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

² Added by Financial Services Act 2012 c. 21 Pt 2 s.18(2)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.88C; March 19, 2013 for purposes of making rules; April 1, 2013 otherwise)

³ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.18(2)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.88C; March 19, 2013 for purposes of making rules; April 1, 2013 otherwise)

⁴ Added by Financial Services Act 2012 c. 21 Pt 2 s.18(2)(c) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.88C; March 19, 2013 for purposes of making rules; April 1, 2013 otherwise)

- ⁵ Words inserted by Regulatory Reform (Financial Services and Markets Act 2000) Order 2007/1973 art.9 (July 12, 2007)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.18(2)(d) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.88C; March 19, 2013 for purposes of making rules; April 1, 2013 otherwise)
- ⁷ Added by Financial Services Act 2012 c. 21 Pt 2 s.18(2)(e) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.88C; March 19, 2013 for purposes of making rules; April 1, 2013 otherwise)
- ⁸ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.18(2)(f) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.88C; March 19, 2013 for purposes of making rules; April 1, 2013 otherwise)
- ⁹ Added by Financial Services Act 2012 c. 21 Pt 2 s.18(2)(g) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.88C; March 19, 2013 for purposes of making rules; April 1, 2013 otherwise)
- ¹⁰ Added by Financial Services Act 2012 c. 21 Pt 2 s.18(2)(h) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.88C; March 19, 2013 for purposes of making rules; April 1, 2013 otherwise)

Commencement

Pt VI s. 88(1)-(3)(d): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Pt VI s. 88(4)-(7): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VI s. 88(1)-(8)(d): United Kingdom

Law In Force

[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 3 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.
-] ¹

Notes

- ¹ Ss 88A-88F substituted for s.89 by Financial Services Act 2012 c. 21 Pt 2 s.18(4) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.88C subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt VI s. 88A(1)-(9): United Kingdom

Law In Force

[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.

] ¹

Notes

- ¹ Ss 88A-88F substituted for s.89 by Financial Services Act 2012 c. 21 Pt 2 s.18(4) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.88C subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt VI s. 88B(1)-(9): United Kingdom

Law In Force

[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 replacement statement.
- (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.

] ¹

Notes

- ¹ Ss 88A-88F substituted for s.89 by Financial Services Act 2012 c. 21 Pt 2 s.18(4) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.88C subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt VI s. 88C(1)-(8): United Kingdom

✔ Law In Force

[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.

] ¹

Notes

- ¹ Ss 88A-88F substituted for s.89 by Financial Services Act 2012 c. 21 Pt 2 s.18(4) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.88C subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt VI s. 88D(1)-(7): United Kingdom

✔ Law In Force

[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.
- (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.

] ¹

Notes

- ¹ Ss 88A-88F substituted for s.89 by Financial Services Act 2012 c. 21 Pt 2 s.18(4) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.88C subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt VI s. 88E(1)-(6): United Kingdom

Law In Force

[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 give 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.

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

] ¹

Notes

- ¹ Ss 88A-88F substituted for s.89 by Financial Services Act 2012 c. 21 Pt 2 s.18(4) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.88C subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt VI s. 88F(1)-(8): United Kingdom

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

89.— [...] ¹

Notes

- ¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.18(4) (April 1, 2013 as SI 2013/423)

Other Application

As part of the substitution of new ss 88A-88F and in relation to the application of those new sections as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: s.89 is repealed.[...] ¹

Notes

- ¹ Ss 88A-88F substituted for s.89 by Financial Services Act 2012 c. 21 Pt 2 s.18(4) (January 24, 2013: substitution has effect on January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.88C subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

[Transparency obligations]¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1266(1) (November 8, 2006)

Law In Force

[89A Transparency rules

- (1) The [FCA]² 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]² 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]² ;
 - (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.

]¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1266(1) (November 8, 2006)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

ExtentPt VI s. 89A(1)-(6): United Kingdom

✔ Law In Force

[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]².

(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.

]¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1266(1) (November 8, 2006)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

ExtentPt VI s. 89B(1)-(7): United Kingdom

✔ Law In Force

[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 [FCA]² 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
 - (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.

] ¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1266(1) (November 8, 2006)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 89C(1)-(4)(e): United Kingdom

✔ Law In Force

[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.

] ¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1266(1) (November 8, 2006)

Extent

Pt VI s. 89D(1)-(4): United Kingdom

Law In Force

[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] ², and
- (b) to the market on which the issuer's securities are admitted,

at times and in circumstances specified in the rules.

] ¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1266(1) (November 8, 2006)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 89E(a)-(b): United Kingdom

Law In Force

[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;
- [“financial instrument” has the meaning given in Article 4.1(17) of Directive 2004/39/EC on markets in financial instruments;]²
- “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.
-] ¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1266(1) (November 8, 2006)

² Definition inserted by Definition of Financial Instrument Order 2008/3053 art.2(2) (January 31, 2009)

Extent

Pt VI s. 89F(1)-(4) definition of "voting shares": United Kingdom

Law In Force

[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.
- (2) Transparency rules that require a person to make information public may include provision authorising the [FCA]² to make the information public in the event that the person fails to do so.
- (3) The [FCA]² may make public any information notified to [the FCA]² 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.

] ¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1266(1) (November 8, 2006)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 89G(1)-(5): United Kingdom

[Power of [FCA]² to call for information]¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1267 (November 8, 2006)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Law In Force

[89H [FCA's]² power to call for information

(1) The [FCA]² 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]² 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.

] ¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1267 (November 8, 2006)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 89H(1)-(5): United Kingdom

Law In Force

[89I Requirements in connection with call for information

(1) The [FCA] ² may require any information provided under section 89H to be provided in such form as it may reasonably require.

(2) The [FCA] ² 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] ² 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] ² may require him to state, to the best of his knowledge and belief, where the document is.

] ¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1267 (November 8, 2006)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

ExtentPt VI s. 89I(1)-(5): United Kingdom

✔ Law In Force

[89J Power to call for information: supplementary provisions

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

] ¹**Notes**

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1267 (November 8, 2006)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

ExtentPt VI s. 89J(1)-(5)(b): United Kingdom

[Powers exercisable in case of infringement of transparency obligation]¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1268 (November 8, 2006)

Law In Force

[89K Public censure of issuer

(1) If the [FCA]² 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]² 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]² 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).

]¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1268 (November 8, 2006)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 89K(1)-(6): United Kingdom

Law In Force

[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]² 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–
 - (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]² 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]² 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).]¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1268 (November 8, 2006)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 89L(1)-(6): United Kingdom

Law In Force

[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]² –
- (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]² action or proposed action;
 - (b) state the [FCA's]² 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]² 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]² may extend the period within which representations may be made to it.

(5) If, having considered any representations made to it, the [FCA]² decides to maintain, vary or revoke its earlier decision, it must give written notice to that effect to the person mentioned in subsection (2).

] ¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1268 (November 8, 2006)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 89M(1)-(5): United Kingdom

Law In Force

[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.

] ¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1268 (November 8, 2006)

Extent

Pt VI s. 89N(a)-(b): United Kingdom

*[Corporate governance]*¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1269 (November 8, 2006)

Law In Force

[89O Corporate governance rules

(1) The [FCA]² 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 [EU]³ 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 [EU]⁴ 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.
]¹

Notes

- ¹ Added by Companies Act 2006 c. 46 Pt 43 s.1269 (November 8, 2006)
- ² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ³ Substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(e) (April 22, 2011)
- ⁴ Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(e) (April 22, 2011)

Extent

Pt VI s. 89O(1)-(5): United Kingdom

[Primary information providers]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.19(1) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.89S and for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
-

✔ Law In Force

[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,
 - (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.

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.19(1) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.89S and for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 89P(1)-(9)(d): United Kingdom

Law In Force

[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 3 years beginning with the first day on which the FCA knew that the provider had contravened the requirement or restriction.

(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.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.19(1) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.89S and for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

ExtentPt VI s. 89Q(1)-(9): United Kingdom

✔ Law In Force

[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.

] ¹**Notes**

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.19(1) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.89S and for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

ExtentPt VI s. 89R(1)-(9): United Kingdom

✔ Law In Force

[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
 - (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 replacement 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.
-] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.19(1) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.89S and for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 89S(1)-(8): United Kingdom

Law In Force

[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.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.19(1) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.89S and for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 89T(1)-(7): United Kingdom

Law In Force

[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
(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.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.19(1) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.89S and for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 89U(1)-(6): United Kingdom

✔ Law In Force

[89V Action under s.89U: procedure

- (1) Action against a provider under section 89U takes effect—
 - (a) immediately, if the notice given under subsection (2) 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.
- (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).

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.19(1) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.89S and for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 89V(1)-(8): United Kingdom

[Compensation for false or misleading statements etc]¹

Notes

¹ Word substituted by Companies Act 2006 c. 46 Sch.15(1) para.4 (November 8, 2006)

Law In Force

90.— [Compensation for statements in listing particulars or prospectus]¹

(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.

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

[(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, when read with the rest of the prospectus—

- (a) is misleading, inaccurate or inconsistent; or
- (b) does not provide key information (as defined in section 87A(9) and (10)),

and in this subsection a summary includes any translation of it.

] ³
] ²

Notes

¹ Heading substituted by Companies Act 2006 c. 46 Sch.15(1) para.5 (November 8, 2006)

² Added by Prospectus Regulations 2005/1433 Sch.1 para.6(2) (July 1, 2005)

³ Substituted by Prospectus Regulations 2012/1538 reg.7 (July 1, 2012)

Commencement

Pt VI s. 90(1)-(10): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VI s. 90(1)-(12)(b): United Kingdom

Law In Force

[90ZA.— Liability for key investor information

(1) A person is not to be subject to civil liability solely on the basis of the key investor information produced in relation to a collective investment scheme or a sub-fund of such a scheme in accordance with rules or other provisions implementing Chapter IX of the UCITS directive, or of any translation of that information, unless the key investor information is misleading, inaccurate or inconsistent with the relevant parts of the prospectus published for that collective investment scheme or sub-fund in accordance with rules made by [the FCA] ² under [section 248 or 261J] ³ of this Act.

(2) In this section, a reference to a sub-fund of a collective investment scheme is a reference to a part of the property of the collective investment scheme which forms a separate pool where—

- (a) the collective investment scheme provides arrangements for separate pooling of the contributions of the participants and the profits and income out of which payments are made to them; and
- (b) the participants are entitled to exchange rights in one pool for rights in another.

] ¹

Notes

¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(3) (July 1, 2011)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

³ Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(2) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)

Extent

Pt VI s. 90ZA(1)-(2)(b): United Kingdom

Law In Force

[90A. Liability of issuers in connection with published information

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.

] ¹**Notes**

- ¹ Substituted by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 reg.2(2) (October 1, 2010: substitution has effect subject to transitional provisions specified in SI 2010/1192, reg.3)

Extent

Pt VI s. 90A(1)-(9)(b): United Kingdom

Law In Force

[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.

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

] ¹**Notes**

- ¹ Added by Companies Act 2006 c. 46 Pt 43 s.1270 (November 8, 2006)

Extent

Pt VI s. 90B(1)-(2): United Kingdom

Penalties

Law In Force

91.— [Penalties for breach of Part 6 rules] ¹

[

[(1) If the [FCA] ⁴ 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]⁴ 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.

] ³

[(1A) If the [FCA]⁴ 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.

] ⁵

[(1B) If the [FCA]⁴ 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.

] ⁶

(2) If, in the case of a contravention [by a person]⁷ referred to in subsection [(1), (1ZA)(a), (1A) or (1B)]⁸ [(“P”)]⁹, the [FCA]⁴ considers that [another person]¹⁰ who was at the material time a director of [P]¹¹ was knowingly concerned in the contravention, it may impose upon him a penalty of such amount as it considers appropriate.]²

(3) If the [FCA]⁴ 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]⁴ 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]⁴.

(6) The [FCA]⁴ may not take action against a person under this section after the end of the period of [3 years]¹² 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]⁴ 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.

Notes

- ¹ Title substituted by Prospectus Regulations 2005/1433 Sch.1 para.7(4) (July 1, 2005)
- ² Substituted by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 Sch.1 para.4 (July 1, 2005)
- ³ S.91(1)-(1ZA) substituted for s.91(1) by Companies Act 2006 c. 46 Sch.15(1) para.6(2) (November 8, 2006)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ⁵ Added by Prospectus Regulations 2005/1433 Sch.1 para.7(2) (July 1, 2005)
- ⁶ Added by Companies Act 2006 c. 46 Sch.15(1) para.6(3) (November 8, 2006)
- ⁷ Words substituted by Prospectus Regulations 2005/1433 Sch.1 para.7(3)(a) (July 1, 2005)
- ⁸ Words substituted by Companies Act 2006 c. 46 Sch.15(1) para.6(4) (November 8, 2006)
- ⁹ Words substituted by Prospectus Regulations 2005/1433 Sch.1 para.7(3)(b) (July 1, 2005)
- ¹⁰ Words substituted by Prospectus Regulations 2005/1433 Sch.1 para.7(3)(c) (July 1, 2005)
- ¹¹ Words substituted by Prospectus Regulations 2005/1433 Sch.1 para.7(3)(d) (July 1, 2005)
- ¹² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.20 (April 1, 2013)

Commencement

Pt VI s. 91(1)-(7)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VI s. 91(1)-(7)(b): United Kingdom

Law In Force

92.— Procedure.

- (1) If the [FCA]¹ 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]¹ 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]¹ decides to take action against a person under section 91, he may refer the matter to the Tribunal.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Commencement

Pt VI s. 92(1)-(7): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VI s. 92(1)-(7): United Kingdom

Law In Force

93.— Statement of policy.

- (1) The [FCA]¹ 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]¹ 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]¹ may at any time alter or replace its policy statement.
- (4) If its policy statement is altered or replaced, the [FCA]¹ 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]¹ 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]¹ must publish a statement issued under this section in the way appearing to the [FCA]¹ to be best calculated to bring it to the attention of the public.
- (7) The [FCA]¹ may charge a reasonable fee for providing a person with a copy of the statement.
- (8) The [FCA]¹ must, without delay, give the Treasury a copy of any policy statement which it publishes under this section.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Commencement

Pt VI s. 93(1)-(8): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt VI s. 93(1)-(8): United Kingdom

Law In Force

94.— Statements of policy: procedure.

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

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Commencement

Pt VI s. 94(1)-(7): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt VI s. 94(1)-(7): United Kingdom

Competition

Repealed

95.— [...]¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.21 (April 1, 2013)

Miscellaneous

Law In Force

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]¹ in the event of non-compliance.
- (2) If the rules require an issuer to publish information, they may include provision authorising the [FCA]¹ 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.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Commencement

Pt VI s. 96(1)-(3): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt VI s. 96(1)-(3): United Kingdom

Law In Force

[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 [whose home State is the United Kingdom]² ;
 - (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]³ in respect of non-compliance.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 Sch.1 para.6 (March 17, 2005)

² Words substituted by Prospectus Regulations 2012/1538 reg.8 (July 1, 2012)

³ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 96A(1)-(3): United Kingdom

Law In Force

[96B [Disclosure rules: persons responsible for compliance] ²

(1) [For the purposes of the provisions of this Part relating to disclosure rules] ³ , 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.

[(2) Schedule 11B (connected persons) has effect for the purposes of the provisions of this Part relating to disclosure rules.] ⁴

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 Sch.1 para.6 (March 17, 2005)

² Heading substituted by Companies Act 2006 c. 46 Sch.15(1) para.7(a) (November 8, 2006)

³ Words substituted by Companies Act 2006 c. 46 Sch.15(1) para.7(b) (November 8, 2006)

⁴ Substituted by Financial Services and Markets Act 2000 (Amendment) Regulations 2009/2461 reg.2(1) (October 1, 2009)

Extent

Pt VI s. 96B(1)-(2)(c)(ii): United Kingdom

Law In Force

[96C Suspension of trading

(1) The [FCA]² may, in accordance with disclosure rules, suspend trading in a financial instrument.

(2) If the [FCA]² 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.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 Sch.1 para.6 (March 17, 2005)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 96C(1)-(3): United Kingdom

Law In Force

97.— Appointment by [FCA]¹ of persons to carry out investigations.

(1) Subsection (2) applies if it appears to the [FCA]¹ that there are circumstances suggesting that—

[(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;

] ²

(c) [...] ³

- (d) there may have been a contravention of [section 85 or 87G]⁴.
- (2) The [FCA]¹ 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 [FCA]¹ ;
 - (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.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ² Substituted by Companies Act 2006 c. 46 Sch.15(1) para.8 (November 8, 2006)
- ³ Repealed by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 Sch.1 para.7(c) (July 1, 2005)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.7 (April 1, 2013)

Commencement

Pt VI s. 97(1)-(3)(d): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VI s. 97(1)-(3)(d): United Kingdom

R Repealed

98.— [...]¹

Notes

- ¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.9 (July 1, 2005)
-

R Repealed

99.— [...]¹

Notes

- ¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(c) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
-

R Repealed

100.— [...]¹

Notes

- ¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(d) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
-

✔ Law In Force

[100A Exercise of powers where UK is host member state

(1) This section applies to the exercise by the [FCA]² of any power under this Part exercisable in case of infringement of—

- (a) a provision of prospectus rules or any other provision made in accordance with the prospectus directive, or
- (b) 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]² 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 FCA]⁴ finds that there has been such an infringement, it must—

- (a) give a notice to that effect to the competent authority of the person's home State requesting it—
 - (i) to take all appropriate measures for the purpose of ensuring that the person remedies the situation that has given rise to the notice, and
 - (ii) to inform [the FCA]⁴ of the measures it proposes to take or has taken or the reasons for not taking such measures, and
- (b) notify ESMA.

] ³

(4) [The FCA]⁵ may not act further unless satisfied—

- (a) 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
- (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 FCA]⁶ is so satisfied, it must, after informing the competent authority of the person's home State [and ESMA]⁷, take all appropriate measures to protect investors.

(6) In such a case [the FCA]⁶ must inform the Commission [and ESMA]⁸ of the measures at the earliest opportunity.

] ¹

Notes

¹ Added by Companies Act 2006 c. 46 Pt 43 s.1271 (November 8, 2006)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(12)(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

³ Substituted by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(6)(a) (April 16, 2012)

⁴ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(12)(b) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

⁵ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(12)(c) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

⁶ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(12)(d) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

⁷ Words inserted by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(6)(b) (April 16, 2012)

⁸ Words inserted by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(6)(c) (April 16, 2012)

Extent

Pt VI s. 100A(1)-(6): United Kingdom

Law In Force

101.— Listing rules: general provisions.

(1) [...] ¹

(2) [Part 6 rules] ² may authorise the [FCA] ³ to dispense with or modify the application of the rules in particular cases and by reference to any circumstances.

(3)-(8) [...] ¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(e) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

² Words substituted by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 Sch.1 para.10(a) (July 1, 2005)

³ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(h) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Commencement

Pt VI s. 101(1)-(8): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt VI s. 101(1)-(8): United Kingdom

Repealed

102.— [...] ¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(f) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Law In Force

103.—

[s.103 is not repealed but has been substituted for ss.102A-103.] ¹

Notes

¹ Ss.102A-103 substituted for s.103 by Prospectus Regulations 2005/1433 Sch.1 para.11 (July 1, 2005)

Commencement

Pt VI s. 103(1)-(7): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt VI s. 103(1)-(7): United Kingdom

*[Interpretative provisions]¹***Notes**¹ Ss.102A-103 substituted for s.103 by Prospectus Regulations 2005/1433 Sch.1 para.11 (July 1, 2005) Law In Force**[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 [Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments]² , other than money-market instruments for the purposes of that directive which have a maturity of less than 12 months .

[(3A) “Debt securities” has the meaning given in Article 2.1(b) of the transparency obligations directive.]³

(4) “Financial instrument” has [(except in section 89F)]⁴ 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 [(as modified by Article 69 of Directive 2004/39/EC on markets in financial instruments)]⁵ .

(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,

[(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 of depository receipts representing securities, the issuer is the issuer of the securities represented;]⁶

(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.

]¹

Notes

- ¹ Ss.102A-103 substituted for s.103 by Prospectus Regulations 2005/1433 Sch.1 para.11 (July 1, 2005)
- ² Words substituted by Companies Act 2006 c. 46 Sch.15(1) para.10(3) (November 8, 2006)
- ³ Added by Companies Act 2006 c. 46 Sch.15(1) para.10(2) (November 8, 2006)
- ⁴ Words inserted by Definition of Financial Instrument Order 2008/3053 art.3(2)(a) (January 31, 2009)
- ⁵ Words inserted by Definition of Financial Instrument Order 2008/3053 art.3(2)(b) (January 31, 2009)
- ⁶ Added by Companies Act 2006 c. 46 Sch.15(1) para.10(4) (November 8, 2006)

Extent

Pt VI s. 102A(1)-(6)(c): United Kingdom

Law In Force

[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 [...]² 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 .

]¹

Notes

- ¹ Ss.102A-103 substituted for s.103 by Prospectus Regulations 2005/1433 Sch.1 para.11 (July 1, 2005)
- ² Words repealed by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.6 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

Extent

Pt VI s. 102B(1)-(6): United Kingdom

Law In Force

[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).]¹

Notes

¹ Ss.102A-103 substituted for s.103 by Prospectus Regulations 2005/1433 Sch.1 para.11 (July 1, 2005)

Extent

Pt VI s. 102C: United Kingdom

Law In Force

[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 [FCA]² 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 [as amended by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 and by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010]³ ;

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

“regulated market” has the meaning given in [Article 4.1(14) of Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments]⁴ ;

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

[“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 [as amended by Directive 2010/73/EU of the European Parliament and of the

Council of 24 November 2010 and by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010]⁶;]⁵

[“transparency rules”has the meaning given by section 89A(5);

“voteholder information”has the meaning given by section 89B(3);]⁷

“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.

(2)-(3) [...]]⁸

Notes

- ¹ Ss.102A-103 substituted for s.103 by Prospectus Regulations 2005/1433 Sch.1 para.11 (July 1, 2005)
- ² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(3)(i) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ³ Words inserted by Prospectus Regulations 2012/1538 reg.9(a) (July 1, 2012)
- ⁴ Words substituted subject to savings and transitional provisions specified in SI 2008/1886 art.7(1) and (4) by Companies Act 2006 c. 46 Sch.15(1) para.11(2) (October 1, 2008: substitution has effect as SI 2008/1886 subject to savings and transitional provisions specified in art.7(1) and (4))
- ⁵ Definition inserted by Companies Act 2006 c. 46 Pt 43 s.1265 (November 8, 2006)
- ⁶ Words inserted by Prospectus Regulations 2012/1538 reg.9(b) (July 1, 2012)
- ⁷ Definitions inserted by Companies Act 2006 c. 46 Sch.15(1) para.11(3) (November 8, 2006)
- ⁸ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(g) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt VI s. 103(1)-(3): United Kingdom

PART VII

CONTROL OF BUSINESS TRANSFERS

Law In Force

[103A Meaning of “the appropriate regulator”

- (1) In this Part “the appropriate regulator” means—
- (a) in relation to a scheme in respect of which the authorised person concerned is a PRA-authorised person, the PRA;
 - (b) in any other case, the FCA.
- (2) In this Part, “the authorised person concerned”—
- (a) in the case of an insurance business transfer scheme, is to be read in accordance with section 105(2);
 - (b) in the case of a banking business transfer scheme, is to be read in accordance with section 106(2);
 - (c) in the case of a reclaim fund business transfer scheme, means the reclaim fund to whose business the scheme relates.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.6 para.2 (April 1, 2013 as SI 2013/423)

Extent

Pt VII s. 103A(1)-(2)(c): United Kingdom

 Partially In Force

104. Control of business transfers.

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

Notes


¹ Words repealed by Financial Services Act 2012 c. 21 Pt 2 s.22(1) (April 1, 2013)

Commencement

Pt VII s. 104: December 1, 2001 for the purposes of insurance business transfer schemes; not yet in force otherwise (SI 2001/3538 art. 2(1), art. 2(2))

Extent

Pt VII s. 104: United Kingdom

 Law In Force

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 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 [falling within paragraph 5(d) of Schedule 3 and qualifying for authorisation under that Schedule] ¹ (“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;
[(aa) the authorised person concerned is not a reinsurance undertaking (within the meaning of Article 2.1(c) of the reinsurance directive);]²
- (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 [...] ³ 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—

- (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
- (c) all of the policyholders who will be affected by the transfer have consented to it.

] ⁴

[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.

] ⁵

(4) The parties to a scheme which falls within Case 2, [3, 4 or 5] ⁶ may apply to the court for an order sanctioning the scheme as if it were an insurance business transfer scheme.

[(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.] ⁷

(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.

Notes

- ¹ Words substituted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(1)(a) (December 10, 2007)
- ² Words inserted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(1)(b) (December 10, 2007)
- ³ Words repealed by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(1)(c) (December 10, 2007)
- ⁴ Amended by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(1)(d) (December 10, 2007)
- ⁵ Words inserted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(1)(e) (December 10, 2007)
- ⁶ Words substituted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(1)(f) (December 10, 2007)
- ⁷ S.105(5) substituted for s.105(5)-(7) subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.211(1) (April 6, 2008)

Commencement

Pt VII s. 105(1)-(9): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VII s. 105(1)-(9): United Kingdom

Law In Force

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);
 - (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
 - [(b) the scheme is a compromise or arrangement to which Part 27 of the Companies Act 2006 (mergers and divisions of public companies) applies.]¹
- (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 Building Societies Act 1986.
- (7) “Credit union” means a credit union within the meaning of—
- (a) the Credit Unions Act 1979;

(b) the Credit Unions (Northern Ireland) Order 1985.

Notes

- ¹ Substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.211(2) (April 6, 2008)

Commencement

Pt VII s. 106(1)-(7)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VII s. 106(1)-(7)(b): United Kingdom

Law In Force

[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.

] ¹

Notes

- ¹ Added by Dormant Bank and Building Society Accounts Act 2008 c. 31 Sch.2 para.2 (March 12, 2009)

Extent

Pt VII s. 106A(1)-(2): United Kingdom

Law In Force

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 [, a banking business transfer scheme or a reclaim fund business transfer scheme] ¹ .

(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.

Notes

¹ Words substituted by Dormant Bank and Building Society Accounts Act 2008 c. 31 Sch.2 para.3 (March 12, 2009)

Commencement

Pt VII s. 107(1)-(4)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VII s. 107(1)-(4)(b): United Kingdom

Law In Force

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;
 - (b) enabling the court to waive a requirement of the regulations in prescribed circumstances.

Commencement

Pt VII s. 108(1)-(3)(b): February 25, 2001 for the purposes of making orders or regulations; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt VII s. 108(1)-(3)(b): United Kingdom

Law In Force

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 [appropriate regulator]¹ to have the skills necessary to enable him to make a proper report; and
 - (b) nominated or approved for the purpose by the [appropriate regulator]¹ .
- (3) A scheme report must be made in a form approved by the [appropriate regulator]¹ .
- [(4) Where the appropriate regulator is the PRA, it must consult the FCA before—
 - (a) nominating or approving a person under subsection (2)(b), or
 - (b) approving a form under subsection (3).

- (5) Subsection (6) applies where the appropriate regulator is the FCA and either—
- (a) the transferee is a PRA-authorized person, or
 - (b) the authorised person concerned or the transferee has as a member of its immediate group a PRA-authorized person.
- (6) The FCA must consult the PRA before—
- (a) nominating or approving a person under subsection (2)(b), or
 - (b) approving a form under subsection (3).
-] ²

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.6 para.3(2) (April 1, 2013 as SI 2013/423)

² Added by Financial Services Act 2012 c. 21 Sch.6 para.3(3) (April 1, 2013: insertion has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Commencement

Pt VII s. 109(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VII s. 109(1)-(6)(b): United Kingdom

Law In Force

110.— Right to participate in proceedings.

- [(1) On an application under section 107, the following are also entitled to be heard—
- (a) the FCA,
 - (aa) in the case of a scheme falling within subsection (2), the PRA, 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.
- (2) A scheme falls within this subsection if—
- (a) the authorised person concerned or the transferee is a PRA-authorized person, or
 - (b) the authorised person concerned or the transferee has as a member of its immediate group a PRA-authorized person.
-] ¹

Notes

¹ Existing s.110 renumbered as s.110(1), s.110(a) and (aa) substituted for s.110(a) and s.110(2) is inserted by Financial Services Act 2012 c. 21 Sch.6 para.4 (April 1, 2013 as SI 2013/423)

Commencement

Pt VII s. 110(a)-(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VII s. 110(a)-(2)(b): United Kingdom

✔ Law In Force

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 [, a banking business transfer scheme or a reclaim fund business transfer scheme]¹ .

(2) The court must be satisfied that—

(a) [in the case of an insurance business transfer scheme or a banking business transfer scheme,]² the appropriate certificates have been obtained (as to which see Parts I and II of Schedule 12);

[(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);]³

(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.

Notes

¹ Words substituted by Dormant Bank and Building Society Accounts Act 2008 c. 31 Sch.2 para.4(2) (March 12, 2009)

² Words inserted by Dormant Bank and Building Society Accounts Act 2008 c. 31 Sch.2 para.4(3)(a) (March 12, 2009)

³ Added by Dormant Bank and Building Society Accounts Act 2008 c. 31 Sch.2 para.4(3)(b) (March 12, 2009)

Commencement

Pt VII s. 111(1), (3): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt VII s. 111(2)-(2)(b): February 25, 2001 for the purposes specified in SI 2001/516 art.2 and Sch.1; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(3) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt VII s. 111(1)-(3): United Kingdom

✔ Law In Force

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;
- (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 [occupational pension scheme (within the meaning of section 150(5) of the Finance Act 2004)]¹ operated by or on behalf of the authorised person concerned.

[(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).]²

(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 [section 770(1) of the Companies Act 2006]³ and any other enactment requiring the delivery of an instrument of transfer for the registration of property.

(7) [...] ⁴

(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;
- (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), [(2A),]⁵ (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 [appropriate regulator]⁶ within 10 days of the making of the order.

(11) But the [appropriate regulator]⁶ 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 the Companies Acts (see sections 540 and 738 of the Companies Act 2006).]⁷

(15) “Charge” includes a mortgage (or, in Scotland, a security over property).

Notes

- ¹ Words substituted by Taxation of Pension Schemes (Consequential Amendments) Order 2006/745 Pt 1 art.17 (April 6, 2006)
- ² Added by Financial Services and Markets Act 2000 (Amendments to Part 7) Regulations 2008/1468 reg.2(1) (June 30, 2008)
- ³ Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.211(3)(a) (April 6, 2008)
- ⁴ Repealed subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.2 para.1 (April 6, 2008)
- ⁵ Words inserted by Financial Services and Markets Act 2000 (Amendments to Part 7) Regulations 2008/1468 reg.2(2) (June 30, 2008)
- ⁶ Word substituted by Financial Services Act 2012 c. 21 Sch.6 para.5 (April 1, 2013 as SI 2013/423)
- ⁷ Words substituted for s.112(14)(a)-(b) subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.211(3)(c) (April 6, 2008)

Commencement

Pt VII s. 112(1)-(15): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VII s. 112(1)-(15): United Kingdom

✔ Law In Force

[112ZA Duty of regulator to provide copy of order

(1) Where the PRA receives under section 112(10) a copy of an order it must, without delay, give a copy of it to the FCA.

(2) Where the FCA receives under section 112(10) a copy of an order it must, without delay, give a copy of it to the PRA if the order relates to a scheme in respect of which—

- (a) the transferee is a PRA-authorized person, or
- (b) the authorised person concerned or the transferee has as a member of its immediate group a PRA-authorized person.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.6 para.6 (April 1, 2013 as SI 2013/423)

Extent

Pt VII s. 112ZA(1)-(b): United Kingdom

✔ Law In Force

[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).

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Amendments to Part 7) Regulations 2008/1468 reg.2(3) (June 30, 2008)

Extent

Pt VII s. 112A(1)-(3): United Kingdom

✔ Law In Force

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 [either regulator]¹, appoint an independent actuary—
- (a) to investigate the business transferred under the scheme; and
 - (b) to report to the [regulator which made the application]² 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.
- [(3) An application under subsection (2) may be made by the PRA only if—
- (a) the authorised person concerned or the transferee is a PRA-authorised person, or
 - (b) the authorised person concerned or the transferee has as a member of its immediate group a PRA-authorised person.
-]³

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.6 para.7(2)(a) (April 1, 2013 as SI 2013/423)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.6 para.7(2)(b) (April 1, 2013 as SI 2013/423)
- ³ Added by Financial Services Act 2012 c. 21 Sch.6 para.7(3) (April 1, 2013 as SI 2013/423)

Commencement

Pt VII s. 113(1)-(2)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VII s. 113(1)-(3)(b): United Kingdom

✔ Law In Force

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 [(other than a contract of reinsurance)]¹, the State of the commitment or the EEA State in which the risk is situated (“the EEA State concerned”).
- (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.

Notes

¹ Words inserted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(2) (December 10, 2007)

Commencement

Pt VII s. 114(1)-(6): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VII s. 114(1)-(6): United Kingdom

Law In Force

[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.

]¹

Notes

¹ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(3) (December 10, 2007)

Extent

Pt VII s. 114A(1)-(2): United Kingdom

Business transfers outside the United Kingdom

✔ Law In Force

115. Certificates for purposes of insurance business transfers overseas.

Part III of Schedule 12 makes provision about certificates which the [appropriate regulator]¹ may issue in relation to insurance business transfers taking place outside the United Kingdom.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.6 para.8 (April 1, 2013 as SI 2013/423)

Commencement

Pt VII s. 115: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VII s. 115: United Kingdom

✔ Law In Force

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) or (da) of Schedule 3]¹ transfers to another body all its rights and obligations under any UK policies.

[(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).

] ²

(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—

[(i) Article 14 of the life assurance consolidation directive; [...]]⁴ ³

- (ii) Article 12 of the third non-life directive; [or]⁵
- [(iii) Article 18 of the reinsurance directive; and]⁶
- (b) in subsection (2), a transfer authorised in an EEA State other than the United Kingdom in accordance with—
 - [(i) Article 53 of the life assurance consolidation directive; [...]]⁷
 - (ii) Article 28a of the first non-life directive [; or]⁹
 - [(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).]⁹

[(6) “UK policy” means—

- (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.

] ¹⁰

(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.

Notes

- ¹ Words inserted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(4)(a) (December 10, 2007)
- ² Substituted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(4)(b) (December 10, 2007)
- ³ Substituted by Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004/3379 Pt 2 reg.6(2)(b) (January 11, 2005)
- ⁴ Word repealed by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(4)(c)(i) (December 10, 2007)
- ⁵ Word substituted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(4)(c)(ii) (December 10, 2007)
- ⁶ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(4)(c)(iii) (December 10, 2007)
- ⁷ Substituted by Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004/3379 Pt 2 reg.6(2)(c) (January 11, 2005)
- ⁸ Word repealed by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(4)(c)(iv) (December 10, 2007)
- ⁹ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(4)(c)(v) (December 10, 2007)
- ¹⁰ Substituted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(4)(d) (December 10, 2007)

Commencement

Pt VII s. 116(1)-(8): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VII s. 116(1)-(8): United Kingdom

Modifications

Law In Force

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.
-

Commencement

Pt VII s. 117(a)-(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VII s. 117(a)-(b): United Kingdom

PART VIII**PENALTIES FOR MARKET ABUSE***Market abuse*

Law In Force

[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.
- (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 [31 December 2014]² and subsection (1)(b) is then to be read as no longer referring to those subsections.

] ¹

Notes

¹ S.118 to s.118C substituted for s.118 by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 Sch.2 para.1 (July 1, 2005)

² Words substituted by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2011/2928 reg.2(2) (December 31, 2011)

Commencement

Pt VIII s. 118(1)-(2)(c), (5)-(9): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt VIII s. 118(3)-(4), (10)-(10) definition of "regular user": February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt VIII s. 118(1)-(10) definition of "regular user": United Kingdom

✔ Law In Force

[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.
- (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 authority 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 [31 December 2014]² .
-]¹

Notes

¹ S.118 to s.118C substituted for s.118 by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 Sch.2 para.1 (July 1, 2005)

- ² Words substituted by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2011/2928 reg.2(3) (December 31, 2011)

Extent

Pt VIII s. 118A(1)-(6): United Kingdom

Law In Force

[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.

] ¹

Notes

- ¹ S.118 to s.118C substituted for s.118 by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 Sch.2 para.1 (July 1, 2005)

Extent

Pt VIII s. 118B(a)-(e): United Kingdom

Law In Force

[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.
- (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.

]¹

Notes

¹ S.118 to s.118C substituted for s.118 by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 Sch.2 para.1 (July 1, 2005)

Extent

Pt VIII s. 118C(1)-(8): United Kingdom

The code

Law In Force

119.— The code.

(1) The [FCA]¹ must prepare and issue a code containing such provisions as the [FCA]¹ considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse.

- (2) The code may among other things specify–
- (a) descriptions of behaviour that, in the opinion of the [FCA]¹, amount to market abuse;
 - (b) descriptions of behaviour that, in the opinion of the [FCA]¹, do not amount to market abuse;
 - (c) factors that, in the opinion of the [FCA]¹, are to be taken into account in determining whether or not behaviour amounts to market abuse.
 - [(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.]²

[(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]¹ 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

- (3) The code may make different provision in relation to persons, cases or circumstances of different descriptions.
- (4) The [FCA]¹ 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]¹.
- (6) A code issued under this section must be published by the [FCA]¹ in the way appearing to the [FCA]¹ to be best calculated to bring it to the attention of the public.
- (7) The [FCA]¹ must, without delay, give the Treasury a copy of any code published under this section.
- (8) The [FCA]¹ may charge a reasonable fee for providing a person with a copy of the code.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(3) para.9(2) (April 1, 2013)

² Added by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 Sch.2 para.2(2) (July 1, 2005)

³ Added by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 Sch.2 para.2(3) (July 1, 2005)

Commencement

Pt VIII s. 119(1)-(8): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt VIII s. 119(1)-(8): United Kingdom

Law In Force

120.— Provisions included in the [FCA's]¹ code by reference to the City Code.

- (1) The [FCA]¹ may include in a code issued by it under section 119 (“the [FCA's]¹ 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]¹ code.
- (3) If the [FCA's]¹ code includes provision of a kind authorised by subsection (1), the [FCA]¹ 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]¹ code .

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(3) para.9(2) (April 1, 2013)

Commencement

Pt VIII s. 120(1)-(5): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt VIII s. 120(1)-(5): United Kingdom

Law In Force

121.— Codes: procedure.

- (1) Before issuing a code under section 119 , the [FCA]¹ must publish a draft of the proposed code in the way appearing to the [FCA]¹ 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]¹ within a specified time.
- (3) Before issuing the proposed code, the [FCA]¹ must have regard to any representations made to it in accordance with subsection (2)(b).
- (4) If the [FCA]¹ 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]¹ , significant—
- (a) the [FCA]¹ 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]¹ considers that there is an urgent need to publish the code.

(7) Neither subsection (2)(a) nor subsection (5)(b) applies if the [FCA]¹ 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]¹ 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.

(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.

]²

(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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(3) para.9(2) (April 1, 2013)

² S.121(10) and (10A) substituted for s.121(10) by Financial Services Act 2012 c. 21 Sch.9(3) para.9(3) (April 1, 2013)

Commencement

Pt VIII s. 121(1)-(11)(b): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt VIII s. 121(1)-(11)(b): United Kingdom

Law In Force

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]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(3) para.9(2) (April 1, 2013)

Commencement

Pt VIII s. 122(1)-(2): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VIII s. 122(1)-(2): United Kingdom

Power to impose penalties

Law In Force

123.— Power to impose penalties in cases of market abuse.

(1) If the [FCA]¹ 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]¹ 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]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(3) para.9(2) (April 1, 2013)

Commencement

Pt VIII s. 123(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VIII s. 123(1)-(3): United Kingdom

Statement of policy

Law In Force

124.— Statement of policy.

- (1) The [FCA]¹ 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]¹ 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]¹ 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]¹ 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]¹ 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]¹ 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]¹ in the way appearing to the [FCA]¹ to be best calculated to bring it to the attention of the public.
- (8) The [FCA]¹ may charge a reasonable fee for providing a person with a copy of a statement published under this section.
- (9) The [FCA]¹ must, without delay, give the Treasury a copy of any statement which it publishes under this section.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(3) para.9(2) (April 1, 2013)

Commencement

Pt VIII s. 124(1)-(9): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt VIII s. 124(1)-(9): United Kingdom

✔ Law In Force

125.— Statement of policy: procedure.

- (1) Before issuing a statement of policy under section 124, the [FCA]¹ must publish a draft of the proposed statement in the way appearing to the [FCA]¹ 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]¹ within a specified time.
- (3) Before issuing the proposed statement, the [FCA]¹ must have regard to any representations made to it in accordance with subsection (2).
- (4) If the [FCA]¹ 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]¹, significant, the [FCA]¹ must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The [FCA]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(3) para.9(2) (April 1, 2013)

Commencement

Pt VIII s. 125(1)-(7): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt VIII s. 125(1)-(7): United Kingdom

Procedure

✔ Law In Force

126.— Warning notices.

- (1) If the [FCA]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(3) para.9(2) (April 1, 2013)

Commencement

Pt VIII s. 126(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VIII s. 126(1)-(3): United Kingdom

Law In Force

127.— Decision notices and right to refer to Tribunal.

- (1) If the [FCA]¹ 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]¹ decides to take action against a person under section 123, that person may refer the matter to the Tribunal.
-

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(3) para.9(2) (April 1, 2013)

Commencement

Pt VIII s. 127(1)-(4): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VIII s. 127(1)-(4): United Kingdom

Miscellaneous

Law In Force

128.— Suspension of investigations.

- (1) If the [FCA]¹ 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—
 - (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]¹, by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.
- (3) The [FCA's]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(3) para.9(2) (April 1, 2013)

Commencement

Pt VIII s. 128(1)-(3)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VIII s. 128(1)-(3)(b): United Kingdom

Law In Force

129.— Power of court to impose penalty in cases of market abuse.

- (1) The [FCA]¹ 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]¹ a penalty of such amount as it considers appropriate.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(3) para.9(2) (April 1, 2013)

Commencement

Pt VIII s. 129(1)-(2): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VIII s. 129(1)-(2): United Kingdom

Law In Force

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 [Part 7 of the Financial Services Act 2012]¹ or Part V of the 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]², 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]², 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]² to determine the action to be taken in cases where behaviour mentioned in subsection (1) occurs.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(3) para.9(4) (April 1, 2013)

² Word substituted by Financial Services Act 2012 c. 21 Sch.9(3) para.9(2) (April 1, 2013)

Commencement

Pt VIII s. 130(1)-(5): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VIII s. 130(1)-(3)(b): England, Wales, Northern Ireland

Pt VIII s. 130(4)-(5): United Kingdom

Law In Force

[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]² 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.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 Sch.2 para.3 (July 1, 2005)

² Word substituted by Financial Services Act 2012 c. 21 Sch.9(3) para.9(2) (April 1, 2013)

Extent

Pt VIII s. 130A(1)-(4): United Kingdom

Law In Force

131. Effect on transactions.

The imposition of a penalty under this Part does not make any transaction void or unenforceable.

Commencement

Pt VIII s. 131: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt VIII s. 131: United Kingdom

Law In Force

[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] ² 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.

] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 Sch.2 para.4 (July 1, 2005)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.9(3) para.9(2) (April 1, 2013)

Extent

Pt VIII s. 131A(1)-(6): United Kingdom

**[PART 8A
SHORT SELLING**

]¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 s.8 (June 8, 2010)
-

[[...]²]¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 s.8 (June 8, 2010)
- ² Repealed by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(2) (November 1, 2012: repeal has effect subject to savings provision specified in SI 2012/2554 reg.7)
-

R Repealed

131B [...]¹

Notes

- ¹ Repealed by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(2) (November 1, 2012: repeal has effect subject to savings provision specified in SI 2012/2554 reg.7)
-

R Repealed

131C [...]¹

Notes

- ¹ Repealed by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(2) (November 1, 2012: repeal has effect subject to savings provision specified in SI 2012/2554 reg.7)
-

R Repealed

131D [...]¹

Notes

- ¹ Repealed by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(2) (November 1, 2012: repeal has effect subject to savings provision specified in SI 2012/2554 reg.7)
-

[Power to require information]¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 s.8 (June 8, 2010)
-

Law In Force

[131E Power to require information

- (1) The [FCA]² may, by notice in writing, require a person [...] ³ —
- (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 only to information and documents that the [FCA]² reasonably requires for the purpose of [the exercise by it of functions under the short selling regulation]⁴ .
- (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]² may require any information provided under this section to be provided in such form as it may reasonably require.
- (5) The [FCA]² 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.
- [(5A) The [FCA's]² powers under this section may be exercised on a request made in the exercise of functions under the short selling regulation by—
- (a) the competent authority for the purposes of that regulation of an EEA State other than the United Kingdom, or
 - (b) ESMA.
- (5B) If a request of the kind mentioned in subsection (5A) has been made to the [FCA]² , the [FCA]² must, in deciding whether or not to exercise its powers under this section in response to the request, consider whether it is necessary to do so to comply with the short selling regulation.]⁵
- (6) In this section “specified” means specified in the notice.
- (7) [...] ⁶
-] ¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 s.8 (June 8, 2010)

- ² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.25(1) (April 1, 2013)
- ³ Word repealed by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(3)(a) (November 1, 2012)
- ⁴ Words substituted by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(3)(b) (November 1, 2012)
- ⁵ Added by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(3)(c) (November 1, 2012)
- ⁶ Repealed by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(3)(d) (November 1, 2012)

Extent

Pt VIIIA s. 131E(1)-(7)(d): United Kingdom

Law In Force

[131F Power to require information: supplementary

(1) [...]²

(2) If a document is produced in response to a requirement imposed under section 131E , the [FCA]³ 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]³ 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.

(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) the [FCA]³ suspects that P or a member of P's group has contravened any provision of the short selling regulation;
- (b) the [FCA]³ suspects that the person to whom the obligation of confidence is owed or a member of that person's group has contravened any provision of the short selling regulation; or]⁴
- (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.

] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.8 (June 8, 2010)

² Repealed by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(4)(a) (November 1, 2012)

³ Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.25(1) (April 1, 2013)

⁴ Substituted by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(4)(b) (November 1, 2012)

Extent

Pt VIIIA s. 131F(1)-(7): United Kingdom

Law In Force

[131FA.— Investigations in support of EEA regulator

(1) If so requested by the competent authority of an EEA State other than the United Kingdom (“the EEA regulator”) acting in the exercise of its functions under the short selling regulation, the [FCA] ² may appoint one or more competent persons to investigate any matter.

(2) In deciding whether to comply with a request falling within subsection (1), the [FCA] ² must consider whether it is necessary to do so in order to comply with the short selling regulation.

(3) Sections 170 to 177 (which relate to investigations) apply in relation to an investigator appointed under subsection (1) as they apply in relation to an investigator appointed under section 168(5).

(4) The [FCA] ² may direct an investigator appointed under subsection (1) to permit a representative of the EEA regulator to attend, and take part in, any interview conducted for the purposes of the investigation.

(5) The [FCA] ² is not to give a direction under subsection (4) unless it is satisfied that any information obtained by the EEA regulator as a result of the interview will be subject to safeguards equivalent to those contained in Part 23.

(6) The [FCA] ² must prepare a statement of its policy with respect to the conduct of interviews in relation to which a direction under subsection (4) has been given.

(7) The statement requires the approval of the Treasury.

(8) If the Treasury approve the statement, the [FCA] ² must publish it.

(9) No direction may be given under subsection (4) before the statement has been published.

(10) The [FCA] ² may at any time alter or replace a statement issued under subsection (6), and subsections (7) and (8) apply to an altered statement or to a replacement statement.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(5) (November 1, 2012)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.25(1) (April 1, 2013)

Extent

Pt VIII A s. 131FA(1)-(10): United Kingdom

Law In Force

[131FB.— 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 [FCA]² that there are reasonable grounds for believing that the conditions in subsection (2) are satisfied.

(2) The conditions are—

- (a) that a relevant person on whom a requirement has been imposed under section 131E or 131F 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) 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.

(4) A warrant under this section may be executed by any constable.

(5) The warrant may authorise persons to accompany any constable who is executing it.

(6) The powers in subsection (3) 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.

(7) In England and Wales, sections 15(5) to (8) and 16(3) to (12) of the Police and Criminal Evidence Act 1984³ (execution of search warrants and safeguards) apply to warrants issued under this section.

(8) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989⁴ apply to warrants issued under this section.

(9) In the application of this section to Scotland—

- (a) for the reference to a justice of the peace substitute a reference 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) The [FCA]² may give information under subsection (1) or under section 176(1) at the request of an EEA regulator where the regulator makes the request in the exercise of its functions under the short selling regulation.

(11) The [FCA]² must, in deciding whether or not to exercise a power referred to in subsection (10), consider whether the exercise of that power is necessary to comply with an obligation under the short selling regulation.

(12) In this section—

“EEA regulator” means the competent authority of an EEA State other than the United Kingdom for the purposes of the short selling regulation;

“relevant person” means—

- (a) an authorised person,
- (b) a person who has been an authorised person,
- (c) a person who is for the purposes of section 165 connected with an authorised person or with a person within paragraph (b).

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(5) (November 1, 2012)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.25(1) (April 1, 2013)

³ 1984 c.60. Sections 15(5) to (8) and 16(3) to (12) were amended by paragraph 281 of Schedule 8 to the Courts Act 2003 (c.39), sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c.15) and S.I. 2005/3496.

⁴ S.I. 1989/1341 (N.I. 12), amended by S.I. 2007/288 (N.I. 2).

Extent

Pt VIIIA s. 131FB(1)-(12) definition of "relevant person" (c): United Kingdom

Law In Force

[131FC.— Retention of documents taken under section 131FB

(1) Any document of which possession is taken under section 131FB (“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.

(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).

] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(5) (November 1, 2012)

Extent

Pt VIII A s. 131FC(1)-(5): United Kingdom

[Breach of short selling [regulation]² etc]¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 s.8 (June 8, 2010)
- ² Word substituted by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(6) (November 1, 2012)
-

Law In Force

[131G Power to impose penalty or issue censure

- (1) This section applies if the [FCA]² is satisfied that a person has contravened—
- (a) any provision of [the short selling regulation]³ ; or
 - (b) any requirement imposed on the person under section 131E or 131F.
- (2) The [FCA]² 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]² 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]² knew of the contravention .
- (6) For this purpose the [FCA]² is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.
-]¹
-

Notes

- ¹ Added by Financial Services Act 2010 c. 28 s.8 (June 8, 2010)
- ² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.25(1) (April 1, 2013)
- ³ Words substituted by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(7) (November 1, 2012)

Extent

Pt VIII A s. 131G(1)-(6): United Kingdom

✔ Law In Force

[131H Procedure and right to refer to Tribunal

- (1) If the [FCA]² 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]² 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.
 - (6) A decision notice about the publication of a statement must set out the terms of the statement.
 - (7) If the [FCA]² decides to take action against a person under section 131G, the person may refer the matter to the Tribunal.
-] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.8 (June 8, 2010)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.25(1) (April 1, 2013)

Extent

Pt VIII A s. 131H(1)-(7): United Kingdom

✔ Law In Force

[131I Duty on publication of statement

- After a statement under section 131G(3) is published, the [FCA]² 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).
-] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.8 (June 8, 2010)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.25(1) (April 1, 2013)

Extent

Pt VIII A s. 131I(a)-(b): United Kingdom

✔ Law In Force

[131J Imposition of penalties under section 131G: statement of policy

- (1) The [FCA]² 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]² 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]² 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]² must issue the altered or replaced statement.
- (5) The [FCA]² 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]² in the way appearing to the [FCA]² to be best calculated to bring it to the attention of the public.
- (7) The [FCA]² 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]² must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.
-]¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.8 (June 8, 2010)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.25(1) (April 1, 2013)

Extent

Pt VIII A s. 131J(1)-(8): United Kingdom

Law In Force

[131K Statement of policy: procedure

- (1) Before issuing a statement under section 131J, the [FCA]² must publish a draft of the proposed statement in the way appearing to the [FCA]² 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]² within a specified time.
- (3) Before issuing the proposed statement, the [FCA]² must have regard to any representations made to it in accordance with subsection (2).
- (4) If the [FCA]² 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]², significant, the [FCA]² must (in addition to complying with subsection (4)) publish details of the difference.

(6) The [FCA]² 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.

] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.8 (June 8, 2010)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.25(1) (April 1, 2013)

Extent

Pt VIII A s. 131K(1)-(7): United Kingdom

Law In Force

[131L.— Offences

(1) If a relevant person (“A”) fails to comply with a requirement imposed on A under section 131E or 131F the [FCA]² may certify that fact in writing to the court.

(2) If the court is satisfied that A failed without reasonable excuse to comply with the requirement, it may deal with A (and where A is a body corporate, any director or officer) as if A (or as the case may be the director or officer) were in contempt; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.

(3) A relevant person (“B”) who, in purported compliance with a requirement imposed on B under section 131E or 131F—

(a) provides information which B 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.

(4) A person guilty of an offence under subsection (3) 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.

(5) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 131FB 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.

(6) In relation to any contravention by a person, the [FCA]² may not exercise both—

(a) its powers under section 131G(2), and

(b) its powers under subsection (1).

(7) In this section—

“court” means—

(a) the High Court;

(b) in Scotland, the Court of Session;

“relevant person” means—

- (a) an authorised person,
- (b) a person who has been an authorised person,
- (c) a person who is for the purposes of section 165 connected with an authorised person or with a person within paragraph (b).

] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(8) (November 1, 2012)
- ² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.25(1) (April 1, 2013)

Extent

Pt VIII A s. 131L(1)-(7) definition of "relevant person" (c): United Kingdom

PART IX

HEARINGS AND APPEALS

R Repealed

132.— [...] ¹

Notes

- ¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.44 (April 6, 2010)
-

✓ Law In Force

! Amendment(s) Pending

[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) a decision of [the FCA or the PRA] ² ;
- (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 Banking (Special Provisions) Act 2008 or the 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—

- (a) must determine what (if any) is the appropriate action for the decision-maker to take in relation to the matter; and
 - (b) 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—
- (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.

] ³

(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 take action under section 192K;
- (k) 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;
- (l) a decision to take action under [section 249 or 261K] ⁵;
- (m) a decision to publish a statement under section 312E or impose a penalty under section 312F;
- (n) a decision to take action under section 345 or 345A.

] ⁴

- (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.

] ¹

Notes

¹ Ss 133-133B substituted for s.133 by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.45 (April 6, 2010)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.23(2)(a) (April 1, 2013)

³ S.133(5)-(6A) substituted for s.133(5)-(6) by Financial Services Act 2012 c. 21 Pt 2 s.23(2)(b) (April 1, 2013)

⁴ Added by Financial Services Act 2012 c. 21 Pt 2 s.23(2)(c) (April 1, 2013)

- ⁵ Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(3) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)

Amendments Pending

Pt IX s. 133(8)(a): words inserted by Crime and Courts Act 2013 c. 22, Sch. 9(3) para. 83 (date to be appointed: insertion has effect subject to savings and transitional provisions specified in 2013 c.22 s.15 and Sch.8)

Commencement

Pt IX s. 133(1)-(12): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt IX s. 133(1)-(12): United Kingdom

Law In Force

[133A Proceedings before Tribunal: decision and supervisory notices, etc.

(1) In determining [in accordance with section 133(5)]² a reference made (whether under this or any other Act) as a result of a decision notice [given by a body, the Tribunal may not direct the body to take action which it would]³ not, as a result of section 388(2), have had power to take when giving the notice.

(2)-(3) [...]⁴

(4) [The action specified in a decision notice must not be taken—]⁵

- (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]⁶, make recommendations as to [its]⁷ regulating provisions or its procedures.

] ¹

Notes

- ¹ Ss 133-133B substituted for s.133 by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.45 (April 6, 2010)
- ² Words inserted by Financial Services Act 2012 c. 21 Pt 2 s.23(3)(a)(i) (April 1, 2013)
- ³ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.23(3)(a)(ii) (April 1, 2013)
- ⁴ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.23(3)(b) (April 1, 2013)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.23(3)(c) (April 1, 2013)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.23(3)(d)(i) (April 1, 2013)
- ⁷ Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.23(3)(d)(ii) (April 1, 2013)

Extent

Pt IX s. 133A(1)-(5): United Kingdom

✔ Law In Force

[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]² ;
 - (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 Banking (Special Provisions) Act 2008 or the 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.

] ¹

Notes

¹ Ss 133-133B substituted for s.133 by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.45 (April 6, 2010)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.23(4) (April 1, 2013)

Extent

Pt IX s. 133B(1)-(4)(b): United Kingdom

Legal assistance before the Tribunal

✔ Law In Force

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).

Commencement

Pt IX s. 134(1)-(4): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt IX s. 134(1)-(4): United Kingdom

Law In Force

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.

Commencement

Pt IX s. 135(1)-(2): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt IX s. 135(1)-(2): United Kingdom

Law In Force

136.— Funding of the legal assistance scheme.

(1) The [FCA]¹ 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]¹ 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.

(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]¹; or
- (b) take the excess into account on the next occasion on which he makes a determination under subsection (1).

(7) The [FCA]¹ 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]¹, whether under rules made under subsection (2) or otherwise; or
- (c) to be partly so distributed and partly so applied.

(8) If the [FCA]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.23(5) (April 1, 2013)

Commencement

Pt IX s. 136(1)-(9): June 18, 2001 for the purposes of making rules; September 3, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt IX s. 136(1)-(9): United Kingdom

Appeals

 Repealed

137.— [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.46 (April 6, 2010)

**[PART 9A
RULES AND GUIDANCE**

]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

**[CHAPTER 1
RULE-MAKING POWERS]¹**

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
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[General rule-making powers of the FCA and the PRA]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[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 or the emission allowance auctioning regulation, reserved to the firm's home state regulator.

] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137A(1)-(5)(b): United Kingdom

Law In Force

[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 results in that clients' money being held on trust in accordance with the rules,

(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.

] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137B(1)-(5): United Kingdom

Law In Force

[137C FCA general rules: cost of credit and duration of credit agreements

(1) The power of the FCA to make general rules includes power to make rules prohibiting authorised persons from—

- (a) entering into a regulated credit agreement that provides for—
 - (i) the payment by the borrower of charges of a specified description, or
 - (ii) the payment by the borrower over the duration of the agreement of charges that, taken with the charges paid under one or more other agreements which are treated by the rules as being connected with it, exceed, or are capable of exceeding, a specified amount;
- (b) imposing charges of a specified description or exceeding a specified amount on a person who is the borrower under a regulated credit agreement;
- (c) entering into a regulated credit agreement that—
 - (i) is capable of remaining in force after the end of a specified period,

- (ii) when taken with one or more other regulated credit agreements which are treated by the rules as being connected with it, would be capable of remaining in force after the end of a specified period, or
 - (iii) is treated by the rules as being connected with a number of previous regulated credit agreements that exceeds a specified maximum;
 - (d) exercising the rights of the lender under a regulated credit agreement (as a person for the time being entitled to exercise them) in a way that enables the agreement to remain in force after the end of a specified period or enables the imposition on the borrower of charges within paragraph (a)(i) or (ii).
- (2) “Charges” means charges payable, by way of interest or otherwise, in connection with the provision of credit under the regulated credit agreement, whether or not the agreement itself makes provision for them and whether or not the person to whom they are payable is a party to the regulated credit agreement or an authorised person.
- (3) “The borrower” includes—
- (a) any person providing a guarantee or indemnity under the regulated credit agreement, and
 - (b) a person to whom the rights and duties of the borrower under the regulated credit agreement or a person falling within paragraph (a) have passed by assignment or operation of law.
- (4) In relation to an agreement entered into or obligation imposed in contravention of the rules, the rules may—
- (a) provide for the 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 the agreement or other 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 the agreement or obligation.
- (5) The provision that may be made as a result of subsection (4) includes provision corresponding to that made by section 30 (enforceability of agreements resulting from unlawful communications).
- (6) A credit agreement is a contract of the kind mentioned in paragraph 23 of Schedule 2, other than one under which the obligation of the borrower to repay is secured on land: and a credit agreement is a “regulated credit agreement” if any of the following is a regulated activity—
- (a) entering into or administering the agreement;
 - (b) exercising or being able to exercise the rights of the lender under the agreement.
- (7) In this section—
- (a) “specified amount” means an amount specified in or determined in accordance with the rules;
 - (b) “specified period” means a period of a duration specified in or determined in accordance with the rules;
 - (c) “specified person” means a person of a description specified in the rules;
 - (d) subject to that, “specified” means specified in the rules.

]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137C(1)-(7)(d): United Kingdom

Law In Force

[137D 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 competition 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—
- (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.

] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137D(1)-(10)(b): United Kingdom

Law In Force

[137E Orders under s.137D(1)(b)

- (1) No order may be made under section 137D(1)(b) unless—
- (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
 - (b) subsection (3) applies.
- (2) Subsection (3) applies if an order under section 137D(1)(b) 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.
- (3) Where this subsection applies 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 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) The “relevant period” is a period of 28 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 4 days.
-] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137E(1)-(5): United Kingdom

Law In Force

[137F Rules requiring participation in benchmark

- (1) The power of the FCA to make general rules includes power to make rules requiring authorised persons to take specified steps in connection with the setting by a specified person of a specified benchmark.
- (2) The rules may in particular—
- (a) require authorised persons to whom the rules apply to provide information of a specified kind, or expressions of opinion as to specified matters, to persons determined in accordance with the rules;
 - (b) make provision about the form in which and the time by which any information or expression of opinion is to be provided;
 - (c) make provision by reference to any code or other document published by the person responsible for the setting of the benchmark or by any other person determined in accordance with the rules, as the code or other document has effect from time to time.
- (3) Rules making provision of the kind mentioned in subsection (2)(c) may provide that the code or other document is to be capable of affecting obligations imposed by the rules only if specified requirements are met in relation to it.
- (4) In this section—
- “benchmark” has the meaning given in section 22(6);
 - “specified” means specified in or determined in accordance with the rules.

] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137F(1)-(4) definition of "specified": United Kingdom

Law In Force

[137G 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 any 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 make provision applying to PRAauthorised persons even though there is no relationship between the PRA-authorised persons to whom the rules will apply and the persons whose interests will be protected by the rules.
- (4) 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.
- (5) 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 or the emission allowance auctioning regulation, reserved to the firm's home state regulator.

] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

ExtentPt IXA c. 1 s. 137G(1)-(5)(b): United Kingdom

 Law In Force**[137H 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.

] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

ExtentPt IXA c. 1 s. 137H(1)-(3): United Kingdom

 Law In Force**[137I 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,
- (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.

]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137I(1)-(7): United Kingdom

Law In Force

[137J 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 PRAauthorised person;
- “specified” means specified in the rules.

] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137J(1)-(6) definition of "specified": United Kingdom

Law In Force

[137K 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—

- (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.

] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of

guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137K(1)-(6)(b): United Kingdom

Law In Force

[137L Interpretation of sections 137J and 137K

- (1) This section has effect for the interpretation of sections 137J and 137K.
- (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 137K the cases in which the business (or any part of the business) of the authorised person (“A”) is to be regarded as having failed include those where—
- (a) A enters insolvency,
 - (b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to A, or
 - (c) A falls to be taken for the purposes of the compensation scheme to be unable, or likely to be unable, to satisfy claims against A.
- (6) In subsection (5)(a) “insolvency” includes—
- (a) bankruptcy,
 - (b) liquidation,
 - (c) bank insolvency,
 - (d) administration,
 - (e) bank administration,
 - (f) receivership,
 - (g) a composition between A and A's creditors, and
 - (h) a scheme of arrangement of A's affairs.

]¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in

accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137L(1)-(6)(h): United Kingdom

Law In Force

[137M 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-authorized persons, or PRA-authorized 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 137K;

“specified” means specified in the rules.

] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137M(1)-(6) definition of "specified": United Kingdom

Law In Force

[137N 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 it 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
- (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 section 166A.

(5) In this section—

- “authorised person”, in relation to rules of the PRA, means a PRA authorised person;
- “specified” means specified in the rules.

] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137N(1)-(5) definition of "specified": United Kingdom

[*Specific rule-making powers*]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[137O Threshold condition code

- (1) Either regulator may make rules supplementing any of the conditions for the time being set out in or specified under Schedule 6 that is expressed to be relevant to the discharge of that regulator's functions.
- (2) Rules made under this section by a regulator are referred to as that regulator's "threshold condition code".
- (3) A threshold condition code may in particular—
- (a) specify requirements which a person must satisfy in order to be regarded as satisfying a particular condition in relation to any regulated activities;
 - (b) specify matters which are, or may be, or are not, relevant in determining whether a person satisfies a particular condition in relation to any regulated activities.
- (4) Except where a regulator's threshold condition code so provides, it is not to be regarded as limiting the matters that are, or may be, relevant in determining whether a person satisfies a particular condition in relation to any regulated activities.
- (5) A threshold condition code cannot impose obligations that are enforceable against authorised persons otherwise than through the threshold conditions.
-] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137O(1)-(5): United Kingdom

✔ Law In Force

[137P 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).

] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137P(1)-(2)(d): United Kingdom

✔ Law In Force

[137Q 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;

(b) may make different provision in relation to different kinds of investment.

(3) The FCA may make rules which, for the purposes of the relevant exemption provisions, 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.

(4) “The relevant exemption provisions” are the following provisions of the Financial Services Act 2012—

- (a) section 90(9)(b);
- (b) section 91(4)(a).

]¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137Q(1)-(4)(b): United Kingdom

Law In Force

[137R 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), and
- (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,
 - (ii) any implementing measure made under paragraph 10 of that Article, or
 - (iii) Article 77 of the UCITS directive,
- 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.
]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137R(1)-(7): United Kingdom

Law In Force

[137S 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.
- (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 may 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.

]¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of

guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137S(1)-(12): United Kingdom

[Supplementary powers]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[137T General supplementary powers

Rules made by either regulator—

- (a) may make different provision for different cases and may, in particular, make different provision in respect of different descriptions of authorised persons, activity or investment,
- (b) may make provision by reference to rules made by the other regulator, as those rules have effect from time to time, and
- (c) may contain such incidental, supplemental, consequential and transitional provision as the regulator making the rule considers appropriate.

]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 1 s. 137T(a)-(c): United Kingdom

[CHAPTER 2

RULES: MODIFICATION, WAIVER, CONTRAVENTION AND PROCEDURAL PROVISIONS]¹**Notes**

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

*[Modification or waiver of rules]¹***Notes**

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Law In Force

[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—
- (a) rules made by either regulator under section 137O (threshold condition code);
 - (b) rules made by the FCA under section 247 (trust scheme rules) [, section 248 (scheme particulars rules), section 261I (contractual scheme rules) or section 261J (contractual scheme particulars rules)]² .
- (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 adversely affect the advancement of any of the regulator's objectives.
- (5) In subsection (4)(b) “objectives”, in relation to the FCA, means operational objectives.

- (6) A direction may be given subject to conditions.
- (7) 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.
- (8) “Direction” means a direction under this section.
-] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ² Words substituted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(4) (June 6, 2013: substitution has effect subject to transitional provision specified in SI 2013/1388 reg.24)

Extent

Pt IXA c. 2 s. 138A(1)-(8): United Kingdom

Law In Force

[138B 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 138D,
 - (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-authorized 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.

] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 2 s. 138B(1)-(6): United Kingdom

[Contravention of rules]¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Law In Force

[138C 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).

- (4) In this section “rule” does not include a rule made under—
- (a) section 137O (threshold condition code);
 - (b) section 192J (provision of information by parent undertakings).

] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 2 s. 138C(1)-(4)(b): United Kingdom

Law In Force

[138D 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 137O (threshold condition code);
 - (c) rules under section 192J (provision of information by parent undertakings);
 - (d) a rule requiring an authorised person to have or maintain financial resources.
- (6) “Private person” has such meaning as may be prescribed.

] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in

accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 2 s. 138D(1)-(6): United Kingdom

Law In Force

[138E 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—
- (a) rules made by the FCA under section 137C, or
 - (b) product intervention rules made by the FCA under section 137D.

] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 2 s. 138E(1)-(3)(b): United Kingdom

[Procedural provisions] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

✔ Law In Force

[138F Notification of rules

If either regulator makes, alters or revokes any rules, that regulator must without delay give written notice—

- (a) to the Treasury, and
- (b) to the Bank of England.

] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 2 s. 138F(a)-(b): United Kingdom

✔ Law In Force

[138G 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 rulemaking 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.

] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

ExtentPt IXA c. 2 s. 138G(1)-(6): United Kingdom

 Law In Force**[138H 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.

(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 138G(4).

(3) A certificate purporting to be signed as mentioned in subsection (1) is to be taken to 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).

] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

ExtentPt IXA c. 2 s. 138H(1)-(4): United Kingdom

 Law In Force**[138I 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 138K(2),
 - (d) an explanation of the FCA's reasons for believing that making the proposed rules is compatible with its duties under section 1B(1) and (5)(a), 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 138K(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 138L.

]¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of

giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 2 s. 138I(1)-(11): United Kingdom

Law In Force

[138J 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 138K(2),
 - (d) an explanation of the PRA's reasons for believing that making the proposed rules is compatible with its duties under—
 - (i) section 2B(1) or, as the case requires, section 2C(1) or 2D(3), and
 - (ii) section 2H, and
 - (e) 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 138K(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 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 138L.
- J¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 2 s. 138J(1)-(10): United Kingdom

Law In Force

[138K 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 138I(1)(b) or section 138J(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 Industrial and Provident Societies 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.

] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 2 s. 138K(1)-(6)(c): United Kingdom

Law In Force

[138L Consultation: general exemptions

- (1) Sections 138I(1)(b) and (2) to (5) and 138K 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 138J(1)(b) and (2) to (5) and 138K 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 policyholders.

- (3) The provisions listed in subsection (4) 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.
- (4) Those provisions are—
- (a) subsections (2)(a) and (5)(a) of section 138I;
 - (b) subsections (2)(a) and (5)(a) of section 138J.
- (5) The “appropriate comparison” means—
- (a) in relation to section 138I(2)(a) or 138J(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 138I(5)(a) or 138J(5)(a), a comparison between the overall position after the making of the rules and the overall position before they were made.

] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 2 s. 138L(1)-(5)(b): United Kingdom

Law In Force

[138M Consultation: exemptions for temporary product intervention rules

- (1) Sections 138I(1)(b) and (2) to (5) and 138K 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 competition objective, or
 - (b) if an order under section 137D(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 12 months 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).

] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 2 s. 138M(1)-(6): United Kingdom

Law In Force

[138N 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 replacement 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.

] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 2 s. 138N(1)-(6): United Kingdom

✔ Law In Force

[138O Statement of policy under section 138N: procedure

- (1) Before issuing a statement under section 138N, 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.

] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 2 s. 138O(1)-(7): United Kingdom

[CHAPTER 3

GUIDANCE] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified

in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

✔ Law In Force

[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 its functions under the short selling regulation.

(5) Where this subsection applies, subsections (1), (2)(e) and (3) of section 138I (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 given 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.

(8) “Consumers” has the meaning given in section 1G.

(9) “FCA-regulated person” means—

- (a) an authorised person, or
- (b) any person who is otherwise subject to rules made by the FCA.

] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified

in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 3 s. 139A(1)-(9)(b): United Kingdom

Law In Force

[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.

] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 3 s. 139B(1)-(6): United Kingdom

[CHAPTER 4

COMPETITION SCRUTINY] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in

accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

✔ Law In Force

[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;

(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 read 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.

] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

ExtentPt IXA c. 4 s. 140A(1)-(4): United Kingdom

✔ Law In Force

[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.

]¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

ExtentPt IXA c. 4 s. 140B(1)-(5): United Kingdom

✔ Law In Force

[140C Consultation with regulator

Before giving section 140B advice, a competition authority must consult the regulator to which the advice is to be given.]¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 4 s. 140C: United Kingdom

✔ Law In Force

[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”.

] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 4 s. 140D(a)-(b): United Kingdom

✔ Law In Force

[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.]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 4 s. 140E: United Kingdom

Law In Force

[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.

] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 4 s. 140F(1)-(2): United Kingdom

Law In Force

[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.

] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 4 s. 140G(1)-(2): United Kingdom

Law In Force

[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).
- (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.

]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 4 s. 140H(1)-(8)(b): United Kingdom

[CHAPTER 5**POWER TO MAKE CONSEQUENTIAL AMENDMENTS]¹****Notes**

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Law In Force

[141A Power to make consequential amendments of references to rules etc.

(1) This section applies if—

- (a) a provision of primary or subordinate legislation (whenever passed or made) contains a reference (however expressed) to rules of either regulator or to guidance of the FCA,
- (b) it appears to the Treasury or the Secretary of State that the reference requires amendment in consequence of the exercise by that regulator of its power under this Part to make, alter or revoke its rules or the exercise by the FCA of its power to make, alter or revoke its guidance.

(2) The Treasury or the Secretary of State may by order make such amendment of the legislation referred to in subsection (1)(a) as appears to them to be necessary or expedient in consequence of the exercise by the regulator of the power mentioned in subsection (1)(b).

(3) The power conferred by subsection (2) includes power—

- (a) to replace a reference to the rules of one regulator with a reference to the rules of the other regulator or to the rules of both regulators;
- (b) to replace a reference to the rules of both regulators with a reference to the rules of one regulator.

(4) In subsection (1)(a) “subordinate legislation” does not include rules of either regulator.
] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt IXA c. 5 s. 141A(1)-(4): United Kingdom

PART X
RULES AND GUIDANCE
CHAPTER I
RULE-MAKING POWERS

R Repealed

138.— [...] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

R Repealed

139.— [...] ¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

R Repealed

139A [...] ¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

R Repealed

139B [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

R Repealed

139C [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

R Repealed

139D [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

R Repealed

139E [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

R Repealed

139F [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

R Repealed

140.— [...]¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

R Repealed

141.— [...]¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

R Repealed

142.— [...]¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

R Repealed

143.— [...]¹

Notes

¹ Repealed by Companies Act 2006 c. 46 Pt 28 c.1 s.964(2) (April 6, 2007 subject to transitional adaptations specified in SI 2007/1093 art.3 and Sch.1)

Specific rules

R Repealed

144.— [...]¹

Notes

¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

R Repealed

145.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

R Repealed

146. [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

R Repealed

147.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Modification or waiver

R Repealed

148.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Contravention of rules

R Repealed

149.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

R Repealed

150.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

R Repealed

151.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Procedural provisions

R Repealed

152.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

R Repealed

153.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

R Repealed

154.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

R Repealed

155.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

R Repealed

156.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

CHAPTER II**GUIDANCE**

R Repealed

157.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

R Repealed

158.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

R Repealed

158A.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

CHAPTER III

COMPETITION SCRUTINY

R Repealed

159.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

R Repealed

160.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

R Repealed

161.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

R Repealed

162.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

R Repealed

163.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

R Repealed

164.— [...]¹

Notes

- ¹ Existing ss 138-164 substituted for a new Part 9A consisting of ss 137A-141A by Financial Services Act 2012 c. 21 Pt 2 s.24(1) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

PART XI

INFORMATION GATHERING AND INVESTIGATIONS

Powers to gather information

Law In Force

165.— [Regulators']¹ power to require information [: authorised persons etc]² .

- (1) [Either regulator]³ 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]⁴ 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]⁵ of functions conferred on it by or under this Act.
- (5) [The regulator in question]⁶ may require any information provided under this section to be provided in such form as it may reasonably require.
- (6) [The regulator in question]⁶ 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—]⁷
- [(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 272]⁸ 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.]⁷

(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]⁹ and includes a member of [that regulator's]¹⁰ staff or an agent of [that regulator]¹¹.

(10) “Specified” means –

- (a) in subsections (1) and (2), specified in the notice; and
- (b) in subsection (3), specified in the authorisation.

(11) For the purposes of this section, a person is connected with [another person]¹² (“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)]¹³.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.1(9) (April 1, 2013)
- ² Words inserted by Financial Services Act 2010 c. 28 Sch.2(1) para.15 (June 8, 2010)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.1(2) (April 1, 2013)
- ⁴ Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.1(3) (April 1, 2013)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.1(4) (April 1, 2013)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.1(5) (April 1, 2013)
- ⁷ S.165(7)(a)-(d) and word substituted for s.165(7)(a)-(c) and words by Financial Services Act 2012 c. 21 Sch.12(1) para.1(6) (April 1, 2013)
- ⁸ Words repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.9 (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁹ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.1(7)(a) (April 1, 2013)
- ¹⁰ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.1(7)(b) (April 1, 2013)
- ¹¹ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.1(7)(c) (April 1, 2013)
- ¹² Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.1(8)(a) (April 1, 2013)
- ¹³ Words inserted by Financial Services Act 2012 c. 21 Sch.12(1) para.1(8)(b) (April 1, 2013)

Commencement

Pt XI s. 165(1)-(11)(d): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XI s. 165(1)-(11)(d): United Kingdom

Law In Force

[165A [PRA's]² power to require information: financial stability

(1) The [PRA]³ 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—
- (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]³ 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]³ 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]³ may require any information provided under this section to be provided in such form as it may reasonably require.
- (7) The [PRA]³ 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).

] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.18(2) (June 8, 2010)

² Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.2(b) (April 1, 2013)

³ Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.2(a) (April 1, 2013)

Extent

Pt XI s. 165A(1)-(10)(d): United Kingdom

Law In Force

[165B Safeguards etc in relation to exercise of power under section 165A

(1) If the [PRA] ² 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 [PRA] ² is proposing to impose the requirement.

(2) The notice under subsection (1) must—

(a) give the [PRA's] ³ reasons for proposing to impose the requirement; and

(b) specify a reasonable period within which the person may make representations to the [PRA] ².

(3) The [PRA] ² 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] ² is satisfied that it is necessary for the information or documents to be provided or produced without delay.

(5) If the [PRA] ² imposes a requirement on a person under section 165A, the notice under that section must give the [PRA's] ³ reasons for imposing the requirement.

(6) The [PRA] ² 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] ² must publish it.

(9) The power conferred by section 165A may not be exercised before the statement has been published.

] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.18(2) (June 8, 2010)

² Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.3(a) (April 1, 2013)

³ Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.3(b) (April 1, 2013)

Extent

Pt XI s. 165B(1)-(9): United Kingdom

✔ Law In Force

[165C Orders under section 165A(2)(d)

[(1) The Treasury may make an order under section 165A(2)(d) only if either or both of the following conditions is met in relation to the provision made by the order.

(1A) Condition A is that the Treasury 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.

(1B) Condition B is that the provision implements all or part of a recommendation made by the Financial Policy Committee of the Bank of England under section 9P of the Bank of England Act 1998.]²

(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.

(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.

] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.18(2) (June 8, 2010)

² S.165(1)-(1B) substituted for s.165(1) by Financial Services Act 2012 c. 21 Sch.12(1) para.4 (April 1, 2013)

Extent

Pt XI s. 165C(1)-(8): United Kingdom

✔ Law In Force

[166 Reports by skilled persons

(1) This section applies where either regulator has required or could require a person to whom subsection (2) applies (“the person concerned”) to provide information or produce documents with respect to any matter (“the matter concerned”).

(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 mentioned in subsection (1) may either—

- (a) by notice in writing given to the person concerned, require the person concerned to provide the regulator with a report on the matter concerned, or
- (b) itself appoint a person to provide the regulator with a report on the matter concerned.

(4) When acting under subsection (3)(a), the regulator may require the report to be in such form as may be specified in the notice.

(5) The regulator must give notice of an appointment under subsection (3)(b) to the person concerned.

(6) The person appointed to make a report—

- (a) must be a person appearing to the regulator to have the skills necessary to make a report on the matter concerned, and
- (b) where the appointment is to be made by the person concerned, must be a person nominated or approved by the regulator.

(7) It is the duty of—

- (a) the person concerned, and
- (b) any person who is providing (or who has at any time provided) services to the person concerned in relation to the matter concerned,

to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.

(8) The obligation imposed by subsection (7) 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.

(9) A regulator may make rules providing for expenses incurred by it in relation to an appointment under subsection (3)(b) to be payable as a fee by the person concerned.

(10) The powers conferred by this section may also be exercised by the FCA in relation to a person to whom subsection (11) applies, (and references to the person concerned are to be read accordingly).

(11) This 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, or
- (d) a person who has at any time been a person falling within paragraph (a), (b) or (c),

who is, or was at the relevant time, carrying on a business.

] ¹

Notes

- ¹ Substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.5 (January 24, 2013: substitution has effect on January 24, 2013 for the purpose of the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Commencement

Pt XI s. 166(1)-(6): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XI s. 166(1)-(11)(d): United Kingdom

Law In Force

[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 either—

- (a) require the authorised person to appoint a skilled person to collect or update the information, or
- (b) itself appoint a skilled person to do so.

(3) References in this section to a skilled person are to a person—

- (a) appearing to the regulator to have the skills necessary to collect or update the information in question, and
- (b) where the appointment is to be made by the authorised person, nominated or approved by the regulator.

(4) The regulator must give notice of an appointment under subsection (2)(b) to the authorised person.

(5) 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.

(6) A requirement imposed under subsection (5) 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.

(7) 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.

(8) An authorised person may provide information (whether received under subsection (7) 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.

(9) A regulator may make rules providing for expenses incurred by it in relation to an appointment under subsection (2)(b) to be payable as a fee by the authorised person.

(10) In this section “authorised person”, in relation to the PRA, means PRA-authorised person.
] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.12(1) para.6 (January 24, 2013: insertion has effect on January 24, 2013 for the purpose of the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt XI s. 166A(1)-(10): United Kingdom

Appointment of investigators

✔ Law In Force

167.— Appointment of persons to carry out general investigations.

(1) If it appears to [an investigating authority] ¹ 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 [a recognised investment exchange or] ² an authorised person or of an appointed representative;
- (b) a particular aspect of that business; or
- (c) the ownership or control of [a recognised investment exchange or] ³ 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

(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.

] ⁴

[(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)).] ⁵

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.7(2) (April 1, 2013)

² Words inserted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.7(a)(i) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

³ Words inserted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.7(a)(ii) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

⁴ Added by Financial Services Act 2012 c. 21 Sch.12(1) para.7(3) (April 1, 2013)

⁵ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.7(b) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

Commencement

Pt XI s. 167(1)-(5): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XI s. 167(1)-(6): United Kingdom

Law In Force

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) [...]¹
- (b) a person may be guilty of an offence under [section 177, 191F, 346 or 398(1)]² 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 under Part 7 of the Financial Services Act 2012]³ or under Part V of the Criminal Justice Act 1993 may have been committed;
- (b) there may have been a breach of the general prohibition;

[(ba) an authorised person may have contravened section 20 in relation to a credit-related regulated activity;]⁴

(c) there may have been a contravention of section 21 or 238; or

(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]⁵ 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;

[(ba) a person may be guilty of an offence under Schedule 7 to the Counter-Terrorism Act 2008 (terrorist financing or money laundering);]⁶

(c) [a person]⁷ may have contravened a rule made by the [investigating authority]⁸ ;

[(ca) a recognised investment exchange may have contravened the recognition requirements (within the meaning of Part 18);]⁹

(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]¹⁰ 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 [a regulator]¹¹ has given its approval under section 59 may not be a fit and proper person to perform the function to which that approval relates; [...]¹²

[(ha) a person may have performed a controlled function without approval for the purposes of section 63A;]¹³

(i) a person may be guilty of misconduct for the purposes of section 66 [; [...]¹⁵]¹⁴

[(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 [...]¹⁶ [; [...]¹⁸]¹⁷]¹⁴

[(ja) a person may have contravened—

(i) any provision made by or under this Act for the purpose of implementing the alternative investment fund managers directive; or

(ii) any provision made by the Alternative Investment Fund Managers Regulations 2013; or

] ¹⁸

[(k) a person may have contravened a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.]¹⁹

(5) The [investigating authority]²⁰ 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.

] ²¹

Notes

- ¹ Repealed by Financial Services Act 2012 c. 21 Sch.12(1) para.8(2)(a) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.8(2)(b) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.8(3)(a) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ⁴ Added by Financial Services Act 2012 c. 21 Sch.12(1) para.8(3)(b) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.8(4)(a) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ⁶ Added by Counter-Terrorism Act 2008 c. 28 Sch.7(7) para.33(3) (November 27, 2008)
- ⁷ Words substituted by Financial Services Act 2010 c. 28 Sch.2(1) para.16(2) (April 8, 2010)
- ⁸ Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.8(4)(b) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ⁹ Added by Financial Services Act 2012 c. 21 Sch.12(1) para.8(4)(c) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ¹⁰ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.8(4)(d) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ¹¹ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.8(4)(e) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ¹² Word repealed by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.8(a) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ¹³ Added by Financial Services Act 2010 c. 28 Sch.2(1) para.16(3) (June 8, 2010)
- ¹⁴ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.8(b) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ¹⁵ Word repealed by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(11)(a) (November 1, 2012)
- ¹⁶ Words repealed by Financial Services Act 2012 c. 21 Sch.12(1) para.8(4)(f) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ¹⁷ Added by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(11)(b) (November 1, 2012)
- ¹⁸ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.10 (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ¹⁹ Substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.8(4)(g) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ²⁰ Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.8(5) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ²¹ Substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.8(6) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

Commencement

Pt XI s. 168(1)-(3), (4)(a), (4)(c)-(6): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Pt XI s. 168(4): February 25, 2001

Pt XI s. 168(4)(b): February 25, 2001 for the purposes of making orders or regulations; September 3, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XI s. 168(1)-(6)(b): United Kingdom

Assistance to overseas regulators

✔ Law In Force

169.— Investigations etc. in support of overseas regulator.

- (1) At the request of an overseas regulator, [a regulator]¹ 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 [EU]² obligation the [regulator]³ 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]³ 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.
- (5) The [regulator]⁴ 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]⁴ considers appropriate.
- (6) Subsections (4) and (5) do not apply if the [regulator]⁵ considers that the exercise of its investigative power is necessary to comply with [an EU]⁶ obligation.
- (7) If [a regulator]⁷ 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]⁸ 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]⁹ 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]¹⁰ 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).

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.9(2) (January 24, 2013 for the purpose of the preparation of a statement of policy; April 1, 2013 otherwise)
- ² Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(e) (April 22, 2011)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.9(3) (January 24, 2013 for the purpose of the preparation of a statement of policy; April 1, 2013 otherwise)
- ⁴ Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.9(4) (January 24, 2013 for the purpose of the preparation of a statement of policy; April 1, 2013 otherwise)
- ⁵ Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.9(5) (January 24, 2013 for the purpose of the preparation of a statement of policy; April 1, 2013 otherwise)
- ⁶ Words substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(e) (April 22, 2011)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.9(6) (January 24, 2013 for the purpose of the preparation of a statement of policy; April 1, 2013 otherwise)
- ⁸ Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.9(7) (January 24, 2013 for the purpose of the preparation of a statement of policy; April 1, 2013 otherwise)
- ⁹ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.9(8) (January 24, 2013 for the purpose of the preparation of a statement of policy; April 1, 2013 otherwise)
- ¹⁰ Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.9(9) (January 24, 2013 for the purpose of the preparation of a statement of policy; April 1, 2013 otherwise)

Commencement

Pt XI s. 169(1)-(15): June 18, 2001 for the purposes of preparing a statement of policy as mentioned in 2000 c.8 s.169(9); September 3, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XI s. 169(1)-(15): United Kingdom

Law In Force

[169A Support of overseas regulator with respect to financial stability

(1) At the request of an overseas regulator, the [PRA]² 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.

(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.

] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.18(3) (June 8, 2010)

² Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.10 (April 1, 2013)

Extent

Pt XI s. 169A(1)-(5)(c): United Kingdom

Conduct of investigations

Law In Force

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;
- (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.]¹

Notes

- ¹ S.170(10)(a), (aa) and (b) substituted for s.170(10)(a) and (b) by Financial Services Act 2012 c. 21 Sch.12(1) para.11 (April 1, 2013)

Commencement

Pt XI s. 170(1)-(10)(b): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XI s. 170(1)-(10)(b): United Kingdom

Law In Force

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.
- [(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).]¹
- (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

(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.

[(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)).]²

Notes

¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.9(a) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

² Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.9(b) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

Commencement

Pt XI s. 171(1)-(6): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XI s. 171(1)-(7): United Kingdom

Law In Force

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.

Commencement

Pt XI s. 172(1)-(5): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XI s. 172(1)-(5): United Kingdom

✔ Law In Force

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.
- (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).

Commencement

Pt XI s. 173(1)-(5): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XI s. 173(1)-(5): United Kingdom

✔ Law In Force

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]¹, 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 Perjury Act 1911 (false statements made otherwise than on oath);
 - (c) under section 44(2) of the Criminal Law (Consolidation)(Scotland) Act 1995 (false statements made otherwise than on oath); or
 - (d) under Article 10 of the 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.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.12 (April 1, 2013)

Commencement

Pt XI s. 174(1)-(5): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XI s. 174(1)-(5): United Kingdom

Law In Force

175.— Information and documents: supplemental provisions.

(1) If [either regulator]¹ 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.

]²

(3) If a person who is required under this Part to produce a document fails to do so, the [regulator]³ 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).

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.13(2) (April 1, 2013)
- ² Added by Financial Services Act 2012 c. 21 Sch.12(1) para.13(3) (April 1, 2013)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.13(4) (April 1, 2013)

Commencement

Pt XI s. 175(1)-(8): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XI s. 175(1)-(8): United Kingdom

Law In Force

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]¹ 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.
- (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.]²
- (6) In England and Wales, [sections 15(5) to (8) and section 16(3) to (12) of the Police and Criminal Evidence Act 1984]³ (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 Police and Criminal Evidence (Northern Ireland) Order 1989]⁴ apply to warrants issued under this section.
- (8) [...] ⁵
- (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]⁶ under [section 87C, 87J, 165, 165A, 169A or 175]⁷; or
 - (b) by an investigator under section 171, 172, 173 or 175.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.14(2) (April 1, 2013)
- ² Added by Financial Services Act 2012 c. 21 Sch.12(1) para.14(3) (April 1, 2013)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.14(4) (April 1, 2013)
- ⁴ Word substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.14(5) (April 1, 2013)
- ⁵ Repealed by Financial Services Act 2012 c. 21 Sch.12(1) para.14(6) (April 1, 2013)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.12(1) para.14(7) (April 1, 2013)
- ⁷ Words inserted by Financial Services Act 2010 c. 28 Sch.2(1) para.17 (June 8, 2010)

Commencement

Pt XI s. 176(1)-(11)(b): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XI s. 176(1)-(11)(b): United Kingdom

Law In Force

[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.

(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).

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.12(1) para.15 (April 1, 2013)

Extent

Pt XI s. 176A(1)-(5): United Kingdom

Offences

✔ Law In Force

! Amendment(s) Pending

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 [other]¹ officer) as if he were in contempt [; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.]² .

(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.

Notes

¹ Word inserted by Financial Services Act 2012 c. 21 Sch.18(1) para.8 (April 1, 2013)

² Words added by Limited Liability Partnerships Regulations 2001/1090 Sch.5 para.21 (September 3, 2001: addition takes place on April 6, 2001 but cannot come into force until the commencement of 2000 c.8 s.177 on September 3, 2001)

Amendments Pending

Pt XI s. 177(6): words substituted by Criminal Justice Act 2003 c. 44, Sch. 26 para. 54(2) (date to be appointed)

Commencement

Pt XI s. 177(1)-(7)(b): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XI s. 177(1)-(7)(b): United Kingdom

PART XII**CONTROL OVER AUTHORISED PERSONS***[Notices of acquisitions of control over UK authorised persons]¹***Notes**

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Law In Force

[178.— Obligation to notify the [appropriate regulator]² : acquisitions of control

(1) A person who decides to acquire or increase control over a UK authorised person must give the [appropriate regulator]² 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—

- (a) where the UK authorised person is a PRA—authorised person, the PRA;
- (b) in any other case, the FCA.

]³

(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”.

]¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(2) (April 1, 2013)

³ Added by Financial Services Act 2012 c. 21 Pt 2 s.26(3) (April 1, 2013)

Commencement

Pt XII s. 178(1)-(5): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XII s. 178(1)-(5): United Kingdom

Law In Force

[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]² may reasonably require.

(2) [Each regulator]³ must publish a list of its requirements as to the form, information and accompanying documents for a section 178 notice.

(3) The [appropriate regulator]² may impose different requirements for different cases and may vary or waive requirements in particular cases.

] ¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(2) (April 1, 2013)

³ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(4) (April 1, 2013)

Extent

Pt XII s. 179(1)-(3): United Kingdom

Law In Force

[180.— Acknowledgment of receipt

(1) The [appropriate regulator]² 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]² receives an incomplete section 178 notice it must inform the section 178 notice-giver as soon as reasonably practicable.

] ¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(2) (April 1, 2013)

Extent

Pt XII s. 180(1)-(2): United Kingdom

[Acquiring control and other changes of holding]¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
-

Law In Force

179.—

[Existing ss 178–191 are not repealed but have been restructured as part of an amendment substituting ss 178–191G]¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Commencement

Pt XII s. 179(1)-(5): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XII s. 179(1)-(5): United Kingdom

Law In Force

180.—

[Existing ss 178–191 are not repealed but have been restructured as part of an amendment substituting ss 178–191G]¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Commencement

Pt XII s. 180(1)-(4)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XII s. 180(1)-(4)(b): United Kingdom

✔ Law In Force

[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.

] ¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Commencement

Pt XII s. 181(1)-(3)(c): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XII s. 181(1)-(3)(c): United Kingdom

✔ Law In Force

[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.

] ¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Extent

Pt XII s. 182(1)-(2)(c): United Kingdom

✔ Law In Force

[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);
- (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.

] ¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Extent

Pt XII s. 183(1)-(3)(c): United Kingdom

✔ Law In Force

[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.
- (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 2.1(b)]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.

] ¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

² Words substituted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(6) (July 1, 2011)

Extent

Pt XII s. 184(1)-(9)(c): United Kingdom

[Assessment procedure]¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
-

Law In Force

182.—

[Existing ss 178–191 are not repealed but have been restructured as part of an amendment substituting ss 178–191G]¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Commencement

Pt XII s. 182(1)-(3): June 18, 2001 for the purposes of imposing requirements as mentioned in 2000 c.8 s.182(1)(b); December 1, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XII s. 182(1)-(3): United Kingdom

Law In Force

183.—

[Existing ss 178–191 are not repealed but have been restructured as part of an amendment substituting ss 178–191G]¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Commencement

Pt XII s. 183(1)-(1)(b), (3): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt XII s. 183(2): February 25, 2001 for the purposes of making orders or regulations; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XII s. 183(1)-(3): United Kingdom

Law In Force

184.—

[Existing ss 178–191 are not repealed but have been restructured as part of an amendment substituting ss 178–191G]¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Commencement

Pt XII s. 184(1)-(3)(b)(iii): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XII s. 184(1)-(3)(b)(iii): United Kingdom

Law In Force

[185.— Assessment: general

- (1) Where the [appropriate regulator]² 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]² 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]² 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.

] ¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(2) (April 1, 2013)

Commencement

Pt XII s. 185(1)-(7)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XII s. 185(1)-(7)(b): United Kingdom

Law In Force

[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
- (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.

] ¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Commencement

Pt XII s. 186(1)-(6): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XII s. 186(a)-(6): United Kingdom

✔ Law In Force

[187.— Approval with conditions

(1) The [appropriate regulator]² 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

(3) The [appropriate regulator]² may not impose conditions requiring a particular level of holding to be acquired.

(4) The [appropriate regulator]² may vary or cancel the conditions.

] ¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(2) (April 1, 2013)

³ Substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(5) (April 1, 2013)

Commencement

Pt XII s. 187(1)-(5): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XII s. 187(1)-(5): United Kingdom

✔ Law In Force

[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

(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 3I or 3J.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.26(6) (April 1, 2013: insertion has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Pt XII s. 187A(1)-(7): United Kingdom

Law In Force

[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 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”—
- (a) means the matters in paragraphs (d) and (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.

(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.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.26(6) (April 1, 2013: insertion has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Pt XII s. 187B(1)-(6): United Kingdom

Law In Force

[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).

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.26(6) (April 1, 2013: insertion has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Pt XII s. 187C(1)-(2)(b): United Kingdom

Law In Force

[188.— Assessment: consultation with EC competent authorities

(1) The [appropriate regulator] ² 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] ² 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]² 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]² must provide the regulator with—

- (a) any relevant information that it requests; and
- (b) any information that the [appropriate regulator]² considers that it needs.

] ¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(2) (April 1, 2013)

Commencement

Pt XII s. 188(1), (3)-(6): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt XII s. 188(2): February 25, 2001 for the purposes of making orders or regulations; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XII s. 188(1)-(6): United Kingdom

Law In Force

[189.— Assessment: Procedure

(1) The [appropriate regulator]² must act under section 185 within a period of 60 working days beginning with the day on which the [appropriate regulator]² 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]² 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]² 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]² 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]² 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]² 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]² decision to the Tribunal.

] ¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(2) (April 1, 2013)

Extent

Pt XII s. 189(1)-(8): United Kingdom

Law In Force

[190.— Requests for further information

(1) The [appropriate regulator]² 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.

(2) On the first occasion that the [appropriate regulator]² asks for further information, the assessment period is interrupted from the date of the request until the date the [appropriate regulator]² 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 [European Union]³ ; 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]² 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]² must acknowledge in writing receipt of further information before the end of the second working day following receipt.

] ¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
- ² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(2) (April 1, 2013)
- ³ Words substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.4(1) (April 22, 2011)

Extent

Pt XII s. 190(1)-(6): United Kingdom

Law In Force

[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]² may specify in writing.

(2) Where the [appropriate regulator]² has specified a period under subsection (1), it may extend the period.

(3) Where the [appropriate regulator]² 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]² 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.

]¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
- ² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(2) (April 1, 2013)

Extent

Pt XII s. 191(1)-(3)(c): United Kingdom

[Enforcement procedures]¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
-

✔ Law In Force

189.—

[Existing ss 178–191 are not repealed but have been restructured as part of an amendment substituting ss 178–191G]¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Commencement

Pt XII s. 189(1)-(9): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XII s. 189(1)-(9): United Kingdom

✔ Law In Force

[191A.— Objection by the [appropriate regulator]²

(1) The [appropriate regulator]² 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]² 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]² —

- (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]² .

(4) If the [appropriate regulator]² 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 to be given is a PRA-authorised person.

] ³

(5) The [appropriate regulator]² 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]² 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]² gives a decision notice under this section may refer the matter to the Tribunal.

] ¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(2) (April 1, 2013)

³ Added by Financial Services Act 2012 c. 21 Pt 2 s.26(7) (April 1, 2013: insertion has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Pt XII s. 191A(1)-(7): United Kingdom

Law In Force

[191B.— Restriction notices

(1) The [appropriate regulator]² 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]² 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 to be given is a PRA-authorised person.

] ³

(3) In a restriction notice, the [appropriate regulator]² 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]² gives a restriction notice may refer the matter to the Tribunal.

] ¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(2) (April 1, 2013)

³ Added by Financial Services Act 2012 c. 21 Pt 2 s.26(8) (April 1, 2013: insertion has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Pt XII s. 191B(1)-(7): United Kingdom

Law In Force

[191C.— Orders for sale of shares

(1) The court may, on the application of the [appropriate regulator]², 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 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 the court under this section.

(2B) Where the appropriate regulator is the FCA, it must consult the PRA before making an application to the 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

- (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.
-] ¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
- ² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(2) (April 1, 2013)
- ³ Added by Financial Services Act 2012 c. 21 Pt 2 s.26(9) (April 1, 2013: insertion has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Pt XII s. 191C(1)-(6): United Kingdom

*[Notice of reductions of control of UK authorised persons]*¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
-

Law In Force

[191D.— Obligation to notify the [appropriate regulator]² : 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]² notice in writing before making the disposition.

[(1A) The PRA must give the FCA a copy of any notice it receives under this section.

(1B) The FCA must give the PRA 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.

] ³

(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.

] ¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(2) (April 1, 2013)

³ Added by Financial Services Act 2012 c. 21 Pt 2 s.26(10) (April 1, 2013)

Extent

Pt XII s. 191D(1)-(2): United Kingdom

Law In Force

[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] ² may reasonably require.

(2) [Each regulator] ³ 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] ² may impose different requirements for different cases and may vary or waive requirements in particular cases.

] ¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(2) (April 1, 2013)

³ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(11) (April 1, 2013)

Extent

Pt XII s. 191E(1)-(3): United Kingdom

[Offences] ¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

✔ Law In Force

190.—

[Existing ss 178–191 are not repealed but have been restructured as part of an amendment substituting ss 178–191G]¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Commencement

Pt XII s. 190(1)-(4)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XII s. 190(1)-(4)(b): United Kingdom

✔ Law In Force

[191F.— Offences under this Part

(1) A person who fails to comply with an obligation to notify the [appropriate regulator]² under section 178(1) or 191D(1) is guilty of an offence.

(2) A person who gives notice to the [appropriate regulator]² 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]² 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's]² 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]² 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.

] ¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
- ² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.26(2) (April 1, 2013)

Extent

Pt XII s. 191F(1)-(9)(b): United Kingdom

*[Interpretation]*¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
-

Law In Force

191.—

[Existing ss 178–191 are not repealed but have been restructured as part of an amendment substituting ss 178–191G]¹

Notes

- ¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Commencement

Pt XII s. 191(1)-(11): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XII s. 191(1)-(11): United Kingdom

Law In Force

[191G.— Interpretation

(1) In this Part—

“acquisition” means the acquisition of control or of an increase in control over a UK authorised person;

[“the appropriate regulator” is to be read in accordance with section 178(2A);]²

“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 Banking and Financial Dealings Act 1971.

] ¹

Notes

¹ Existing ss 178-191 substituted for ss 178-191G by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.1 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

² Definition inserted by Financial Services Act 2012 c. 21 Pt 2 s.26(12) (April 1, 2013)

Extent

Pt XII s. 191G(1)-(2)(b): United Kingdom

Miscellaneous

Law In Force

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 191D] ¹;
- (b) amend [section 181] ² by varying, or removing, any of the cases in which a person is treated as [acquiring] ³ control over a UK authorised person or by adding a case;
- (c) amend [section 182] ⁴ 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 183] ⁵ by varying, or removing, any of the cases in which a person is treated as [reducing or ceasing to have] ⁶ 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.

Notes

¹ Word substituted by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 reg.4(a) (March 21, 2009)

- ² Word substituted by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 reg.4(b)(i) (March 21, 2009)
- ³ Word substituted by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 reg.4(b)(ii) (March 21, 2009)
- ⁴ Word substituted by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 reg.4(c) (March 21, 2009)
- ⁵ Word substituted by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 reg.4(d)(i) (March 21, 2009)
- ⁶ Words substituted by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 reg.4(d)(ii) (March 21, 2009)

Commencement

Pt XII s. 192(a): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Pt XII s. 192(b)-(e): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XII s. 192(a)-(e): United Kingdom

[PART 12A

POWERS EXERCISABLE IN RELATION TO PARENT UNDERTAKINGS

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

[Introductory]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

✔ Law In Force

[192A Meaning of “qualifying authorised person”

- (1) In this Part “qualifying authorised person” means an authorised person satisfying the following conditions.
- (2) Condition A is that the authorised person is a body corporate incorporated in 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.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt XIA s. 192A(1)-(9): United Kingdom

☑ Law In Force

[192B Meaning of “qualifying parent undertaking”

- (1) The parent undertaking of a qualifying authorised person or recognised UK investment exchange is for the purposes of this Part a “qualifying parent undertaking” if the following conditions are satisfied in relation to it.
- (2) Condition A is that the parent undertaking is a body corporate which—
- (a) is incorporated in the United Kingdom, or
 - (b) has a place of business in the United Kingdom.
- (3) Condition B is that the parent undertaking is not itself an authorised person, a recognised investment exchange or a recognised clearing house.
- (4) Condition C is that the parent undertaking is a financial institution of a kind prescribed by the Treasury by order.
- (5) “Recognised UK investment exchange” means a recognised investment exchange that is not an overseas investment exchange as defined in section 313(1).
- (6) 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).

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt XIA s. 192B(1)-(6)(b): United Kingdom

[Power of direction]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)
-

✔ Law In Force

[192C Power to direct qualifying parent undertaking

- (1) The appropriate regulator may give a direction under this section to a qualifying parent undertaking if either the general condition or the consolidated supervision condition is satisfied.
- (2) The general condition is that the appropriate regulator considers that it is desirable to give the direction in order to advance—
- (a) in the case of the FCA, one or more of its operational objectives;
 - (b) in the case of the PRA, any of its objectives.
- (3) The consolidated supervision condition is that—
- (a) the appropriate regulator is the competent authority for the purpose of consolidated supervision that is required, in relation to some or all of the members of the group of a qualifying authorised person, in pursuance of any of the directives mentioned in section 3M(3), and
 - (b) the appropriate regulator considers that the giving of the direction is desirable for the purpose of the effective consolidated supervision of the group.
- (4) In subsection (3)(a) “consolidated supervision” includes supplemental supervision.
- (5) In deciding whether to give a direction under this section, a regulator must have regard—
- (a) to the desirability where practicable of exercising its powers in relation to authorised persons or recognised investment exchanges 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.
- (6) “The appropriate regulator” means—
- (a) where a direction relates to a qualifying authorised person or recognised investment exchange who is a PRA-authorised person, the FCA or the PRA;
 - (b) in any other case, the FCA.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt XIA s. 192C(1)-(6)(b): United Kingdom

✔ Law In Force

[192D Requirements that may be imposed

- (1) A direction under section 192C 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) A requirement imposed by the direction may be expressed to expire at the end of a specified period, but the imposition of a requirement that expires at the end of a specified period does not affect the power to give a further direction imposing a new requirement.
- (5) The direction—
 - (a) may be revoked by the regulator which gave it by written notice to the body to which it is given, and
 - (b) ceases to be in force if the body to which it is given ceases to be a qualifying parent undertaking.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt XIA s. 192D(1)-(5)(b): United Kingdom

Law In Force

[192E Direction: procedure

- (1) If a regulator proposes to give a direction under section 192C, 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 or recognised investment exchange 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 192C 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.

(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).

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt XIII s. 192E(1)-(12): United Kingdom

✔ Law In Force

[192F Consultation between regulators

- (1) Before the PRA gives a notice under section 192E(1) or (8)(b), it must consult the FCA.
- (2) Before the FCA gives a notice under section 192E(1) or (8)(b) in relation to the parent undertaking of a PRA-authorized person, the FCA must consult the PRA.
- (3) Before either regulator gives a notice under section 192E(1) or (8)(b) in relation to the parent undertaking of a recognised clearing house, the regulator must consult the Bank of England.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt XIA s. 192F(1)-(3): United Kingdom

✔ Law In Force

[192G 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 192C may refer the matter to the Tribunal.
- (2) “Notified person” is to be read in accordance with subsection (2) of section 192E, except that it includes a person to whom a notice under subsection (1) of that section ought to have been given.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt XIA s. 192G(1)-(2): United Kingdom

✔ Law In Force

[192H Statement of policy: directions under section 192C

- (1) Each regulator must prepare and issue a statement of policy with respect to the giving of directions under section 192C.

- (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 192C 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.
-] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt XIII s. 192H(1)-(7): United Kingdom

Law In Force

[192I Statement of policy relating to directions: procedure

- (1) Before issuing a statement of policy under section 192H, a regulator (“the issuing regulator”) must—
- (a) consult the other regulator and the Bank of England, 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.
- (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.

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt XIII A s. 192I(1)-(7): United Kingdom

[Rules requiring provision of information by parent undertakings]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)
-

Law In Force

[192J Rules requiring provision of information by parent undertakings

- (1) The appropriate regulator may make rules requiring qualifying parent undertakings—
- (a) to provide to the regulator information of a specified description;
 - (b) to produce to the regulator documents of a specified description.
- (2) The rules may only specify a description of information or documents that is relevant to the exercise by the regulator of its functions.
- (3) The rules may make provision—
- (a) as to the time within which information must be provided or documents produced;
 - (b) about the form in which any information is to be provided;
 - (c) about the place where any documents are to be produced;
 - (d) requiring information provided to be verified in a specified manner;
 - (e) requiring documents produced to be authenticated in a specified manner.
- (4) “The appropriate regulator” means—

- (a) in relation to the parent undertaking of a qualifying authorised person who is a PRA-authorised person, the FCA or the PRA;
- (b) in any other case, the FCA.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt XIII s. 192J(1)-(4)(b): United Kingdom

[Failure to comply with direction or breach of rules]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)
-

Law In Force

[192K Power to impose penalty or issue censure

- (1) This section applies if a regulator is satisfied that a person who is or has been a qualifying parent undertaking (“P”) has contravened—
- (a) a requirement of a direction given to P by that regulator under section 192C, or
 - (b) a provision of rules made by that regulator under section 192J.
- (2) The regulator may impose a penalty of such amount as it considers appropriate on—
- (a) P, or
 - (b) any person who was knowingly concerned in the contravention.
- (3) The regulator may, instead of imposing a penalty on a person, publish a statement censuring the person.
- (4) The regulator 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 192L.
- (5) “The limitation period” means the period of 3 years beginning with the first day on which the regulator knew of the contravention.

(6) For this purpose a regulator is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt XIA s. 192K(1)-(6): United Kingdom

Law In Force

[192L Procedure and right to refer to Tribunal

(1) If a regulator proposes to take action against a person under section 192K, 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 regulator decides to take action against a person under section 192K, 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.

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

(7) If the regulator decides to take action against a person under section 192K, the person may refer the matter to the Tribunal.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt XIA s. 192L(1)-(7): United Kingdom

✔ Law In Force

[192M Duty on publication of statement

After a statement under section 192K(3) is published, the regulator 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).

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt XIA s. 192M(a)-(b): United Kingdom

✔ Law In Force

[192N Imposition of penalties under section 192K: statement of policy

(1) Each regulator must prepare and issue a statement of policy with respect to—

- (a) the imposition of penalties under section 192K, and
- (b) the amount of penalties under that section.

(2) A regulator'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) A regulator 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 regulator must issue the altered or replacement statement.

(5) In exercising, or deciding whether to exercise, a power under section 192K(2) in the case of any particular contravention, a regulator must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.

(6) 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.

(7) A regulator may charge a reasonable fee for providing a person with a copy of the statement published under this section.

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

(9) Section 192I applies in relation to a statement under this section as it applies in relation to a statement under section 192H.

] ¹**Notes**

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.27 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purpose of the preparation and issue of statements of policy under 2000 c.8 ss 192H and 192N and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 otherwise)

Extent

Pt XIII s. 192N(1)-(9): United Kingdom

PART XIII**INCOMING FIRMS: INTERVENTION BY [FCA or PRA] ¹****Notes**

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.30 (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Interpretation

Law In Force

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

[(aa) an EEA UCITS which is a recognised scheme under section 264 ; [...]] ² ¹

[(ab) an EEA AIFM which is exercising, or has exercised, its right to market an AIF in the United Kingdom in accordance with Schedule 3; or] ²

(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] ³ by section 196.

[(1A) In the definition of “incoming firm” references to an EEA UCITS include, in a case where the UCITS is not a body corporate, references to its management company.] ⁴

(2) In relation to an incoming firm which is an EEA firm [or an EEA UCITS] ⁵ , expressions used in this Part and in Schedule 3 have the same meaning in this Part as they have in that Schedule.

Notes


- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(7)(a) (July 1, 2011)
- ² Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.11 (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.31 (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁴ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(7)(b) (July 1, 2011)
- ⁵ Words inserted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(7)(c) (July 1, 2011)

Commencement

Pt XIII s. 193(1)-(2): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XIII s. 193(1)-(2): United Kingdom

 Law In Force

194.— General grounds on which power of intervention is exercisable.

(1) The [appropriate regulator]¹ may exercise its power of intervention in respect of an incoming firm if it appears to it that—

- (a) the firm has contravened, or is likely to contravene, a requirement which is imposed on it by or under this Act (in a case where the [appropriate regulator]¹ 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 Authority information which is false or misleading in a material particular; or

[(c) it is desirable to exercise the power in order to [advance—]³

- [(i) in the case of the FCA, one or more of its operational objectives, and
- (ii) in the case of the PRA, any of its objectives.]³

] ²

[(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.]⁴

[(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.

] ⁵

(2)-(4) [...] ⁶

[(5) The FCA may exercise its power of intervention in respect of an EEA AIFM if it appears to the FCA that the EEA AIFM has contravened, or is likely to contravene, a requirement imposed by—

- (a) the Alternative Investment Fund Managers Regulations 2013; or
- (b) any directly applicable EU regulation made under the alternative investment fund managers directive.

] ⁷

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.32(2)(a) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ² Substituted by Financial Services Act 2010 c. 28 s.3(5)(a) (June 8, 2010)
- ³ S.194(1)(c)(i), (ii) and word substituted for words by Financial Services Act 2012 c. 21 Sch.4(4) para.32(2)(b) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁴ Added by Financial Services Act 2010 c. 28 s.3(5)(b) (June 8, 2010)
- ⁵ Added by Financial Services Act 2012 c. 21 Sch.4(4) para.32(3) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁶ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(3) (July 26, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/1998 art.11(3))
- ⁷ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.12 (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Commencement

Pt XIII s. 194(1)-(4): September 3, 2001 for the purposes of requirements mentioned in 2000 c.8 s.196 taking effect not sooner than December 1, 2001, the coming into force date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XIII s. 194(1)-(5)(b): United Kingdom

Law In Force

[194A.— Contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive: [appropriate regulator]² 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]³ 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]³ 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]³ 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]³ 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]³ 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]³ 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]³ power of intervention is also exercisable as a result of section 194.
- (7) If [the appropriate regulator]³ 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 [, ESMA]⁴ and the Commission of—
- (a) the fact that [the appropriate regulator]³ has exercised that power in respect of the firm; and
 - (b) any requirements it has imposed on the firm in exercise of the power.
- [(8) If the firm has failed to put an end to the contravention as described in subsection (5)(b), [the appropriate regulator]³ may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority⁶)).]⁵
- [(9) Subsection (4) is not to be regarded as requiring the PRA to take action in relation to the contravention of a requirement falling within subsection (3) in a case where it is satisfied that the FCA is required to act, and is acting or has acted, under subsection (4)—
- (a) in relation to that requirement, or
 - (b) where that requirement is imposed by rules made by the PRA, in relation to an identical requirement imposed by rules made by the FCA.
- (10) “The appropriate regulator” means—
- (a) where the relevant EEA firm is a PRA-authorized person, the FCA or, subject to subsection (9), the PRA;
 - (b) in any other case, the FCA.

] ⁷
] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.1 para.2 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.33(4) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.33(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁴ Words inserted by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(7)(a) (April 16, 2012)

⁵ Added by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(7)(b) (April 16, 2012)

⁶ O.J. No. L331, 15.12.2010 p.84

⁷ Added by Financial Services Act 2012 c. 21 Sch.4(4) para.33(3) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Extent

Pt XIII s. 194A(1)-(10)(b): United Kingdom

 Partially In Force

195.— Exercise of power in support of overseas regulator.

(1) The [appropriate regulator]¹ 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]² 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-authorized person, the FCA or the PRA;
- (b) in any other case, the FCA.

] ³

(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]⁴ under this Act;
- (b) [...]⁵
- (c) a function corresponding to any function exercised by the Secretary of State under [the Companies Acts (as defined in section 2 of the Companies Act 2006)]⁶;
- (d) a function in connection with—
 - (i) the investigation of conduct of the kind prohibited by Part V of the 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]⁷ for the exercise of its power of intervention has been made by a home state regulator in pursuance of [an EU]⁸ obligation, or
- (b) a home state regulator has notified the [appropriate regulator]⁷ that an EEA firm's EEA authorisation has been withdrawn,

the [appropriate regulator]⁷ must, in deciding whether or not to exercise its power of intervention, consider whether exercising it is necessary in order to comply with [an EU]⁸ obligation.

(6) In deciding in any case in which the [appropriate regulator]⁷ does not consider that the exercise of its power of intervention is necessary in order to comply with [an EU]⁸ 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]⁷ 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]⁷ considers appropriate.

(8) Subsection (7) does not apply if the [appropriate regulator]⁷ decides that it is necessary for it to exercise its power of intervention in order to comply with [an EU]⁸ obligation.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.34(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.34(3) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ³ Added by Financial Services Act 2012 c. 21 Sch.4(4) para.34(4) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.34(5)(a) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁵ Repealed by Financial Services Act 2012 c. 21 Sch.4(4) para.34(5)(b) (April 1, 2013: February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁶ Words substituted by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007/2194 Sch.4(3) para.92 (October 1, 2007)
- ⁷ Word substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.34(6) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁸ Words substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(e) (April 22, 2011)

Commencement

Pt XIII s. 195(1)-(8): September 3, 2001 for the purposes of requirements mentioned in 2000 c.8 s.196 taking effect not sooner than December 1, 2001, the coming into force date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XIII s. 195(1)-(8): United Kingdom

Law In Force

Amendment(s) Pending

[195A.— Contravention by relevant EEA firm [, EEA UCITS or EEA AIFM]² of directive requirements: home state regulator primarily responsible for securing compliance

(1) This section applies if [the appropriate regulator]³ has clear and demonstrable grounds for believing—

- (a) 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);
 - (b) that a relevant EEA UCITS has contravened, or is contravening, a requirement falling within subsection (3) (in a case to which Article 108.4 of the UCITS directive applies) [; or]⁴
 - [(c) that an EEA AIFM has contravened, or is contravening, a requirement falling within subsection (3A) (in a case to which Article 45.7 or 45.8 of the alternative investment fund managers directive applies).]⁴
- (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) A requirement falls within this subsection if it is imposed on the EEA UCITS—
- (a) by or under any provision adopted in the home state of the EEA UCITS for the purpose of implementing the UCITS directive; or
 - (b) by any directly applicable Community regulation or decision made under that directive.
- [(3A) A requirement falls within this subsection if it is imposed on the EEA AIFM—
- (a) by or under any provision adopted in the AIFM's home state for the purpose of implementing the alternative investment fund managers directive; or
 - (b) by any directly applicable EU regulation made under that directive.
-] ⁵
- (4) [The appropriate regulator]³ must notify the home state regulator of the firm or EEA UCITS in writing of the situation mentioned in subsection (1).
- (5) The notice under subsection (4) must—
- (a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the firm or EEA UCITS puts an end to the contravention;
 - (b) state that [the appropriate regulator's]³ powers of intervention are likely to become exercisable in relation to the firm or EEA UCITS if it continues the contravention; and
 - (c) indicate any requirements that [the appropriate regulator]³ proposes to impose on the firm or EEA UCITS in exercise of its power of intervention in the event of the power becoming exercisable.
- (6) [The appropriate regulator]³ may exercise its power of intervention in respect of the firm or EEA UCITS if—
- (a) a reasonable time has expired since the giving of the notice under subsection (4); and
 - (b) conditions A to C are satisfied.
- (7) Condition A is that—
- (a) the home state regulator of the firm or EEA UCITS has failed or refused to take measures for the purpose mentioned in subsection (5)(a); or
 - (b) any measures taken by the home state regulator have proved inadequate for that purpose.
- [(8) Condition B is—
- (a) in the case of a relevant EEA firm, 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;

- (b) in the case of an EEA UCITS, that the EEA UCITS is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom; or
- (c) in the case of an EEA AIFM, that the AIFM is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the financial stability or integrity of the markets in the United Kingdom.

] ⁶

(9) Condition C is that [the appropriate regulator] ³ has informed the home state regulator of the firm or EEA UCITS of its intention to exercise its power of intervention in respect of the firm or EEA UCITS.

(10) Subsection (6) applies whether or not [the appropriate regulator's] ³ power of intervention is also exercisable as a result of section 194 or 195.

(11) If [the appropriate regulator] ³ exercises its power of intervention in respect of a relevant EEA firm or EEA UCITS by virtue of subsection (6), it must at the earliest opportunity inform [ESMA and] ⁷ the Commission of—

- (a) the fact that [the appropriate regulator] ³ has exercised that power in respect of that firm or EEA UCITS; and
- (b) any requirements it has imposed on the firm or EEA UCITS in exercise of the power.

[(11A) If circumstances exist which enable [the appropriate regulator] ³ to exercise its power of intervention under subsection (6), [the appropriate regulator] ³ may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)).] ⁸

[(11B) Subsection (4) is not to be regarded as requiring the PRA to notify the home state regulator in relation to the contravention of a requirement falling within subsection (2) [, (3) or (3A)] ¹⁰ in a case where the PRA is satisfied that the FCA is required to act, and is acting or has acted, under subsection (4) in relation to that requirement.] ⁹

(12) In this section—

[“the appropriate regulator” means—

- (a) [in the case of a relevant EEA firm which is] ¹² a PRA-authorized person, the FCA or, subject to subsection (11B), the PRA;
- (b) in any other case, the FCA;

] ¹¹

“home state” means—

- (a) in relation to a relevant EEA firm—
 - (i) 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
 - (ii) in any other case, the EEA State in which the firm has its head office;
- (b) in relation to a relevant EEA UCITS, the EEA State in which the UCITS is authorised pursuant to Article 5 of the UCITS directive;
- [(c) in relation to an EEA AIFM, the EEA State in which the AIFM has its registered office;] ¹³

“relevant EEA firm” means an EEA firm falling within paragraph 5(a) or (b) of Schedule 3 which is exercising in the United Kingdom a right deriving from the markets in financial instruments directive;

“relevant EEA UCITS” means a UCITS which is authorised pursuant to Article 5 of the UCITS directive in an EEA State other than the United Kingdom, and references to an EEA UCITS include, in a case where the UCITS is not a body corporate, references to its management company.

] ¹

Notes

- ¹ Substituted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(8) (July 1, 2011)
- ² Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.13(a) (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.35(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁴ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.13(b) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁵ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.13(c) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁶ Substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.13(d) (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁷ Words inserted by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(8)(a) (April 16, 2012)
- ⁸ Added by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(8)(b) (April 16, 2012)
- ⁹ Added by Financial Services Act 2012 c. 21 Sch.4(4) para.35(3) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ¹⁰ Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.13(e) (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ¹¹ Definition inserted by Financial Services Act 2012 c. 21 Sch.4(4) para.35(4) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ¹² Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.13(f)(i) (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ¹³ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.13(f)(ii) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Amendments Pending

Pt XIII s. 195A(12) definition of "home state" (c): words substituted by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 1 para. 1(3) (date to be appointed)

Extent

Pt XIII s. 195A(1)-(12) definition of "relevant EEA UCITS": United Kingdom

Law In Force

[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.

] ¹

Notes

- ¹ Substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.36 (February 27, 2013: substitution has effect subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Commencement

Pt XIII s. 196(a)-(b): September 3, 2001 for the purposes of requirements mentioned in 2000 c.8 s.196 taking effect not sooner than December 1, 2001, the coming into force date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XIII s. 196(1)-(b): United Kingdom

Exercise of power of intervention

Law In Force

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] ¹, 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).

(3) If [a regulator] ² 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] ³ 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] ⁴ 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] ⁵ may extend the period allowed under the notice for making representations.

- (6) If, having considered any representations made by the firm, the [regulator]⁵ 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]⁵ 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.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.37(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.37(3) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.37(4)(a) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁴ Word substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.37(4)(b) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁵ Word substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.37(5) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Commencement

Pt XIII s. 197(1)-(10): September 3, 2001 for the purposes of requirements mentioned in 2000 c.8 s.196 taking effect not sooner than December 1, 2001, the coming into force date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XIII s. 197(1)-(10): United Kingdom

Law In Force

198.— Power to apply to court for injunction in respect of certain overseas insurance companies.

- (1) This section applies if the [appropriate regulator]¹ 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; [...]²
 - [(b) Article 37.5 of the life assurance consolidation directive [; or]⁴]³
 - [(c) Article 42.4 of the reinsurance directive.]⁴

(2) The court may, on an application made to it by the [appropriate regulator]¹ 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 [appropriate regulator]¹ to perform any of its functions under this Act.

[(3A) “The appropriate regulator” means whichever regulator is, at the time when the request is received, the competent authority for the purposes of the provision referred to in subsection (1)(a), (b) or (c).]⁵

(4) “The court” means—

- (a) the High Court; or
- (b) in Scotland, the Court of Session.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.38(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ² Word repealed by Reinsurance Directive Regulations 2007/3253 Sch.1 para.3(a) (December 10, 2007)
- ³ Substituted by Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004/3379 Pt 2 reg.6(3) (January 11, 2005)
- ⁴ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.3(b) (December 10, 2007)
- ⁵ Added by Financial Services Act 2012 c. 21 Sch.4(4) para.38(3) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Commencement

Pt XIII s. 198(1)-(4)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XIII s. 198(1)-(4)(b): United Kingdom

Law In Force

199.— Additional procedure for EEA firms in certain cases.

(1) This section applies if it appears to [a regulator]¹ 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—

- (i) by [that regulator]³ under this Act, or
- (ii) under any directly applicable Community regulation or decision made under a single market directive; and

] ²

[(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.]⁴

(3) [The regulator]⁵ must, in writing, require the firm to remedy the situation.

[(3A) If the firm falls within [paragraph 5(da), (f) or (h) of Schedule 3]⁷, [the regulator]⁵ 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) [and (5)]⁸ apply to an incoming EEA firm other than a firm falling within [paragraph 5(da) of Schedule 3]⁹.]⁶

(4) If the firm fails to comply with the requirement under subsection (3) within a reasonable time, [the regulator]⁵ 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]⁵ 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]⁵ may not exercise its power of intervention [before informing the firm's home state regulator and]¹⁰ 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.

[(5A) Subsections (6) to (8) apply to an incoming EEA firm other than a firm falling within paragraph 5(da) or (h) of Schedule 3.]¹¹

(6) If [the regulator]⁵ 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]⁵ must at the earliest opportunity inform the firm's home state regulator [, ESMA]¹² and the Commission.

(8) If—

- (a) [the regulator]⁵ 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 [(other than the markets in financial instruments directive)]¹³ that [the regulator]⁵ must rescind or vary any requirement imposed in the exercise of its power of intervention,

[the regulator]⁵ must in accordance with the decision rescind or vary the requirement.

[(9) In the case of a firm falling within paragraph 5(da) of Schedule 3, [the regulator]⁵ 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.

] ¹⁴

[(10) If an incoming EEA firm is exercising EEA rights under the UCITS directive, then [the regulator] ⁵ must inform [ESMA and] ¹⁶ the Commission of any measures it has taken in the exercise of its power of intervention.] ¹⁵

[(11) If, in the case of a home state regulator of an incoming EEA firm exercising EEA rights under the UCITS directive, [the regulator] ⁵ is satisfied as mentioned in subsection (5), it may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)).] ¹⁷

[(12) Subsection (3) is not to be regarded as requiring the PRA to take action in relation to the contravention of a relevant requirement in a case where it is satisfied that the FCA is required to act, and is acting or has acted, under subsection (3)—

(a) in relation to that requirement, or

(b) where that requirement is imposed by rules made by the PRA, in relation to an identical requirement imposed by rules made by the FCA.

] ¹⁸

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.39(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ² Substituted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(9)(a) (July 1, 2011)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.39(3) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁴ Substituted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.4(a) (December 10, 2007)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.39(4) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁶ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.4(b) (December 10, 2007)
- ⁷ Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.14(a) (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁸ Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.14(b) (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁹ Words repealed by Undertakings for Collective Investment in Transferable Securities (Amendment) Regulations 2012/2015 reg.3 (August 24, 2012)
- ¹⁰ Words inserted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.4(c) (December 10, 2007)
- ¹¹ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.14(c) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ¹² Word inserted by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(9)(a) (April 16, 2012)
- ¹³ Words inserted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.1 para.4 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ¹⁴ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.4(d) (December 10, 2007)
- ¹⁵ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(9)(d) (July 1, 2011)

- ¹⁶ Words inserted by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(9)(b) (April 16, 2012)
- ¹⁷ Added by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(9)(c) (April 16, 2012)
- ¹⁸ Added by Financial Services Act 2012 c. 21 Sch.4(4) para.39(5) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Commencement

Pt XIII s. 199(1)-(8)(b): September 3, 2001 for the purposes of requirements mentioned in 2000 c.8 s.196 taking effect not sooner than December 1, 2001, the coming into force of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XIII s. 199(1)-(12)(b): United Kingdom

Law In Force

[199A.— Management companies: loss of authorisation

(1) This section applies in relation to an EEA firm falling within paragraph 5(f) of Schedule 3 (“a management company”) which is providing services in the United Kingdom in the exercise of an EEA right deriving from the UCITS directive.

(2) If the [appropriate regulator]² has been informed by the home state regulator of the management company that it is withdrawing the management company's authorisation, the [appropriate regulator]² must exercise its powers under this Act in such manner as it thinks fit to safeguard the interests of investors in a collective investment scheme managed by the management company in the United Kingdom.

(3) Measures taken under subsection (2) may include decisions preventing the management company from initiating any further transactions in the United Kingdom.

[(4) In this section—

“the appropriate regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the UCITS directive;

“collective investment scheme” has the same meaning as in Part 17.

]³

]¹

Notes

¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(10) (July 1, 2011)

² Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.40(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

³ Substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.40(3) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Extent

Pt XIII s. 199A(1)-(4) definition of "collective investment scheme": United Kingdom

Supplemental

Law In Force

200.— Rescission and variation of requirements.

- (1) [Either regulator]¹ 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]² on its own initiative to rescind a requirement is exercisable by written notice given by [the regulator]³ 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]⁴ on its own initiative to vary a requirement as it applies to the imposition of a requirement.
- (4) If the [regulator]⁴ 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]⁵ decides to refuse an application for the variation or rescission of a requirement—
- (a) [the regulator]⁶ must give the applicant a decision notice; and
 - (b) that person may refer the matter to the Tribunal.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.41(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.41(3)(a) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.41(3)(b) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁴ Word substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.41(4) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.41(5)(a) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.41(5)(b) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Commencement

Pt XIII s. 200(1)-(5)(b): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XIII s. 200(1)-(5)(b): United Kingdom

Law In Force

[201 Effect of certain requirements on other persons

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.]¹

Notes

¹ Substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.42 (February 27, 2013: substitution has effect on February 27, 2013 for the purpose of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Commencement

Pt XIII s. 201: September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XIII s. 201: United Kingdom

Law In Force

202.— Contravention of requirement imposed under this Part.

- (1) Contravention of a requirement imposed by [a regulator]¹ 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.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.4(4) para.43 (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Commencement

Pt XIII s. 202(1)-(1)(c): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Pt XIII s. 202(2): February 25, 2001 for the purposes of making orders or regulations; September 3, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XIII s. 202(1)-(2): United Kingdom

Powers of [Office of Fair Trading]¹

Notes

¹ Words substituted by Enterprise Act 2002 c. 40 Sch.25 para.40(7) (April 1, 2003)

R Repealed

203.— [...]¹

Notes

- ¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(4) (July 26, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/1998 art.11(4))

R Repealed

204.— [...]¹

Notes

- ¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(4) (July 26, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/1998 art.11(4))

PART XIV

DISCIPLINARY MEASURES

✓ Law In Force

[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, [...]²
 - (b) by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order [, or]³
 - [(c) by the Alternative Investment Fund Managers Regulations 2013.]³
- (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.
- (4) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” for the purpose of any provision of this Part is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of that provision of this Part.
- (5) 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).
- (6) The FCA is “the appropriate regulator” in the case of a contravention of any other requirement imposed by or under this Act.

(7) The Treasury may by order amend the provisions defining “the appropriate regulator”.
] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.9(4) para.10 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ² Word repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.15(a) (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ³ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.15(b) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Extent

Pt XIV s. 204A(1)-(7): United Kingdom

Law In Force

205. Public censure.

If the [appropriate regulator] ¹ considers that an authorised person has contravened [a relevant requirement imposed on the person, it may] ² publish a statement to that effect.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.11(a) (April 1, 2013)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.11(b) (April 1, 2013)

Commencement

Pt XIV s. 205: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XIV s. 205: United Kingdom

Law In Force

206.— Financial penalties.

(1) If the [appropriate regulator] ¹ considers that an authorised person has contravened [a relevant requirement imposed on the person,] ² it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.

(2) [...]³

(3) A penalty under this section is payable to the [regulator that imposed the penalty] ⁴ .

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.12(2)(a) (April 1, 2013)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.12(2)(b) (April 1, 2013)
- ³ Repealed by Financial Services Act 2010 c. 28 s.10 (June 8, 2010)

⁴ Word substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.12(3) (April 1, 2013)

Commencement

Pt XIV s. 206(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XIV s. 206(1)-(3): United Kingdom

Law In Force

[206A Suspending permission to carry on regulated activities etc

(1) If the [appropriate regulator]² 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.

] ³

(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]⁴ or conferred by any provision of this Act [.]⁵
 (a)-(f) [...] ⁵

(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]⁶ 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.

] ¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 s.9 (June 8, 2010)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.13(2) (April 1, 2013)
- ³ Added by Financial Services Act 2012 c. 21 Sch.9(4) para.13(3) (April 1, 2013)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.13(4)(a) (April 1, 2013)
- ⁵ Definition repealed by Financial Services Act 2012 c. 21 Sch.9(4) para.13(4)(b) (April 1, 2013)
- ⁶ Word substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.13(5) (April 1, 2013)

Extent

Pt XIV s. 206A(1)-(8)(b): United Kingdom

Law In Force

207.— Proposal to take disciplinary measures.

- (1) If [a regulator]¹ proposes—
- (a) to publish a statement in respect of an authorised person (under section 205), [...]²
 - (b) to impose a penalty on an authorised person (under section 206), [or]²
 - [(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),]²
- 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.
- [(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.]³

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.14 (April 1, 2013)
- ² Added by Financial Services Act 2010 c. 28 Sch.2(1) para.18(2) (June 8, 2010)
- ³ Added by Financial Services Act 2010 c. 28 Sch.2(1) para.18(3) (June 8, 2010)

Commencement

Pt XIV s. 207(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XIV s. 207(1)-(4): United Kingdom

Law In Force

208.— Decision notice.

- (1) If [a regulator]¹ decides—
- (a) to publish a statement under section 205 (whether or not in the terms proposed), [...]²
 - (b) to impose a penalty under section 206 (whether or not of the amount proposed), [or]²

[(c) to suspend a permission or impose a restriction under section 206A (whether or not in the manner proposed),]²

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.

[(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.]³

(4) If [a regulator]¹ decides to—

(a) publish a statement in respect of an authorised person under section 205 , [...] ⁴

(b) impose a penalty on an authorised person under section 206, [or] ⁴

[(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,] ⁴

the authorised person may refer the matter to the Tribunal.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.15 (April 1, 2013)

² Repealed by Financial Services Act 2010 c. 28 Sch.2(1) para.19(2) (June 8, 2010)

³ Added by Financial Services Act 2010 c. 28 Sch.2(1) para.19(3) (June 8, 2010)

⁴ Added by Financial Services Act 2010 c. 28 Sch.2(1) para.19(4) (June 8, 2010)

Commencement

Pt XIV s. 208(1)-(4)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XIV s. 208(1)-(4)(c): United Kingdom

Law In Force

209. Publication.

After a statement under section 205 is published, [the regulator concerned]¹ 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).

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.16 (April 1, 2013)

Commencement

Pt XIV s. 209: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XIV s. 209: United Kingdom

☑ Law In Force

210.— Statements of policy.

(1) [Each regulator]¹ must prepare and issue a statement of its policy with respect to—
 [(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

[(1A) Each regulator's policy with respect to the imposition of penalties, suspensions or restrictions under this Part must include policy with respect to their imposition in relation to conduct which constitutes or may constitute an offence by virtue of section 23(1A) (authorised persons carrying on credit-related regulated activities otherwise than in accordance with permission).]³

(2) [A regulator's]⁴ 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,]⁵ 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 against whom action is to be taken]⁶ is an individual.

(3) [A regulator]⁷ may at any time alter or replace a statement issued [by it]⁸ under this section.

(4) If a statement issued under this section is altered or [replaced by a regulator, the regulator]⁹ must issue the altered or replacement statement.

(5) [A regulator]¹⁰ must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(6) A statement issued under this section [by a regulator]¹¹ must be published by the [regulator]¹² in the way appearing to the [regulator]¹² 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 or 206A]¹³ in the case of any particular contravention, [a regulator]¹⁴ must have regard to any statement published [by it]¹⁵ under this section and in force at the time when the contravention in question occurred.

(8) The [regulator]¹⁶ may charge a reasonable fee for providing a person with a copy of the statement.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.17(2) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy; April 1, 2013 otherwise)

² S.210(1)(a)-(c) substituted for s.210(1)(a)-(b) by Financial Services Act 2010 c. 28 Sch.2(1) para.20(2) (June 8, 2010)

³ Added by Financial Services Act 2012 c. 21 Sch.9(4) para.17(3) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy; April 1, 2013 otherwise)

⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.17(4) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy; April 1, 2013 otherwise)

⁵ Words inserted by Financial Services Act 2010 c. 28 Sch.2(1) para.20(3)(a) (June 8, 2010)

⁶ Words substituted by Financial Services Act 2010 c. 28 Sch.2(1) para.20(3)(b) (June 8, 2010)

⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.17(5)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy; April 1, 2013 otherwise)

- ⁸ Words inserted by Financial Services Act 2012 c. 21 Sch.9(4) para.17(5)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy; April 1, 2013 otherwise)
- ⁹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.17(6) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy; April 1, 2013 otherwise)
- ¹⁰ Words substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.17(7) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy; April 1, 2013 otherwise)
- ¹¹ Words inserted by Financial Services Act 2012 c. 21 Sch.9(4) para.17(8)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy; April 1, 2013 otherwise)
- ¹² Word substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.17(8)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy; April 1, 2013 otherwise)
- ¹³ Words inserted by Financial Services Act 2010 c. 28 Sch.2(1) para.20(4) (June 8, 2010)
- ¹⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.17(9)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy; April 1, 2013 otherwise)
- ¹⁵ Words inserted by Financial Services Act 2012 c. 21 Sch.9(4) para.17(9)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy; April 1, 2013 otherwise)
- ¹⁶ Word substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.17(10) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy; April 1, 2013 otherwise)

Commencement

Pt XIV s. 210(1)-(8): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XIV s. 210(1)-(8): United Kingdom

Law In Force

211.— Statements of policy: procedure.

- (1) Before [a regulator issues]¹ a statement under section 210, the [regulator]² must publish a draft of the proposed statement in the way appearing to the [regulator]² 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]³ within a specified time.
- (3) Before issuing the proposed statement, the [regulator]³ must have regard to any representations made to it in accordance with subsection (2).
- (4) If the [regulator]³ 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]³, significant, the [regulator]³ must (in addition to complying with subsection (4)) publish details of the difference.
- (6) [A regulator]⁴ 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.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.18(2)(a) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy; April 1, 2013 otherwise)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.18(2)(b) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy; April 1, 2013 otherwise)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.18(3) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy; April 1, 2013 otherwise)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.9(4) para.18(4) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy; April 1, 2013 otherwise)

Commencement

Pt XIV s. 211(1)-(7): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XIV s. 211(1)-(7): United Kingdom

PART XV**THE FINANCIAL SERVICES COMPENSATION SCHEME***The scheme manager*

Law In Force

212.— The scheme manager.

[(1) “The scheme manager” means the body corporate established by the Financial Services Authority under this section as originally enacted.

(2) The regulators must take such steps as are necessary to ensure that the scheme manager is, at all times, capable of exercising the functions conferred on it by or under this Part or Part 15A.]¹

(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]² (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]² 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 [...] officers and staff are not to be regarded as Crown servants.

Notes

- ¹ Substituted by Financial Services Act 2012 c. 21 Sch.10 para.2(2) (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.10 para.2(3) (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)
- ³ Words repealed by Financial Services Act 2012 c. 21 Sch.10 para.2(4) (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

Commencement

Pt XV s. 212(1)-(7): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XV s. 212(1)-(7): United Kingdom

The scheme

✔ Law In Force

! Amendment(s) Pending

213.— The compensation scheme.

- (1) The [regulators] ¹ must by rules [made in accordance with an order under subsection (1A)] ² establish a scheme for compensating persons in [cases where—] ³
- [(a) relevant persons are unable, or likely to be unable, to satisfy claims against them, or
(b) persons who have assumed responsibility for liabilities arising from acts or omissions of relevant persons (“successors”) are unable, or likely to be unable, to satisfy claims against the successors that are based on those acts or omissions.] ³
- [(1A) The Treasury must by order specify—
- (a) the cases in which the FCA may, or may not, make rules under subsection (1), and
(b) the cases in which the PRA may, or may not, make rules under that subsection.
-] ⁴
- (2) The rules [(taken together)] ⁵ 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]¹ 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]¹ 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—
 (a) an authorised person at the time the act or omission giving rise to the claim against him [, or against a successor falling within subsection (1)(b),]⁶ 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 in relation to any authorised activities,

is not to be regarded as a relevant person in relation to those activities, unless the person had elected to participate in the scheme in relation to those activities at that time.

(11) In subsection (10) “authorised activities”, in relation to a person, means activities for which the person had, at the time mentioned in that subsection, permission as a result of any provision of, or made under, Schedule 3.]⁷

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.10 para.3(2) (January 24, 2013 for the purposes of making orders or regulations for the provision specified in SI 2013/113 art.2 Sch.1 Pt 2; January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

² Words inserted by Financial Services Act 2012 c. 21 Sch.10 para.3(3)(a) (January 24, 2013 for the purposes of making orders or regulations for the provision specified in SI 2013/113 art.2 Sch.1 Pt 2; January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

³ S.213(1)(a) and (b) and words substituted for words by Financial Services Act 2012 c. 21 Sch.10 para.3(3)(b) (January 24, 2013 for the purposes of making orders or regulations for the provision specified in SI 2013/113 art.2 Sch.1 Pt 2; January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

⁴ Added by Financial Services Act 2012 c. 21 Sch.10 para.3(4) (January 24, 2013 for the purposes of making orders or regulations for the provision specified in SI 2013/113 art.2 Sch.1 Pt 2; January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

⁵ Words inserted by Financial Services Act 2012 c. 21 Sch.10 para.3(5) (January 24, 2013 for the purposes of making orders or regulations for the provision specified in SI 2013/113 art.2 Sch.1 Pt 2; January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

⁶ Words inserted by Financial Services Act 2012 c. 21 Sch.10 para.3(6) (January 24, 2013 for the purposes of making orders or regulations for the provision specified in SI 2013/113 art.2 Sch.1 Pt 2; January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

⁷ S.213(10) and (11) substituted for s.213(10) by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(13) (July 1, 2011)

Amendments Pending

Pt XV s. 213(7): words added by Banking Act 2009 c. 1, Pt 4 s. 170(2) (date to be appointed)

Commencement

Pt XV s. 213(1)-(9)(b): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Pt XV s. 213(10)-(10)(b): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XV s. 213(1)-(11): United Kingdom

Provisions of the scheme

✔ Law In Force

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;
[(aa) as to the circumstances in which a successor falling within section 213(1)(b) is to be taken (for the purposes of the scheme) to be unable, or likely to be unable, to satisfy claims against the successor that are based on the acts or omissions of a relevant person;]¹
- (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.

[(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

(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.

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.10 para.4 (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

² Added by Banking Act 2009 c. 1 Pt 4 s.174(1) (February 21, 2009)

Commencement

Pt XV s. 214(1)-(4)(d), (6)-(6)(b)(ii): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Pt XV s. 214(5)-(5)(b): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XV s. 214(1)-(6)(b)(ii): United Kingdom

 Not Yet In Force

[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.

] ¹

Notes

¹ Added by Banking Act 2009 c. 1 Pt 4 s.170(1) (date to be appointed)

Extent

Pt XV s. 214A(1)-(3): United Kingdom

Law In Force

Amendment(s) Pending

[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).

(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.
-] ¹

Notes

¹ Ss 214B-214D substituted for s.214B by Financial Services Act 2010 c. 28 s.16(1) (April 8, 2010)

Amendments Pending

Pt XV s. 214B(1)(a): words substituted by Financial Services Act 2012 c. 21, Pt 8 s. 101(10) (date to be appointed)

Extent

Pt XV s. 214B(1)-(9): United Kingdom

Law In Force

[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
 - (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.

] ¹

Notes

¹ Ss 214B-214D substituted for s.214B by Financial Services Act 2010 c. 28 s.16(1) (April 8, 2010)

Extent

Pt XV s. 214C(1)-(7): United Kingdom

Law In Force

[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
 - (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
 - (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).
-] ¹

Notes

¹ Ss 214B-214D substituted for s.214B by Financial Services Act 2010 c. 28 s.16(1) (April 8, 2010)

Extent

Pt XV s. 214D(1)-(13): United Kingdom

Law In Force

215.— [Rights of the scheme in insolvency.] ¹

- [(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

(2) Such a right of recovery conferred by the scheme does not, in the event of [a person's insolvency]³, exceed such right (if any) as the claimant would have had in that event.

(3) If a person other than the scheme manager [makes an administration application under Schedule B1 to the 1986 Act or [Schedule B1 to]⁵ the 1989 Order]⁴ 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]⁶ by section 362.

[(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 [or paragraph 15 or 23 of Schedule B1 to the 1989 Order]⁸, or

(b) filing with the court a copy of notice of intention to appoint an administrator under [any]⁹ of those paragraphs.

] ⁷

(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]⁶ 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]⁶ 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 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 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.

Notes

¹ Heading substituted by Banking Act 2009 c. 1 Pt 4 s.175(4) (February 21, 2009)

² Substituted by Banking Act 2009 c. 1 Pt 4 s.175(2) (February 21, 2009)

³ Words substituted by Banking Act 2009 c. 1 Pt 4 s.175(3) (February 21, 2009)

- ⁴ Words substituted by Enterprise Act 2002 c. 40 Sch.17 para.54(2) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)
- ⁵ Words substituted by Insolvency (Northern Ireland) Order 2005/1455 Sch.2 para.57(2) (March 27, 2006 subject to transitional provisions and savings specified in SR 2006/22 art.2 - 7)
- ⁶ Word substituted by Financial Services Act 2012 c. 21 Sch.10 para.5 (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)
- ⁷ Added by Enterprise Act 2002 c. 40 Sch.17 para.54(3) (September 15, 2003: insertion has effect subject to transitional provisions specified in SI 2003/2093 art.3)
- ⁸ Words inserted by Insolvency (Northern Ireland) Order 2005/1455 Sch.2 para.57(3)(a) (March 27, 2006 subject to transitional provisions and savings specified in SR 2006/22 art.2 - 7)
- ⁹ Word substituted by Insolvency (Northern Ireland) Order 2005/1455 Sch.2 para.57(3)(b) (March 27, 2006 subject to transitional provisions and savings specified in SR 2006/22 art.2 - 7)

Commencement

Pt XV s. 215(1)-(5), (7)-(7)(c): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Pt XV s. 215(6), (8)-(9): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XV s. 215(1)-(9): United Kingdom

Law In Force

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).

Commencement

Pt XV s. 216(1)-(5)(b): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XV s. 216(1)-(5)(b): United Kingdom

Law In Force

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.
- (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 the [either regulator or both regulators]¹ 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–
- (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.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.10 para.6 (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

Commencement

Pt XV s. 217(1)-(8): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XV s. 217(1)-(8): United Kingdom

[Relationship with the regulators]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.10 para.7 (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)
-

Law In Force

[217A Co-operation

- (1) Each regulator and the scheme manager must 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) Each regulator and the scheme manager must prepare and maintain a memorandum describing how that regulator and the scheme manager intend to comply with subsection (1).
- (3) The scheme manager must ensure that the memoranda as currently in force are published in the way appearing to it to be best calculated to bring them to the attention of the public.
- ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.10 para.7 (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

Extent

Pt XV s. 217A(1)-(3): United Kingdom

[Annual plan and report]¹

Notes

- ¹ Heading substituted by Financial Services Act 2012 c. 21 Sch.10 para.8 (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)
-

✔ Law In Force

[217B Annual plan

- (1) The scheme manager 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.
 - (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.
-]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.10 para.9 (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

Extent

Pt XV s. 217B(1)-(6): United Kingdom

✔ Law In Force

! Amendment(s) Pending

218.— Annual report.

- (1) At least once a year, the scheme manager must make a report to the [regulators]¹ 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]¹.
- (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.]²

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.10 para.10(2) (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)
- ² Added by Financial Services Act 2012 c. 21 Sch.10 para.10(3) (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

Amendments Pending

- Pt XV s. 218(2)(b): words added by Banking Act 2009 c. 1, Pt 4 s. 170(3)(b) (date to be appointed)
- Pt XV s. 218(1): words inserted by Banking Act 2009 c. 1, Pt 4 s. 170(3)(a) (date to be appointed)

Commencement

- Pt XV s. 218(1)-(3): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

- Pt XV s. 218(1)-(6): United Kingdom
-

Law In Force

[218ZA Audit of accounts

- (1) The scheme manager must send a copy of its annual accounts to the Comptroller and Auditor General and the Treasury as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—
- (a) examine, certify and report on accounts received under this section, and
 - (b) send a copy of the certified accounts and the report to the Treasury.
- (3) The Treasury must lay the copy of the certified accounts and the report before Parliament.
- (4) The scheme manager must send a copy of the certified accounts and the report to the regulators.
- (5) 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.

(6) In this section “annual accounts” has the meaning given by section 471 of the Companies Act 2006.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.10 para.11 (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

Extent

Pt XV s. 218ZA(1)-(6): United Kingdom

Information and documents

Law In Force

[218A [Regulators'] ² power to require information

(1) [Each regulator] ³ may make rules enabling [that regulator] ⁴ to require authorised persons to provide information, which may then be made available to the scheme manager by [that regulator] ⁴ .

(2) A requirement may be imposed only if the [regulator] ⁵ 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;
- (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] ⁵ 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] ⁶ general rules.

] ¹

Notes

¹ Added by Banking Act 2009 c. 1 Pt 4 s.176(1) (February 21, 2009)

² Word substituted by Financial Services Act 2012 c. 21 Sch.10 para.12(5) (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.10 para.12(2)(a) (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.10 para.12(2)(b) (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

⁵ Word substituted by Financial Services Act 2012 c. 21 Sch.10 para.12(3) (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

⁶ Word substituted by Financial Services Act 2012 c. 21 Sch.10 para.12(4) (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

Extent

Pt XV s. 218A(1)-(5): United Kingdom

Law In Force

219.— Scheme manager's power to require information.

- (1) The scheme manager may, by notice in writing [require a person]¹ –
- (a) to provide specified information or information of a specified description; or
 - (b) to produce specified documents or documents of a specified description.
- [(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
- (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 [to be necessary (or likely to be necessary) for the fair determination of claims which have been or may be made against P.]³
- (a)-(b) [...] ³
- [(3A) Where a stabilisation power under Part 1 of the Banking Act 2009 has been exercised in respect of a bank, [building society or credit union,]⁵ the scheme manager may by notice in writing require [the bank, building society or credit union, or the Bank of England,]⁶ to provide information that the scheme manager requires for the purpose of [determining the matters mentioned in section 214D(2)(a) and (b) above]⁷ .]⁴
- (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 [P]⁸ 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) [...]⁹

(9) “Specified” means specified in the notice given under subsection (1).

(10) [...]¹⁰

Notes

¹ Words substituted by Banking Act 2009 c. 1 Pt 4 s.176(3) (February 21, 2009)

² Added by Banking Act 2009 c. 1 Pt 4 s.176(4) (February 21, 2009)

³ Words substituted for s.219(3)(a) and (b) by Banking Act 2009 c. 1 Pt 4 s.176(5) (February 21, 2009)

⁴ Added by Banking Act 2009 c. 1 Pt 4 s.176(6) (February 21, 2009)

⁵ Words inserted by Financial Services Act 2010 c. 28 s.21(8)(a) (April 8, 2010)

⁶ Words substituted by Financial Services Act 2010 c. 28 s.21(8)(b) (April 8, 2010)

⁷ Words substituted by Financial Services Act 2010 c. 28 Sch.2(1) para.22 (April 8, 2010)

⁸ Words substituted by Banking Act 2009 c. 1 Pt 4 s.176(7) (February 21, 2009)

⁹ Repealed by Banking Act 2009 c. 1 Pt 4 s.176(8) (February 21, 2009)

¹⁰ Repealed by Banking Act 2009 c. 1 Pt 4 s.176(9) (February 21, 2009)

Commencement

Pt XV s. 219(1)-(10): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XV s. 219(1)-(10): United Kingdom

Law In Force

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 [, bank liquidator]¹ [, building society liquidator]² or trustee in bankruptcy of an insolvent relevant person;

(b) the permanent trustee, within the meaning of the 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.

Notes

¹ Words inserted by Banking Act 2009 c. 1 Pt 2 s.123(3) (February 21, 2009)

² Words inserted by Building Societies (Insolvency and Special Administration) Order 2009/805 art.15 (March 29, 2009)

Commencement

Pt XV s. 220(1)-(5): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XV s. 220(1)-(5): United Kingdom

Law In Force

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,

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 [other]¹ officer) as if he were in contempt [; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.]²

(3) “Court” means—

(a) the High Court;

(b) in Scotland, the Court of Session.

Notes

¹ Word inserted by Financial Services Act 2012 c. 21 Sch.10 para.13 (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

² Words added by Limited Liability Partnerships Regulations 2001/1090 Sch.5 para.21 (December 1, 2001: insertion came into force on April 6, 2001 but could not take effect until the commencement of 2000 c.8 s.221 on December 1, 2001 as specified in SI 2001/3538 art.2(1))

Commencement

Pt XV s. 221(1)-(3)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XV s. 221(1)-(3)(b): United Kingdom

Miscellaneous

✔ Law In Force

[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 [except where the function in question is one under Part 15A]²).

] ¹

Notes

¹ Added by Banking Act 2009 c. 1 Pt 4 s.179(1) (February 21, 2009)

² Words inserted by Financial Services Act 2010 c. 28 Sch.2(1) para.23 (October 12, 2010)

Extent

Pt XV s. 221A(1)-(3): United Kingdom

✔ Law In Force

222.— Statutory immunity.

- (1) Neither the scheme manager nor any person who is, or is acting as, its [...] ¹ officer [, scheme agent] ² 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 Human Rights Act 1998.

Notes

¹ Words repealed by Financial Services Act 2012 c. 21 Sch.10 para.14 (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

² Words inserted by Banking Act 2009 c. 1 Pt 4 s.179(2) (February 21, 2009)

Commencement

Pt XV s. 222(1)-(2)(b): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XV s. 222(1)-(2)(b): United Kingdom

Law In Force

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) [;]¹

[(c) under section 214B [or 214D]² [;]³]¹

[(d) under Part 15A.]³

Notes

¹ Added by Banking Act 2009 c. 1 Pt 4 s.171(2) (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

² Words inserted by Financial Services Act 2010 c. 28 Sch.2(1) para.24(2) (April 8, 2010)

³ Added by Financial Services Act 2010 c. 28 Sch.2(1) para.24(3) (October 12, 2010)

Commencement

Pt XV s. 223(1)-(3)(b): June 18, 2001 for the purposes of fixing an amount by the scheme as mentioned in 2000 c.8 s.223(1); December 1, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XV s. 223(1)-(3)(d): United Kingdom

Not Yet In Force

[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)).

] ¹

Notes

¹ Added by Banking Act 2009 c. 1 Pt 4 s.172 (date to be appointed)

Extent

Pt XV s. 223A(1)-(5): United Kingdom

Law In Force

[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.

(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.

] ¹

Notes

¹ Added by Banking Act 2009 c. 1 Pt 4 s.173 (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

Extent

Pt XV s. 223B(1)-(5): United Kingdom

Law In Force

[223C 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.

]

Notes

¹ Added by Banking Act 2009 c. 1 Pt 4 s.177 (February 21, 2009)

Extent

Pt XV s. 223C(1)-(2): United Kingdom

Law In Force

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, [or a successor falling within section 213(1)(b),]¹ 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
- (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.

Notes

¹ Words inserted by Financial Services Act 2012 c. 21 Sch.10 para.15 (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

Commencement

Pt XV s. 224(1)-(3)(b), (5)-(5)(c): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt XV s. 224(4)-(4)(b): February 25, 2001 for the purposes of making orders or regulations; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XV s. 224(1)-(5)(c): United Kingdom

Law In Force

[224A Functions under the Banking Act 2009

[(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.]²

[(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.]²
]¹

Notes

¹ Added by Banking Act 2009 c. 1 Pt 4 s.180 (February 21, 2009)

² Existing text renumbered as s.224A(1) and s.224A(2) inserted by Financial Services Act 2010 c. 28 Sch.2(1) para.25 (April 8, 2010)

Extent

Pt XV s. 224A(1)-(2): United Kingdom

[PART 15A**POWER TO REQUIRE FSCS MANAGER TO ACT IN RELATION TO OTHER SCHEMES**

]¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.17 (October 12, 2010)

[Introduction]¹**Notes**

¹ Added by Financial Services Act 2010 c. 28 s.17 (October 12, 2010)

Law In Force

[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.

]¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.17 (October 12, 2010)


Extent

Pt XVA s. 224B(1)-(9): United Kingdom

[Power to require FSCS manager to act]¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.17 (October 12, 2010)

 Law In Force

[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.

(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.

]¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.17 (October 12, 2010)

Extent

Pt XVA s. 224C(1)-(5): United Kingdom

✔ Law In Force

[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.

]¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.17 (October 12, 2010)

Extent

Pt XVA s. 224D(1)-(6)(b): United Kingdom

✔ Law In Force

[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
 - (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.

] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.17 (October 12, 2010)

Extent

Pt XVA s. 224E(1)-(9): United Kingdom

[Rules]¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.17 (October 12, 2010)

Law In Force

[224F Rules about relevant schemes

(1) The [regulators]² 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.

]¹

Notes

¹ Added by Financial Services Act 2010 c. 28 s.17 (October 12, 2010)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.38(2) (January 24, 2013 for the purpose of the preparation of memoranda under 2000 c.8 s.217A and the making of rules; April 1, 2013 otherwise)

Extent

Pt XVA s. 224F(1)-(7): United Kingdom

PART XVI
THE OMBUDSMAN SCHEME

The scheme

✔ Law In Force

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.

Commencement

Pt XVI s. 225(1)-(4): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XVI s. 225(1)-(4): United Kingdom

✔ Law In Force

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 [, [or an electronic money issuer within the meaning of the Electronic Money Regulations 2011]² or a payment service provider within the meaning of the Payment Services Regulations 2009,]¹ 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]³ 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.

- (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”.

Notes

- ¹ Words inserted by Payment Services Regulations 2009/209 Sch.6(1) para.1(1)(a) (March 2, 2009)
- ² Words inserted by Electronic Money Regulations 2011/99 Sch.4(1) para.2(3)(a) (February 9, 2011)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.11 para.1 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Commencement

Pt XVI s. 226(1)-(8): June 18, 2001 for the purposes of making rules by the Authority and the scheme operator; December 1, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent


Pt XVI s. 226(1)-(8): United Kingdom

 Repealed

226A [...] ¹

Notes

- ¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(5) (July 26, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/1998 art.11(5)-(8))
-

 Partially In Force

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;
 - (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 [...]¹ .
- (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]² 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.

Notes

¹ Words repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(6) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)


² Word substituted by Financial Services Act 2012 c. 21 Sch.11 para.3 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Commencement

Pt XVI s. 227(1)-(14)(b): June 18, 2001 for the purpose of making rules by the Authority and the scheme operator; December 1, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVI s. 227(1)-(14)(b): United Kingdom

Determination of complaints Partially In Force**228.— Determination under the compulsory jurisdiction.**

- (1) This section applies only in relation to the compulsory jurisdiction [...] ¹ .
- (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 [...] ² , 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.]³
- (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).] ⁴
- (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.

Notes


- ¹ Words repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(7) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)
- ² Words repealed by Financial Services Act 2012 c. 21 Sch.11 para.4(2) (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)
- ³ Added by Financial Services Act 2012 c. 21 Sch.11 para.4(3) (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)
- ⁴ Added by Financial Services Act 2012 c. 21 Sch.11 para.4(4) (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Commencement

Pt XVI s. 228(1)-(9): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVI s. 228(1)-(9): United Kingdom

 Partially In Force

229.— Awards.

- (1) This section applies only in relation to the compulsory jurisdiction [...] ¹ .
- (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] ² may specify [for the purposes of the compulsory jurisdiction] ³ the maximum amount which may be regarded as fair compensation for a particular kind of loss or damage specified under subsection (3)(b).
- (4A) [...] ⁴
- (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.
- (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[...]⁵.

(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 Court of Session Act 1988.

(10) Only the complainant may bring proceedings for an injunction or proceedings for an order.

[(11) “Specified” means specified in compulsory jurisdiction rules.]⁶

(12) [...]⁷

Notes


- ¹ Words repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(8)(a) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.11 para.5 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)
- ³ Words inserted by Consumer Credit Act 2006 c. 14 s.61(4) (June 16, 2006)
- ⁴ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(8)(b) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)
- ⁵ Words repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(8)(c) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)
- ⁶ Substituted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(8)(d) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)
- ⁷ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(8)(e) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

Commencement

Pt XVI s. 229(1)-(11): June 18, 2001 for the purposes of making rules by the Authority and the scheme operator; December 1, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVI s. 229(1)-(12): United Kingdom

 Partially In Force

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 [...]¹, to award costs in accordance with the provisions of the rules.
- (2) Costs rules require the approval of the [FCA]².
- (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[...]³.

Notes

- ¹ Words repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(9)(a) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.11 para.6 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)
- ³ Words repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(9)(b) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

Commencement

Pt XVI s. 230(1)-(7): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XVI s. 230(1)-(7): United Kingdom

Law In Force

[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.
]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.11 para.7 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

ExtentPt XVI s. 230A(1)-(4): United Kingdom

Information Law In Force**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).
-

Commencement

Pt XVI s. 231(1)-(7): December 1, 2001 (SI 2001/3538 art. 2(1))

ExtentPt XVI s. 231(1)-(7): United Kingdom

 Law In Force**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 [other]¹ officer) as if he were in contempt [; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.]²

- (3) “Court” means–
- (a) the High Court;
 - (b) in Scotland, the Court of Session.

Notes

- ¹ Word inserted by Financial Services Act 2012 c. 21 Sch.11 para.8 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)
- ² Words added by Limited Liability Partnerships Regulations 2001/1090 Sch.5 para.21 (December 1, 2001: insertion came into force on April 6, 2001 but could not take effect until the commencement of 2000 c.8 s.232 on December 1, 2001 as specified in SI 2001/3538 art.2(1))

Commencement

Pt XVI s. 232(1)-(3)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVI s. 232(1)-(3)(b): United Kingdom

Law In Force

[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.]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.11 para.9 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Extent

Pt XVI s. 232A: United Kingdom

Law In Force

233. Data protection.

In section 31 of the 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.”

Commencement

Pt XVI s. 233: December 1, 2001 (SI 2001/3538 art. 2(1))

ExtentPt XVI s. 233: United Kingdom

Funding

☑ Law In Force

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]¹ may make rules requiring the payment to it or to the scheme operator, by authorised persons or any class of authorised person [, any electronic money issuer within the meaning of the Electronic Money Regulations 2011]² [or any payment service provider within the meaning of the Payment Services Regulations 2009]³ of specified amounts (or amounts calculated in a specified way).

(2) “Specified” means specified in the rules.

Notes¹ Word substituted by Financial Services Act 2012 c. 21 Sch.11 para.10 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)² Words inserted by Electronic Money Regulations 2011/99 Sch.4(1) para.2(3)(b) (February 9, 2011)³ Words inserted by Payment Services Regulations 2009/209 Sch.6(1) para.1(1)(b) (March 2, 2009)**Commencement**

Pt XVI s. 234(1)-(2): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

ExtentPt XVI s. 234(1)-(2): United Kingdom

☒ Repealed

234A [...] ¹

Notes¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(10) (July 26, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/1998 art.11(9))

[Successors to businesses]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.11 para.12 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)
-

Law In Force

[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.

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.11 para.12 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Extent

Pt XVI s. 234B(1)-(2): United Kingdom

[PART 16A

CONSUMER PROTECTION AND COMPETITION

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.43 (January 24, 2013: insertion has effect on January 24, 2013 for the purpose of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2; January 24, 2013 for the purpose of the power to give guidance of the kind specified by 2000 c.8 s.234G as specified by SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
-

[Super-complaints and references to FCA]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.43 (January 24, 2013: insertion has effect on January 24, 2013 for the purpose of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2; January 24, 2013 for the purpose of the power to give guidance of the kind specified by 2000 c.8 s.234G as specified by SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
-

✓ Law In Force

[234C Complaints by consumer bodies

- (1) A designated consumer body may make a complaint to the FCA that a feature, or combination of features, of a market in the United Kingdom for financial services is, or appears to be, significantly damaging the interests of consumers.
- (2) “Designated consumer body” means a body designated by the Treasury by order.
- (3) The Treasury—
 - (a) may designate a body only if it appears to them to represent the interests of consumers of any description, and
 - (b) must publish in such manner as they think fit (and may from time to time vary) criteria to be applied by them in determining whether to make or revoke a designation.
- (4) 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.
- (5) In this section—
 - (a) “market in the United Kingdom” has the meaning given in section 140A;
 - (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.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.43 (January 24, 2013: insertion has effect on January 24, 2013 for the purpose of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2; January 24, 2013 for the purpose of the power to give guidance of the kind specified by 2000 c.8 s.234G as specified by SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt XVIA s. 234C(1)-(5)(b): United Kingdom

Ⓜ Partially In Force

[234D Reference by scheme operator or regulated person

- (1) A relevant person may make a reference to the FCA where it appears to that person that either the first set of conditions or the second set of conditions are satisfied.
- (2) Each of the following is a “relevant person”—
 - (a) the scheme operator;
 - (b) a regulated person.
- (3) The first set of conditions is—
 - (a) that there may have been—
 - (i) in the case of a reference by the scheme operator, a regular failure by one or more regulated persons to comply with requirements applicable to the carrying on by them of any activity, or

- (ii) in the case of a reference by a regulated person, a regular failure by that person to comply with requirements applicable to the carrying on by that person of any activity, and
 - (b) 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.
- (4) The reference to the failure by a regulated person (“R”) to comply with a requirement applicable to the carrying on by R of any activity includes anything done, or omitted to be done, by R in carrying on the activity—
- (a) which is a breach of a duty or other obligation, prohibition or restriction, or
 - (b) which otherwise gives rise to the availability of remedy or relief in legal proceedings.
- (5) 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.
- (6) The second set of conditions is—
- (a) in the case of a reference by the scheme operator, that one or more regulated persons have, on a regular basis, acted or failed to act, in such a way that, if a complaint were made under the ombudsman scheme in relation to that conduct, the ombudsman would be likely to determine the complaint in favour of the complainant,
 - (b) in the case of a reference by a regulated person, that the regulated person has, on a regular basis, acted or failed to act in such a way that, if a complaint were made under the ombudsman scheme in relation to that conduct, the ombudsman would be likely to determine the complaint in favour of the complainant, and
 - (c) in either case, that—
 - (i) if the complaint would fall within the compulsory jurisdiction [...] ², the ombudsman would be likely to make an award under section 229(2)(a) or give a direction under section 229(2)(b), or
 - (ii) if voluntary jurisdiction rules made for the purposes of section 227 provide for the making of an award against a respondent or the giving of a direction that a respondent take certain steps in relation to a complainant, and the complaint would fall within the voluntary jurisdiction, the ombudsman would be likely to make such an award or give such a direction.
- (7) “Consumers” has the meaning given in section 1G.
- (8) “Regulated person” means—
- (a) an authorised person;
 - (b) an electronic money issuer, as defined in section 1H(8);
 - (c) a payment service provider, as defined in section 1H(8).

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.43 (January 24, 2013: insertion has effect on January 24, 2013 for the purpose of the power to give guidance of the kind specified by 2000 c.8 s.234G as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

² Words repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(11) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

Extent

Pt XVIA s. 234D(1)-(8)(c): United Kingdom

✔ Law In Force

[234E Response by FCA

(1) The FCA must within 90 days after the day on which it receives a complaint under section 234C or a reference under section 234D publish a response stating how it proposes to deal with the complaint or reference, and in particular—

- (a) whether it has decided to take any action, or to take no action, and
- (b) if it has decided to take action, what action it proposes to take.

(2) The response must—

- (a) include a copy of the complaint or reference, and
- (b) state the FCA's reasons for its proposals.

(3) The Treasury may by order amend subsection (1) by substituting any period for the period for the time being specified there.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.43 (January 24, 2013: insertion has effect on January 24, 2013 for the purpose of the power to give guidance of the kind specified by 2000 c.8 s.234G as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt XVIA s. 234E(1)-(3): United Kingdom

✔ Law In Force

[234F Section 234E: exceptions

(1) This section applies where the FCA has received a reference under section 234D from a person who is a relevant person as a result of subsection (2)(b) of that section.

(2) The duty to respond in section 234E does not apply if the FCA considers that the reference is frivolous, vexatious or has been made in bad faith.

(3) The FCA must within 90 days after the day on which it receives the reference inform the person who made it—

- (a) that the duty to respond under section 234E does not apply by virtue of this section, and
- (b) of its reasons for reaching the conclusion in paragraph (a).

(4) The Treasury may by order amend subsection (3) by substituting any period for the period for the time being specified there.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.43 (January 24, 2013: insertion has effect on January 24, 2013 for the purpose of the power to give guidance of the kind specified by 2000 c.8 s.234G as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt XVIA s. 234F(1)-(4): United Kingdom

Law In Force

[234G Guidance

- (1) The guidance given by the FCA under section 139A—
- (a) must include guidance about the presentation of a reasoned case for a complaint under section 234C or a reference under section 234D, and
 - (b) may include guidance about such other matters as appears to the FCA to be appropriate for the purposes of section 234C or 234D.
- (2) Guidance given under this section is to be taken to be general guidance as defined in section 139B(5).
-] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.43 (January 24, 2013: insertion has effect on January 24, 2013 for the purpose of the power to give guidance of the kind specified by 2000 c.8 s.234G as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt XVIA s. 234G(1)-(2): United Kingdom

[Competition] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.43 (January 24, 2013: insertion has effect on January 24, 2013 for the purpose of the power to give guidance of the kind specified by 2000 c.8 s.234G as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
-

Law In Force

[234H 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 a 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.

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.43 (January 24, 2013: insertion has effect on January 24, 2013 for the purpose of the power to give guidance of the kind specified by 2000 c.8 s.234G as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Pt XVIIA s. 234H(1)-(5)(b): United Kingdom

PART XVII**COLLECTIVE INVESTMENT SCHEMES****CHAPTER I****INTERPRETATION**

Law In Force

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—

- (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
 - (b) the property is managed as a whole by or on behalf of the operator of the scheme.
- (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.

Commencement

Pt XVII c. I s. 235(1)-(5)(b): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XVII c. I s. 235(1)-(5)(b): United Kingdom

Law In Force

[235A.— Contractual schemes

- (1) In this Part “contractual scheme” means—
- (a) a co-ownership scheme; or
 - (b) a partnership scheme.
- (2) In this Part “co-ownership scheme” means a collective investment scheme which satisfies the conditions in subsection (3).
- (3) The conditions are—
- (a) that the arrangements constituting the scheme are contractual;
 - (b) that they are set out in a deed that is entered into between the operator and a depository and meets the requirements of subsection (4);
 - (c) that the scheme does not constitute a body corporate, a partnership or a limited partnership;
 - (d) that the property subject to the scheme is held by, or to the order of, a depository; and
 - (e) that either—
 - (i) the property is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants); or
 - (ii) where the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property, each part is beneficially owned by the participants in that part as tenants in common (or, in Scotland, is the common property of the participants in that part).
- (4) The deed—
- (a) must contain a statement that the arrangements are intended to constitute a co-ownership scheme as defined in section 235A of the Financial Services and Markets Act 2000;
 - (b) must make provision for the issue and redemption of units;

- (c) must—
 - (i) prohibit the transfer of units,
 - (ii) allow units to be transferred only if specified conditions are met, or
 - (iii) where the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property, in relation to each separate part make provision falling within sub-paragraph (i) or (ii);
- (d) must authorise the operator—
 - (i) to acquire, manage and dispose of property subject to the scheme; and
 - (ii) to enter into contracts which are binding on participants for the purposes of, or in connection with, the acquisition, management or disposal of property subject to the scheme; and
- (e) must make provision requiring the operator and depositary to wind up the scheme in specified circumstances.

(5) In this Part “partnership scheme” means a collective investment scheme which satisfies the conditions in subsection (6).

(6) The conditions are—

- (a) that the scheme is a limited partnership;
- (b) that the limited partnership—
 - (i) at any time has only one general partner; and
 - (ii) on formation has only one limited partner, who is a person nominated by the general partner (“the nominated partner”);
- (c) that the arrangements constituting the partnership are set out in a deed that is entered into between the general partner and the nominated partner;
- (d) that the deed prohibits such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property; and
- (e) that the deed provides that if an authorisation order is made in respect of the limited partnership under section 261D(1)—
 - (i) the property subject to the scheme is to be held by, or to the order of, a person appointed to be a depositary;
 - (ii) the limited partners, other than the nominated partner, are to be the participants in the scheme; and
 - (iii) the partnership is not dissolved on any person ceasing to be a limited partner provided that there remains at least one limited partner.

(7) In this section “general partner”, “limited partner” and “limited partnership” have the same meaning as in the Limited Partnerships Act 1907.

(8) In this Part “contractual scheme deed” means—

- (a) in relation to a co-ownership scheme, the deed referred to in subsection (3)(b); and
- (b) in relation to a partnership scheme, the deed referred to in subsection (6)(c) .

] ¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(5) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. I s. 235A(1)-(8)(b): United Kingdom

Law In Force

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—

- [(a) Chapters 3 to 7 of Part 18 of the Companies Act 2006;]¹
- (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.

Notes

¹ S.236(4)(a) substituted for s.236(4)(a)-(b) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.181(3) (October 1, 2009)

Commencement

Pt XVII c. I s. 236(1)-(5): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XVII c. I s. 236(1)-(5): United Kingdom

✓ Law In Force

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 [, except that it does not include a contractual scheme]¹.

(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;

[“management company” has the meaning given in Article 2.1(b) of the UCITS directive;]²

[“the operator”—

(a) in relation to a unit trust scheme with a separate trustee, means the manager;

[(aa) in relation to a co-ownership scheme, means the operator appointed under the terms of the contractual scheme deed;

(ab) in relation to a partnership scheme, means the general partner;]⁴

(b) in relation to an open-ended investment company, means that company; and

(c) in relation to an EEA UCITS which is not an open-ended investment company or unit trust scheme, means the management company for that UCITS;

] ³

“units” means the rights or interests (however described) of the participants in a collective investment scheme [;]⁵

[“working day” has the meaning given in section 191G(2).]⁵

(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 contractual scheme” means a contractual scheme which is authorised for the purposes of this Act by an authorisation order in force under section 261D(1);]⁶

“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)(1) of that section;

[“EEA UCITS” means a UCITS which is authorised pursuant to Article 5 of the UCITS directive in an EEA State other than the United Kingdom;

“feeder UCITS” means a UCITS, or a sub-fund of a UCITS, which has been approved by the [FCA]⁸ or (where relevant) by its home state regulator to invest 85% or more of the total property which is subject to the collective investment scheme constituted by the UCITS in units of another UCITS or UCITS sub-fund (the “master UCITS”);]⁷

“a recognised scheme” means a scheme recognised under [section 264 or 272]⁹.

[“UCITS” has the meaning given in Article 1.2 of the UCITS directive;

“UK UCITS” means a UCITS which is an authorised unit trust scheme [, an authorised contractual scheme]¹¹ or an authorised open-ended investment company .]¹⁰

[(4) In this Part, references to a sub-fund of a UCITS are references to a part of the property of the UCITS which forms a separate pool where—

- (a) the UCITS provides arrangements for separate pooling of the contributions of the participants and the profits and income out of which payments are made to them; and
- (b) the participants are entitled to exchange rights in one pool for rights in another.

] ¹²

[(5) In this Part “umbrella co-ownership scheme” means an authorised contractual scheme which satisfies the conditions in subsection (6).

(6) The conditions are—

- (a) that the scheme is a co-ownership scheme;
- (b) that the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property; and
- (c) that the participants are entitled under the terms of the scheme to exchange rights in one part for rights in another.

(7) In this Part “sub-scheme”, in relation to an umbrella co-ownership scheme, means the arrangements constituting the scheme so far as they relate to a separate part of the property.

(8) In this Part “stand-alone co-ownership scheme” means an authorised contractual scheme which—

- (a) is a co-ownership scheme; and
- (b) is not an umbrella co-ownership scheme.

] ¹³

Notes

- ¹ Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(6)(a) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ² Definition inserted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(14)(a)(i) (July 1, 2011)
- ³ Definition substituted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(14)(a)(ii) (July 1, 2011)
- ⁴ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(6)(b) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ⁵ Definition inserted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(14)(a)(iii) (July 1, 2011)
- ⁶ Definition inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(6)(c)(i) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ⁷ Definitions inserted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(14)(b)(i) (July 1, 2011)
- ⁸ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(a) (April 1, 2013)
- ⁹ Word repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.16 (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ¹⁰ Definitions inserted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(14)(b)(ii) (July 1, 2011)
- ¹¹ Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(6)(c)(ii) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ¹² Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(14)(c) (July 1, 2011)
- ¹³ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(6)(d) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)

Commencement

Pt XVII c. I s. 237(1)-(3) definition of "a recognised scheme": February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XVII c. I s. 237(1)-(8)(b): United Kingdom

CHAPTER II**RESTRICTIONS ON PROMOTION**

Law In Force

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.
- (4) Subsection (1) does not apply in relation to—
 - (a) an authorised unit trust scheme;
 - [(aa) an authorised contractual scheme;]¹
 - (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 [FCA]² 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.

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(7) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(a) (April 1, 2013)

Commencement

Pt XVII c. II s. 238(1)-(11): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVII c. II s. 238(1)-(11): United Kingdom

Law In Force

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
- (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 [FCA]¹ 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.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(a) (April 1, 2013)

Commencement

Pt XVII c. II s. 239(1)-(3)(b): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Pt XVII c. II s. 239(4)-(5): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XVII c. II s. 239(1)-(5): United Kingdom

Law In Force

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.

Commencement

Pt XVII c. II s. 240(1)-(2): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVII c. II s. 240(1)-(2): United Kingdom

Law In Force

241. Actions for damages.

If an authorised person contravenes a requirement imposed on him by [section 238 or 240, section 138D]¹ applies to the contravention as it applies to a contravention mentioned in [section 138D(2)]¹ .

Notes

¹ Words substituted by Financial Services Act 2012 (Consequential Amendments) Order 2013/636 Sch.1 para.6 (April 1, 2013)

Commencement

Pt XVII c. II s. 241: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVII c. II s. 241: United Kingdom

CHAPTER III

AUTHORISED UNIT TRUST SCHEMES

Applications for authorisation

Law In Force

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 [FCA]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(b) (April 1, 2013)

Commencement

Pt XVII c. III s. 242(1)-(6): June 18, 2001 for the purposes of giving directions or imposing requirements as mentioned under s.242(3); September 3, 2001 for the purposes of authorisation orders and applications for such orders coming into force no sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVII c. III s. 242(1)-(6): United Kingdom

Law In Force

243.— Authorisation orders.

- (1) If, on an application under section 242 in respect of a unit trust scheme, the [FCA]¹ –
 - (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,
- 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 be a body corporate incorporated in the United Kingdom or another EEA State, and the affairs of each must be administered in the country in which it is incorporated.
- (5A) The trustee must have a place of business in the United Kingdom, and the manager must have a place of business in the United Kingdom or in another EEA State.]²
- (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.
- [(7A) The manager must be a fit and proper person to manage the unit trust scheme to which the application relates.]³
- (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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(b) (April 1, 2013)

² S.243(5) and (5A) substituted for s.243(5) by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(15)(a) (July 1, 2011)

³ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(15)(b) (July 1, 2011)

Commencement

Pt XVII c. III s. 243(1)-(11): September 3, 2001 for the purposes of authorisation orders and applications for such orders coming into force no sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVII c. III s. 243(1)-(11): United Kingdom

Law In Force

244.— Determination of applications.

(1) [Subject to subsection (1A), an]¹ application under section 242 must be determined by the [FCA]² before the end of the period of six months beginning with the date on which it receives the completed application.

[(1A) An application under section 242 for authorisation of a unit trust scheme which is a UCITS must be determined by the Authority before the end of two months beginning with the date on which it receives the application.]³

(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.

Notes

¹ Words inserted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(16)(a) (July 1, 2011)

² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(b) (April 1, 2013)

³ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(16)(b) (July 1, 2011)

Commencement

Pt XVII c. III s. 244(1)-(3): September 3, 2001 for the purposes of authorisation orders and applications for such orders coming into force no sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVII c. III s. 244(1)-(3): United Kingdom

Applications refused

Law In Force

245.— Procedure when refusing an application.

(1) If the [FCA]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(b) (April 1, 2013)

Commencement

Pt XVII c. III s. 245(1)-(2)(b): September 3, 2001 for the purposes of authorisation orders and applications for such orders coming into force no sooner than December 1, 2001, the commencement of 2000 c.8 s.19; December 1, 2001 otherwise (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVII c. III s. 245(1)-(2)(b): United Kingdom

Certificates

Law In Force

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 [EU]¹ instrument so requests, the [FCA]² 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.

Notes

¹ Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(d) (April 22, 2011)

² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(b) (April 1, 2013)

Commencement

Pt XVII c. III s. 246(1)-(2): September 3, 2001 for the purposes of certificates coming into force no sooner than December 1, 2001, the commencement of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVII c. III s. 246(1)-(2): United Kingdom

Rules

Law In Force

247.— Trust scheme rules.

(1) The [FCA]¹ 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 [FCA]¹ ; 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 [the United Kingdom]² relating to companies,
 - (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 [FCA]¹ by this section,
- the Treasury may by order make such modifications of those powers as they consider appropriate.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(b) (April 1, 2013)

² Words substituted by Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011/1265 art.12(2) (May 12, 2011)

Commencement

Pt XVII c. III s. 247(1)-(5)(c): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XVII c. III s. 247(1)-(5)(c): United Kingdom

Law In Force

248.— Scheme particulars rules.

- (1) The [FCA]¹ may make rules (“scheme particulars rules”) requiring the manager of an authorised unit trust scheme—
- (a) to submit scheme particulars to the [FCA]¹ ; 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(b) (April 1, 2013)

Commencement

Pt XVII c. III s. 248(1)-(7): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XVII c. III s. 248(1)-(7): United Kingdom

Law In Force

249.— [Disciplinary measures]¹

- (1) If it appears to the [FCA]² that an auditor has failed to comply with a duty imposed on him by trust scheme rules, [it may do one or more of the following—]³
- [(a) disqualify the auditor from being the auditor of any authorised unit trust scheme [, authorised contractual scheme]⁴ or authorised open-ended investment company;
 - (b) publish a statement to the effect that it appears to the FCA that the auditor has failed to comply with the duty;
 - (c) impose on the auditor a penalty, payable to the FCA, of such amount as the FCA considers appropriate.]³

[(2) Sections 345B to 345E have effect in relation to the taking of action under subsection (1) as they have effect in relation to the taking of action under section 345(2).]⁵

Notes

- ¹ Heading substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.10(4) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.345D as applied by 2000 c.8 s.249(2); April 1, 2013 otherwise)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(b) (April 1, 2013)
- ³ S.249(1)(a)-(c) and words substituted for words by Financial Services Act 2012 c. 21 Sch.18(1) para.10(2) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.345D as applied by 2000 c.8 s.249(2); April 1, 2013 otherwise)
- ⁴ Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(8) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ⁵ Substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.10(3) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.345D as applied by 2000 c.8 s.249(2); April 1, 2013 otherwise)

Commencement

Pt XVII c. III s. 249(1)-(2): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVII c. III s. 249(1)-(2): United Kingdom

Law In Force

250.— Modification or waiver of rules.

- (1) In this section “rules” means—
- (a) trust scheme rules; or
 - (b) scheme particulars rules.
- (2) The [FCA]¹ 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 [FCA]¹ 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) [Section 138A and subsections (1) to (3), (5) and (6) of section 138B]² have effect in relation to a direction under subsection (2) as they have effect in relation to a direction under [section 138A(1)]³ but with the following modifications—
- (a) [...]⁴
 - (b) any reference to the [person]⁵ is to be read as a reference to the person mentioned in subsection (2); and
 - (c) [section 138B(3)(c)]⁶ is to be read, in relation to a participant of the scheme, as if the word “commercial” were omitted.

(5) [Section 138A and subsections (1) to (3), (5) and (6) of section 138B]⁷ have effect in relation to a direction under subsection (3) as they have effect in relation to a direction under [section 138A(1)]⁸ but with the following modifications—

(a) [subsection (4)(a) of section 138A]⁹ is to be read as if the words “by the [...]”¹⁰ person” were omitted;

(b) [section 138B(3)(c) and the definition of “immediate group” in section 421ZA as it applies to that section]¹¹ are to be read as if references to the [...]”¹⁰ person were references to each of the manager and the trustee of the scheme;

(c) [section 138B(3)(c)]¹² is to be read, in relation to a participant of the scheme, as if the word “commercial” were omitted;

(d) [section 138B(5)]¹³ is to be read as if the reference to the [...]”¹⁰ person concerned were a reference to the scheme concerned and to its manager and trustee; and

(e) [section 138A(7)]¹⁴ is to be read as if the reference to the [...]”¹⁰ person were a reference to the manager and trustee of the scheme acting jointly.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(b) (April 1, 2013)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.11(2)(a) (April 1, 2013)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.11(2)(b) (April 1, 2013)
- ⁴ Repealed by Regulatory Reform (Financial Services and Markets Act 2000) Order 2007/1973 art.11(a) (July 12, 2007)
- ⁵ Words substituted by Regulatory Reform (Financial Services and Markets Act 2000) Order 2007/1973 art.11(b) (July 12, 2007)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.11(2)(c) (April 1, 2013)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.11(3)(a) (April 1, 2013)
- ⁸ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.11(3)(b) (April 1, 2013)
- ⁹ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.11(3)(c) (April 1, 2013)
- ¹⁰ Word repealed by Regulatory Reform (Financial Services and Markets Act 2000) Order 2007/1973 art.11(c) (July 12, 2007)
- ¹¹ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.11(3)(d) (April 1, 2013)
- ¹² Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.11(3)(e) (April 1, 2013)
- ¹³ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.11(3)(f) (April 1, 2013)
- ¹⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.11(3)(g) (April 1, 2013)

Commencement

Pt XVII c. III s. 250(1)-(5)(e): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XVII c. III s. 250(1)-(5)(e): United Kingdom

Alterations

☑ Law In Force

251.— Alteration of schemes and changes of manager or trustee.

[(A1) This section applies where the manager of an authorised unit trust scheme proposes—

- (a) to make an alteration to the scheme, other than an alteration—
 - (i) to which section 252A applies; or
 - (ii) to which Part 4 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (mergers) applies; or
- (b) to replace its trustee.

(1) The manager must give written notice of the proposal to the [FCA]² .]¹

(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 [FCA]² 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 [FCA]² , 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 [FCA]² a warning notice under section 252 in respect of the proposal.

(5) The [FCA]² 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).

Notes

¹ S.251(A1) and (1) substituted for s.251(1) by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(17) (July 1, 2011)

² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(b) (April 1, 2013)

Commencement

Pt XVII c. III s. 251(1)-(3), (4)(a), (5): September 3, 2001 for the purposes of the giving of notice of any proposal to alter a scheme, or to replace its trustee or manager, and the giving of approval to any such proposal coming into force no sooner than December 1, 2001, the commencement of 2000 c.8 s.19; December 1, 2001 otherwise (SI 2001/2632 art. 2, Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Pt XVII c. III s. 251(4): September 3, 2001

Pt XVII c. III s. 251(4)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVII c. III s. 251(A1)-(5): United Kingdom

✔ Law In Force

252.— Procedure when refusing approval [of a proposal under section 251]¹ .

- (1) If the [FCA]² proposes to refuse approval of a proposal [under section 251]³ 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 [FCA]² proposes to refuse approval of a proposal [under section 251]³ 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 [FCA]² decides to refuse approval—
 - (a) it must give him a decision notice; and
 - (b) he may refer the matter to the Tribunal.

Notes

- ¹ Words substituted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(18)(a) (July 1, 2011)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(b) (April 1, 2013)
- ³ Words inserted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(18)(b) (July 1, 2011)

Commencement

Pt XVII c. III s. 252(1)-(4)(b): September 3, 2001 for the purposes of the giving of notice of any proposal to alter a scheme, or to replace its trustee or manager, and the giving of approval to any such proposal coming into force no sooner than December 1, 2001, the commencement of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVII c. III s. 252(1)-(4)(b): United Kingdom

✔ Law In Force

[252A.— Proposal to convert to a non-feeder UCITS

- (1) This section applies where the manager of an authorised unit trust scheme which is a feeder UCITS proposes to make an alteration to the scheme which—
 - (a) involves a change in the trust deed, and
 - (b) will enable the scheme to convert into a UCITS which is not a feeder UCITS.
- (2) The manager must give written notice of the proposal to the [FCA]² .
- (3) Any notice given in respect of such a proposal must be accompanied by—
 - (a) 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; and
 - (b) the specified information.
- (4) The [FCA]² must, within 15 working days after the date on which it received the notice under subsection (2), give—

- (a) written notice to the manager of the scheme that the [FCA]² approves the proposed amendments to the trust deed, or
 - (b) separate warning notices to the manager and trustee of the scheme that the [FCA]² proposes to refuse approval of the proposed amendments.
- (5) Effect is not to be given to any proposal of which notice has been given under subsection (2) unless the [FCA]², by written notice, has given its approval to the proposal.
- (6) If, having given a warning notice to a person, the [FCA]² decides to refuse approval—
- (a) it must give that person a decision notice; and
 - (b) that person may refer the matter to the Tribunal.
- (7) Subsection (8) applies where—
- (a) the notice given under subsection (2) relates to a proposal to amend the trust deed of a feeder UCITS to enable it to convert into a UCITS which is not a feeder UCITS following the winding-up of its master UCITS; and
 - (b) the proceeds of the winding-up are to be paid to the feeder UCITS before the date on which the feeder UCITS proposes to start investing in accordance with the new investment objectives and policy provided for in its amended trust deed and scheme rules.
- (8) Where this subsection applies, the [FCA]² may only approve the proposal subject to the conditions set out in section 283A(5) and (6).
- (9) In this section, “specified” means—
- (a) specified in rules made by the [FCA]² to implement the UCITS directive, or
 - (b) specified in any directly applicable Community regulation or decision made under the UCITS directive.

] ¹

Notes

¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(19) (July 1, 2011)

² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(b) (April 1, 2013)

Extent

Pt XVII c. III s. 252A(1)-(9)(b): United Kingdom

Exclusion clauses

Law In Force

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.

Commencement

Pt XVII c. III s. 253: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVII c. III s. 253: United Kingdom

Ending of authorisation

Law In Force

254.— Revocation of authorisation order otherwise than by consent.

(1) An authorisation order may be revoked by an order made by the [FCA]¹ if it appears to the [FCA]¹ that—

- (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 [FCA]¹ 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 [FCA]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(c) (April 1, 2013)

Commencement

Pt XVII c. III s. 254(1)-(2)(h): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XVII c. III s. 254(1)-(2)(h): United Kingdom

✔ Law In Force

255.— Procedure.

(1) If the [FCA]¹ 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 [FCA]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(c) (April 1, 2013)

Commencement

Pt XVII c. III s. 255(1)-(2): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XVII c. III s. 255(1)-(2): United Kingdom

✔ Law In Force

256.— Requests for revocation of authorisation order.

(1) An authorisation order may be revoked by an order made by the [FCA]¹ at the request of the manager or trustee of the scheme concerned.

(2) If the [FCA]¹ 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 [FCA]¹ 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 [an EU]² obligation.

(4) If the [FCA]¹ 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 [FCA]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(c) (April 1, 2013)

² Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(e) (April 22, 2011)

Commencement

Pt XVII c. III s. 256(1)-(5): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XVII c. III s. 256(1)-(5): United Kingdom

Powers of intervention

☑ Law In Force

257.— Directions.

- (1) The [FCA]¹ may give a direction under this section if it appears to the [FCA]¹ 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—
 - (i) by or under this Act; or
 - (ii) by any directly applicable Community regulation or decision made under the UCITS directive;
-]²
- (c) the manager or trustee of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the [FCA]¹ 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;
 - (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 138D]³ applies to the contravention as it applies to a contravention mentioned in that section.
- (6) The [FCA]¹ 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 [FCA]¹ –
- (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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(c) (April 1, 2013)

² Substituted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(20) (July 1, 2011)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.12 (April 1, 2013)

Commencement

Pt XVII c. III s. 257(1)-(6)(b): September 3, 2001 for the purposes of the giving of directions coming into force no sooner than December 1, 2001, the commencement of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVII c. III s. 257(1)-(6)(b): United Kingdom

Law In Force

258.— Applications to the court.

(1) If the [FCA]¹ 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 [FCA]¹.

(2) The [FCA]¹ 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 [FCA]¹ 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.

(5) The court may, on the application of the [FCA]¹, rescind any such order as is mentioned in subsection (3) and substitute such an order as is mentioned in subsection (1).

(6) The [FCA]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(c) (April 1, 2013)

Commencement

Pt XVII c. III s. 258(1)-(7)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVII c. III s. 258(1)-(7)(b): United Kingdom

✔ Law In Force

[258A.— Winding up or merger of master UCITS

(1) Subsection (2) applies if a master UCITS which has one or more feeder UCITS which are authorised unit trust schemes is wound up, whether as a result of a direction given by the [FCA]² under section 257 [or 261X]³, an order of the court under section 258 [or 261Y]⁴, rules made by the [FCA]² or otherwise.

(2) The [FCA]² must direct the manager and trustee of any authorised unit trust scheme which is a feeder UCITS of the master UCITS to wind up the feeder UCITS unless—

- (a) the [FCA]² approves under section 283A the investment by the feeder UCITS of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in units of another UCITS or master UCITS; or
- (b) the [FCA]² approves under section 252A an amendment of the trust deed of the feeder UCITS which would enable it to convert into a UCITS which is not a feeder UCITS.

(3) Subsection (4) applies if a master UCITS which has one or more feeder UCITS which are authorised unit trust schemes—

- (a) merges with another UCITS, or
- (b) is divided into two or more UCITS.

(4) The [FCA]² must direct the manager and trustee of any authorised unit trust scheme which is a feeder UCITS of the master UCITS to wind up the scheme unless—

- (a) the [FCA]² approves under section 283A the investment by the scheme of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in the units of—
 - (i) the master UCITS which results from the merger;
 - (ii) one of the UCITS resulting from the division; or
 - (iii) another UCITS or master UCITS;
- (b) the [FCA]² approves under section 252A an amendment of the trust deed of the scheme which would enable it to convert into a UCITS which is not a feeder UCITS.

] ¹

Notes

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(21) (July 1, 2011)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(c) (April 1, 2013)
- ³ Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(9)(a) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ⁴ Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(9)(b) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. III s. 258A(1)-(4)(b): United Kingdom

✔ Law In Force

259.— Procedure on giving directions under section 257 [or 258A]¹ and varying them on [FCA's]² own initiative.

- (1) A direction [under [that section or 258A]⁴]³ 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 [under section 257]⁵ may be expressed to take effect immediately (or on a specified date) only if the [FCA]², 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 [FCA]² proposes to give a direction under [section 257 or 258A, or gives a direction under either section]⁶ 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 [FCA's]² 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 [FCA]² 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 [is given under section 257(2)(b) or section 258A(2) or (4)]⁷, 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 [FCA]² may extend the period allowed under the notice for making representations.
- (8) If, having considered any representations made by a person to whom the notice was given, the [FCA]² 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 [FCA]² 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 [FCA's]² 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).

Notes

¹ Words inserted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(22)(a) (July 1, 2011)

² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(c) (April 1, 2013)

³ Words inserted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(22)(b) (July 1, 2011)

⁴ Words substituted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(10)(a)(ii) (June 6, 2013: substitution has effect subject to transitional provision specified in SI 2013/1388 reg.24)

⁵ Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(10)(a)(i) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)

⁶ Words substituted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(10)(b) (June 6, 2013: substitution has effect subject to transitional provision specified in SI 2013/1388 reg.24)

⁷ Words substituted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(22)(c) (July 1, 2011)

Commencement

Pt XVII c. III s. 259(1)-(14): September 3, 2001 for the purposes of directions coming into force no sooner than December 1, 2001, the commencement of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVII c. III s. 259(1)-(14): United Kingdom

Law In Force

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 [FCA]¹ 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 [FCA]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(c) (April 1, 2013)

Commencement

Pt XVII c. III s. 260(1)-(2)(b): September 3, 2001 for the purposes of directions coming into force no sooner than December 1, 2001, the commencement of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVII c. III s. 260(1)-(2)(b): United Kingdom

Law In Force

261.— Procedure: revocation of direction and grant of request for variation.

- (1) If the [FCA]¹ 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 [FCA]¹ 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 [FCA]¹ may publish such information about the revocation or variation, in such way, as it considers appropriate.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(c) (April 1, 2013)

Commencement

Pt XVII c. III s. 261(1)-(4): September 3, 2001 for the purposes of directions coming into force no sooner than December 1, 2001, the commencement of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVII c. III s. 261(1)-(4): United Kingdom

Law In Force

[261A.— Information for home state regulator

- (1) Subsection (2) applies if, in accordance with rules made by the [FCA]² to implement Article 66 of the UCITS directive, the [FCA]² is informed by the manager of an authorised unit trust

scheme which is a master UCITS that a feeder UCITS which invests in units of the scheme is an EEA UCITS.

(2) The [FCA]² must immediately inform the home state regulator of the feeder UCITS of the investment made by that UCITS in the master UCITS.

] ¹

Notes

¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(23) (July 1, 2011)

² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(c) (April 1, 2013)

Extent

Pt XVII c. III s. 261A(1)-(2): United Kingdom

Law In Force

[261B.— Information for feeder UCITS

(1) The [FCA]² must immediately inform the operator of any authorised unit trust scheme which is a feeder UCITS of an authorised unit trust scheme [, an authorised contractual scheme]³ or an authorised open-ended investment company (the master UCITS) of—

- (a) any failure of which the [FCA]² becomes aware by the master UCITS to comply with a provision made in implementation of Chapter VIII of the UCITS directive;
- (b) any warning notice or decision notice given to the master UCITS in relation to a contravention of any provision made in implementation of Chapter VIII of the UCITS directive by or under any enactment or in rules of the [FCA]² ;
- (c) any information reported to the [FCA]² pursuant to rules of the [FCA]² made to implement Article 106(1) of the UCITS directive which relates to the master UCITS, or to one or more of its directors, or its management company, trustee, depositary or auditor.

(2) The [FCA]² must immediately inform the operator of any authorised unit trust scheme which is a feeder UCITS of an EEA UCITS of any information received from the home state regulator of the EEA UCITS in relation to—

- (a) any failure by the EEA UCITS to comply with any requirement in Chapter VIII of the UCITS directive;
- (b) any decision or measure imposed on the EEA UCITS under provisions implementing Chapter VIII of the UCITS directive;
- (c) any information reported to the home state regulator pursuant to Article 106(1) of the UCITS directive relating to the EEA UCITS, its operator, depositary or auditor.

(3) Where the [FCA]² has the information described in subsection (1)(a), (b) or (c) in relation to an authorised unit trust scheme which is a master UCITS for one or more feeder UCITS which are EEA UCITS, the [FCA]² must immediately give that information to the home state regulator of each feeder UCITS established outside the United Kingdom.

] ¹

Notes

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(23) (July 1, 2011)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(c) (April 1, 2013)
- ³ Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(11) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. III s. 261B(1)-(3): United Kingdom

**[CHAPTER 3A
AUTHORISED CONTRACTUAL SCHEMES]¹**

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)
-

[Applications for authorisation]¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)
-

Law In Force

[261C.— Applications for authorisation of contractual schemes

- (1) Any application for an order declaring a contractual scheme to be an authorised contractual scheme must be made to the FCA by the operator and depositary, or proposed operator and depositary, of the scheme.
- (2) The application—
- (a) must be made in such manner as the FCA may direct;
 - (b) must state the name and the registered office, or if it does not have a registered office, the head office, of the operator or proposed operator and of the depositary or proposed depositary; and
 - (c) in the case of a partnership scheme, must be accompanied by a copy of the certificate of registration as a limited partnership under the Limited Partnerships Act 1907.
- (3) At any time after receiving an application and before determining it, the FCA may require the applicants 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 FCA 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 FCA may direct.

] ¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261C(1)-(5): United Kingdom

Law In Force

[261D.— Authorisation orders

- (1) If, on an application under section 261C in respect of a contractual scheme, the FCA—
- (a) is satisfied that the scheme complies with the requirements set out in this section and section 261E,
 - (b) is satisfied that the scheme complies with the requirements of contractual scheme rules, and
 - (c) has been provided with a copy of the contractual scheme 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,
- the FCA may make an order declaring the scheme to be an authorised contractual scheme.
- (2) If the FCA makes an order under subsection (1), it must give written notice of the order to the applicants.
- (3) In this Chapter “authorisation order” means an order under subsection (1).
- (4) The operator and the depositary must be persons who are independent of each other.
- (5) The operator and the depositary must each be a body corporate incorporated in the United Kingdom or another EEA State, and the affairs of each must be administered in the country in which it is incorporated.
- (6) The depositary must have a place of business in the United Kingdom, and the operator must have a place of business in the United Kingdom or in another EEA State.
- (7) If the operator is incorporated in another EEA State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 264.
- (8) The operator and the depositary must each be an authorised person, and the operator must have [such permission as may be necessary to act as operator] ² and the depositary must have permission to act as depositary.
- (9) The operator must be a fit and proper person to manage the scheme to which the application relates.
- (10) The name of the scheme must not be undesirable or misleading.
- (11) The purposes of the scheme must be reasonably capable of being successfully carried into effect.

] ¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)
- ² Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.17 (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Extent

Pt XVII c. IIIA s. 261D(1)-(11): United Kingdom

Law In Force

[261E.— Authorisation orders: holding of units

- (1) The participants in a contractual scheme 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.
- (2) The scheme must not allow units in the scheme to be issued to anyone other than—
- (a) a professional investor;
 - (b) a large investor; or
 - (c) a person who already holds units in the scheme.
- (3) The scheme must require the operator, if it becomes aware that units have become vested in a person to whom as a result of subsection (2) the units could not have been issued, to redeem the units as soon as practicable.
- (4) In subsection (2)—
- “professional investor” means a person who falls within one of the categories (1) to (4) of Section I of Annex II to the markets in financial instruments directive (professional clients for the purpose of that directive); and
 - “large investor” means a person who, in exchange for units in the scheme, makes a payment of, or contributes property with a value of, not less than £1,000,000.

] ¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261E(1)-(4) definition of "large investor": United Kingdom

✔ Law In Force

[261F.— Determination of applications

(1) Subject to subsection (2), an application under section 261C 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.

(2) An application under section 261C for authorisation of a contractual scheme which is a UCITS must be determined by the FCA before the end of two months beginning with the date on which it receives the application.

(3) The FCA 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.

(4) The applicants may withdraw the application, by giving the FCA written notice, at any time before the FCA determines it.

] ¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261F(1)-(4): United Kingdom

*[Applications refused]*¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

✔ Law In Force

[261G.— Procedure when refusing an application

(1) If the FCA proposes to refuse an application made under section 261C, it must give each of the applicants a warning notice.

(2) If the FCA 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.

] ¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261G(1)-(2)(b): United Kingdom

[Certificates]¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Law In Force

[261H.— Certificates

(1) If the operator of a contractual scheme which complies with the conditions necessary for it to enjoy the rights conferred by any relevant EU instrument so requests, the FCA 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.

]¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261H(1)-(2): United Kingdom

[Rules]¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Law In Force

[261I.— Contractual scheme rules

(1) The FCA may by rules (“contractual scheme rules”) make in relation to authorised contractual schemes provision corresponding to that which may be made under section 247² in relation to authorised unit trust schemes.

(2) For the purposes of subsection (1), section 247 is to be read with the following modifications—
(a) a reference to trust scheme rules is to be read as a reference to contractual scheme rules;
(b) a reference to authorised unit trust schemes is to be read as a reference to authorised contractual schemes;

- (c) a reference to the manager is to be read as a reference to the operator;
- (d) a reference to the trustee is to be read as a reference to the depositary; and
- (e) a reference to the trust deed is to be read as a reference to the contractual scheme deed.

(3) The Treasury's power by order under section 247(5) to modify the FCA's power to make trust scheme rules shall also be exercisable in relation to the FCA's power to make contractual scheme rules.

(4) For the purposes of subsection (3), section 247(5) is to be read as if the reference to authorised unit trust schemes were a reference to authorised contractual schemes.

] ¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

² Section 247 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(b).

Extent

Pt XVII c. IIIA s. 261I(1)-(4): United Kingdom

Law In Force

[261J.— Contractual scheme particulars rules

(1) The FCA may by rules (“contractual scheme particulars rules”) make in relation to authorised contractual schemes provision corresponding to that which may be made under section 248² in relation to authorised unit trust schemes.

- (2) For the purposes of subsection (1), section 248 is to be read with the following modifications—
- (a) a reference to scheme particulars rules is to be read as a reference to contractual scheme particulars rules;
 - (b) a reference to scheme particulars is to be read as a reference to contractual scheme particulars; and
 - (c) a reference to the manager of an authorised unit trust scheme is to be read as a reference to the operator of an authorised contractual scheme.

] ¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

² Section 248 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9 (1) and (2)(b).

Extent

Pt XVII c. IIIA s. 261J(1)-(2)(c): United Kingdom

✔ Law In Force

[261K.— Disciplinary measures

(1) If it appears to the FCA that an auditor has failed to comply with a duty imposed on the auditor by contractual scheme rules, it may do one or more of the following—

- (a) disqualify the auditor from being the auditor of any authorised unit trust scheme, authorised contractual scheme or authorised open-ended investment company;
- (b) publish a statement to the effect that it appears to the FCA that the auditor has failed to comply with the duty;
- (c) impose on the auditor a penalty, payable to the FCA, of such amount as the FCA considers appropriate.

(2) Sections 345B to 345E² have effect in relation to the taking of action under subsection (1) as they have effect in relation to the taking of action under section 345(2).

] ¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

² Sections 345B to 345E were substituted by the Financial Services Act 2012, Schedule 13, paragraph 7.

Extent

Pt XVII c. IIIA s. 261K(1)-(2): United Kingdom

✔ Law In Force

[261L.— Modification or waiver of rules

(1) In this section “rules” means—

- (a) contractual scheme rules; or
- (b) contractual scheme particulars rules.

(2) The FCA may, on the application or with the consent of any person to whom rules apply, direct that all or any of the rules—

- (a) are not to apply to that person as respects a particular scheme; or
- (b) are to apply to that person, as respects a particular scheme, with such modifications as may be specified in the direction.

(3) The FCA may, on the application or with the consent of the operator and depositary 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) Section 138A and subsections (1) to (3), (5) and (6) of section 138B² have effect in relation to a direction under subsection (2) as they have effect in relation to a direction under section 138A(1) but with the following modifications—

- (a) any reference to the person is to be read as a reference to the person mentioned in subsection (2); and
- (b) section 138B(3)(c) is to be read, in relation to a participant in the scheme, as if the word “commercial” were omitted.

(5) Section 138A and subsections (1) to (3), (5) and (6) of section 138B have effect in relation to a direction under subsection (3) as they have effect in relation to a direction under section 138A(1) but with the following modifications—

- (a) subsection (4)(a) of section 138A is to be read as if the words “by the person” were omitted;
- (b) section 138B(3)(c) and the definition of “immediate group” in section 421ZA³ as it applies to that section are to be read as if references to the person were references to each of the operator and the depositary of the scheme;
- (c) section 138B(3)(c) is to be read, in relation to a participant in the scheme, as if the word “commercial” were omitted;
- (d) section 138B(5) is to be read as if the reference to the person concerned were a reference to the scheme concerned and to its operator and depositary; and
- (e) section 138A(7) is to be read as if the reference to the person were a reference to the operator and depositary of the scheme acting jointly.

] ¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)
- ² Sections 138A and 138B were substituted by section 24(1) of the Financial Services Act 2012.
- ³ Section 421ZA was inserted by section 48(2) of the Financial Services Act 2012.

Extent

Pt XVII c. IIIA s. 261L(1)-(5)(e): United Kingdom

*[Co-ownership schemes: rights and liabilities of participants]*¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)
-

Law In Force

[261M.— Contracts

(1) In this section “authorised contract” means a contract which the operator of a co-ownership scheme is authorised to enter into on behalf of the relevant participants for the purposes of, or in connection with, the acquisition, management or disposal of property subject to the scheme (but does not include a contract by which a person becomes a participant in the scheme).

(2) The relevant participants are—

- (a) in the case of a contract relating to a stand-alone co-ownership scheme, the participants in the scheme;
- (b) in the case of a contract relating to an umbrella co-ownership scheme, the participants in the sub-scheme of the umbrella co-ownership scheme to which the contract relates.

(3) The operator on behalf of the relevant participants may—

- (a) exercise rights under an authorised contract;
 - (b) bring and defend proceedings for the resolution of any matter relating to an authorised contract; and
 - (c) take action in relation to the enforcement of any judgment given in such proceedings.
- (4) The relevant participants may not themselves do any of the things mentioned in subsection (3), but this does not affect their rights as against the operator.
- (5) A person who enters into a contract which purports to be an authorised contract is deemed to have actual knowledge of the scope of the authority given to the operator by the contractual scheme deed.
- (6) The validity of an authorised contract is not to be called into question on the ground that a participant lacks capacity to authorise the operator to enter into such a contract.
- (7) An authorised contract must make provision for any property which is acquired under or by virtue of the contract to be held by, or to the order of, the depositary of the scheme concerned.

] ¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261M(1)-(7): United Kingdom

Law In Force

[261N.— Effect of becoming or ceasing to be a participant

- (1) A person who at any time becomes a participant in a relevant scheme acquires the rights and becomes subject to the liabilities to which the other participants in the relevant scheme are entitled or subject at that time under, or in connection with, authorised contracts.
- (2) A person who ceases to be a participant in a relevant scheme ceases to have any of the rights and to be subject to any of the liabilities to which a participant in the relevant scheme is entitled or subject under, or in connection with, authorised contracts.
- (3) In this section—
- (a) “authorised contract” has the meaning given in section 261M(1); and
 - (b) each of the following is a “relevant scheme”—
 - (i) a stand-alone co-ownership scheme; and
 - (ii) a sub-scheme of an umbrella co-ownership scheme.

] ¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261N(1)-(3)(b)(ii): United Kingdom

Law In Force

[261O.— Limited liability

(1) The debts of a relevant scheme are to be paid by the operator out of the property subject to the relevant scheme.

(2) The participants in a relevant scheme are not liable for the debts of the relevant scheme beyond the amount of the property subject to the relevant scheme which is available to the operator to meet the debts.

(3) In this section—

(a) a reference to the debts of a relevant scheme is a reference to debts and obligations incurred under, or in connection with, authorised contracts;

(b) “authorised contract” has the meaning given in section 261M(1); and

(c) “relevant scheme” has the meaning given in section 261N(3).

] ¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261O(1)-(3)(c): United Kingdom

Law In Force

[261P.— Segregated liability in relation to umbrella co-ownership schemes

(1) The property subject to a sub-scheme of an umbrella co-ownership scheme must not be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-scheme.

(2) Any provision contained in any contract, agreement or other document is void in so far as it is inconsistent with subsection (1), and any transaction involving the application of property in contravention of that subsection is void.

(3) The FCA may give a direction under section 261X(2) in relation to a sub-scheme of an umbrella co-ownership scheme as if the sub-scheme were an authorised contractual scheme, but this subsection does not enable the FCA to apply to the court for an order under section 261Y in relation to a sub-scheme of an umbrella co-ownership scheme.

(4) Where such a direction is given, the reference in section 261Z1(6) to the scheme is to be read as a reference to the sub-scheme concerned.

] ¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261P(1)-(4): United Kingdom

[Alterations]¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)
-

Law In Force

[261Q.— Alteration of contractual schemes and changes of operator or depositary

- (1) This section applies where the operator of an authorised contractual scheme proposes to make an alteration to the scheme, other than an alteration—
- (a) to which section 261S applies; or
 - (b) to which Part 4 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (mergers) applies.
- (2) The operator must give written notice of the proposal to the FCA.
- (3) Any notice given in respect of a proposal to alter the scheme involving a change in the contractual scheme 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 contractual scheme rules.
- (4) The operator of an authorised contractual scheme must give written notice to the FCA of any proposal to replace the depositary of the scheme.
- (5) The depositary of an authorised contractual scheme must give written notice to the FCA of any proposal to replace the operator of the scheme.
- (6) Effect is not to be given to any proposal of which notice has been given under subsection (2), (4) or (5) unless—
- (a) the FCA, 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 operator or the depositary having received from the FCA a warning notice under section 261R in respect of the proposal.
- (7) The FCA must not approve a proposal to replace the operator or the depositary of an authorised contractual scheme unless it is satisfied that, if the proposed replacement is made, the scheme will continue to comply with the requirements of section 261D(4) to (9).

]¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261Q(1)-(7): United Kingdom

Law In Force

[261R.— Procedure when refusing approval of a proposal under section 261Q

- (1) If the FCA proposes to refuse approval of a proposal under section 261Q to replace the depositary or operator of an authorised contractual scheme, it must give a warning notice to the person by whom notice of the proposal was given under section 261Q(4) or (5).
- (2) If the FCA proposes to refuse approval of a proposal under section 261Q to alter an authorised contractual scheme, it must give separate warning notices to the operator and the depositary of the scheme.
- (3) To be valid the warning notice must be received by the person to whom it is given 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 FCA decides to refuse approval—
- (a) it must give that person a decision notice; and
 - (b) that person may refer the matter to the Tribunal.

] ¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261R(1)-(4)(b): United Kingdom

Law In Force

[261S.— Proposal to convert to a non-feeder UCITS

- (1) This section applies where the operator of an authorised contractual scheme which is a feeder UCITS proposes to make an alteration to the scheme which—
- (a) involves a change in the contractual scheme deed, and
 - (b) will enable the scheme to convert into a UCITS which is not a feeder UCITS.
- (2) The operator must give written notice of the proposal to the FCA.
- (3) Any notice given in respect of such a proposal must be accompanied by—
- (a) a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the contractual scheme rules; and
 - (b) the specified information.

- (4) The FCA must, within 15 working days after the date on which it received the notice under subsection (2), give—
- (a) written notice to the operator of the scheme that the FCA approves the proposed amendments to the contractual scheme deed, or
 - (b) separate warning notices to the operator and depositary of the scheme that the FCA proposes to refuse approval of the proposed amendments.
- (5) Effect is not to be given to any proposal of which notice has been given under subsection (2) unless the FCA, by written notice, has given its approval to the proposal.
- (6) If, having given a warning notice to a person, the FCA decides to refuse approval—
- (a) it must give that person a decision notice; and
 - (b) that person may refer the matter to the Tribunal.
- (7) Subsection (8) applies where—
- (a) the notice given under subsection (2) relates to a proposal to amend the contractual scheme deed of a feeder UCITS to enable it to convert into a UCITS which is not a feeder UCITS following the winding-up of its master UCITS; and
 - (b) the proceeds of the winding-up are to be paid to the feeder UCITS before the date on which the feeder UCITS proposes to start investing in accordance with the new investment objectives and policy provided for in its amended contractual scheme deed and contractual scheme rules.
- (8) Where this subsection applies, the FCA may only approve the proposal subject to the conditions set out in section 283A(5) and (6)².
- (9) In this section “specified” means—
- (a) specified in rules made by the FCA to implement the UCITS directive, or
 - (b) specified in any directly applicable EU regulation or decision made under the UCITS directive.

] ¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

² Section 283A was inserted by S.I. 2011/1613 and amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(f).

Extent

Pt XVII c. IIIA s. 261S(1)-(9)(b): United Kingdom

*[Exclusion clauses]*¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

✔ Law In Force

[261T.— Avoidance of exclusion clauses

Any provision—

- (a) of the contractual scheme deed of an authorised contractual scheme, or
- (b) in the case of an authorised contractual scheme which is a partnership scheme, of the contract under which the depositary of the scheme is appointed,

is void in so far as it would have the effect of exempting the operator or the depositary from liability for any failure to exercise due care and diligence in the discharge of its functions in respect of the scheme.

] ¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261T(a)-(b): United Kingdom

[Ending of authorisation] ¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

✔ Law In Force

[261U.— Revocation of authorisation order otherwise than by consent

(1) An authorisation order may be revoked by an order made by the FCA if it appears to the FCA that—

- (a) one or more of the requirements for the making of the order are no longer satisfied;
- (b) the operator or depositary of the scheme concerned has contravened a requirement imposed on the operator or depositary by or under this Act;
- (c) the operator or depositary of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the FCA 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 FCA may take into account any matter relating to—

- (a) the scheme;
- (b) the operator or depositary;
- (c) any person employed by or associated with the operator or depositary in connection with the scheme;
- (d) any director of the operator or depositary;

- (e) any person exercising influence over the operator or depositary;
- (f) any body corporate in the same group as the operator or depositary;
- (g) any director of any such body corporate;
- (h) any person exercising influence over any such body corporate.

] ¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261U(1)-(2)(h): United Kingdom

Law In Force

[261V.— Procedure for revoking authorisation order

(1) If the FCA proposes to make an order under section 261U revoking an authorisation order (“a revoking order”), it must give separate warning notices to the operator and the depositary of the scheme.

(2) If the FCA 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.

] ¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261V(1)-(2): United Kingdom

Law In Force

[261W.— Requests for revocation of authorisation order

(1) An authorisation order may be revoked by an order made by the FCA at the request of the operator or depositary of the scheme concerned.

(2) If the FCA makes an order under subsection (1), it must give written notice of the order to the operator and depositary of the scheme concerned.

(3) The FCA 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 an EU obligation.

(4) If the FCA proposes to refuse a request under this section, it must give separate warning notices to the operator and the depositary of the scheme.

(5) If the FCA 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.

] ¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261W(1)-(5): United Kingdom

[Powers of intervention] ¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Law In Force

[261X.— Directions

- (1) The FCA may give a direction under this section if it appears to the FCA that—
- (a) one or more of the requirements for the making of an authorisation order are no longer satisfied;
 - (b) the operator or depositary of an authorised contractual scheme has contravened, or is likely to contravene, a requirement imposed—
 - (i) by or under this Act; or
 - (ii) by any directly applicable EU regulation or decision made under the UCITS directive;
 - (c) the operator or depositary of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the FCA 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 operator of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme;
 - (b) require the operator and depositary 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.
- (5) If a person contravenes a direction under this section, section 138D² applies to the contravention as it applies to a contravention mentioned in that section.

- (6) The FCA may revoke or vary a direction given under this section, either on its own initiative or on the application of a person to whom the direction was given, if it appears to the FCA—
- (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.

] ¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)
- ² Section 138D was substituted by section 24(1) of the Financial Services Act 2012.

Extent

Pt XVII c. IIIA s. 261X(1)-(6)(b): United Kingdom

Law In Force

[261Y.— Applications to the court

- (1) If the FCA could give a direction under section 261X, it may also apply to the court for an order—
- (a) removing the operator or the depositary, or both the operator and the depositary, of the scheme; and
 - (b) replacing the person or persons removed with a suitable person or persons nominated by the FCA.
- (2) The FCA 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 261D(4) to (9) would be complied with.
- (3) If it appears to the FCA 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 operator or the depositary, or both the operator and the depositary, 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.
- (5) The court may, on the application of the FCA, rescind any such order as is mentioned in subsection (3) and substitute such an order as is mentioned in subsection (1).
- (6) The FCA must give written notice of the making of an application under this section to the operator and depositary 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.

] ¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261Y(1)-(7)(b): United Kingdom

Law In Force

[261Z.— Winding up or merger of master UCITS

(1) Subsection (2) applies if a master UCITS which has one or more feeder UCITS which are authorised contractual schemes is wound up, whether as a result of a direction given by the FCA under section 257² or 261X, an order of the court under section 258³ or 261Y, rules made by the FCA or otherwise.

(2) The FCA must direct the operator and depositary of any authorised contractual scheme which is a feeder UCITS of the master UCITS to wind up the feeder UCITS unless—

- (a) the FCA approves under section 283A the investment by the feeder UCITS of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in units of another UCITS or master UCITS; or
- (b) the FCA approves under section 261S an amendment of the contractual scheme deed of the feeder UCITS which would enable it to convert into a UCITS which is not a feeder UCITS.

(3) Subsection (4) applies if a master UCITS which has one or more feeder UCITS which are authorised contractual schemes—

- (a) merges with another UCITS, or
- (b) is divided into two or more UCITS.

(4) The FCA must direct the operator and depositary of any authorised contractual scheme which is a feeder UCITS of the master UCITS to wind up the scheme unless—

- (a) the FCA approves under section 283A the investment by the scheme of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in the units of—
 - (i) the master UCITS which results from the merger;
 - (ii) one of the UCITS resulting from the division; or
 - (iii) another UCITS or master UCITS;
- (b) the FCA approves under section 261S an amendment of the contractual scheme deed of the scheme concerned which would enable it to convert into a UCITS which is not a feeder UCITS.

] ¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)
- ² Section 257 was amended by the Financial Services Act 2012, Schedule 18, paragraphs 9(1) and (2)(c) and 12.
- ³ Sections 258 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(c).

ExtentPt XVII c. IIIA s. 261Z(1)-(4)(b): United Kingdom

✔ Law In Force

[261Z1.— Procedure on giving directions under section 261X or 261Z and varying them on FCA's own initiative

- (1) A direction under section 261X or 261Z 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 under section 261X may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is exercising its power under that section, considers that it is necessary for the direction to take effect immediately (or on that date).
- (3) If the FCA proposes to give a direction under section 261X or 261Z, or gives a direction under either section with immediate effect, it must give separate written notice to the operator and the 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 FCA'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 representations may be made to the FCA within such period as may be specified in it (whether or not the matter has been referred to the Tribunal); and
 - (e) inform the person to whom it is given of the right to refer the matter to the Tribunal.
- (5) If the direction imposes a requirement under section 261X(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 is given under section 261X(2)(b) or section 261Z(2) or (4), 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 FCA may extend the period allowed under the notice for making representations.
- (8) If, having considered any representations made by a person to whom the notice was given, the FCA 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 the depositary of the scheme concerned.
- (9) If, having considered any representations made by a person to whom the notice was given, the FCA 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 the depositary of the scheme concerned.

(10) A notice given under subsection (8) must inform the persons to whom it is given of the 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 the 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 FCA'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).

] ¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261Z1(1)-(14): United Kingdom

Law In Force

[261Z2.— Procedure: refusal to revoke or vary direction

(1) If on an application under section 261X(6) for a direction to be revoked or varied the FCA 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 FCA 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.

] ¹

Notes

- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261Z2(1)-(2)(b): United Kingdom

✔ Law In Force

[261Z3.— Procedure: revocation of direction and grant of request for variation

(1) If the FCA decides on its own initiative to revoke a direction under section 261X it must give separate written notice of its decision to the operator and the depositary of the scheme.

(2) If on an application under section 261X(6) for a direction to be revoked or varied the FCA 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 FCA may publish such information about the revocation or variation, in such way, as it considers appropriate.

] ¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261Z3(1)-(4): United Kingdom

✔ Law In Force

[261Z4.— Information for home state regulator

(1) Subsection (2) applies if, in accordance with rules made by the FCA to implement Article 66 of the UCITS directive, the FCA is informed by the operator of an authorised contractual scheme which is a master UCITS that a feeder UCITS which invests in units of the scheme is an EEA UCITS.

(2) The FCA must immediately inform the home state regulator of the feeder UCITS of the investment made by that UCITS in the master UCITS.

] ¹

Notes

¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261Z4(1)-(2): United Kingdom

✔ Law In Force

[261Z5.— Information for feeder UCITS

(1) The FCA must immediately inform the operator of any authorised contractual scheme which is a feeder UCITS of an authorised unit trust scheme, an authorised contractual scheme or an authorised open-ended investment company (the master UCITS) of—

- (a) any failure of which the FCA becomes aware by the master UCITS to comply with a provision made in implementation of Chapter VIII of the UCITS directive;
 - (b) any warning notice or decision notice given to the master UCITS in relation to a contravention of any provision made in implementation of Chapter VIII of the UCITS directive by or under any enactment or in rules of the FCA;
 - (c) any information reported to the FCA pursuant to rules of the FCA made to implement Article 106(1) of the UCITS directive which relates to the master UCITS, or to one or more of its directors, or its management company, trustee, depository or auditor.
- (2) The FCA must immediately inform the operator of any authorised contractual scheme which is a feeder UCITS of an EEA UCITS of any information received from the home state regulator of the EEA UCITS in relation to—
- (a) any failure by the EEA UCITS to comply with any requirement in Chapter VIII of the UCITS directive;
 - (b) any decision or measure imposed on the EEA UCITS under provisions implementing Chapter VIII of the UCITS directive;
 - (c) any information reported to the home state regulator pursuant to Article 106(1) of the UCITS directive relating to the EEA UCITS, its operator, depository or auditor.
- (3) Where the FCA has the information described in subsection (1)(a), (b) or (c) in relation to an authorised contractual scheme which is a master UCITS for one or more feeder UCITS which are EEA UCITS, the FCA must immediately give that information to the home state regulator of each feeder UCITS established outside the United Kingdom.
-] ¹

Notes


- ¹ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(12) (June 6, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. IIIA s. 261Z5(1)-(3): United Kingdom

CHAPTER IV

OPEN-ENDED INVESTMENT COMPANIES

 Law In Force

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 [the United Kingdom] ¹ 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—
 - (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 [FCA]² ;
- (j) enabling the [FCA]² 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 [FCA]² 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 [FCA]² ;
- (c) in the case of provision made by virtue of subsection (2)(l), authorise the making of rules by the [FCA]² ;
- (d) confer jurisdiction on any court or on the Tribunal;
- (e) provide for fees to be charged by the [FCA]² 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 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.

Notes

¹ Words substituted by Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011/1265 art.12(3) (May 12, 2011)

² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(c) (April 1, 2013)

Commencement

Pt XVII c. IV s. 262(1)-(5)(b): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XVII c. IV s. 262(1)-(5)(b): England, Wales, Scotland

Law In Force

Amendment(s) Pending

263. Amendment of section 716 Companies Act 1985.

In section 716(1) of the 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”.

Amendments Pending

Pt XVII c. IV s. 263: repealed by Companies Act 2006 c. 46, Sch. 16 para. 1 (date to be appointed)

Commencement

Pt XVII c. IV s. 263: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVII c. IV s. 263: England, Wales, Scotland

CHAPTER V**RECOGNISED OVERSEAS SCHEMES***Schemes constituted in other EEA States*

Law In Force

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; [...]¹
 - [(b) the home state regulator of the operator of the scheme has transmitted to the [FCA]³ notice of the operator's intention to invite persons in the United Kingdom to participate in the scheme; and
 - (c) the notice from the home state regulator—
 - (i) complies with the requirements of any directly applicable Community regulation or decision made under the UCITS directive, and
 - (ii) is accompanied by such other information as may be prescribed.

] ²

(2)-(4) [...]⁴

(5) For the purposes of this section a collective investment scheme is constituted in another EEA State [(“the home state”)]⁵ if–

- (a) it is constituted under the law of [the home state]⁶ by a contract or under a trust and is managed by a body corporate incorporated under [the law of any EEA State]⁷ ; or
- (b) it takes the form of an open-ended investment company incorporated under [the law of the home state]⁸ .

(6) The operator of a recognised scheme may give written notice to the [FCA]³ 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.

Notes

- ¹ Word repealed by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(24)(a) (July 1, 2011)
- ² S.264(1)(b) and (c) substituted for s.264(1)(b) by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(24)(b) (July 1, 2011)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(d) (April 1, 2013)
- ⁴ Repealed by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(24)(c) (July 1, 2011)
- ⁵ Words inserted by Undertakings for Collective Investment in Transferable Securities (Amendment) Regulations 2012/2015 reg.4(a) (August 24, 2012)
- ⁶ Words substituted by Undertakings for Collective Investment in Transferable Securities (Amendment) Regulations 2012/2015 reg.4(b)(i) (August 24, 2012)
- ⁷ Words substituted by Undertakings for Collective Investment in Transferable Securities (Amendment) Regulations 2012/2015 reg.4(b)(ii) (August 24, 2012)
- ⁸ Words substituted by Undertakings for Collective Investment in Transferable Securities (Amendment) Regulations 2012/2015 reg.4(c) (August 24, 2012)

Commencement

Pt XVII c. V s. 264(1)-(1)(b), (3)(c): February 25, 2001 for the purposes of making orders or regulations; September 3, 2001 in relation to the giving of notice under 2000 c.8 s.264(1) of intention to make invitations no sooner than December 1, 2001, the coming into force of s.19 and in relation to the giving of notice under s.264(2) or (6); December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Pt XVII c. V s. 264(2)-(2)(b): September 3, 2001 in relation to the giving of notice under 2000 c.8 s.264(1) of intention to make invitations no sooner than December 1, 2001 the coming into force of s.19 and in relation to the giving of notice under s.264(2) or (6); December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Pt XVII c. V s. 264(3): February 25, 2001

Pt XVII c. V s. 264(3)(a)-(3)(b), (4)-(7): September 3, 2001 in relation to the giving of notice under 2000 c.8 s.264(1) of intention to make invitations no sooner than December 1, 2001, the coming into force of s.19 and in relation to the giving of notice under s.264(2) or (6); December 1, 2001 otherwise (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent


Pt XVII c. V s. 264(1)-(7): United Kingdom

 Repealed

265.— [...] ¹

Notes

¹ Repealed by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(25) (July 1, 2011)

 Law In Force

266.— Disapplication of rules.

(1) Apart from—

- (a) financial promotion rules, and
- (b) rules under section 283(1),

rules made by the [FCA] ¹ 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.

[(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

(2) “Scheme” means a scheme which is a recognised scheme by virtue of section 264.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(e) (April 1, 2013)


² Added by Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003/2066 Pt 3 reg.9 (February 13, 2004)

Commencement

Pt XVII c. V s. 266(1)-(2): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XVII c. V s. 266(1)-(2): United Kingdom

 Law In Force

267.— Power of [FCA] ¹ to suspend promotion of scheme.

(1) Subsection (2) applies if it appears to the [FCA] ² 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 [FCA] ² 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.
- (4) The [FCA]² 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 [FCA]² that the direction should take effect or continue in force in a different form.
- (5) The [FCA]² 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 [FCA]² –
- (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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.13(b) (April 1, 2013)

² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.13(a) (April 1, 2013)

Commencement

Pt XVII c. V s. 267(1)-(9): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVII c. V s. 267(1)-(9): United Kingdom

Law In Force

268.— Procedure on giving directions under section 267 and varying them on [FCA's]¹ 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 [FCA]², 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 FCA]³ 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 [FCA's]⁴ reasons for giving the direction and for its determination as to when the direction takes effect;
 - (d) inform the operator that he may make representations to the [FCA]⁵ 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 [FCA]⁵ 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 [FCA]⁵ decides—
- (a) to give the direction in the way proposed, or
 - (b) if it has been given, not to revoke the direction.
- (7) [The FCA]⁶ 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 [FCA]⁷ 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 FCA]⁸ 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 [FCA's]⁹ 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).

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.14(i) (April 1, 2013)

- ² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.14(a) (April 1, 2013)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.14(b) (April 1, 2013)
- ⁴ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.14(c) (April 1, 2013)
- ⁵ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.14(d) (April 1, 2013)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.14(e) (April 1, 2013)
- ⁷ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.14(f) (April 1, 2013)
- ⁸ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.14(g) (April 1, 2013)
- ⁹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.14(h) (April 1, 2013)

Commencement

Pt XVII c. V s. 268(1)-(14): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVII c. V s. 268(1)-(14): United Kingdom

Law In Force

269.— Procedure on application for variation or revocation of direction.

(1) If, on an application under subsection (4) or (5) of section 267, the [FCA]¹ 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 [FCA]¹ decides—
(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 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 [FCA]¹ decides to grant the application it must give the operator of the scheme concerned written notice.

(5) If the [FCA]¹ 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 FCA]² must inform the competent authorities in the scheme's home State of any notice given under this section.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.15(a) (April 1, 2013)

² Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.15(b) (April 1, 2013)

Commencement

Pt XVII c. V s. 269(1)-(6): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVII c. V s. 269(1)-(6): United Kingdom

[...]¹**Notes**

- ¹ Repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.18 (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9 and Sch.1 para.45)

R Repealed

270.— [...]¹

Notes

- ¹ Repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.18 (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9 and Sch.1 para.45)

R Repealed

271.— [...]¹

Notes

- ¹ Repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.18 (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9 and Sch.1 para.45)

Individually recognised overseas schemes

✓ Law In Force

272.— Individually recognised overseas schemes.

- (1) The [FCA]¹ 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, [and]²
 - (c) [...]³
 - (d) appears to the [FCA]¹ 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 [FCA]¹ 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 [FCA]¹ considers the most appropriate, having regard to the nature of scheme in respect of which the application is made—

(a) authorised unit trust schemes;

[(aa) authorised contractual schemes which are co-ownership schemes;

(ab) authorised contractual schemes which are partnership schemes;]⁴

(b) authorised open-ended investment companies;

[(c) any two or more of the kinds of collective investment scheme mentioned in paragraphs (a) to (b).]⁵

(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.

(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 [FCA]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(f) (April 1, 2013)

² Word inserted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.19(a) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

³ Repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.19(b) (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

⁴ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(14)(a) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)

⁵ Substituted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(14)(b) (June 6, 2013: substitution has effect subject to transitional provision specified in SI 2013/1388 reg.24)

Commencement

Pt XVII c. V s. 272(1)-(15): September 3, 2001 for the purposes of orders and applications for orders coming into force not sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise

Extent

Pt XVII c. V s. 272(1)-(15): United Kingdom

Law In Force

273. Matters that may be taken into account.

For the purposes of subsections (8)(b) and (9)(b) of section 272, the [FCA]¹ 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.
-

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(f) (April 1, 2013)

Commencement

Pt XVII c. V s. 273(a)-(f): September 3, 2001 for the purposes of orders and applications for orders coming into force not sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise

Extent

Pt XVII c. V s. 273(a)-(f): United Kingdom

Law In Force

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 [FCA]¹ by the operator of the scheme.

(2) The application—

- (a) must be made in such manner as the [FCA]¹ 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 [FCA]¹ may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it, the [FCA]¹ 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 [FCA]¹ 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 [FCA]¹ may direct.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(f) (April 1, 2013)

Commencement

Pt XVII c. V s. 274(1)-(5): September 3, 2001 for the purposes of orders and applications for orders coming into force not sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise

Extent

Pt XVII c. V s. 274(1)-(5): United Kingdom

Law In Force

275.— Determination of applications.

(1) An application under section 272 must be determined by the [FCA]¹ before the end of the period of six months beginning with the date on which it receives the completed application.

(2) The [FCA]¹ 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) If the [FCA]¹ makes an order under section 272(1), it must give written notice of the order to the applicant.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(f) (April 1, 2013)

Commencement

Pt XVII c. V s. 275(1)-(3): September 3, 2001 for the purposes of orders and applications for orders coming into force not sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise

Extent

Pt XVII c. V s. 275(1)-(3): United Kingdom

Law In Force

276.— Procedure when refusing an application.

(1) If the [FCA]¹ proposes to refuse an application made under section 272 it must give the applicant a warning notice.

(2) If the [FCA]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(f) (April 1, 2013)

Commencement

Pt XVII c. V s. 276(1)-(2)(b): September 3, 2001 for the purposes of orders and applications for orders coming into force not sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise

Extent

Pt XVII c. V s. 276(1)-(2)(b): United Kingdom

Law In Force

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 [FCA]¹ of any proposed alteration to the scheme.

(2) Effect is not to be given to any such proposal unless—

- (a) the [FCA]¹, 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 [FCA]¹ 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 [FCA]¹—

- (a) by the operator, trustee or depositary (as the case may be); or
- (b) by the person who is to replace him.

[(4) If a change is made, or is to be made, to the law which applies to such a scheme in the country or territory in which it is managed and the change affects or will affect any of the matters mentioned at section 272(2) to (4), the operator of the scheme must give written notice of the change to the FCA—

- (a) at least one month before the change takes effect; or
- (b) if that is not reasonably practicable, as soon as it is reasonably practicable to do so.

(5) A notice under this section—

- (a) must be given in such manner as the FCA may direct; and
- (b) where the notice is given under subsection (1) or (3), must include such information as the FCA may direct for the purpose of determining whether the requirements for the making of an order under section 272 in respect of the scheme would continue to be satisfied following the alteration or replacement that is the subject of the notice.

] ²

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(f) (April 1, 2013)

² Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.20 (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Commencement

Pt XVII c. V s. 277(1)-(3)(b): September 3, 2001 for the purposes of orders and applications for orders coming into force not sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise

Extent

Pt XVII c. V s. 277(1)-(5)(b): United Kingdom

Law In Force

[277A.— Regular provision of information relating to compliance with requirements for recognition

(1) The operator of a scheme recognised by virtue of section 272 must provide to the FCA such information as the FCA may direct, at such times as the FCA may direct, for the purpose of determining whether the requirements for the making of an order under section 272 in respect of the scheme continue to be satisfied.

(2) A direction under subsection (1) may not require information to be provided within the period of 12 months beginning with the date on which information was last required to be provided to the FCA in respect of the scheme pursuant to a requirement under section 274(2)(c) or a direction under subsection (1) or section 277(5)(b).

(3) The information must be provided in such manner as the FCA may direct.

] ¹

Notes

¹ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.21 (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Extent

Pt XVII c. V s. 277A(1)-(3): United Kingdom

Law In Force

[278. Rules as to scheme particulars.

The FCA may make rules imposing duties or liabilities on the operator of a scheme recognised under [section 272] ² for purposes corresponding to those for which rules may be made under section 248 in relation to authorised unit trust schemes.] ¹

Notes

¹ Existing heading repealed and ss 278-282 moved under the heading entitled "Individually recognised overseas schemes" by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.22 (July 22, 2013: amendment has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

² Words repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.23 (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Extent

Pt XVII c. V s. 278: United Kingdom

✔ Law In Force

[279. Revocation of recognition.

The FCA may [...] ² revoke an order under section 272 if it appears to the FCA–

- (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 FCA information which is false or misleading in a material particular;
- (c) [...] ³ 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.

] ¹

Notes

- ¹ Existing heading repealed and ss 278-282 moved under the heading entitled "Individually recognised overseas schemes" by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.22 (July 22, 2013: amendment has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ² Words repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.24(a) (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ³ Words repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.24(b) (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Extent

Pt XVII c. V s. 279(a)-(d): United Kingdom

✔ Law In Force

[280.— Procedure.

- (1) If the FCA proposes to [make an order under section 279] ² 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 FCA decides to [...] ³ 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.

] ¹

Notes

- ¹ Existing heading repealed and ss 278-282 moved under the heading entitled "Individually recognised overseas schemes" by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.22 (July 22, 2013: amendment has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ² Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.25(a) (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ³ Words repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.25(b) (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Extent

Pt XVII c. V s. 280(1)-(2)(b): United Kingdom

 Law In Force
[281. Directions.

(1) In this section a “relevant recognised scheme” means a scheme recognised under [section 272]².

(2) If it appears to the FCA that–

- (a) the operator, trustee or depository 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 depository of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the FCA information which is false or misleading in a material particular,
- (c) one or more of the requirements for the recognition of [such a scheme]³ 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.

] ¹

Notes

-
- ¹ Existing heading repealed and ss 278-282 moved under the heading entitled "Individually recognised overseas schemes" by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.22 (July 22, 2013: amendment has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ² Words repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.26(a) (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ³ Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.26(b) (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Extent

Pt XVII c. V s. 281(1)-(2)(d): United Kingdom

 Law In Force
[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 FCA, 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).

(3) If the FCA 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 FCA'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 FCA 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 FCA 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 FCA 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 FCA 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 FCA'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).

]¹

Notes

- ¹ Existing heading repealed and ss 278-282 moved under the heading entitled "Individually recognised overseas schemes" by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.22 (July 22, 2013: amendment has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Extent

Pt XVII c. V s. 282(1)-(12): United Kingdom

[...]¹

Notes

- ¹ Existing heading repealed and ss 278-282 moved under the heading entitled "Individually recognised overseas schemes" by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.22 (July 22, 2013: amendment has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
-

Law In Force

278.

[s.278 is not repealed but has been moved under the heading entitled "Individually recognised overseas schemes"]¹

Notes

- ¹ Existing heading repealed and ss 278-282 moved under the heading entitled "Individually recognised overseas schemes" by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.22 (July 22, 2013: amendment has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Commencement

Pt XVII c. V s. 278: June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XVII c. V s. 278: United Kingdom

Law In Force

279.

[s.279 is not repealed but has been moved under the heading entitled "Individually recognised overseas schemes"]¹

Notes

- ¹ Existing heading repealed and ss 278-282 moved under the heading entitled "Individually recognised overseas schemes" by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.22 (July 22, 2013: amendment has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Commencement

Pt XVII c. V s. 279(a)-(d): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XVII c. V s. 279(a)-(d): United Kingdom

Law In Force

280.—

[s.280 is not repealed but has been moved under the heading entitled “Individually recognised overseas schemes”]¹

Notes

¹ Existing heading repealed and ss 278-282 moved under the heading entitled "Individually recognised overseas schemes" by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.22 (July 22, 2013: amendment has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Commencement

Pt XVII c. V s. 280(1)-(2)(b): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XVII c. V s. 280(1)-(2)(b): United Kingdom

Law In Force

281.

[s.281 is not repealed but has been moved under the heading entitled “Individually recognised overseas schemes”]¹

Notes

¹ Existing heading repealed and ss 278-282 moved under the heading entitled "Individually recognised overseas schemes" by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.22 (July 22, 2013: amendment has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Commencement

Pt XVII c. V s. 281(1)-(2)(d): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XVII c. V s. 281(1)-(2)(d): United Kingdom

Law In Force

282.—

[s.282 is not repealed but has been moved under the heading entitled “Individually recognised overseas schemes”]¹

Notes

- ¹ Existing heading repealed and ss 278-282 moved under the heading entitled "Individually recognised overseas schemes" by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.22 (July 22, 2013: amendment has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Commencement

Pt XVII c. V s. 282(1)-(12): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XVII c. V s. 282(1)-(12): United Kingdom

Facilities and information in UK

Law In Force

283.— Facilities and information in UK.

(1) The [FCA]¹ 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 as the [FCA]¹ thinks desirable in the interests of participants and as are specified in rules.

(2) The [FCA]¹ 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.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(f) (April 1, 2013)

Commencement

Pt XVII c. V s. 283(1): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Pt XVII c. V s. 283(2)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVII c. V s. 283(1)-(3): United Kingdom

**[CHAPTER 5A
MASTER-FEEDER STRUCTURES]¹**

Notes

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(26) (July 1, 2011)
-

✔ Law In Force

[283A.— Master-feeder structures

- (1) The operator of a UK UCITS may not invest a higher proportion of the property which is subject to the collective investment scheme constituted by that UCITS in units of another UCITS than is permitted by rules made by the [FCA]² implementing Article 55 of the UCITS directive unless the investment is approved by the [FCA]² in accordance with this section.
- (2) An application for approval under subsection (1) of an investment must be made by the operator of the UK UCITS in such manner, and accompanied by such information, as is required by rules made by the [FCA]².
- (3) The [FCA]² must grant an application made under subsection (2) if it is satisfied—
- (a) that the UCITS, its operator, trustee or depositary and auditor and the UCITS in which it proposes to invest, and its operator, have complied with—
 - (i) the requirements laid down in Chapter VIII of the UCITS directive, and
 - (ii) any other requirements imposed by the [FCA]² in relation to the application;
 - (b) in a case where the application is made by the operator of a feeder UCITS in respect of the investment of the proceeds of the winding-up of its master UCITS, that the proceeds of the winding up are to be paid to the feeder UCITS before the date on which the investment is to be made.
- (4) In a case within subsection (3)(b), approval must be subject to the conditions in subsections (5) and (6).
- (5) The first condition is that the feeder UCITS is to receive the proceeds of the winding-up—
- (a) in cash; or
 - (b) wholly or partly in assets other than cash in a case where the feeder UCITS so elects and each of the following so permits—
 - (i) the decision of the master UCITS that it should be wound up;
 - (ii) the trust deed [, contractual scheme deed]³ or instrument of incorporation of the feeder UCITS; and
 - (iii) either the agreement between the feeder UCITS and its master UCITS, or the internal conduct of business rules operated by the feeder UCITS and the master UCITS in accordance with rules made by the [FCA]².
- (6) The second condition is that cash received by the feeder UCITS in accordance with paragraph (5)(a) may not be reinvested before the date on which the feeder UCITS proposes to invest in the new UCITS, except for the purpose of efficient cash management.
- (7) The [FCA]² must, within 15 working days of the date on which the [FCA]² had received all the information required in relation to the application, give written notice to the operator—

- (a) that the [FCA]² approves its application, or
- (b) that the [FCA]² objects to the application.

(8) Following receipt of notice that the [FCA]² objects to the application, the operator may refer the [FCA's]² decision to the Tribunal.
]¹

Notes

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(26) (July 1, 2011)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(f) (April 1, 2013)
- ³ Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(15) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)

Extent

Pt XVII c. VA s. 283A(1)-(8): United Kingdom

Law In Force

[283B.— Reports on derivative instruments

- (1) An authorised person who is the management company in relation to a UCITS must report to the [FCA]² at specified intervals of not more than 12 months about any investment in derivative instruments during the specified period to which the report relates.
- (2) The report must be in the specified form and contain the specified information.
- (3) The [FCA]² must review the regularity and completeness of the information provided by each management company under subsection (1).
- (4) In this section, “specified” means specified—
 - (a) in rules made by the [FCA]² to implement the UCITS directive, or
 - (b) in any directly applicable Community regulation or decision made under the UCITS directive.

]¹

Notes

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(26) (July 1, 2011)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.9(2)(f) (April 1, 2013)

Extent

Pt XVII c. VA s. 283B(1)-(4)(b): United Kingdom

CHAPTER VI

INVESTIGATIONS

✔ Law In Force

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.

(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 FCA]¹ or the Secretary of State .

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.17 (April 1, 2013)

Commencement

Pt XVII c. VI s. 284(1)-(1)(c), (3)-(11): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt XVII c. VI s. 284(2)-(2)(b): February 25, 2001 for the purposes of making orders or regulations; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVII c. VI s. 284(1)-(11): United Kingdom

PART XVIII
RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES
CHAPTER I
EXEMPTION

General

☑ Law In Force

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 ; [...]¹

[(b) “recognised clearing house” means—

(i) a central counterparty in relation to which a recognition order is in force (in this Part referred to as a “recognised central counterparty”), or

(ii) a clearing house which provides clearing services in the United Kingdom without doing so as a central counterparty, and in relation to which a recognition order is in force;

(c) “EEA central counterparty” means a person established in an EEA State other than the United Kingdom who has been authorised by the competent authority of that State as a central counterparty pursuant to Article 17 of the EMIR regulation; and

(d) “third country central counterparty” means a person established in a State which is not an EEA State who has been recognised by ESMA as a central counterparty pursuant to Article 25 of the EMIR regulation.]¹

(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 by the exchange of services designed to facilitate the provision of clearing services by another person.]²

(3) [A recognised clearing house which is not a recognised central counterparty]³ is exempt from the general prohibition as respects any regulated [activity—]⁴

[(a) which is carried on for the purposes of, or in connection with, the provision of clearing services by the clearing house, or

(b) which is carried on for the purposes of, or in connection with, the provision by the clearing house of services designed to facilitate the provision of clearing services by another person.]⁴

[(3A) A recognised central counterparty is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the services or activities specified in its recognition order.

(3B) An EEA central counterparty is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the services or activities specified in its authorisation granted pursuant to Article 17 of the EMIR regulation.

(3C) A third country central counterparty is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the services or activities specified in its recognition by ESMA pursuant to Article 25 of the EMIR regulation.]⁵

[(4) The Treasury may by order amend paragraph (b) of subsection (2) or (3).]⁶

Notes

- ¹ S.285(1)(b)-(d) substituted for s.285(1)(b) by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(3)(a) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
- ² Substituted by Financial Services Act 2012 c. 21 Pt 2 s.28(2) (April 1, 2013)
- ³ Words substituted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(3)(b) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
- ⁴ Words and s.285(3)(a)-(b) substituted for words by Financial Services Act 2012 c. 21 Pt 2 s.28(3) (April 1, 2013)
- ⁵ Added by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(3)(c) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
- ⁶ Added by Financial Services Act 2012 c. 21 Pt 2 s.28(4) (April 1, 2013)

Commencement

Pt XVIII c. I s. 285(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVIII c. I s. 285(1)-(4): United Kingdom

Law In Force

[285A Powers exercisable in relation to recognised investment exchanges and clearing houses

(1) For the purposes of this Part, the FCA is “the appropriate regulator” in relation to recognised investment exchanges.

(2) For the purposes of this Part, the Bank of England is “the appropriate regulator” in relation to recognised clearing houses.

(3) In Schedule 17A—

(a) Part 1 makes provision for a memorandum of understanding between the appropriate regulators and the PRA with respect to the exercise of their functions in relation to recognised investment exchanges and clearing houses;

(b) Part 2 applies certain provisions of this Act in relation to the Bank of England in consequence of the conferring of functions on the Bank under this Part of this Act;

(c) Part 3 makes provision relating to the winding up, administration or insolvency of [recognised clearing houses]² ; and

(d) Part 4 makes provision about fees.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.29(1) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ² Words substituted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(4) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

Extent

Pt XVIII c. I s. 285A(1)-(3)(d): United Kingdom

Law In Force

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]¹ 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 Companies Act 1989 applies as a result of section 155 of that Act or a contract to which Part V of the 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.
- [(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]³ to waive the requirement in the circumstances specified in the relevant provisions.
- (4B) The “relevant provisions” for the purposes of subsection (4A) are—
- (a) in a case falling within paragraph (a) of that subsection, Article 29.2 of the markets in financial instruments directive and the Commission Regulation, and
 - (b) in a case falling within paragraph (b) of that subsection, Article 44.2 of that directive and that Regulation.

(4C) If regulations under subsection (1) require an investment exchange to make information available to the public in accordance with—

(a) Article 30.1 of the markets in financial instruments directive and the Commission Regulation, or

(b) Article 45.1 of that directive and that Regulation,

the regulations may authorise [the FCA]³ 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.]²

[(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.]⁴

(5) Requirements resulting from this section are referred to in this Part as “recognition requirements”.

[(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]³ may make a recognition order declaring the exchange to be a recognised investment exchange.]⁵

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.2(2) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

² Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Modification of Powers) Regulations 2006/2975 reg.8 (December 6, 2006)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.2(3) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

⁴ Added by Financial Services Act 2012 c. 21 Pt 2 s.30 (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

⁵ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.2 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

Commencement

Pt XVIII c. I s. 286(1)-(5): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XVIII c. I s. 286(1)-(6): United Kingdom

Applications for recognition

☑ Law In Force

287.— Application by an investment exchange.

(1) Any body corporate or unincorporated association may apply to [the FCA]¹ 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]¹ 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 FCA]¹ 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 [by another person]² of clearing services in respect of transactions effected on the exchange;
- (b) if the applicant proposes to provide [services falling within section 285(2)(b)]³ 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 [;]⁴
- [(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]⁵ 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]⁵ may reasonably require.]⁴

[(4) Subsection (3)(c) to (e) does not apply to an application by an overseas applicant.]⁶

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.3(2) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

² Words inserted by Financial Services Act 2012 c. 21 Sch.8 para.3(3)(a) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.3(3)(b) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

⁴ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.3(a) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.3(3)(c) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

⁶ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.3(b) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

Commencement

Pt XVIII c. I s. 287(1)-(3)(b): June 18, 2001 for the purposes of giving directions or imposing requirements as mentioned in s.287(2); September 3, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XVIII c. I s. 287(1)-(4): United Kingdom

Law In Force

288.— Application by a clearing house.

[(1) A body corporate or unincorporated association which is established in the United Kingdom may, where it intends to provide clearing services as a central counterparty, apply to the Bank of England in accordance with Article 17 of the EMIR regulation for an order granting authorisation for the purposes of that Article and declaring it to be a recognised central counterparty for the purposes of this Act.

(1A) A body corporate or unincorporated association may, where it intends to provide clearing services in the United Kingdom without doing so as a central counterparty, apply to the Bank of England for an order declaring it to be for the purposes of this Act a recognised clearing house which is not a recognised central counterparty.]¹

(2) [An application under subsection (1A)]² must be made in such manner as [the Bank of England]³ 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]⁴ 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 [or services falling within section 285(3)(b)]⁵ for persons other than recognised investment exchanges, particulars of the criteria which it will apply when determining to whom it will provide those services.

Notes

¹ S.288(1) and (1A) substituted for s.288(1) by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(5)(a) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

² Words substituted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(5)(b) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.4(3)(a) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.4(3)(b) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

- ⁵ Words inserted by Financial Services Act 2012 c. 21 Sch.8 para.4(4) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Commencement

Pt XVIII c. I s. 288(1)-(3)(b): June 18, 2001 for the purposes of giving directions or imposing requirements as mentioned in s.288(2); September 3, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XVIII c. I s. 288(1)-(3)(b): United Kingdom

Law In Force

289.— Applications: supplementary.

(1) At any time after receiving an application and before determining it, [the appropriate regulator]¹ 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]¹ requires in connection with an application must be provided in such form, or verified in such manner, as [the appropriate regulator]¹ may direct.

(3) Different directions may be given, or requirements imposed, by [the appropriate regulator]¹ with respect to different applications.

[(4) In relation to an application under section 288(1), this section does not apply to information which can be required under Article 17 of the EMIR regulation.]²

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.5 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

² Added by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(6) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

Commencement

Pt XVIII c. I s. 289(1)-(3): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XVIII c. I s. 289(1)-(4): United Kingdom

Law In Force

290.— Recognition orders.

[(1) If it appears to the appropriate regulator that the applicant satisfies the recognition requirements applicable in its case, the regulator may—

- (a) where the application is made under section 287, make a recognition order declaring the applicant to be a recognised investment exchange;

(b) where the application is made under section 288(1) and Article 17 of the EMIR regulation allows authorisation to be granted, make a recognition order (“a central counterparty recognition order”) granting authorisation for the purposes of that Article and declaring the applicant to be a recognised central counterparty; or

(c) where the application is made under section 288(1A), make a recognition order declaring the applicant to be a recognised clearing house which is not a recognised central counterparty.

] ¹

[(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] ³ 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

[(1D) A central counterparty recognition order must specify the services or activities linked to clearing which the applicant may provide or perform and the classes of financial instruments covered by the order.] ⁴

(2) [...] ⁵

(3) In considering an application [made under section 287 or 288(1A)] ⁶ , [the appropriate regulator] ⁷ may have regard to any information which it considers is relevant to the application.

(4) A recognition order must specify a date on which it is to take effect.

(5) Section 298 has effect in relation to a decision to refuse to make a recognition order [in respect of an investment exchange or a clearing house which is not a central counterparty] ⁸ –

(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) [...] ⁹

[(7) Where—

(a) a body corporate or unincorporated association has made an application under section 288(1), and

(b) the Bank of England has determined that application in accordance with Article 17 of the EMIR regulation,

any previous recognition order under section 290(1)(c) or 292(2)(b) shall cease to be valid.

] ¹⁰

Notes

¹ Substituted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(7)(a) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

² Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.4 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.6(3) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

- ⁴ Added by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(7)(b) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
- ⁵ Repealed by Financial Services Act 2012 c. 21 Sch.8 para.6(4) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁶ Words inserted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(7)(c) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.6(5) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁸ Words inserted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(7)(d) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
- ⁹ Repealed by Financial Services Act 2012 c. 21 Sch.8 para.6(6) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ¹⁰ Added by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(7)(e) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

Commencement

Pt XVIII c. I s. 290(1)-(6): September 3, 2001 for the purposes of recognition orders coming into force not sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVIII c. I s. 290(1)-(6): United Kingdom

Law In Force

[290ZA.— Variation of central counterparty recognition order

(1) On an application made to it in accordance with Article 15 of the EMIR regulation, the Bank of England may in accordance with Article 17 of that regulation vary a central counterparty recognition order by specifying an additional service or activity or class of financial instruments.

(2) Where Article 20(5) of the EMIR regulation applies, the Bank of England may vary a central counterparty recognition order by removing a service or activity or class of financial instruments from those specified in the order.

(3) The Bank of England may at any time vary a central counterparty recognition order for the purpose of correcting an error in, or omission from, the order.

] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(8) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

Extent

Pt XVIII c. I s. 290ZA(1)-(3): United Kingdom

✔ Law In Force

[290A Refusal of recognition on ground of excessive regulatory provision

(1) [The appropriate regulator must]² not make a recognition order if it appears to [it that]³ an existing or proposed regulatory provision of the applicant in connection with–

(a) the applicant's business as an investment exchange, [...] ⁴

(b) the provision by the applicant of clearing services, [or] ⁵

[(c) the provision by the applicant of services falling within section 285(2)(b) or (3)(b),] ⁵ 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] ⁶ 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, an overseas clearing house or a recognised central counterparty.] ⁷

] ¹

Notes

¹ Added by Investment Exchanges and Clearing Houses Act 2006 c. 55 s.4 (December 20, 2006)

² Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.7(2)(a) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.7(2)(b) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

⁴ Word repealed by Financial Services Act 2012 c. 21 Sch.8 para.7(2)(c) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

⁵ Added by Financial Services Act 2012 c. 21 Sch.8 para.7(2)(d) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

⁶ Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.7(3) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

⁷ Substituted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(9) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

Extent

Pt XVIII c. I s. 290A(1)-(6): United Kingdom

✔ Law In Force

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 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.

Commencement

Pt XVIII c. I s. 291(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVIII c. I s. 291(1)-(3): United Kingdom

✔ Law In Force

292.— Overseas investment exchanges and overseas clearing houses.

(1) An application under [section 287 or 288(1A)]¹ 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]² 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 [which is not a central counterparty]³.

(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 [, other than any such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph]⁴;
- (b) there are adequate procedures for dealing with a person who is unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the investment exchange or clearing house;
- (c) the applicant is able and willing to co-operate with [the appropriate regulator]² by the sharing of information and in other ways;
- (d) adequate arrangements exist for co-operation between [the appropriate regulator]² 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]² 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]² arrangements of the kind mentioned in subsection (3)(d) no longer exist.

[(6) Where a recognised clearing house is authorised as an EEA central counterparty or recognised as a third country central counterparty, any previous recognition order under section 290(1)(c) or 292(2)(b) shall cease to be valid.]⁵

Notes

- ¹ Word substituted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(10)(a) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.8 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ³ Words inserted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(10)(b) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
- ⁴ Words inserted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Modification of Powers) Regulations 2006/2975 reg.9 (December 6, 2006)
- ⁵ Added by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(10)(c) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

Commencement

Pt XVIII c. I s. 292(1): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Pt XVIII c. I s. 292(2)-(3)(d): September 3, 2001 for the purposes of recognition orders coming into force not sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Pt XVIII c. I s. 292(4)-(5)(c): September 3, 2001 for the purposes of recognition orders coming into force not sooner than December 1, 2001, the commencement of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVIII c. I s. 292(1)-(6): United Kingdom

[Publication of information by recognised investment exchange]¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.5 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
-

Law In Force

[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]² 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]² 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]² may reasonably require.

(6) The [FCA]² 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.

]¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.5 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

- ² Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.9 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XVIII c. I s. 292A(1)-(7): United Kingdom

Supervision

☑ Law In Force

293.— Notification requirements.

- (1) The [appropriate regulator]¹ 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]¹, 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]¹ 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]¹ without delay.
- (6) If a recognised investment exchange makes a change—
 - (a) in the arrangements it makes for the provision [by another person]² of clearing services in respect of transactions effected on the exchange, or
 - (b) in the criteria which it applies when determining to whom it will provide [services falling within section 285(2)(b)]³,it must give written notice to [the FCA and the Bank of England]⁴ without delay.
- (7) If a recognised clearing house makes a change—
 - (a) in the recognised investment exchanges for whom it provides clearing services [or services falling within section 285(3)(b)]⁵, or
 - (b) in the criteria which it applies when determining to whom (other than recognised investment exchanges) it will provide clearing services [or services falling within section 285(3)(b)]⁶,it must give written notice to [the Bank of England and the FCA]⁷ 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]⁸ rules .

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.10(2) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

² Words inserted by Financial Services Act 2012 c. 21 Sch.8 para.10(3)(a) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.10(3)(b) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.10(3)(c) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁵ Words inserted by Financial Services Act 2012 c. 21 Sch.8 para.10(4)(a) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁶ Words inserted by Financial Services Act 2012 c. 21 Sch.8 para.10(4)(b) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.10(4)(c) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁸ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.10(5) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Commencement

Pt XVIII c. I s. 293(1)-(9): June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVIII c. I s. 293(1)-(9): United Kingdom

Law In Force

[293A Information: compliance with EU requirements

The appropriate regulator may require a recognised body to give the appropriate regulator such information as the appropriate regulator reasonably requires in order to satisfy itself that the body is complying with any qualifying EU provision that is specified, or of a description specified, for the purposes of this section by the Treasury by order.]¹

Notes

- ¹ Substituted by Financial Services Act 2012 c. 21 Sch.8 para.11 (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XVIII c. I s. 293A: United Kingdom

Law In Force

294.— Modification or waiver of rules.

- (1) The [appropriate regulator]¹ 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]¹ may direct.
- (3) Subsections (4) to (6) apply to a direction given under subsection (1).
- (4) The [appropriate regulator]¹ may not give a direction unless it is satisfied that—

- (a) compliance by the recognised body with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made; and
- (b) the direction would not result in undue risk to persons whose interests the rules are intended to protect.

(5) A direction may be given subject to conditions.

(6) The [appropriate regulator]¹ may—

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

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.12 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Commencement

Pt XVIII c. I s. 294(1)-(6)(b): June 18, 2001 for the purposes of giving directions as mentioned in 2000 c.8 s.294(2); September 3, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XVIII c. I s. 294(1)-(6)(b): United Kingdom

Law In Force

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]¹ 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).]²

(a)-(b) [...] ²

(3) The report must also contain such information as may be specified in rules made by [the appropriate regulator]³ .

(4) [...] ⁴

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.13(2) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

² Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.13(3) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.13(4) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

⁴ Repealed by Financial Services Act 2012 c. 21 Sch.8 para.13(5) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Commencement

Pt XVIII c. I s. 295(1)-(4): June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVIII c. I s. 295(1)-(4): United Kingdom

Law In Force

296.— [Appropriate regulator's]¹ power to give directions.

- (1) This section applies if it appears to [the appropriate regulator]² 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.

[(1A) This section also applies [if it appears to the appropriate regulator that a recognised body]⁴ 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]⁵ .]³

- (2) [The regulator concerned]⁶ 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.

[(2A) In the case of [a recognised body other than an overseas investment exchange or overseas clearing house]⁸ , those steps may include—

- (a) the granting to [the regulator concerned]⁹ of access to the premises of [the body]¹⁰ for the purpose of inspecting—
 - (i) those premises; or
 - (ii) any documents on the premises which appear to [the regulator concerned]⁹ to be relevant for the purpose mentioned in subsection (2);
- (b) the suspension of the carrying on of any regulated activity by [the body]¹¹ for the period specified in the direction.

] ⁷

- (3) A direction under this section is enforceable, on the application of [the regulator concerned]¹² , by an injunction or, in Scotland, by an order for specific performance under section 45 of the 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]¹³ does not prevent it from being subsequently altered or revoked by the recognised body.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.14(8) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

² Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.14(2) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

³ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.7(a) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.14(3)(a) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.14(3)(b) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.14(4) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁷ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.7(b) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ⁸ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.14(5)(a) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁹ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.14(5)(b)(i) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ¹⁰ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.14(5)(b)(ii) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ¹¹ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.14(5)(c) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ¹² Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.14(6) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ¹³ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.14(7) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Commencement

Pt XVIII c. I s. 296(1)-(4): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVIII c. I s. 296(1)-(4): United Kingdom

Law In Force

[296A Additional power to direct [recognised central counterparties]²

(1) The Bank of England may direct a [recognised central counterparty]³ to take, or refrain from taking, specified action if the Bank is satisfied that it is necessary to give the direction, having regard to the public interest in—

- (a) protecting and enhancing the stability of the UK financial system,
- (b) maintaining public confidence in the stability of the UK financial system,
- (c) maintaining the continuity of the [...] ⁴ clearing services provided by the [recognised central counterparty]⁵, and
- (d) maintaining and enhancing the financial resilience of the [recognised central counterparty]⁵.

(2) The direction may, in particular—

- (a) specify the time for compliance with the direction,
- (b) require the rules of the [recognised central counterparty]⁵ to be amended, and
- (c) override such rules (whether generally or in their application to a particular case).

(3) The direction may not require the [recognised central counterparty]⁵ —

- (a) to take any steps for the purpose of securing its compliance with—
 - (i) the recognition requirements, or
 - (ii) any obligation of a kind mentioned in section 296(1)(b) or (1A), or

(b) to accept a transfer of property, rights or liabilities of another [recognised central counterparty]⁵ .

(4) If the direction is given in reliance on section 298(7) the Bank must, within a reasonable time of giving the direction, give the [recognised central counterparty]⁵ a statement of its reasons—

- (a) for giving the direction, and
- (b) for relying on section 298(7).

(5) The direction is enforceable, on the application of the Bank, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(6) The Bank may revoke a direction given under this section.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.31 (April 1, 2013)
- ² Words substituted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(11)(a) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
- ³ Words substituted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(11)(b)(i) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
- ⁴ Words repealed by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(11)(b)(ii) (April 1, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
- ⁵ Words substituted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(11)(c) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

Extent

Pt XVIII c. I s. 296A(1)-(6): United Kingdom

Law In Force

297.— Revoking recognition.

(1) A recognition order [in respect of a recognised investment exchange or in respect of a recognised clearing house which is not a recognised central counterparty]¹ may be revoked by an order made by [the appropriate regulator]² at the request, or with the consent, of the recognised body concerned.

[(1A) A central counterparty recognition order may be revoked by an order made by the Bank of England in accordance with Article 20 of the EMIR regulation.]³

(2) If it appears to [the appropriate regulator]² that a recognised body [which is not a recognised central counterparty]⁴ –

- (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.

[(2A) If it appears to [the appropriate regulator]⁶ that a recognised body [which is not a recognised central counterparty]⁷ [...]]⁸ —

(a) has not carried on the business of an investment exchange [or (as the case may be) of a clearing house]⁹ 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]⁹ 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]¹⁰ ,

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]¹¹ .]⁵

(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) [or (2A)]¹² , 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]¹³ thinks necessary or expedient.

[(6) Where [the appropriate regulator]¹³ makes an order revoking the recognition order for a body that is a recognised investment exchange, it must notify ESMA.]¹⁴

Notes

¹ Words inserted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(12)(a) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

² Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.15(2) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

³ Added by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(12)(b) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

⁴ Words inserted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(12)(c) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

⁵ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.8(a) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.15(3)(a)(i) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

⁷ Words inserted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(12)(d) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

- ⁸ Words repealed by Financial Services Act 2012 c. 21 Sch.8 para.15(3)(a)(ii) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁹ Words inserted by Financial Services Act 2012 c. 21 Sch.8 para.15(3)(b) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ¹⁰ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.15(3)(c) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ¹¹ Words inserted by Financial Services Act 2012 c. 21 Sch.8 para.15(4) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ¹² Words inserted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.8(b) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ¹³ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.15(5) (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ¹⁴ Added by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(10) (April 16, 2012)

Commencement

Pt XVIII c. I s. 297(1)-(5): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XVIII c. I s. 297(1)-(6): United Kingdom

Law In Force

298.— Directions and revocation: procedure.

(1) Before giving a direction under section 296 [or 296A]¹, or making a revocation order under [section 297(2) or (2A)]², [the appropriate regulator]³ must—

- (a) give written notice of its intention to do so to the recognised body concerned [.]⁴
- (b)-(c) [...]⁴

(2) A notice under subsection (1) must—

- (a) state why [the appropriate regulator]³ 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)-(c) [...]⁵

may make representations to [the appropriate regulator]³.

[(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).]⁶

(5) In deciding whether to—

- (a) give a direction, or
- (b) make a revocation order,

[the appropriate regulator]³ must have regard to any representations made in accordance with subsection (3).

(6) When [the appropriate regulator]³ has decided whether to give a direction under section 296 [or 296A]¹ or to make the proposed revocation order, it must—

- (a) give the recognised body written notice of its decision [.]⁷
 (b) [...] ⁷

(7) If [the appropriate regulator]³ [reasonably considers it necessary]⁸ to do so, it may give a direction under section 296 [or 296A]¹—

- (a) without following the procedure set out in this section; or
 (b) if [the appropriate regulator]³ has begun to follow that procedure, regardless of whether the period for making representations has expired.

(8) If [the appropriate regulator]³ 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).

Notes

- ¹ Words inserted by Financial Services Act 2012 c. 21 Sch.8 para.16(a) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
² Words inserted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.9 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
³ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.16(b) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
⁴ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.32(2) (April 1, 2013)
⁵ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.32(3) (April 1, 2013)
⁶ Substituted by Financial Services Act 2012 c. 21 Pt 2 s.32(4) (April 1, 2013)
⁷ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.32(5) (April 1, 2013)
⁸ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.32(6) (April 1, 2013)

Commencement

Pt XVIII c. I s. 298(1)-(8): September 3, 2001 for the purposes of revocation orders under 2000 c.8 s.297; December 1, 2001 otherwise (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XVIII c. I s. 298(1)-(8): United Kingdom

Law In Force

299.— Complaints about recognised bodies.

(1) The [appropriate regulator]¹ must make arrangements for the investigation of any relevant complaint about a recognised body.

(2) “Relevant complaint” means a complaint which the [appropriate regulator]¹ considers is relevant to the question of whether the body concerned should remain a recognised body .

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.17 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Commencement

Pt XVIII c. I s. 299(1)-(2): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XVIII c. I s. 299(1)-(2): United Kingdom

Law In Force

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.
- (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 Human Rights Act 1998.

Commencement

Pt XVIII c. I s. 300(1)-(5): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVIII c. I s. 300(1)-(5): United Kingdom

[Power to disallow excessive regulatory provision]¹

Notes

¹ Added by Investment Exchanges and Clearing Houses Act 2006 c. 55 s.1 (December 20, 2006)

Law In Force

[300A Power of [appropriate regulator]² to disallow excessive regulatory provision

- (1) This section applies where a recognised body proposes to make any regulatory provision in connection [with—]³

- [(a) its business as an investment exchange,
 (b) the provision by it of clearing services, or
 (c) the provision by it of services falling within section 285(2)(b) or (3)(b).]³
- (2) If it appears to the [appropriate regulator]² –
 (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]² may direct that the proposed provision must not be made.
- (3) A requirement is excessive if–
 (a) it is not required under [EU]⁴ 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]² 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.
]¹

Notes

- ¹ Added by Investment Exchanges and Clearing Houses Act 2006 c. 55 s.1 (December 20, 2006)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.18(b) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ³ Word and s.300A(1)(a)-(c) substituted for words by Financial Services Act 2012 c. 21 Sch.8 para.18(a) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁴ Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(2)(a) (April 22, 2011)

Extent

Pt XVIII c. I s. 300A(1)-(6): United Kingdom

Law In Force

[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]² without delay.
- (2) The [appropriate regulator]² 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]² 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 [appropriate regulator]² may reasonably require.
-] ¹

Notes

¹ Added by Investment Exchanges and Clearing Houses Act 2006 c. 55 s.2 (December 20, 2006)

² Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.19 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XVIII c. I s. 300B(1)-(3)(b): United Kingdom

Law In Force

[300C Restriction on making provision before [appropriate regulator]² decides whether to act

- (1) Where notice of a proposal to make regulatory provision is required to be given to the [appropriate regulator]² 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]² 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]² notifies the body that it is calling in the proposal, the provisions of section 300D (consideration by [appropriate regulator]² whether to disallow proposed provision) apply as to when the provision may be made.
- (4) If–
- (a) before the end of the initial period the [appropriate regulator]² notifies the body that it is not calling in the proposal, or
 - (b) the initial period ends without the [appropriate regulator]² 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.
-] ¹

Notes

¹ Added by Investment Exchanges and Clearing Houses Act 2006 c. 55 s.2 (December 20, 2006)

- ² Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.20 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XVIII c. I s. 300C(1)-(5): United Kingdom

Law In Force

[300D Consideration by [appropriate regulator]² whether to disallow proposed provision

- (1) This section applies where the [appropriate regulator]³ notifies a recognised body that it is calling in a proposal to make regulatory provision.
- (2) The [appropriate regulator]³ 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]³ may extend the period for making representations.
- (4) The [appropriate regulator]³ 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]³ notifies it of its decision not to disallow it, or
 - (b) the 30-day period specified in subsection (4) ends without the [appropriate regulator]³ having notified any decision.
- (6) If [the appropriate regulator]⁴ 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]⁵ decision is quashed and the matter is remitted to it for reconsideration, the court may give directions as to the period within which [the regulator concerned]⁶ is to complete its reconsideration, and
 - (c) the body must not make the provision until—
 - (i) [the appropriate regulator]⁷ 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]⁷ having notified any decision.
- (7) Any provision made in contravention of subsection (5) or (6) is of no effect.
-]¹

Notes

¹ Added by Investment Exchanges and Clearing Houses Act 2006 c. 55 s.2 (December 20, 2006)

² Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.21(4) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.21(2) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.21(3)(a) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.21(3)(b)(i) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.21(3)(b)(ii) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.21(3)(c) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XVIII c. I s. 300D(1)-(7): United Kingdom

Law In Force

[300E Power to disallow excessive regulatory provision: supplementary

(1) In sections 300A to 300D—

- (a) “regulatory provision” means any rule, guidance, arrangements, policy or practice, and
- (b) references to making provision shall be read accordingly as including, as the case may require, issuing guidance, entering into arrangements or adopting a policy or practice.

(2) For the purposes of those sections a variation of a proposal is treated as a new proposal.

(3) Those sections do not apply to an overseas investment exchange [, overseas clearing house or recognised central counterparty]² .

] ¹

Notes

¹ Added by Investment Exchanges and Clearing Houses Act 2006 c. 55 s.2 (December 20, 2006)

² Words substituted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(13) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

Extent

Pt XVIII c. I s. 300E(1)-(3): United Kingdom

Other matters

Law In Force

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 Companies Act 1989 (financial markets and insolvency), and
- (b) Part V of the 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]¹ 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]² , that it is appropriate for the arrangements mentioned in subsection (2) to be supervised by [the Bank]³ .

(4) The approval of the Treasury is required for–

- (a) the conditions set by the [Bank of England]⁴ 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]⁴ 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]⁴ must–

- (a) publish the list as for the time being in force; and
- (b) provide a certified copy of it to any person who wishes to refer to it in legal proceedings.

(8) A certified copy of the list is evidence (or in Scotland sufficient evidence) of the contents of the list.

(9) A copy of the list which purports to be certified by or on behalf of the [Bank of England]⁴ 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 Companies Act 1989 and Part V of the 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).

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.22(2) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

² Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.22(3)(a) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.22(3)(b) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

⁴ Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.22(4) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Commencement

Pt XVIII c. I s. 301(1)-(10)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XVIII c. I s. 301(1)-(10)(b): United Kingdom

[CHAPTER 1A
CONTROL OVER RECOGNISED INVESTMENT EXCHANGE]¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.10 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

[[Notices of acquisitions of control over recognised investment exchanges]²]¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.10 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

² Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Law In Force

[301A.— Obligation to notify [the FCA]² : acquisitions of control

(1) A person who decides to acquire or increase control over a recognised investment exchange must give [the FCA]² 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]² 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”.

[(5) Nothing in this Chapter applies to an overseas investment exchange.]³
] ¹

Notes

- ¹ Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.23 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ³ Added by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013/1908 reg.5(2) (August 26, 2013)

Extent

Pt XVIII c. IA s. 301A(1)-(6): United Kingdom

Law In Force

[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]² may reasonably require.
 - (2) The [FCA]² must publish a list of its requirements as to the form, information and accompanying documents for a section 301A notice.
 - (3) The [FCA]² may impose different requirements for different cases and may vary or waive requirements in particular cases.
-] ¹

Notes

- ¹ Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.24 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XVIII c. IA s. 301B(1)-(3): United Kingdom

Law In Force

[301C.— Acknowledgment of receipt

- (1) The [FCA]² must acknowledge receipt of a section 301A notice in writing before the end of the second working day following receipt.
 - (2) If the [FCA]² receives an incomplete section 301A notice it must inform the section 301A notice-giver as soon as reasonably practicable.
-] ¹

Notes

- ¹ Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.25 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XVIII c. IA s. 301C(1)-(2): United Kingdom

[Acquiring and increasing control]¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.10 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
-

Law In Force

[301B.—

[Existing Part 18 Chapter 1A is not repealed but has been substituted for a new Part 18 Chapter 1A consisting of ss 301A-301M]²]¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.10 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ² Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Extent

Pt XVIII c. IA s. 301B(1)-(7)(b): United Kingdom

[[Acquiring and increasing control]²]¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.10 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ² Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
-

✔ Law In Force

[301C.—

[Existing Part 18 Chapter 1A is not repealed but has been substituted for a new Part 18 Chapter 1A consisting of ss 301A-301M]²]¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.10 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ² Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Extent

Pt XVIII c. IA s. 301C(1)-(8): United Kingdom

✔ Law In Force

[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.

] ¹

Notes

- ¹ Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Extent

Pt XVIII c. IA s. 301D(1)-(6): United Kingdom

✔ Law In Force

[301E.— Disregarded holdings

(1) For the purpose of section 301D, shares and voting power that a person holds in a recognised investment exchange (“B”) or in a parent undertaking of B (“P”) are disregarded in the following circumstances.

(2) Shares held only for the purposes of clearing and settling within a short settlement cycle are disregarded.

(3) Shares held by a custodian or its nominee in a custodian capacity are disregarded, provided that the custodian or nominee is only able to exercise voting power represented by the shares in accordance with instructions given in writing.

(4) Shares representing no more than 5% of the total voting power in B or P held by an investment firm are disregarded, provided that it—

- (a) holds the shares in the capacity of a market maker (as defined in article 4.1(8) of the markets in financial instruments directive);
- (b) is authorised by its home state regulator under the markets in financial instruments directive; and
- (c) neither intervenes in the management of B or P nor exerts any influence on B or P to buy the shares or back the share price.

(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 2.1(b)]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.

] ¹

Notes

- ¹ Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
- ² Words substituted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(27) (July 1, 2011)

Extent

Pt XVIII c. IA s. 301E(1)-(9)(c): United Kingdom

[Improperly acquired shares] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.10 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

Law In Force

[301E.—

[Existing Part 18 Chapter 1A is not repealed but has been substituted for a new Part 18 Chapter 1A consisting of ss 301A-301M] ²] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.10 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ² Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Extent

Pt XVIII c. IA s. 301E(1)-(9): United Kingdom

[[Assessment procedure]²]¹**Notes**

¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.10 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

² Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

✔ Law In Force

[301F.— Assessment: general

- (1) Where the [FCA]² 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]² 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]² 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.

] ¹

Notes

¹ Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

² Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.26 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XVIII c. IA s. 301F(1)-(10): United Kingdom

✔ Law In Force

[301G.— Assessment: Procedure

- (1) The [FCA]² must act under section 301F within a period three months from the date the [FCA]² receives the completed section 301A notice (“the assessment period”).
- (2) The [FCA]² 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]² 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]² 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]² 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]³ decision to the Tribunal.
-] ¹

Notes

- ¹ Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.27(2) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.27(3) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XVIII c. IA s. 301G(1)-(6): United Kingdom

Law In Force

[301H.— Duration of approval

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

Notes

- ¹ Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

- ² Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.28 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XVIII c. IA s. 301H(1)-(3)(c): United Kingdom

[[Enforcement procedures]²]¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.10 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ² Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Law In Force

[301G.

[Existing Part 18 Chapter 1A is not repealed but has been substituted for a new Part 18 Chapter 1A consisting of ss 301A-301M]²]¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.10 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ² Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Extent

Pt XVIII c. IA s. 301G definition of "associate"- definition of "notice of control": United Kingdom

Law In Force

[301I.— Objections by the [FCA]²

- (1) The [FCA]² 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]² 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]² 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]² 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]² gives a decision notice under this section may refer the matter to the Tribunal.

]¹

Notes

¹ Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

² Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.29 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XVIII c. IA s. 301I(1)-(5): United Kingdom

Law In Force

[301J.— Restriction notices

(1) The [FCA]² 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]² 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]² 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 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]² gives a restriction notice may refer the matter to the Tribunal.
]¹

Notes

¹ Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

² Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.30 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XVIII c. IA s. 301J(1)-(7): United Kingdom

Law In Force

[301K.— Orders for sale of shares

(1) The court may, on the application of [the FCA]², 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.

]¹

Notes

¹ Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

- ² Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.31 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XVIII c. IA s. 301K(1)-(6): United Kingdom

[Offences]¹

Notes

- ¹ Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
-

✔ Law In Force

[301L.— Offences under this Chapter

- (1) A person who fails to comply with an obligation to notify [the FCA]² under section 301A(1) or (2) is guilty of an offence.
- (2) A person who gives notice to [the FCA]² 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]² 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]³ 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]⁴ 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]⁴ arose.

] ¹

Notes

- ¹ Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.32(2) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.32(3) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.32(4) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XVIII c. IA s. 301L(1)-(9): United Kingdom

[Interpretation]¹

Notes

- ¹ Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Law In Force

[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.

]¹

Notes

- ¹ Existing Chapter 1A is substituted for a new Chapter 1A consisting of ss 301A-301M by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.2 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Extent

Pt XVIII c. IA s. 301M(1)-(2)(b): United Kingdom

CHAPTER II**COMPETITION SCRUTINY**

R Repealed

302.— [...] ¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.34(a) (April 1, 2013)

Role of Director General of Fair Trading

R Repealed

303.— [...] ¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.34(a) (April 1, 2013)

R Repealed

304.— [...] ¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.34(a) (April 1, 2013)

R Repealed

305.— [...] ¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.34(a) (April 1, 2013)

Role of Competition Commission

R Repealed

306.— [...] ¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.34(a) (April 1, 2013)

Role of the Treasury

R Repealed

307.— [...]¹**Notes**

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.34(a) (April 1, 2013)

R Repealed

308.— [...]¹**Notes**

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.34(a) (April 1, 2013)

R Repealed

309.— [...]¹**Notes**

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.34(a) (April 1, 2013)

R Repealed

310.— [...]¹**Notes**

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.34(a) (April 1, 2013)

CHAPTER III**EXCLUSION FROM THE COMPETITION ACT 1998**

R Repealed

311.— [...]¹**Notes**

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.34(b) (April 1, 2013)

R Repealed

312.— [...]¹**Notes**

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.34(b) (April 1, 2013)

**[CHAPTER 3A
PASSPORT RIGHTS]¹**

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.15 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
-

[EEA market operators in United Kingdom]¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.15 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
-

Law In Force

[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]² 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.

]¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.15 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.8 para.33 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XVIII c. IIIA s. 312A(1)-(4): United Kingdom

✔ Law In Force

[312B.— Removal of passport rights from EEA market operator

(1) The [FCA]² 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]² has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement, and
- (b) the [FCA]² has first complied with subsections (3) to (9).

(2) A requirement is relevant if it is imposed—

- (a) by the operator's home state regulator in the implementation of the markets in financial instruments directive or any [EU]³ legislation made under that directive;
- (b) by provision implementing that directive, or any [EU]³ 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]² 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]² proposes to exercise the power under subsection (1) if the operator continues the contravention.

(5) The [FCA]² 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]² 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]² 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]² 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]² may allow in a particular case.

(9) If, having considered any representations made by the operator, the [FCA]² 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]² exercises the power under subsection (1) it must at the earliest opportunity notify the Commission [and ESMA]⁴ of the action taken in relation to the operator.

(11) The exemption conferred on an operator by section 312A(2) ceases to apply if the [FCA]² 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]² is satisfied that the contravention which led to the [FCA]² exercising the power under subsection (1) has been remedied.

[(13) If the [FCA]² is satisfied as mentioned in subsection (5), it may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)).]⁵
] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.15 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.34 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)
- ³ Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(2)(b) (April 22, 2011)
- ⁴ Words inserted by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(11)(a) (April 16, 2012)
- ⁵ Added by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(11)(b) (April 16, 2012)

Extent

Pt XVIII c. IIIA s. 312B(1)-(13): United Kingdom

[Recognised investment exchanges operating in EEA States (other than the United Kingdom)]¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.15 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
-

Law In Force

[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]² 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]² 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]² has complied with subsection (3).

(5) Subsection (6) applies if the [FCA]² 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]² 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.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.15 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

² Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.35 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XVIII c. IIIA s. 312C(1)-(8): United Kingdom

[Interpretation] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.15 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

Law In Force

[312D. Interpretation of Chapter 3A

In this Chapter—

“the applicable provision” means—

(a) in the case of arrangements relating to a multilateral trading facility, Article 31.5 of the markets in financial instruments directive; and

(b) in the case of arrangements relating to a regulated market, the first sub-paragraph of Article 42.6 of that directive;

“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.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.15 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

Extent

Pt XVIII c. IIIA s. 312D definition of "the applicable provision"- definition of "home state regulator": United Kingdom

[CHAPTER 3B

DISCIPLINARY MEASURES] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.33 (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of the preparation and issue of a statement under 2000 c.8 s.312J; April 1, 2013 otherwise)

Law In Force

[312E Public censure

(1) If the appropriate regulator considers that a recognised body has contravened a relevant requirement imposed on the body, it may publish a statement to that effect.

(2) Where the FCA is the appropriate regulator, a requirement is a “relevant requirement” for the purposes of this Chapter if it is—

(a) a requirement that is imposed by or under any provision of this Part that relates to a recognised investment exchange,

(b) a requirement that is imposed under any other provision of this Act by the FCA that relates to a recognised investment exchange,

(c) a requirement that is imposed by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order, or

(d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the FCA has power to prosecute under this Act (see section 401).

(3) Where the Bank of England is the appropriate regulator, a requirement is a “relevant requirement” for the purposes of this Chapter if it is—

- (a) a requirement that is imposed by or under any provision of this Part that relates to a recognised clearing house,
- (b) a requirement that is imposed under any other provision of this Act by the Bank,
- (c) a requirement that is imposed by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order, or
- (d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the Bank has power to prosecute under this Act (see section 401, as applied by paragraph 31 of Schedule 17A).

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.33 (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of the preparation and issue of a statement under 2000 c.8 s.312J; April 1, 2013 otherwise)

Extent

Pt XVIII c. IIIB s. 312E(1)-(3)(d): United Kingdom

Law In Force

[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.] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.33 (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of the preparation and issue of a statement under 2000 c.8 s.312J; April 1, 2013 otherwise)

Extent

Pt XVIII c. IIIB s. 312F: United Kingdom

Law In Force

[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.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.33 (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of the preparation and issue of a statement under 2000 c.8 s.312J; April 1, 2013 otherwise)

Extent

Pt XVIII c. IIIB s. 312G(1)-(3): United Kingdom

Law In Force

[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.
-] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.33 (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of the preparation and issue of a statement under 2000 c.8 s.312J; April 1, 2013 otherwise)

Extent

Pt XVIII c. IIIB s. 312H(1)-(4)(b): United Kingdom

Law In Force

[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).
-] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.33 (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of the preparation and issue of a statement under 2000 c.8 s.312J; April 1, 2013 otherwise)

Extent

Pt XVIII c. IIIB s. 312I(a)-(b): United Kingdom

Law In Force

[312J Statement of policy

- (1) Each appropriate regulator must prepare and issue a statement of its policy with respect to—
 - (a) the imposition of penalties under section 312F, and
 - (b) the amount of penalties under that section.
- (2) An appropriate regulator's policy in determining what the amount of a penalty should be must include having regard to—
 - (a) the seriousness of the contravention in question in relation to the nature of the requirement concerned, and
 - (b) the extent to which that contravention was deliberate or reckless.
- (3) An appropriate regulator may at any time alter or replace a statement issued by it under this section.
- (4) If a statement issued by an appropriate regulator under this section is altered or replaced, the regulator must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, its power under section 312F in the case of any particular contravention, an appropriate regulator must have regard to any statement of policy published by it under this section and in force at a time when the contravention in question occurred.
- (6) A statement issued by an appropriate regulator under this section must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (7) An appropriate regulator may charge a reasonable fee for providing a person with a copy of the statement.
- (8) An appropriate regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.33 (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of the preparation and issue of a statement under 2000 c.8 s.312J; April 1, 2013 otherwise)

Extent

Pt XVIII c. IIIB s. 312J(1)-(8): United Kingdom

✔ Law In Force

[312K Statement of policy: procedure

- (1) Before issuing a statement under section 312J, an appropriate regulator must publish a draft of the proposed statement in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
 - (2) The draft must be accompanied by notice that representations about the proposal may be made to the regulator within a specified time.
 - (3) Before issuing the proposed statement, the regulator must have regard to any representations made to it in accordance with subsection (2).
 - (4) If the regulator issues the proposed statement it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (2), and
 - (b) its response to them.
 - (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with subsection (4)) publish details of the difference.
 - (6) An appropriate regulator may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
 - (7) This section also applies to a proposal to alter or replace a statement.
-] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.33 (January 24, 2013 for the purposes of making orders or regulations; January 24, 2013 for the purpose of the preparation and issue of a statement under 2000 c.8 s.312J; April 1, 2013 otherwise)

Extent

Pt XVIII c. IIIB s. 312K(1)-(7): United Kingdom

CHAPTER IV

Interpretation

✔ Law In Force

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;
 - [“central counterparty” means a body corporate or unincorporated association which interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;] ¹
 - [...] ²

[“central counterparty recognition order” means a recognition order made under section 290(1)(b);

“clearing”, in relation to a central counterparty, means the process of establishing positions, including the calculation of net obligations and ensuring that financial instruments, cash, or both, are available to secure the exposures arising from those positions; and “clearing services”, in relation to a central counterparty, is to be read accordingly;

“the EMIR regulation” means Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories⁴, and any reference to the requirements contained in that Regulation includes a reference to requirements contained in any directly applicable EU regulation made under its provisions;]³

[“OFT” means the Office of Fair Trading;]⁵

[“multilateral trading facility” has the meaning given in Article 4.1.15 of the markets in financial instruments directive;]⁶

“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 is not a central counterparty and has neither its head office nor its registered office in the United Kingdom and in relation to which a recognition order is in force;]⁷

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

[“recognised central counterparty” has the meaning given in section 285;]¹

“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;

[“regulated market” has the meaning given in Article 4.1.14 of the markets in financial instruments directive;]⁶

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

“revocation order” has the meaning given in section 297 [.]²

(a)-(c) [...] ²

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

- (a) recognition requirements;
- (b) admission of persons to, or their exclusion from the use of, its facilities; or
- (c) matters relating to its constitution.

(3) References in this Part to guidance issued by an investment exchange are references to guidance issued, or any recommendation made, in writing or other legible form and intended to have continuing effect, by the investment exchange to—

- (a) all or any class of its members or users, or
 - (b) persons seeking to become members of the investment exchange or to use its facilities,
- with respect to any of the matters mentioned in subsection (2)(a) to (c).

(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 [or services falling within section 285(3)(b)]⁸ .

Notes

- ¹ Definition inserted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(14)(a) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
- ² Definition repealed by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(14)(c) (April 1, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
- ³ Definitions inserted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(14)(a) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
- ⁴ OJ No L 201, 27.7.2012, p1.
- ⁵ Definition substituted by Enterprise Act 2002 c. 40 Sch.25 para.40(15) (April 1, 2003)
- ⁶ Definition inserted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.2 para.16 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ⁷ Definition substituted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(14)(b) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
- ⁸ Words inserted by Financial Services Act 2012 c. 21 Sch.8 para.36(3) (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Commencement

Pt XVIII c. IV s. 313(1)-(4)(b): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XVIII c. IV s. 313(1)-(4)(b): United Kingdom

[Part 18A

SUSPENSION AND REMOVAL OF FINANCIAL INSTRUMENTS FROM TRADING

] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.3 para.1 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
-

✔ Law In Force

[313A.— [FCA's]² power to require suspension or removal of financial instruments from trading

(1) The [FCA]³ may, for the purpose of protecting—
 (a) the interests of investors, or
 (b) the orderly functioning of the financial markets,
 require an institution [or a class of institutions]⁴ to suspend or remove a financial instrument from trading.

[(2) If the [FCA]³ 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).

] ⁵

(3) In this section, “trading” includes trading otherwise than on a regulated market or a multilateral trading facility.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.3 para.1 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.36(b) (April 1, 2013)

³ Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.36(a) (April 1, 2013)

⁴ Words inserted by Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010/1193 reg.2(2) (April 9, 2010)

⁵ Substituted by Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010/1193 reg.2(3) (April 9, 2010)

Extent

Pt XVIII A s. 313A(1)-(3): United Kingdom

✔ Law In Force

[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]² proposes to impose a relevant requirement on an institution, [or a class of institutions,]³ or imposes such a requirement with immediate effect, it must [give notice—]⁴

[(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.]⁴

(3) [A notice given under subsection (2)(a)]⁵ must—

- (a) give details of the relevant requirement;
- (b) state the [FCA's]⁶ 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]² 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.

[(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]⁶ 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]² 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.

] ⁷

(4) The [FCA]² may extend the period within which representations may be made to it.

(5)-(12) [...] ⁸

] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.3 para.1 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.36(a) (April 1, 2013)
- ³ Words inserted by Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010/1193 reg.3(2)(a) (April 9, 2010)
- ⁴ S.313B(2)(a) and (b) and words substituted by Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010/1193 reg.3(2)(b) (April 9, 2010)
- ⁵ Words substituted by Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010/1193 reg.3(3) (April 9, 2010)
- ⁶ Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.36(b) (April 1, 2013)
- ⁷ Added by Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010/1193 reg.3(4) (April 9, 2010)
- ⁸ Repealed by Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010/1193 reg.3(5) (April 9, 2010)

Extent

Pt XVIII s. 313B(1)-(12): United Kingdom

✔ Law In Force

[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]² in relation to a requirement that it has proposed to impose or has imposed under section 313A.

(2) The [FCA]² 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]² has proposed to impose on a class of institutions, the [FCA]² 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.

(4) In the case of a requirement that the [FCA]² has imposed on a class of institutions, the [FCA]² 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]² 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]² has proposed to impose or has imposed on a class, the [FCA]² 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]³ 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]³ 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.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010/1193 reg.4 (April 9, 2010)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.36(a) (April 1, 2013)

³ Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.36(b) (April 1, 2013)

ExtentPt XVIII s. 313BA(1)-(9): United Kingdom

✔ Law In Force

[313BB.— Revocation of requirements: applications by institutions

- (1) This section applies where the [FCA]² 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]² for the revocation of the requirement.
- (3) The [FCA]² must decide whether to revoke the requirement.
- (4) In the case of a requirement imposed on a class of institutions, the [FCA]² 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]² must give a warning notice if—
 - (a) in the case of a requirement imposed on an institution, the [FCA]² proposes not to revoke the requirement, or
 - (b) in the case of a requirement imposed on a class, the [FCA]² 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).

] ¹**Notes**

¹ Added by Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010/1193 reg.4 (April 9, 2010)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.36(a) (April 1, 2013)

ExtentPt XVIII s. 313BB(1)-(6)(b): United Kingdom

✔ Law In Force

[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]² has decided whether to grant an application for revocation made under section 313BB.
- (2) The [FCA]² must give written notice in accordance with subsection (3) if—

- (a) in the case of a requirement imposed on an institution, the [FCA]² decides to revoke the requirement, or
 - (b) in the case of a requirement imposed on a class, the [FCA]² 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]² is required to give written notice under subsection (2) in relation to a requirement imposed on a class, the [FCA]² must also give notice of its decision by publishing it by means of a regulatory information service.
- (5) The [FCA]² must give a decision notice in accordance with subsection (6) if—
- (a) in the case of a requirement imposed on an institution, the [FCA]² decides not to revoke the requirement, or
 - (b) in the case of a requirement imposed on a class, the [FCA]² 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]² is required to give a decision notice in relation to a requirement imposed on a class, the [FCA]² must also give notice of its decision by publishing it by means of a regulatory information service.
- (8) If the [FCA]² gives a decision notice, the recipient may refer the matter to the Tribunal.
]¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010/1193 reg.4 (April 9, 2010)
- ² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.36(a) (April 1, 2013)

Extent

Pt XVIII A s. 313BC(1)-(8): United Kingdom

Law In Force

[313BD.— Revocation of requirements: applications by issuers

- (1) This section applies where the [FCA]² has imposed a requirement on an institution or a class of institutions under section 313A.
- (2) The issuer of the financial instrument may apply to the [FCA]² for the revocation of the requirement.
- (3) The [FCA]² must decide whether to revoke the requirement.

- (4) In the case of a requirement imposed on a class of institutions, the [FCA]² 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]² must give the issuer a warning notice if—
- (a) in the case of a requirement imposed on an institution, the [FCA]² proposes not to revoke the requirement, or
 - (b) in the case of a requirement imposed on a class, the [FCA]² 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.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010/1193 reg.4 (April 9, 2010)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.36(a) (April 1, 2013)

Extent

Pt XVIII s. 313BD(1)-(5)(b)(ii): United Kingdom

Law In Force

[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]² has decided whether to grant an application for revocation made under section 313BD.
- (2) The [FCA]² must give written notice to the issuer if the [FCA]² decides to revoke the requirement.
- (3) If the [FCA]² is required to give written notice under subsection (2) in relation to a requirement imposed on a class, the [FCA]² must also give notice of its decision by publishing it by means of a regulatory information service.
- (4) The [FCA]² must give the issuer a decision notice if—
- (a) in the case of a requirement imposed on an institution, the [FCA]² decides not to revoke the requirement, or
 - (b) in the case of a requirement imposed on a class, the [FCA]² 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]² 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]² gives a decision notice under subsection (4), the issuer may refer the matter to the Tribunal.

] ¹**Notes**

¹ Added by Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010/1193 reg.4 (April 9, 2010)

² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.36(a) (April 1, 2013)

Extent

Pt XVIII s. 313BE(1)-(6): United Kingdom

Law In Force

[313C.— Notification in relation to suspension or removal of a financial instrument from trading

(1) If the [FCA] ² 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—

(a) publish its decision in such manner as it considers appropriate [unless the decision has already been published under section 313B(2)(b)] ³ , and

(b) inform [ESMA and] ⁴ the competent authorities of all other EEA States of its decision.

(2) If the [FCA] ² 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] ² 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] ² 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] ² —

(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] ² —

(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.

] ¹**Notes**

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.3 para.1 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ² Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.36(a) (April 1, 2013)
- ³ Words inserted by Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010/1193 reg.5 (April 9, 2010)
- ⁴ Words inserted by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(12) (April 16, 2012)

Extent

Pt XVIII s. 313C(1)-(6): United Kingdom

Law In Force

[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
- (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;

[“regulated information” has the meaning given in Article 2(1)(k) of the transparency obligations directive (as defined in section 103 of this Act);] ²

[“regulatory information service” means—

- (a) a service approved by the [FCA] ³ 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;

] ²

“regulated market” has the meaning given in Article 4.1.14 of the markets in financial instruments directive.

] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.3 para.1 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ² Definition inserted by Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010/1193 reg.6 (April 9, 2010)
- ³ Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.36(a) (April 1, 2013)

Extent

Pt XVIII A s. 313D definition of "financial instrument"- definition of "regulatory information service" (b): United Kingdom

PART XIX**LLOYD'S***General*

Law In Force

314.— [Regulators']¹ 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—

- (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

(2) [Each regulator] ³ 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 [provision made by or under this Act] ⁴.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(2)(c) (April 1, 2013)
- ² S.314(1)-(1A) substituted for s.314(1) by Financial Services Act 2012 c. 21 Pt 2 s.40(2)(a) (April 1, 2013)
- ³ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(2)(b)(i) (April 1, 2013)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(2)(b)(ii) (April 1, 2013)

Commencement

Pt XIX s. 314(1)-(2)(b): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

ExtentPt XIX s. 314(1)-(2)(b): United Kingdom

 Law In Force**[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 3I (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 2G and 2J(3) 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 PRA-regulated activities in relation to anything done at Lloyd's.

(5) Section 3I(4)(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.

] ¹**Notes**¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.40(3) (January 24, 2013)**Extent**Pt XIX s. 314A(1)-(5): United Kingdom

The Society Law In Force**[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.

] ¹

Notes

¹ Substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(4) (April 1, 2013)

Commencement

Pt XIX s. 315(1)-(2)(c): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt XIX s. 315(3)-(5): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XIX s. 315(1)-(5): United Kingdom

Power to apply Act to Lloyd's underwriting

Law In Force

316.— Direction by [a regulator]¹ .

(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]² 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.

(1B) A direction under subsection (1) which applies the general prohibition to a member of the Society, or to the members of the Society taken together, may be given by a regulator only with the consent of the other regulator.]³

(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]⁴ 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]⁴ has in relation to the Society as a result of [provision made by or under this Act]⁵.
- (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]⁶ must be published in the way appearing to [the regulator]⁷ to be best calculated to bring it to the attention of the public.
- (10) [A regulator who gives a direction under subsection (1)]⁸ may charge a reasonable fee for providing a person with a copy of the direction.
- (11) [A regulator who gives a direction under subsection (1)]⁹ must, without delay, give the Treasury a copy of [the direction]¹⁰.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(5)(g) (April 1, 2013)
- ² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(5)(a) (April 1, 2013)
- ³ Added by Financial Services Act 2012 c. 21 Pt 2 s.40(5)(b) (April 1, 2013)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(5)(c)(i) (April 1, 2013)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(5)(c)(ii) (April 1, 2013)
- ⁶ Words inserted by Financial Services Act 2012 c. 21 Pt 2 s.40(5)(d)(i) (April 1, 2013)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(5)(d)(ii) (April 1, 2013)
- ⁸ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(5)(e) (April 1, 2013)
- ⁹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(5)(f)(i) (April 1, 2013)
- ¹⁰ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(5)(f)(ii) (April 1, 2013)

Commencement

Pt XIX s. 316(1)-(11): June 18, 2001 for the purposes of giving directions; December 1, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XIX s. 316(1)-(11): United Kingdom

✔ Law In Force

317.— The core provisions.

(1) The core provisions are [Parts V, 9A, XI, XII, XIV, XV, XVI, XXII and XXIV, sections 384 to 386 and Part XXVI]¹.

(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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(6) (April 1, 2013)

Commencement

Pt XIX s. 317(1)-(3): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XIX s. 317(1)-(3): United Kingdom

✔ Law In Force

318.— Exercise of powers through Council.

(1) [A regulator]¹ 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.

] ²

(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]³ 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).

(6) A direction under this section—

- (a) does not, at any time, prevent the exercise by [a regulator]⁴ of any of its powers;
- (b) must be in writing.

(7) A direction under subsection (1) [given by a regulator]⁵ must be published in the way appearing to [the regulator]⁶ to be best calculated to bring it to the attention of the public.

(8) [A regulator who gives a direction under subsection (1)]⁷ 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)]⁸ must, without delay, give the Treasury a copy of [the direction]⁹.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(7)(a) (April 1, 2013)

² Added by Financial Services Act 2012 c. 21 Pt 2 s.40(7)(b) (April 1, 2013)

³ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(7)(c) (April 1, 2013)

⁴ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(7)(d) (April 1, 2013)

⁵ Words inserted by Financial Services Act 2012 c. 21 Pt 2 s.40(7)(e)(i) (April 1, 2013)

⁶ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(7)(e)(ii) (April 1, 2013)

⁷ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(7)(f) (April 1, 2013)

⁸ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(7)(g)(i) (April 1, 2013)

⁹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(7)(g)(ii) (April 1, 2013)

Commencement

Pt XIX s. 318(1)-(9): June 18, 2001 for the purposes of giving directions as mentioned in 2000 c.8 s.318(1) coming into force not sooner than December 1, 2001, the commencement date of 2000 c.8 s.9; December 1, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XIX s. 318(1)-(9): United Kingdom

Law In Force

319.— Consultation.

[(1) Before a regulator gives a direction under section 316 or 318, it must—

- (a) in a case where section 316(1B) requires the regulator to obtain the consent of the other regulator, obtain that consent,
- (b) in any other case, consult the other regulator, and
- (c) after complying with paragraph (a) or (b), publish a draft of the proposed direction.

] ¹

(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]² within a specified time.

[(3) Before a regulator gives the proposed direction—

- (a) it must have regard to any representations made to it in accordance with subsection (2)(b), and
- (b) if it was required by subsection (1)(b) to consult the other regulator and proposes to give a direction which differs from the draft published under subsection (1) in a way which is, in the opinion of the regulator, significant, it must again consult the other regulator.

] ³

(4) If [the regulator] ⁴ 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] ⁴, significant—

- (a) [the regulator] ⁴ 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)(c) 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—
 - (i) be prejudicial to the safety and soundness of the Society, and the members of the Society, taken together, or
 - (ii) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policyholders.

] ⁵

(7) Neither subsection (2)(a) nor subsection (5)(b) applies if [the regulator concerned] ⁶ 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 gives a direction under subsection (1)] ⁷ may charge a reasonable fee for providing a person with a copy of [the draft] ⁸.

(9) When [a regulator] ⁹ 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.

] ¹⁰

(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.

Notes

- ¹ Substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(8)(a) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
- ² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(8)(b) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
- ³ Substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(8)(c) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(8)(d) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
- ⁵ Substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(8)(e) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(8)(f) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(8)(g)(i) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
- ⁸ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(8)(g)(ii) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
- ⁹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(8)(h) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
- ¹⁰ S.319(10)-(10A) substituted for s.319(10) by Financial Services Act 2012 c. 21 Pt 2 s.40(8)(i) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Commencement

Pt XIX s. 319(1)-(11)(b): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XIX s. 319(1)-(11)(b): United Kingdom

Former underwriting members

Law In Force

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]¹ that he has does not extend to his activities in carrying out any of those contracts.

(3) [The PRA]² 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.

[(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.

]³

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(9)(a) (April 1, 2013)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(9)(b) (April 1, 2013)

³ Added by Financial Services Act 2012 c. 21 Pt 2 s.40(9)(c) (April 1, 2013)

Commencement

Pt XIX s. 320(1)-(2): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt XIX s. 320(3)-(4): September 3, 2001 for the purposes of requirements taking effect not sooner than December 1, 2001, the coming into force date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XIX s. 320(1)-(6)(b): United Kingdom

Law In Force

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]¹ 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]² reasons for imposing it;

(c) inform A that he may make representations to the [PRA]³ 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]³ may extend the period allowed under the notice for making representations.

- (5) If, having considered any representations made by A, the [PRA]³ 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]³ 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]³ decides to grant an application by A for the variation or revocation of a requirement, it must give him written notice of its decision.
- (8) If the [PRA]³ 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]³, 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]³ 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.]⁴

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(10)(a) (April 1, 2013)
- ² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(10)(b) (April 1, 2013)
- ³ Word substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(10)(c) (April 1, 2013)
- ⁴ Added by Financial Services Act 2012 c. 21 Pt 2 s.40(10)(d) (April 1, 2013)

Commencement

Pt XIX s. 321(1)-(12): September 3, 2001 for the purposes of requirements taking effect not sooner than December 1, 2001, the coming into force date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XIX s. 321(1)-(13): United Kingdom

Law In Force

322.— Rules applicable to former underwriting members.

(1) [The PRA]¹ 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 137T, 138F, 138G and 138H)]² 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.]³

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(11)(a) (April 1, 2013)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.40(11)(b) (April 1, 2013)

³ Added by Financial Services Act 2012 c. 21 Pt 2 s.40(11)(c) (April 1, 2013)

Commencement

Pt XIX s. 322(1)-(4): June 18, 2001 for the purpose of making rules coming into force not sooner than December 1, 2001, the day on which 2000 c.8 s.19 came into force; December 1, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XIX s. 322(1)-(5): United Kingdom

Transfers of business done at Lloyd's

Law In Force

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 [underwriting members of the Society or by one or more persons who have ceased to be such a member (whether before, on or after 24th December 1996)]¹ .

Notes

¹ Words substituted by Financial Services and Markets Act 2000 (Amendment of section 323) Regulations 2008/1469 reg.2 (June 30, 2008)

Commencement

Pt XIX s. 323: June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XIX s. 323: United Kingdom

Supplemental

Law In Force

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 Lloyd's Act 1982 has the same meaning as in that Act.

Commencement

Pt XIX s. 324(1)-(2): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XIX s. 324(1)-(2): United Kingdom

PART XX**PROVISION OF FINANCIAL SERVICES BY MEMBERS OF THE PROFESSIONS**

Law In Force

325.— [FCA's]¹ general duty.

(1) The [FCA]² 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]² 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]², by the sharing of information and in other ways, in order to enable the [FCA]² to perform its functions under this Part.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.16 para.1(b) (April 1, 2013)

² Word substituted by Financial Services Act 2012 c. 21 Sch.16 para.1(a) (April 1, 2013)

Commencement

Pt XX s. 325(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt XX s. 325(4): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XX s. 325(1)-(4): United Kingdom

Law In Force

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;
- (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.

Commencement

Pt XX s. 326(1)-(7)(d): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XX s. 326(1)-(7)(d): United Kingdom

Law In Force

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.

(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.

Commencement

Pt XX s. 327(1)-(5)(b), (7)-(8)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt XX s. 327(6): February 25, 2001 for the purposes of making orders or regulations; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XX s. 327(1)-(8)(b): United Kingdom

 Partially In Force

328.— Directions in relation to the general prohibition.

- (1) The [FCA]¹ 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]¹ to be best calculated to bring it to the attention of the public.
- (4) The [FCA]¹ may charge a reasonable fee for providing a person with a copy of the direction.
- (5) The [FCA]¹ must, without delay, give the Treasury a copy of any direction which it gives under this section.
- [(6) The [FCA]¹ 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 [an EU]³ obligation imposed by the insurance mediation directive [or Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC⁵]⁴ .
-]²
- (7) In considering whether it is [satisfied of the matter specified in subsection (6)(a)]⁶ , the [FCA]¹ 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;
 - (d) for co-operating with the [FCA]¹ 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.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.16 para.2 (April 1, 2013)
- ² Substituted by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 3 reg.9(a) (January 14, 2005)
- ³ Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(e) (April 22, 2011)
- ⁴ Words inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(12) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)
- ⁵ OJ L 133/66 22.5.2008 p.1.
- ⁶ Words substituted by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 3 reg.9(b) (January 14, 2005)

Commencement

Pt XX s. 328(1)-(9): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XX s. 328(1)-(9): United Kingdom

Law In Force

329.— Orders in relation to the general prohibition.

- (1) Subsection (2) applies if it appears to the [FCA]¹ 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]¹ may make an order disapplying section 327(1) in relation to that person to the extent specified in the order.
- (3) The [FCA]¹ 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
 - (b) succession is to the whole or substantially the whole of the business of the former partnership.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.16 para.3 (April 1, 2013)

Commencement

Pt XX s. 329(1)-(7)(b): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XX s. 329(1)-(7)(b): United Kingdom

Law In Force

330.— Consultation.

- (1) Before giving a direction under section 328(1), the [FCA]¹ 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]¹ within a specified time.
- (3) Before giving the proposed direction, the [FCA]¹ must have regard to any representations made to it in accordance with subsection (2)(b).
- (4) If the [FCA]¹ 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]¹, significant—
- (a) the [FCA]¹ 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]¹ 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]¹ 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]¹ may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(9) When the [FCA]¹ 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 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.

]²

(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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.16 para.4(a) (April 1, 2013: substitution has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

² S.330(10)-(10A) substituted for s.330(10) by Financial Services Act 2012 c. 21 Sch.16 para.4(b) (April 1, 2013: substitution has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Commencement

Pt XX s. 330(1)-(11)(b): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XX s. 330(1)-(11)(b): United Kingdom

Law In Force

331.— Procedure on making or varying orders under section 329.

(1) If the [FCA]¹ 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]¹ 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]¹ decides to grant the application, it must give the applicant written notice of its decision.

(7) If the [FCA]¹ proposes to refuse the application, it must give the applicant a warning notice.

(8) If the [FCA]¹ decides to refuse the application, it must give the applicant a decision notice.

(9) A person—

(a) against whom the [FCA]¹ have decided to make an order under section 329, or

(b) whose application for the variation or revocation of such an order the [FCA]¹ had decided to refuse,

may refer the matter to the Tribunal.

(10) The [FCA]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.16 para.5 (April 1, 2013)

Commencement

Pt XX s. 331(1)-(10)(b): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XX s. 331(1)-(10)(b): United Kingdom

Law In Force

332.— Rules in relation to persons to whom the general prohibition does not apply.

(1) The [FCA]¹ 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]¹.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.16 para.6 (April 1, 2013)

Commencement

Pt XX s. 332(1)-(5): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XX s. 332(1)-(5): United Kingdom

Law In Force

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.

Commencement

Pt XX s. 333(1)-(4): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XX s. 333(1)-(4): United Kingdom

PART XXI**MUTUAL SOCIETIES***Friendly societies*

Law In Force

334.— The Friendly Societies Commission.

(1)-(2) [...] ¹

(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.

Notes

- ¹ Repealed by Financial Services Act 2012 c. 21 Pt 3 s.54(1)(a) (April 1, 2013: repeal has effect on April 1, 2013 as SI 2013/423 subject to savings as specified in 2012 c.21 s.54(2))

Commencement

Pt XXI s. 334(1)-(2): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Pt XXI s. 334(3)-(4)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXI s. 334(1)-(4)(b): United Kingdom

R Repealed

335.— [...]¹

Notes

- ¹ Repealed by Financial Services Act 2012 c. 21 Pt 3 s.54(1)(b) (April 1, 2013: repeal has effect on April 1, 2013 as SI 2013/423 subject to savings as specified in 2012 c.21 s.54(2))
-

Building societies

R Repealed

336.— [...]¹

Notes

- ¹ Repealed by Financial Services Act 2012 c. 21 Pt 3 s.54(1)(c) (April 1, 2013: repeal has effect on April 1, 2013 as SI 2013/423 subject to savings as specified in 2012 c.21 s.54(2))
-

R Repealed

337. [...]¹

Notes

- ¹ Repealed by Financial Services Act 2012 c. 21 Pt 3 s.54(1)(d) (April 1, 2013: repeal has effect on April 1, 2013 as SI 2013/423 subject to savings as specified in 2012 c.21 s.54(2))
-

*Industrial and provident societies and credit unions***R** Repealed**338.— [...]¹****Notes**

¹ Repealed by Financial Services Act 2012 c. 21 Pt 3 s.54(1)(e) (April 1, 2013: repeal has effect on April 1, 2013 as SI 2013/423 subject to savings as specified in 2012 c.21 s.54(2))

*Supplemental***R** Repealed**339.— [...]¹****Notes**

¹ Repealed by Financial Services Act 2012 c. 21 Pt 3 s.54(1)(f) (April 1, 2013: repeal has effect on April 1, 2013 as SI 2013/423 subject to savings as specified in 2012 c.21 s.54(2))

PART XXII**AUDITORS AND ACTUARIES***[General duties of PRA]¹***Notes**

¹ Added by Financial Services Act 2012 c. 21 Sch.13 para.2 (January 24, 2013 in relation to the preparation and issue of a code of practice under 2000 c.8 s.339A; April 1, 2013 otherwise)

✓ Law In Force**[339A General duties of PRA in relation to auditors**

(1) The arrangements maintained by the PRA under section 2K (supervision of PRA-authorized persons) must include arrangements for—

- (a) the sharing with auditors of PRA-authorized persons of information that the PRA is not prevented from disclosing, and
- (b) the exchange of opinions with auditors of PRA-authorized persons.

(2) The PRA must issue and maintain a code of practice describing how it will comply with subsection (1).

(3) The PRA may at any time alter or replace a code issued under this section.

(4) If a code is altered or replaced, the PRA must issue the altered or replacement code.

(5) When the PRA issues a code under this section the PRA must—

- (a) give a copy of the code to the Treasury, and

- (b) publish the code in such manner as the PRA thinks fit.
- (6) The Treasury must lay before Parliament a copy of the code.
- (7) “Auditor” means an auditor appointed under or as a result of a statutory provision.
] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.13 para.2 (January 24, 2013 in relation to the preparation and issue of a code of practice under 2000 c.8 s.339A; April 1, 2013 otherwise)

Extent

Pt XXII s. 339A(1)-(7): United Kingdom

Appointment

Law In Force

340.— Appointment.

- (1) [The appropriate regulator may make rules requiring] ¹ 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) [The appropriate regulator may make rules requiring] ² an authorised person, or an authorised person falling within a specified class—
- (a) to produce periodic financial reports; and
 - (b) to have them reported on by an auditor or an actuary.
- [(3A) The PRA—
- (a) must make rules imposing on auditors of PRA-authorised persons such duties as may be specified in relation to cooperation with the PRA in connection with the supervision by the PRA of PRA-authorised persons, and
 - (b) may make rules—
 - (i) imposing such other duties on auditors of PRA authorised persons as may be specified, and
 - (ii) imposing such duties on actuaries acting for PRA authorised persons as may be specified.
- (3B) The FCA may make rules imposing on auditors of, or actuaries acting for, authorised persons such duties as may be specified.] ³
- (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 [regulator making the rules] ⁴ to be notified of an appointment;
 - (c) enabling the [regulator making the rules] ⁴ 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 [(3A) or (3B)]⁵ –

- (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.

[(5A) In subsections (1) and (2) “the appropriate regulator” means—

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

] ⁶

(6) In subsections (1) to [(3B)]⁷ “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.

[(8) The powers conferred by this section enable only the making of such rules as appear to the regulator making them to be necessary or expedient—

- (a) in the case of the FCA, for the purpose of advancing one or more of its operational objectives, or
- (b) in the case of the PRA, for the purpose of advancing any of its objectives.

] ⁸

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.13 para.3(2) (April 1, 2013)

² Words substituted by Financial Services Act 2012 c. 21 Sch.13 para.3(3) (April 1, 2013)

³ Existing s.340(3) renumbered as s.340(3A)-(3B) by Financial Services Act 2012 c. 21 Sch.13 para.3(4) (April 1, 2013)

⁴ Word substituted by Financial Services Act 2012 c. 21 Sch.13 para.3(5) (April 1, 2013)

⁵ Word substituted by Financial Services Act 2012 c. 21 Sch.13 para.3(6) (April 1, 2013)

⁶ Added by Financial Services Act 2012 c. 21 Sch.13 para.3(7) (April 1, 2013)

⁷ Word substituted by Financial Services Act 2012 c. 21 Sch.13 para.3(8) (April 1, 2013)

⁸ Added by Financial Services Act 2012 c. 21 Sch.13 para.3(9) (April 1, 2013)

Commencement

Pt XXII s. 340(1)-(7): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XXII s. 340(1)-(8)(b): United Kingdom

Information

Law In Force

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.

Commencement

Pt XXII s. 341(1)-(2): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXII s. 341(1)-(2): United Kingdom

Law In Force

342.— Information given by auditor or actuary to [a regulator]¹ .

- (1) This section applies to a person who is, or has been, an auditor of an authorised person [or recognised investment exchange,]² appointed under or as a result of a statutory provision.
- (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 [a regulator]³ –
- (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 recognised investment exchange]⁴ ,
 - 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 [that regulator]⁵ .
- (4) Subsection (3) applies whether or not the auditor or actuary is responding to a request from the [regulator]⁶ .
- (5) The Treasury may make regulations prescribing circumstances in which an auditor or actuary must communicate matters to [a regulator]¹ 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 [a regulator]¹ in the circumstances prescribed by the regulations.
- (7) The matters to be communicated to [a regulator]¹ in accordance with the regulations may include matters relating to persons other than the authorised person [or recognised investment exchange]⁷ concerned.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.13 para.4(6) (April 1, 2013)
- ² Words inserted by Financial Services Act 2012 c. 21 Sch.13 para.4(2) (April 1, 2013)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.13 para.4(3)(a) (April 1, 2013)
- ⁴ Words inserted by Financial Services Act 2012 c. 21 Sch.13 para.4(3)(b) (April 1, 2013)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.13 para.4(3)(c) (April 1, 2013)
- ⁶ Word substituted by Financial Services Act 2012 c. 21 Sch.13 para.4(4) (April 1, 2013)
- ⁷ Words inserted by Financial Services Act 2012 c. 21 Sch.13 para.4(5) (April 1, 2013)

Commencement

Pt XXII s. 342(1)-(4), (6)-(7): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt XXII s. 342(5): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XXII s. 342(1)-(7): United Kingdom

Law In Force

343.— Information given by auditor or actuary to [a regulator]¹ : persons with close links.

- (1) This section applies to a person who—
- (a) is, or has been, an auditor of an authorised person [or recognised investment exchange,]² 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 [or recognised investment exchange]³ .
- (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 [a regulator]⁴ –
- (a) information on a matter concerning the authorised person [or recognised investment exchange]⁵ 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 [that regulator]⁶ .
- (4) Subsection (3) applies whether or not the auditor or actuary is responding to a request from the [regulator]⁷ .
- (5) The Treasury may make regulations prescribing circumstances in which an auditor or actuary must communicate matters to [a regulator]¹ 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 [a regulator]¹ in the circumstances prescribed by the regulations.

(7) The matters to be communicated to [a regulator]¹ in accordance with the regulations may include matters relating to persons other than the authorised person [or recognised investment exchange]⁸ concerned.

(8) CL has close links with the authorised person [or recognised investment exchange]⁹ 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.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.13 para.5(7) (April 1, 2013)
- ² Words inserted by Financial Services Act 2012 c. 21 Sch.13 para.5(2)(a) (April 1, 2013)
- ³ Words inserted by Financial Services Act 2012 c. 21 Sch.13 para.5(2)(b) (April 1, 2013)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.13 para.5(3)(a) (April 1, 2013)
- ⁵ Words inserted by Financial Services Act 2012 c. 21 Sch.13 para.5(3)(b) (April 1, 2013)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.13 para.5(3)(c) (April 1, 2013)
- ⁷ Word substituted by Financial Services Act 2012 c. 21 Sch.13 para.5(4) (April 1, 2013)
- ⁸ Words inserted by Financial Services Act 2012 c. 21 Sch.13 para.5(5) (April 1, 2013)
- ⁹ Words inserted by Financial Services Act 2012 c. 21 Sch.13 para.5(6) (April 1, 2013)

Commencement

Pt XXII s. 343(1)-(4), (6)-(9): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt XXII s. 343(5): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XXII s. 343(1)-(9): United Kingdom

Law In Force

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 [appropriate regulator]¹ if he—

- (a) is removed from office by an authorised person [or recognised investment exchange]² ;
- (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 [appropriate regulator]¹ —

- (a) of any matter connected with his so ceasing which he thinks ought to be drawn to the [regulator's]³ attention; or
- (b) that there is no such matter.

- [(4) In this section “the appropriate regulator” means—
- (a) in the case of an auditor of, or an actuary acting for, a PRA-authorized person, the PRA;
 - (b) in any other case, the FCA.
-] ⁴

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.13 para.6(2) (April 1, 2013)
- ² Words inserted by Financial Services Act 2012 c. 21 Sch.13 para.6(3) (April 1, 2013)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.13 para.6(4) (April 1, 2013)
- ⁴ Added by Financial Services Act 2012 c. 21 Sch.13 para.6(5) (April 1, 2013)

Commencement

Pt XXII s. 344(1)-(3)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXII s. 344(1)-(4)(b): United Kingdom

*[Disciplinary measures]*¹

Notes

- ¹ Ss 345-345E substituted for s.345 by Financial Services Act 2012 c. 21 Sch.13 para.7(1) (January 24, 2013: substitution has effect on January 24, 2013 as specified in SI 2013/113 in relation to the preparation and issue of a statement of policy under 2000 c.8 s.345D subject to transitional provisions specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[345 Disciplinary measures: FCA

- (1) Subsection (2) applies if it appears to the FCA that an auditor or actuary to whom section 342 applies—
- (a) has failed to comply with a duty imposed on the auditor or actuary by rules made by the FCA, or
 - (b) has failed to comply with a duty imposed under this Act to communicate information to the FCA.
- (2) The FCA may do one or more of the following—
- (a) disqualify the auditor or actuary 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;
 - (b) disqualify the auditor from being the auditor of any recognised investment exchange or any particular class of recognised investment exchange;
 - (c) publish a statement to the effect that it appears to the FCA that the auditor or (as the case may be) actuary has failed to comply with the duty;
 - (d) impose on the auditor or actuary a penalty, payable to the FCA, of such amount as the FCA considers appropriate.

- (3) If an auditor or actuary has been disqualified by the PRA under section 345A(4)(a), the FCA may disqualify the auditor or actuary, so long as the disqualification under that provision remains in force, from being the auditor of, or (as the case may be) from acting as an actuary for—
- (a) any FCA-authorized person,
 - (b) any particular class of FCA-authorized person,
 - (c) any recognised investment exchange, or
 - (d) any particular class of recognised investment exchange.
- (4) In subsection (3) “FCA-authorized person” means an authorised person who is not a PRA-authorized person.
- (5) Where under subsection (2) or (3) the FCA disqualifies a person from being the auditor of an authorised person or recognised investment exchange or class of authorised person or recognised investment exchange and that authorised person or recognised investment exchange is also, or any person within that class is also, a recognised clearing house, the FCA must —
- (a) notify the Bank of England, and
 - (b) notify the disqualified person that it has made a notification under paragraph (a).
- (6) The FCA may remove any disqualification imposed under paragraph (a) or (b) of subsection (2) if satisfied that the disqualified person will in future comply with the duty in question.
- (7) The FCA may at any time remove any disqualification imposed under subsection (3).
-] ¹

Notes

- ¹ Ss 345-345E substituted for s.345 by Financial Services Act 2012 c. 21 Sch.13 para.7(1) (January 24, 2013: substitution has effect on January 24, 2013 as specified in SI 2013/113 in relation to the preparation and issue of a statement of policy under 2000 c.8 s.345D subject to transitional provisions specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions specified in 2012 c.21 Sch.20 para.7 otherwise)

Commencement

Pt XXII s. 345(1)-(5): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXII s. 345(1)-(7): United Kingdom

Law In Force

[345A Disciplinary measures: PRA

- (1) The following provisions of this section have effect only if the Treasury, by order made after consultation with the PRA, so provide.
- (2) Subsection (3) applies if it appears to the PRA that an auditor or actuary to whom section 342 applies—
- (a) has failed to comply with a duty imposed on the auditor or actuary by rules made by the PRA, or
 - (b) has failed to comply with a duty imposed under this Act to communicate information to the PRA.
- (3) The PRA may exercise one or more of the specified powers.

- (4) The specified powers are such one or more of the following as may be specified in the order under subsection (1)—
- (a) to disqualify the auditor or actuary from being the auditor of, or (as the case may be) from acting as an actuary for, any PRA-authorized person or any particular class of PRA-authorized person;
 - (b) to publish a statement to the effect that it appears to the PRA that the auditor or (as the case may be) actuary has failed to comply with the duty;
 - (c) to impose on the auditor or actuary a penalty, payable to the PRA, of such amount as the PRA considers appropriate.
- (5) Where the PRA disqualifies a person under subsection (4)(a) it must—
- (a) notify the FCA, and
 - (b) notify the person concerned that it has made a notification under paragraph (a).
- (6) Where the PRA disqualifies a person from being the auditor of a PRA-authorized person or class of PRA-authorized person, and that PRA-authorized person is also, or any person within that class is also, a recognised clearing house, the PRA must, in addition to complying with subsection (5)—
- (a) notify the Bank of England, and
 - (b) notify the disqualified person that it has made a notification under paragraph (a).
- (7) The PRA may remove any disqualification imposed under subsection (4)(a) if satisfied that the disqualified person will in future comply with the duty in question.

] ¹

Notes

- ¹ Ss 345-345E substituted for s.345 by Financial Services Act 2012 c. 21 Sch.13 para.7(1) (January 24, 2013: substitution has effect on January 24, 2013 as specified in SI 2013/113 in relation to the preparation and issue of a statement of policy under 2000 c.8 s.345D subject to transitional provisions specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt XXII s. 345A(1)-(7): United Kingdom

Law In Force

[345B Procedure and right to refer to Tribunal

- (1) If the FCA proposes to act under section 345(2) or the PRA proposes to act under section 345A(3), it must give the auditor or actuary to whom the action would relate 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 act under section 345(2) or the PRA decides to act under section 345A(3), it must give the auditor or actuary to whom the action would relate 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 act under section 345(2) or the PRA decides to act under section 345A(3), the auditor or actuary concerned may refer the matter to the Tribunal.

] ¹

Notes

¹ Ss 345-345E substituted for s.345 by Financial Services Act 2012 c. 21 Sch.13 para.7(1) (January 24, 2013: substitution has effect on January 24, 2013 as specified in SI 2013/113 in relation to the preparation and issue of a statement of policy under 2000 c.8 s.345D subject to transitional provisions specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt XXII s. 345B(1)-(7): United Kingdom

Law In Force

[345C Duty on publication of statement

After a statement under section 345(2)(c) or 345A(4)(b) is published, the regulator that published it must send a copy of the statement to—

- (a) the auditor or actuary, and
- (b) any person to whom a copy of the decision notice was given under section 393(4).

] ¹

Notes

¹ Ss 345-345E substituted for s.345 by Financial Services Act 2012 c. 21 Sch.13 para.7(1) (January 24, 2013: substitution has effect on January 24, 2013 as specified in SI 2013/113 in relation to the preparation and issue of a statement of policy under 2000 c.8 s.345D subject to transitional provisions specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt XXII s. 345C(a)-(b): United Kingdom

Law In Force

[345D Imposition of penalties on auditors or actuaries: 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 345(2)(d), and
- (b) the amount of penalties under that provision.

(2) If by virtue of an order under section 345A(1), the PRA has power to impose penalties under section 345A(4)(c), the PRA must prepare and issue a statement of its policy with respect to—

- (a) the imposition of penalties under section 345A(4)(c), and
- (b) the amount of penalties under that provision.

(3) A regulator's policy in determining what the amount of a penalty should be must include having regard to—

- (a) the seriousness of the contravention, and
- (b) the extent to which the contravention was deliberate or reckless.

- (4) A regulator 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 regulator must issue the altered or replacement statement.
- (6) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (7) A statement issued 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.
- (8) In deciding whether to exercise a power under section 345(2)(d) in the case of any particular contravention, the FCA must have regard to any statement of policy published by it under this section and in force at a time when the contravention occurred.
- (9) In deciding whether to exercise a power under section 345A(4)(c) in the case of any particular contravention, the PRA must have regard to any statement of policy published by it under this section and in force at a time when the contravention occurred.
- (10) A regulator may charge a reasonable fee for providing a person with a copy of the statement.
] ¹

Notes

- ¹ Ss 345-345E substituted for s.345 by Financial Services Act 2012 c. 21 Sch.13 para.7(1) (January 24, 2013: substitution has effect on January 24, 2013 as specified in SI 2013/113 in relation to the preparation and issue of a statement of policy under 2000 c.8 s.345D subject to transitional provisions specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt XXII s. 345D(1)-(10): United Kingdom

Law In Force

[345E Statements of policy: procedure

- (1) Before a regulator issues a statement under section 345D, the 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) A regulator may charge a reasonable fee for providing a person with a copy of a draft under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

] ¹

Notes

¹ Ss 345-345E substituted for s.345 by Financial Services Act 2012 c. 21 Sch.13 para.7(1) (January 24, 2013: substitution has effect on January 24, 2013 as specified in SI 2013/113 in relation to the preparation and issue of a statement of policy under 2000 c.8 s.345D subject to transitional provisions specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Pt XXII s. 345E(1)-(7): United Kingdom

Offence

Law In Force

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;
- (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.

Commencement

Pt XXII s. 346(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXII s. 346(1)-(3): United Kingdom

PART XXIII

PUBLIC RECORD, DISCLOSURE OF INFORMATION AND CO-OPERATION

The public record

Law In Force

347.— The record of authorised persons etc.

- (1) The [FCA]¹ must maintain a record of every—
- (a) person who appears to the [FCA]¹ to be an authorised person;
 - (b) authorised unit trust scheme;
 - [(ba) authorised contractual scheme;]²
 - (c) authorised open-ended investment company;
 - (d) recognised scheme;
 - (e) recognised investment exchange;
 - (f) [...] ³
 - (g) individual to whom a prohibition order relates;
 - (h) approved person; [...] ⁴
 - [(ha) person to whom subsection (2A) applies; and]⁵
 - (i) person falling within such other class (if any) as the [FCA]¹ may determine.
- (2) The record must include such information as the [FCA]¹ considers appropriate and at least the following information—
- (a) in the case of a person appearing to the [FCA]¹ 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]¹ 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;
 - [(ba) in the case of an authorised contractual scheme, the name and address of the operator and depositary of the scheme;]⁶
 - (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);
 - (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 [...] ⁷ the name and address of the exchange [...] ⁸ ;
 - (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.

[(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]¹ 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).

] ⁹

(3) If it appears to the [FCA]¹ 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]¹ may remove the entry from the record.

(4) But if the [FCA]¹ 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]¹ 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]¹ 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]¹; and
 - (ii) in a form (either written or electronic) in which it is legible to the person asking for it.

(6) The [FCA]¹ may—

- (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 contractual scheme”,]¹⁰ “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]¹¹ 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.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.12(2) para.16(2) (April 1, 2013)
- ² Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(16)(a) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ³ Repealed by Financial Services Act 2012 c. 21 Sch.12(2) para.16(3) (April 1, 2013)
- ⁴ Word repealed by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.12(a) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ⁵ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.12(b) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ⁶ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(16)(b) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ⁷ Words repealed by Financial Services Act 2012 c. 21 Sch.12(2) para.16(4)(a) (April 1, 2013)
- ⁸ Words repealed by Financial Services Act 2012 c. 21 Sch.12(2) para.16(4)(b) (April 1, 2013)
- ⁹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.12(c) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ¹⁰ Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(16)(c) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ¹¹ Word substituted by Financial Services Act 2012 c. 21 Sch.12(2) para.16(5) (April 1, 2013)

Commencement

Pt XXIII s. 347(1)-(1)(i): December 1, 2001 for the purposes of enabling the Authority to maintain a record of persons specified in SI 2001/3538 art.2(3)(a) to (c); December 1, 2001 for provisions mentioned in SI 2001/3538 art.2(1); May 1, 2002 for the purposes of requiring the Authority to maintain a record of persons who appear to the Authority to be authorised persons who are EEA firms or Treaty firms; August 1, 2002 for the purposes of requiring the Authority to maintain a record of persons who appear to the Authority to be authorised persons as specified in SI 2001/3538 art.2(3)(a); December 1, 2002 for the purposes of requiring the Authority to maintain a record of approved persons (SI 2001/3538 art. 2)

Pt XXIII s. 347(2)-(2)(g)(iii): December 1, 2001 for the purposes of enabling the Authority to maintain a record of persons specified in SI 2001/3538 art.2(3)(a) to (c); December 1, 2001 for provisions specified in SI 2001/3538 art.2(1); May 1, 2002 for the purposes of requiring the Authority to maintain a record of persons who appear to the Authority to be authorised persons who are EEA firms or Treaty firms; August 1, 2002 for the purposes of requiring the Authority to maintain a record of persons who appear to the Authority to be authorised persons as specified in SI 2001/3538 art.2(3)(a); December 1, 2002 for the purposes of requiring the Authority to maintain a record of approved persons (SI 2001/3538 art. 2)

Pt XXIII s. 347(3)-(9): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIII s. 347(1)-(9): United Kingdom

Law In Force

[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.

]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.12(2) para.17 (April 1, 2013)

Extent

Pt XXIII s. 347A(1)-(5): United Kingdom

Disclosure of information

Law In Force

348.— Restrictions on disclosure of confidential information by [FCA, PRA]¹ 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]²[...] ³ 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

(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;]⁴
- (b) [...] ⁵
- (c) the Secretary of State;
- (d) a person appointed [to collect or update information under [section 166A]⁷ or]⁶ to make a report under section 166;
- (e) any person who is or has been employed by a person mentioned in paragraphs (a) to (c);
- [(ea) a person who is or has been engaged to provide services to a person mentioned in those paragraphs;]⁸
- (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]⁹ under section 97;
- (b) a competent person appointed by the [FCA, the PRA]¹⁰ or the Secretary of State to conduct an investigation under Part XI [.]¹¹
- (c) [...] ¹¹

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.12(2) para.18(5) (April 1, 2013: substitution has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.9)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.12(2) para.18(2)(a) (April 1, 2013: substitution has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.9)
- ³ Words repealed by Financial Services Act 2012 c. 21 Sch.12(2) para.18(2)(b) (April 1, 2013: repeal has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.9)
- ⁴ S.348(5)(a) and (aa) substituted for s.348(5)(a) by Financial Services Act 2012 c. 21 Sch.12(2) para.18(3)(a) (April 1, 2013: substitution has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.9)
- ⁵ Repealed by Financial Services Act 2012 c. 21 Sch.12(2) para.18(3)(b) (April 1, 2013: repeal has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.9)
- ⁶ Words inserted by Financial Services Act 2010 c. 28 Sch.2(1) para.26 (June 8, 2010)
- ⁷ Word substituted by Financial Services Act 2012 c. 21 Sch.12(2) para.18(3)(c) (April 1, 2013: substitution has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.9)
- ⁸ Added by Financial Services Act 2012 c. 21 Sch.12(2) para.18(3)(d) (April 1, 2013: insertion has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.9)
- ⁹ Words substituted by Financial Services Act 2012 c. 21 Sch.12(2) para.18(4)(a) (April 1, 2013: substitution has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.9)
- ¹⁰ Word substituted by Financial Services Act 2012 c. 21 Sch.12(2) para.18(4)(b) (April 1, 2013: substitution has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.9)
- ¹¹ Repealed by Financial Services Act 2012 c. 21 Sch.12(2) para.18(4)(c) (April 1, 2013: repeal has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.9)

Commencement

Pt XXIII s. 348(1)-(6)(c): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XXIII s. 348(1)-(6)(c): United Kingdom

Law In Force

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]¹ 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.
- [(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]³ 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]⁴ or those of the Panel on Takeovers and Mergers.
-] ²
- (4) In relation to confidential information, each of the following is a “recipient”—
- (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 [EU]⁵ Treaties or any [EU]⁶ 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 Interpretation Act 1978 and also includes an instrument made under an Act of the Scottish Parliament or under Northern Ireland legislation.
- (8) [...] ⁷

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.12(2) para.19(2) (April 1, 2013)
- ² Added by Companies Act 2006 c. 46 Pt 28 c.1 s.964(4) (April 6, 2007 subject to transitional adaptations specified in SI 2007/1093 art.3 and Sch.1)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.12(2) para.19(3) (April 1, 2013)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.12(2) para.19(4) (April 1, 2013)
- ⁵ Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(a) (April 22, 2011)
- ⁶ Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(d) (April 22, 2011)
- ⁷ Repealed by Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007/1093 Sch.5 para.1 (April 6, 2007)

Commencement

Pt XXIII s. 349(1)-(7): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XXIII s. 349(1)-(8): United Kingdom

Law In Force

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 FCA or the PRA, if the disclosure is made for the purpose of assisting or enabling that regulator to discharge its functions under this or any other Act, 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.

] ¹

- (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)(b)]² 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 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).
- (7) “Revenue information” means information held by a person which it would be an offence under section 182 of the Finance Act 1989 for him to disclose.

Notes

¹ Substituted by Financial Services Act 2012 c. 21 Sch.12(2) para.20(2) (April 1, 2013)

² Words substituted by Financial Services Act 2012 c. 21 Sch.12(2) para.20(3) (April 1, 2013)

Commencement

Pt XXIII s. 350(1)-(2), (4)-(6): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Pt XXIII s. 350(3), (7): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XXIII s. 350(1)-(7): United Kingdom

R Repealed

351.— [...] ¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Sch.12(2) para.21 (April 1, 2013)

✓ Law In Force

[351A.— Disclosure under the UCITS directive

- (1) This section applies in relation to a disclosure made by a person who falls within subsection (2) for the purpose of compliance with requirements set out in rules made by [the FCA or the PRA]² to implement Chapter VIII of the UCITS directive.

(2) The following persons fall within this subsection—

- (a) the auditor of an authorised unit trust scheme [or authorised contractual scheme]³ that is a master UCITS;
- (b) the trustee of an authorised unit trust scheme that is a master UCITS;
[(ba) the depositary of an authorised contractual scheme that is a master UCITS;]⁴
- (c) the auditor of an authorised unit trust scheme [or authorised contractual scheme]³ that is a feeder UCITS;
- (d) the trustee of an authorised unit trust scheme that is a feeder UCITS; [...]⁵
[(da) the depositary of an authorised contractual scheme that is a feeder UCITS; or]⁵
[(e) a person acting on behalf of a person within any of paragraphs (a) to (da);]⁶

(3) A disclosure to which this section applies is not to be taken as a contravention of any duty to which the person making the disclosure is subject.

(4) In this section, “authorised unit trust scheme”, [“authorised contractual scheme”,]⁷ “master UCITS” and “feeder UCITS” have the meaning given in section 237.
]¹

Notes

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(28) (July 1, 2011)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.12(2) para.22 (April 1, 2013)
- ³ Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(17)(a)(i) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ⁴ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(17)(a)(ii) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ⁵ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(17)(a)(iii) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ⁶ Substituted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(17)(a)(iv) (June 6, 2013: substitution has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ⁷ Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(17)(b) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)

Extent

Pt XXIII s. 351A(1)-(4): United Kingdom

Law In Force

Amendment(s) Pending

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.

Amendments Pending

Pt XXIII s. 352(5): words substituted by Criminal Justice Act 2003 c. 44, Sch. 26 para. 54(3) (date to be appointed)

Commencement

Pt XXIII s. 352(1)-(6)(b): June 18, 2001 for the purposes of any contravention of s.348; September 3, 2001 otherwise (SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XXIII s. 352(1)-(6)(b): United Kingdom

 Partially In Force

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 [FCA or the PRA]¹ for the purpose of assisting or enabling [either of them]² to discharge prescribed functions [.]³
 - (c) [...] ³
- (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.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.12(2) para.23(1)(a) (April 1, 2013)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.12(2) para.23(1)(b) (April 1, 2013)
- ³ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(13) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

Commencement

Pt XXIII s. 353(1)-(3): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XXIII s. 353(1)-(3): United Kingdom

[Information received from Bank of England]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.12(2) para.24 (April 1, 2013)
-

Law In Force

[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) persons who are, or are acting as,—

(i) officers of, or members of the staff of, the regulator, or

(ii) officers, employees or agents of 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 any paragraph of 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 members of staff (including persons acting as its officers or members of staff);

(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.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.12(2) para.24 (April 1, 2013)

Extent

Pt XXIII s. 353A(1)-(9)(c): United Kingdom


Co-operation

 Repealed

354.— [...]¹

Notes

¹ Ss 354A-354C substituted for s.354 by Financial Services Act 2012 c. 21 Sch.12(2) para.25 (April 1, 2013)

 Law In Force

[354A FCA's duty to co-operate with others

(1) The FCA must take such steps as it considers appropriate to cooperate 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 3Q).
- (3) The FCA must take such steps as it considers appropriate to cooperate 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 appear 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 1H(3).

] ¹

Notes

¹ Ss 354A-354C substituted for s.354 by Financial Services Act 2012 c. 21 Sch.12(2) para.25 (April 1, 2013)

Extent

Pt XXIII s. 354A(1)-(5): United Kingdom

Law In Force

[354B PRA's duty to co-operate with others

- (1) The PRA must take such steps as it considers appropriate to cooperate 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 3Q).
- (3) Co-operation may include the sharing of information which the PRA is not prevented from disclosing.

] ¹

Notes

¹ Ss 354A-354C substituted for s.354 by Financial Services Act 2012 c. 21 Sch.12(2) para.25 (April 1, 2013)

Extent

Pt XXIII s. 354B(1)-(3): United Kingdom

✔ Law In Force

[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;
 - (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.

]¹

Notes

¹ Ss 354A-354C substituted for s.354 by Financial Services Act 2012 c. 21 Sch.12(2) para.25 (April 1, 2013)

Extent

Pt XXIII s. 354C(1)-(6)(c): United Kingdom

PART XXIV

INSOLVENCY

Interpretation

✔ Law In Force

355.— Interpretation of this Part.

- (1) In this Part—
- “the 1985 Act” means the Bankruptcy (Scotland) Act 1985;
- “the 1986 Act” means the Insolvency Act 1986;
- “the 1989 Order” means the 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.

[“PRA-regulated person” means a person who—

(a) is or has been a PRA-authorized person,

(b) is or has been an appointed representative whose principal (or one of whose principals) is, or was, a PRA-authorized person, or

(c) is carrying on or has carried on a PRA-regulated activity in contravention of the general prohibition.

] ¹

(2) In this Part “insurer” has such meaning as may be specified in an order made by the Treasury.

Notes

¹ Definition inserted by Financial Services Act 2012 c. 21 Sch.14 para.2 (April 1, 2013)

Commencement

Pt XXIV s. 355(1)-(2): July 20, 2001 (SI 2001/2632 art. 2(1), Sch. 1(1) para. 1)

Extent

Pt XXIV s. 355(1)-(2): United Kingdom

Voluntary arrangements

Law In Force

356.— [Powers of FCA and PRA] ¹ to participate in proceedings: company voluntary arrangements.

[(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, [or recognised investment exchange, the appropriate regulator] ³ may apply to the court under section 6 or 7 of that Act.] ²

[(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, [or recognised investment exchange, the appropriate regulator] ³ may apply to the court under Article 19 or 20 of that Order.] ⁴

(3) If a person other than [a regulator] ⁵ makes an application to the court in relation to the company or insolvent partnership under [any] ⁶ of those provisions, [the appropriate regulator] ⁷ is entitled to be heard at any hearing relating to the application.

[(4) “The appropriate regulator” means—

(a) in the case of a PRA-authorized person—

(i) for the purposes of subsections (1) and (2), the FCA or the PRA, and

(ii) for the purposes of subsection (3), each of the FCA and the PRA;

(b) in any other case, the FCA.

(5) If either regulator makes an application to the court under any of those provisions in relation to a PRA-authorized person, the other regulator is entitled to be heard at any hearing relating to the application.]⁸

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.3(5) (April 1, 2013)
- ² Substituted by Insolvency Act 2000 c. 39 s.15(3)(a) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.3(2) (April 1, 2013)
- ⁴ Substituted by Insolvency Act 2000 c. 39 s.15(3)(b) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.3(3)(a) (April 1, 2013)
- ⁶ Words substituted by Insolvency Act 2000 c. 39 s.15(3)(c) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.3(3)(b) (April 1, 2013)
- ⁸ Added by Financial Services Act 2012 c. 21 Sch.14 para.3(4) (April 1, 2013)

Commencement

Pt XXIV s. 356(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 356(1)-(5): United Kingdom

Law In Force

357.— [Powers of FCA and PRA]¹ to participate in proceedings: individual voluntary arrangements.

- (1) The [appropriate regulator]² 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 [appropriate regulator]² 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 [appropriate regulator]² by the chairman of the meeting.
- (5) The [appropriate regulator]² 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 [a regulator]³ makes an application to the court under any provision mentioned in subsection (5), [the appropriate regulator]⁴ is entitled to be heard at any hearing relating to the application.
- [(7) “The appropriate regulator” means—
- (a) in the case of a PRA-authorized person—

- (i) for the purposes of subsections (1) and (4) to (6), each of the FCA and the PRA, and
 - (ii) for the purposes of subsection (3), the FCA or the PRA;
- (b) in any other case, the FCA.

(8) If either regulator makes an application to the court under any of the provisions mentioned in subsection (5) in relation to a PRA-authorized person, the other regulator is entitled to be heard at any hearing relating to the application.]⁵

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.4(5) (April 1, 2013)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.14 para.4(2) (April 1, 2013)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.4(3)(a) (April 1, 2013)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.4(3)(b) (April 1, 2013)
- ⁵ Added by Financial Services Act 2012 c. 21 Sch.14 para.4(4) (April 1, 2013)

Commencement

Pt XXIV s. 357(1)-(6): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 357(1)-(8): United Kingdom

Law In Force

358.— [Powers of FCA and PRA]¹ 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 [or recognised investment exchange]² .
- (2) The trustee must, as soon as practicable after he becomes aware that the debtor is an authorised person [or recognised investment exchange]² , send to the [appropriate regulator]³ –
- (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 [appropriate regulator]³ 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 [appropriate regulator]³ must be given the same notice as the creditors of any meeting of creditors held in relation to the trust deed.
- (5) A person appointed for the purpose by [the appropriate regulator]⁴ is entitled to attend and participate in (but not to vote at) any such meeting of creditors as if [that regulator]⁵ were a creditor under the deed.
- (6) This section does not affect any right [a regulator]⁶ has as a creditor of a debtor who is an authorised person [or recognised investment exchange]² .

[(6A) “The appropriate regulator” means—

- (a) in the case of a PRA-authorised person—
 - (i) for the purposes of subsections (2), (3) and (4), each of the FCA and the PRA, and
 - (ii) for the purposes of subsection (5), the FCA or the PRA;
- (b) in any other case, the FCA.

] ⁷

(7) Expressions used in this section and in the 1985 Act have the same meaning in this section as in that Act.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.5(7) (April 1, 2013)
- ² Words inserted by Financial Services Act 2012 c. 21 Sch.14 para.5(2) (April 1, 2013)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.14 para.5(3) (April 1, 2013)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.5(4)(a) (April 1, 2013)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.5(4)(b) (April 1, 2013)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.5(5) (April 1, 2013)
- ⁷ Added by Financial Services Act 2012 c. 21 Sch.14 para.5(6) (April 1, 2013)

Commencement

Pt XXIV s. 358(1)-(7): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 358(1)-(7): United Kingdom

Administration orders

Law In Force

[359 Administration order

(1) The [FCA]² may make an administration application under Schedule B1 to the 1986 Act [or Schedule B1 to the 1989 Order]³ in relation to a company or insolvent partnership which—

- (a) is or has been an authorised person [or recognised investment exchange]⁴,
- (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.

[(1A) The PRA may make an administration application under Schedule B1 to the 1986 Act or Schedule B1 to the 1989 Order in relation to a company or insolvent partnership which is a PRA-regulated person.]⁵

(2) Subsection (3) applies in relation to an administration application made (or a petition presented) by [a regulator]⁶ 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 [or paragraph 12(a) of Schedule B1 to the 1989 Order]³ 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, [...]⁷

(b) an authorised deposit taker in default on an obligation to pay a sum due and payable in respect of a relevant deposit [, and]⁸

[(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.]⁸

(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 4A]⁹ permission to accept deposits (but not a person who has a [Part 4A]⁹ permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission) ,

[“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;]¹⁰

“company” means a company—

(a) in respect of which an administrator may be appointed under Schedule B1 to the 1986 Act, or

[(b) in respect of which an administrator may be appointed under Schedule B1 to the 1989 Order, and]³

“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.

] ¹

Notes

¹ Substituted by Enterprise Act 2002 c. 40 Sch.17 para.55 (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

² Word substituted by Financial Services Act 2012 c. 21 Sch.14 para.6(2)(a) (April 1, 2013)

³ Amended by Insolvency (Northern Ireland) Order 2005/1455 Sch.2 para.58 (March 27, 2006 subject to transitional provisions and savings specified in SR 2006/22 art.2 - 7)

⁴ Words inserted by Financial Services Act 2012 c. 21 Sch.14 para.6(2)(b) (April 1, 2013)

⁵ Added by Financial Services Act 2012 c. 21 Sch.14 para.6(3) (April 1, 2013)

⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.6(4) (April 1, 2013)

⁷ Word repealed by Dormant Bank and Building Society Accounts Act 2008 c. 31 Sch.2 para.6(2) (March 12, 2009)

⁸ Added by Dormant Bank and Building Society Accounts Act 2008 c. 31 Sch.2 para.6(2) (March 12, 2009)

⁹ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.6(5) (April 1, 2013)

¹⁰ Definition inserted by Dormant Bank and Building Society Accounts Act 2008 c. 31 Sch.2 para.6(3) (March 12, 2009)

Commencement

Pt XXIV s. 359(1)-(5)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 359(1)-(5)(c): United Kingdom

Law In Force

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.

(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.

Commencement

Pt XXIV s. 360(1)-(3): July 20, 2001 (SI 2001/2632 art. 2(1), Sch. 1(1) para. 1)

Extent

Pt XXIV s. 360(1)-(3): United Kingdom

Law In Force

[361 Administrator's duty to report to [FCA and PRA]²

(1) This section applies where a company or partnership is—

(a) in administration within the meaning of Schedule B1 to the 1986 Act, or

[(b) in administration within the meaning of Schedule B1 to the 1989 Order.]³

[(2) If the administrator thinks that the company or partnership is carrying on, or has carried on—

(a) a regulated activity in contravention of the general prohibition, or

(b) a credit-related regulated activity in contravention of section 20,

the administrator must report the matter to the appropriate regulator without delay.

] ⁴

[(2A) “The appropriate regulator” means—

(a) where the regulated activity is a PRA-regulated activity, the FCA and the PRA;

(b) in any other case, the FCA.

] ⁵

[(3) Subsection (2) does not apply where—

(a) the administration arises out of an administration order made on an application made or petition presented by a regulator, and

(b) the regulator's application or petition depended on a contravention by the company or partnership of the general prohibition.

] ⁶
] ¹

Notes

- ¹ Substituted by Enterprise Act 2002 c. 40 Sch.17 para.56 (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.14 para.7(5) (April 1, 2013)
- ³ Substituted by Insolvency (Northern Ireland) Order 2005/1455 Sch.2 para.59 (March 27, 2006 subject to transitional provisions and savings specified in SR 2006/22 art.2 - 7)
- ⁴ Substituted by Financial Services Act 2012 c. 21 Sch.14 para.7(2) (April 1, 2013)
- ⁵ Added by Financial Services Act 2012 c. 21 Sch.14 para.7(3) (April 1, 2013)
- ⁶ Substituted by Financial Services Act 2012 c. 21 Sch.14 para.7(4) (April 1, 2013)

Commencement

Pt XXIV s. 361(1)-(2): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 361(1)-(3)(b): United Kingdom

Law In Force

362.— [Powers of FCA and PRA] ¹ to participate in proceedings.

(1) This section applies if a person [...] ² [makes an administration application under Schedule B1 to the 1986 Act [or Schedule B1 to the 1989 Order] ⁴] ³ in relation to a company or partnership which—

- (a) is, or has been, an authorised person [or recognised investment exchange] ⁵ ;
- (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.

[(1A) This section also applies in relation to—

- (a) the appointment under paragraph 14 or 22 of Schedule B1 to the 1986 Act [or paragraph 15 or 23 of Schedule B1 to the 1989 Order] ⁴ 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 [any] ⁴ of those paragraphs.

] ⁶

[(1B) This section also applies in relation to—

- (a) the appointment under paragraph 22 of Schedule B1 to the 1986 Act (as applied by order under section 420 of the 1986 Act), or under paragraph 23 of Schedule B1 to the 1989 Order (as applied by order under Article 364 of the 1989 Order), of an administrator of a partnership 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 either of those paragraphs (as so applied).

] ⁷

(2) The [appropriate regulator] ⁸ is entitled to be heard—
 (a) at the hearing of the [administration application [...]] ⁹ ; 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 [appropriate regulator] ⁸ .

[(4) The [appropriate regulator] ⁸ may apply to the court under paragraph 74 of Schedule B1 to the 1986 Act [or paragraph 75 of Schedule B1 to the 1989 Order] ⁴ .

(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

[(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”.] ⁴

] ¹⁰

(5) A person appointed for the purpose by the [appropriate regulator] ⁸ 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 [paragraph 57 of Schedule B1 to the 1986 Act] ¹¹ [or paragraph 58 of Schedule B1 to the 1989 Order] ⁴ ; 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 [appropriate regulator] ⁸ may apply to the court under [section 896 or 899 of the Companies Act 2006] ¹² .

[(7) “The appropriate regulator” means—

(a) for the purposes of subsections (2) to (4) and (6)—

- (i) where the company or partnership is a PRA-regulated person, each of the FCA and the PRA, and
- (ii) in any other case, the FCA;

(b) for the purposes of subsection (5)—

- (i) where the company or partnership is a PRA-regulated person, the FCA or the PRA, and
- (ii) in any other case, the FCA.

(8) But where the administration application was made by a regulator “the appropriate regulator” does not include that regulator.] ¹³

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.8(6) (April 1, 2013)

² Words repealed by Financial Services Act 2012 c. 21 Sch.14 para.8(2)(a) (April 1, 2013)

- ³ Words substituted by Enterprise Act 2002 c. 40 Sch.17 para.57(a) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)
- ⁴ Amended by Insolvency (Northern Ireland) Order 2005/1455 Sch.2 para.60 (March 27, 2006 subject to transitional provisions and savings specified in SR 2006/22 art.2 - 7)
- ⁵ Words inserted by Financial Services Act 2012 c. 21 Sch.14 para.8(2)(b) (April 1, 2013)
- ⁶ Added by Enterprise Act 2002 c. 40 Sch.17 para.57(b) (September 15, 2003: insertion has effect subject to transitional provisions specified in SI 2003/2093 art.3)
- ⁷ Added by Financial Services Act 2012 c. 21 Sch.14 para.8(3) (April 1, 2013)
- ⁸ Word substituted by Financial Services Act 2012 c. 21 Sch.14 para.8(4) (April 1, 2013)
- ⁹ Word substituted by Enterprise Act 2002 c. 40 Sch.17 para.57(c) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)
- ¹⁰ S.362(4)-(4A) substituted for s.362(4) by Enterprise Act 2002 c. 40 Sch.17 para.57(d) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)
- ¹¹ Words substituted by Enterprise Act 2002 c. 40 Sch.17 para.57(e) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)
- ¹² Words substituted by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.211(4) (April 6, 2008: substitution has effect subject to savings specified in SI 2008/948 arts 11 and 12)
- ¹³ Added by Financial Services Act 2012 c. 21 Sch.14 para.8(5) (April 1, 2013)

Commencement

Pt XXIV s. 362(1)-(6): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 362(1)-(8): United Kingdom

Law In Force

[362A Administrator appointed by company or directors

(1) This section applies in relation to a company [or partnership]² of a kind described in section 362(1)(a) to (c).

[(2) An administrator of the company or partnership may not be appointed under a provision specified in subsection (2A) without the consent of the appropriate regulator.

(2A) Those provisions are—

- (a) paragraph 22 of Schedule B1 to the 1986 Act (including that paragraph as applied in relation to partnerships by order under section 420 of that Act);
- (b) paragraph 23 of Schedule B1 to the 1989 Order (including that paragraph as applied in relation to partnerships by order under article 364 of that Order).

(2B) “The appropriate regulator” means—

- (a) where the company or partnership is a PRA-regulated person, the PRA, and
- (b) in any other case, the FCA.

] ³

(3) Consent under subsection (2)—

- (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 [Schedule B1 to the 1986 Act or paragraph 28 of Schedule B1 to the 1989 Order]⁴

(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 [Schedule B1 to the 1986 Act or paragraph 30 of Schedule B1 to the 1989 Order]⁴ .

] ¹

Notes

¹ Added by Enterprise Act 2002 c. 40 Sch.17 para.58 (September 15, 2003; insertion has effect subject to transitional provisions specified in SI 2003/2093 art.3)

² Words inserted by Financial Services Act 2012 c. 21 Sch.14 para.9(2) (April 1, 2013)

³ S.362(2)-(2B) substituted for s.362(2) by Financial Services Act 2012 c. 21 Sch.14 para.9(3) (April 1, 2013)

⁴ Amended by Insolvency (Northern Ireland) Order 2005/1455 Sch.2 para.61 (March 27, 2006 subject to transitional provisions and savings specified in SR 2006/22 art.2 - 7)

Extent

Pt XXIV s. 362A(1)-(4)(b): United Kingdom

Receivership

Law In Force

363.— [Powers of FCA and PRA]¹ 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 [or recognised investment exchange]² ;

(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 [appropriate regulator]³ 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 [appropriate regulator]³ 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 [appropriate regulator]³ .

(5) A person appointed for the purpose by the [appropriate regulator]³ is entitled—

(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.

[(6) “The appropriate regulator” means—

- (a) for the purposes of subsections (2) to (4)—
 - (i) where the company is a PRA-regulated person, each of the FCA and the PRA, and
 - (ii) in any other case, the FCA;
- (b) for the purposes of subsection (5)—
 - (i) where the company is a PRA-regulated person, the FCA or the PRA, and
 - (ii) in any other case, the FCA.

] ⁴**Notes**¹ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.10(5) (April 1, 2013)² Words inserted by Financial Services Act 2012 c. 21 Sch.14 para.10(2) (April 1, 2013)³ Word substituted by Financial Services Act 2012 c. 21 Sch.14 para.10(3) (April 1, 2013)⁴ Added by Financial Services Act 2012 c. 21 Sch.14 para.10(4) (April 1, 2013)**Commencement**

Pt XXIV s. 363(1)-(5)(c): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 363(1)-(6)(b)(ii): United Kingdom

 Law In Force**364. Receiver's duty to report to [FCA and PRA] ¹ .**

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 [or a credit-related regulated activity in contravention of section 20] ² ,

the receiver must report the matter [without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA] ³ .

Notes¹ Word substituted by Financial Services Act 2012 c. 21 Sch.14 para.11(c) (April 1, 2013)² Words inserted by Financial Services Act 2012 c. 21 Sch.14 para.11(a) (April 1, 2013)³ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.11(b) (April 1, 2013)**Commencement**

Pt XXIV s. 364(a)-(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 364(a)-(b): United Kingdom

Voluntary winding up

☑ Law In Force

365.— [Powers of FCA and PRA]¹ 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 [or recognised investment exchange]² ; and
 - (c) is not an insurer effecting or carrying out contracts of long-term insurance.
- (2) The [appropriate regulator]³ 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 [appropriate regulator]³ 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 [appropriate regulator]³ .
- (5) A person appointed for the purpose by the [appropriate regulator]³ is entitled—
- (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 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 [appropriate regulator]³ 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 [appropriate regulator]³ may apply to the court under [section 896 or 899 of the Companies Act 2006]⁴ .
- [(8) “The appropriate regulator” means—
- (a) for the purposes of subsections (2) to (4), (6) and (7)—
 - (i) where the company is a PRA-authorised person, each of the FCA and the PRA, and
 - (ii) in any other case, the FCA;
 - (b) for the purposes of subsection (5)—
 - (i) where the company is a PRA-authorised person, the FCA or the PRA, and
 - (ii) in any other case, the FCA.

] ⁵

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.12(5) (April 1, 2013)

² Words inserted by Financial Services Act 2012 c. 21 Sch.14 para.12(2) (April 1, 2013)

³ Word substituted by Financial Services Act 2012 c. 21 Sch.14 para.12(3) (April 1, 2013)

⁴ Words substituted by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.211(4) (April 6, 2008: substitution has effect subject to savings specified in SI 2008/948 arts 11 and 12)

⁵ Added by Financial Services Act 2012 c. 21 Sch.14 para.12(4) (April 1, 2013)

Commencement

Pt XXIV s. 365(1)-(7): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 365(1)-(8)(b)(ii): United Kingdom

 Law In Force
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 [PRA]¹.

(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 [PRA]¹ 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.

[(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).

] ²

(5) A copy of a winding-up resolution forwarded to the registrar of companies in accordance with [section 30 of the Companies Act 2006]³ must be accompanied by a certificate issued by the [PRA]¹ 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.

[(9) Before giving or refusing consent under subsection (1), the PRA must consult the FCA.

(10) In the event that the activity of effecting or carrying out long-term contracts of insurance as principal is not to any extent a PRAregulated activity—

(a) references to the PRA in subsections (1), (2) and (5) are to be read as references to the FCA, and

(b) subsection (9) does not apply.

] ⁴

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.14 para.13(2) (April 1, 2013)

² Substituted by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007/2194 Sch.4(3) para.93(2) (October 1, 2007)

- ³ Words substituted by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007/2194 Sch.4(3) para.93(3) (October 1, 2007)
- ⁴ Added by Financial Services Act 2012 c. 21 Sch.14 para.13(3) (April 1, 2013: insertion has effect subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Commencement

Pt XXIV s. 366(1)-(8): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 366(1)-(10)(b): United Kingdom

Winding up by the court

Law In Force

367.— Winding-up petitions.

- (1) The [FCA]¹ may present a petition to the court for the winding up of a body which—
- (a) is, or has been, an authorised person [or recognised investment exchange]² ;
 - (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.
- [(1A) The PRA may present a petition to the court for the winding up of a body which is a PRA-regulated person.]³
- (2) In [subsections (1) and (1A)]⁴ “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) [or (1A)]⁵ 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).

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.14 para.14(2)(a) (April 1, 2013)
- ² Words inserted by Financial Services Act 2012 c. 21 Sch.14 para.14(2)(b) (April 1, 2013)
- ³ Added by Financial Services Act 2012 c. 21 Sch.14 para.14(3) (April 1, 2013)

⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.14(4) (April 1, 2013)

⁵ Words inserted by Financial Services Act 2012 c. 21 Sch.14 para.14(5) (April 1, 2013)

Commencement

Pt XXIV s. 367(1)-(7): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 367(1)-(7): United Kingdom

Law In Force

368. Winding-up petitions: EEA and Treaty firms.

[(1) [A regulator]² 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 [or the other regulator]³ has been asked to do so by the home state regulator of the firm concerned.

]¹

[(2) If a regulator receives from the home state regulator of a body falling within subsection (1)(a) or (b) a request to present a petition to the court under section 367 for the winding up of the body, it must—

(a) notify the other regulator of the request, and

(b) provide the other regulator with such information relating to the request as it thinks fit.

]⁴

Notes

¹ Existing text renumbered as s.368(1) by Financial Services Act 2012 c. 21 Sch.14 para.15(2) (April 1, 2013)

² Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.15(3)(a) (April 1, 2013)

³ Words inserted by Financial Services Act 2012 c. 21 Sch.14 para.15(3)(b) (April 1, 2013)

⁴ Added by Financial Services Act 2012 c. 21 Sch.14 para.15(4) (April 1, 2013)

Commencement

Pt XXIV s. 368(a)-(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 368(a)-(2)(b): United Kingdom

Law In Force

369.— Insurers: service of petition etc. on Authority.

(1) If a person other than [a regulator]¹ 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 appropriate regulator]².

(2) If a person other than [a regulator]³ 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 appropriate regulator]⁴ .

[(3) “The appropriate regulator” means—

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

(4) If either regulator—

- (a) presents a petition for the winding up of a PRA-authorised person with permission to effect or carry out contracts of insurance, or
- (b) applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of a PRA-authorised person with permission to effect or carry out contracts of insurance, that regulator must serve a copy of the petition or application (as the case requires) on the other regulator.

] ⁵

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.16(2)(a) (April 1, 2013)

² Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.16(2)(b) (April 1, 2013)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.16(3)(a) (April 1, 2013)

⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.16(3)(b) (April 1, 2013)

⁵ Added by Financial Services Act 2012 c. 21 Sch.14 para.16(4) (April 1, 2013)

Commencement

Pt XXIV s. 369(1)-(2): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 369(1)-(4)(b): United Kingdom

Law In Force

[369A Reclaim funds: service of petition etc on [FCA and PRA]²

(1) If a person [other than a regulator]³ presents a petition for the winding up of an authorised reclaim fund, the petitioner must serve a copy of the petition [on the appropriate regulator]⁴ .

(2) If a person [other than a regulator]⁵ 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 appropriate regulator]⁶ .

(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.

[(4) “The appropriate regulator” means—

- (a) in relation to an authorised reclaim fund that is a PRA-authorised person, the FCA and the PRA, and
- (b) in relation to any other authorised reclaim fund, the FCA.

(5) If either regulator—

- (a) presents a petition for the winding up of an authorised reclaim fund that is a PRA-authorised person, or
- (b) 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 that is a PRA-authorised person,

that regulator must serve a copy of the petition or application (as the case requires) on the other regulator.

] ⁷
] ¹

Notes

- ¹ Added by Dormant Bank and Building Society Accounts Act 2008 c. 31 Sch.2 para.7 (March 12, 2009)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.14 para.17(5) (April 1, 2013)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.17(2)(a) (April 1, 2013)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.17(2)(b) (April 1, 2013)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.17(3)(a) (April 1, 2013)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.17(3)(b) (April 1, 2013)
- ⁷ Added by Financial Services Act 2012 c. 21 Sch.14 para.17(4) (April 1, 2013)

Extent

Pt XXIV s. 369A(1)-(5)(b): United Kingdom

Law In Force

[370 Liquidator's duty to report to FCA and PRA

(1) If—

- (a) a company is being wound up voluntarily or a body is being wound up on a petition presented by any person, and
- (b) it appears to the liquidator that the company or body is carrying on, or has carried on—
 - (i) a regulated activity in contravention of the general prohibition, or
 - (ii) a credit-related regulated activity in contravention of section 20,
 the liquidator must report the matter without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA.

(2) Subsection (1) does not apply where—

- (a) a body is being wound up on a petition presented by a regulator, and
- (b) the regulator's petition depended on a contravention by the body of the general prohibition.

] ¹

Notes

- ¹ Substituted by Financial Services Act 2012 c. 21 Sch.14 para.18 (April 1, 2013)

Commencement

Pt XXIV s. 370(a)-(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 370(1)-(b): United Kingdom

Law In Force

371.— [Powers of FCA and PRA]¹ to participate in proceedings.

- (1) This section applies if a person [...] ² presents a petition for the winding up of a body which—
- (a) is, or has been, an authorised person [or recognised investment exchange] ³ ;
 - (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 [appropriate regulator] ⁴ 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 [appropriate regulator] ⁴ .
- (4) A person appointed for the purpose by the [appropriate regulator] ⁴ 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
 - (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 [appropriate regulator] ⁴ may apply to the court under [section 896 or 899 of the Companies Act 2006] ⁵ .
- [(6) “The appropriate regulator” means—
- (a) for the purposes of subsections (2), (3) and (5)—
 - (i) where the body is a PRA-regulated person, each of the FCA and the PRA, and
 - (ii) in any other case, the FCA;
 - (b) for the purposes of subsection (4)—
 - (i) where the body is a PRA-regulated person, the FCA or the PRA, and
 - (ii) in any other case, the FCA.
- (7) But where the petition was presented by a regulator “the appropriate regulator” does not include the regulator which presented the petition.] ⁶

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.19(5) (April 1, 2013)

² Words repealed by Financial Services Act 2012 c. 21 Sch.14 para.19(2)(a) (April 1, 2013)

³ Words inserted by Financial Services Act 2012 c. 21 Sch.14 para.19(2)(b) (April 1, 2013)

⁴ Word substituted by Financial Services Act 2012 c. 21 Sch.14 para.19(3) (April 1, 2013)

⁵ Words substituted by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.211(4) (April 6, 2008: substitution has effect subject to savings specified in SI 2008/948 arts 11 and 12)

⁶ Added by Financial Services Act 2012 c. 21 Sch.14 para.19(4) (April 1, 2013)

Commencement

Pt XXIV s. 371(1)-(5): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 371(1)-(7): United Kingdom

Bankruptcy

Law In Force

372.— Petitions.

- (1) The [FCA]¹ 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.
- [(1A) The PRA 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 who is a PRA-regulated person;
 - (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual who is a PRA-regulated person.
-]²
- (2) But [a petition may be presented by virtue of subsection (1) or (1A)]³ 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) [a regulator]⁴ has served on him a demand requiring him to establish to the satisfaction of [that regulator]⁵ 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) [or (1A)(b)]⁶
-

- (a) [the regulator by which the petition is presented]⁷ is to be treated as a qualified creditor; and
- (b) a ground mentioned in subsection (2) constitutes apparent insolvency.

(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.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.14 para.20(2) (April 1, 2013)
- ² Added by Financial Services Act 2012 c. 21 Sch.14 para.20(3) (April 1, 2013)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.20(4) (April 1, 2013)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.20(5)(a) (April 1, 2013)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.20(5)(b) (April 1, 2013)
- ⁶ Words inserted by Financial Services Act 2012 c. 21 Sch.14 para.20(6)(a) (April 1, 2013)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.20(6)(b) (April 1, 2013)

Commencement

Pt XXIV s. 372(1)-(9)(c): July 20, 2001 for purpose of making rules; December 1, 2001 otherwise (SI 2001/2632 art. 2(1), Sch. 1(1) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 372(1)-(9)(c): United Kingdom

Law In Force

373.— Insolvency practitioner's duty to report [to FCA and PRA]¹ .

(1) If—

- (a) a bankruptcy order or sequestration award is in force in relation to an individual [...]², and
- (b) it appears to the insolvency practitioner that the individual is carrying on, or has [carried on—]³
 - [(i) a regulated activity in contravention of the general prohibition, or
 - (ii) a credit-related regulated activity in contravention of section 20,]³

the insolvency practitioner must report the matter [without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA]⁴ .

[(1A) Subsection (1) does not apply where—

- (a) the bankruptcy order or sequestration award is in force by virtue of a petition presented by a regulator, and
- (b) the regulator's petition depended on a contravention by the individual of the general prohibition.

] ⁵

(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).

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.21(4) (April 1, 2013)

² Words repealed by Financial Services Act 2012 c. 21 Sch.14 para.21(2)(a) (April 1, 2013)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.21(2)(b) (April 1, 2013)

⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.21(2)(c) (April 1, 2013)

⁵ Added by Financial Services Act 2012 c. 21 Sch.14 para.21(3) (April 1, 2013)

Commencement

Pt XXIV s. 373(1)-(4): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 373(1)-(4): United Kingdom

Law In Force

374.— [Powers of FCA or PRA]¹ to participate in proceedings.

- (1) This section applies if a person [...] ² 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.
- (2) The [appropriate regulator] ³ 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 [appropriate regulator] ³.
- (4) A person appointed for the purpose by the [appropriate regulator] ³ 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.
- [(7) “The appropriate regulator” means—
- (a) for the purposes of subsections (2) and (3)—
 - (i) where the individual or entity is a PRA-regulated person, each of the FCA and the PRA, and
 - (ii) in any other case, the FCA;
 - (b) for the purposes of subsection (4)—
 - (i) where the individual or entity is a PRA-regulated person, the FCA or the PRA, and
 - (ii) in any other case, the FCA.
- (8) But where the petition was presented by a regulator “the appropriate regulator” does not include the regulator which presented the petition.]⁴

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.22(5) (April 1, 2013)
- ² Words repealed by Financial Services Act 2012 c. 21 Sch.14 para.22(2) (April 1, 2013)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.14 para.22(3) (April 1, 2013)
- ⁴ Added by Financial Services Act 2012 c. 21 Sch.14 para.22(4) (April 1, 2013)

Commencement

Pt XXIV s. 374(1)-(6)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 374(1)-(8): United Kingdom

Provisions against debt avoidance

Law In Force

375.— [Right of FCA and PRA]¹ to apply for an order.

(1) The [FCA]² 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.

[(1A) The PRA 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 PRA-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 PRA-regulated activity carried on by the debtor.

] ³

(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) [or subsection (1A)(b) (as the case may be)] ⁴ 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.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.14 para.23(5) (April 1, 2013)

² Word substituted by Financial Services Act 2012 c. 21 Sch.14 para.23(2) (April 1, 2013)

³ Added by Financial Services Act 2012 c. 21 Sch.14 para.23(3) (April 1, 2013)

⁴ Words inserted by Financial Services Act 2012 c. 21 Sch.14 para.23(4) (April 1, 2013)

Commencement

Pt XXIV s. 375(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 375(1)-(3): United Kingdom

Supplemental provisions concerning insurers

Law In Force

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
 - (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 [PRA]¹.
- [(11A) The PRA must—
- (a) consult the FCA before making an application under subsection (10), and
 - (b) provide the FCA with a copy of any actuary's report made to the PRA under that subsection.
- (11B) In the event that the activity of effecting or carrying out long-term contracts of insurance as principal is not to any extent a PRA authorised activity—
- (a) the reference in subsection (11)(c) to the PRA is to be read as a reference to the FCA, and
 - (b) subsection (11A) does not apply.
-]²
- (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).

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.14 para.24(2) (April 1, 2013)
- ² Added by Financial Services Act 2012 c. 21 Sch.14 para.24(3) (April 1, 2013: insertion has effect subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Commencement

Pt XXIV s. 376(1)-(12): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 376(1)-(12): United Kingdom

Law In Force

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.
-

Commencement

Pt XXIV s. 377(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXIV s. 377(1)-(3): United Kingdom

Law In Force

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.
-

Commencement

Pt XXIV s. 378(1)-(2)(b): July 20, 2001 (SI 2001/2632 art. 2(1), Sch. 1(1) para. 1)

Extent

Pt XXIV s. 378(1)-(2)(b): United Kingdom

✔ Law In Force

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.
- (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.

Commencement

Pt XXIV s. 379(1)-(5): July 20, 2001 (SI 2001/2632 art. 2(1), Sch. 1(1) para. 1)

Extent

Pt XXIV s. 379(1)-(5): United Kingdom

PART XXV

INJUNCTIONS AND RESTITUTION

Injunctions

✔ Law In Force

380.— Injunctions.

- (1) If, on the application of the [appropriate regulator]¹ 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]¹ 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,

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]¹ 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]², means a requirement—
 - [(i) which is imposed by or under this Act or by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order; [...]⁴]³
 - (ii) which is imposed by or under any other Act and whose contravention constitutes an offence [mentioned in section 402(1)]⁵; [or]⁶
 - [(iii) which is imposed by the Alternative Investment Fund Managers Regulations 2013;]⁶

(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) [...]⁷
- (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 by the PRA under any provision of this Act,
- (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, or
- (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.

(9) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.

(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”.]⁸

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.19(2) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.19(3)(a) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ³ Substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.19(3)(b) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ⁴ Word repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.27(a) (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.19(3)(c) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ⁶ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.27(b) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁷ Repealed by Financial Services Act 2012 c. 21 Sch.9(5) para.19(4) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ⁸ Added by Financial Services Act 2012 c. 21 Sch.9(5) para.19(5) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

Commencement

Pt XXV s. 380(1)-(7)(b): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XXV s. 380(1)-(12): United Kingdom

Law In Force

381.— Injunctions in cases of market abuse.

- (1) If, on the application of the [FCA]¹, 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]¹ 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]¹, the court is satisfied that any person—
- (a) may be engaged in market abuse; or

(b) may have been engaged in market abuse.

(4) The court [may]² 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.20(2) (April 1, 2013)

² Word inserted by Financial Services Act 2012 c. 21 Sch.9(5) para.20(3) (April 1, 2013)

Commencement

Pt XXV s. 381(1)-(6): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXV s. 381(1)-(6): United Kingdom

Restitution orders

Law In Force

382.— Restitution orders.

(1) The court may, on the application of the [appropriate regulator]¹ 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]² 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]² 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.

(7) Nothing in this section affects the right of any person other than the [appropriate regulator]³ 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]⁴, means a requirement—
 - [(i) which is imposed by or under this Act or by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order; [...]]⁵
 - (ii) which is imposed by or under any other Act and whose contravention constitutes an offence [mentioned in section 402(1)]⁷; [or]⁸
 - [(iii) which is imposed by the Alternative Investment Fund Managers Regulations 2013;]⁸
- (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) [...]]⁹
- (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 by the PRA under any provision of this Act,
- (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorized person and the prohibition order concerned is made by the PRA, or
- (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorized person and the approval concerned falls to be given by the PRA.

(12) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.

(13) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is the regulator which has power to prosecute the offence (see section 401).

(14) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.

(15) The Treasury may by order amend the definition of “appropriate regulator”.]¹⁰

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.21(2) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.21(3) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.21(4) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ⁴ Word substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.21(5)(a) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ⁵ Substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.21(5)(b) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ⁶ Word repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.28(a) (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.21(5)(c) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ⁸ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.28(b) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁹ Repealed by Financial Services Act 2012 c. 21 Sch.9(5) para.21(6) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ¹⁰ Added by Financial Services Act 2012 c. 21 Sch.9(5) para.21(7) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

Commencement

Pt XXV s. 382(1)-(10)(b): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XXV s. 382(1)-(15): United Kingdom

Law In Force

383.— Restitution orders in cases of market abuse.

(1) The court may, on the application of the [FCA]¹, 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]¹ 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]¹ 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);
 - (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]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.22 (April 1, 2013)

Commencement

Pt XXV s. 383(1)-(10)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXV s. 383(1)-(10)(b): United Kingdom

*Restitution required by [FCA or PRA]¹***Notes**

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.23(10) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

Law In Force

384.— Power of [FCA or PRA]¹ to require restitution.

(1) [The appropriate regulator]² may exercise the power in subsection (5) if it is satisfied that an authorised person [or recognised investment exchange]³ (“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]⁴ 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]⁴ 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
- (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 [regulator exercising the power (“the regulator concerned”)]⁵ considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the [regulator concerned]⁶ to be just having regard—

- (a) in a case within paragraph (a) of subsection (1) or (3), to the profits appearing to the [regulator concerned]⁶ 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 [regulator concerned]⁶ to have accrued and to the extent of the loss or other adverse effect.
- (6) “Appropriate person” means a person appearing to the [regulator concerned]⁷ 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 [or by]⁸ [a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order]⁹ ; [...]¹⁰
- (b) a requirement which is imposed by or under any other Act and whose contravention constitutes an offence [mentioned in section 402(1)]¹¹ [; and]¹²
- [(c) a requirement imposed by the Alternative Investment Fund Managers Regulations 2013.]¹²
- (8) [...]¹³
- [(9) The PRA is the “appropriate regulator” in the case of a contravention of—
- (a) a requirement that is imposed by the PRA under any provision of this Act,
- (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, or
- (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.
- (10) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.
- (11) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is the regulator which has power to prosecute the offence (see section 401).
- (12) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.
- (13) The Treasury may by order amend the definition of “appropriate regulator”.]¹⁴

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.23(9) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.23(2)(a) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ³ Words inserted by Financial Services Act 2012 c. 21 Sch.9(5) para.23(2)(b) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ⁴ Word substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.23(3) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ⁵ Word substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.23(4)(a) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

- ⁶ Word substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.23(4)(b) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ⁷ Word substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.23(5) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ⁸ Words inserted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.15 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ⁹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.23(6)(a) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ¹⁰ Word repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.29(a) (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ¹¹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.23(6)(b) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ¹² Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.29(b) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ¹³ Repealed by Financial Services Act 2012 c. 21 Sch.9(5) para.23(7) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)
- ¹⁴ Added by Financial Services Act 2012 c. 21 Sch.9(5) para.23(8) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

Commencement

Pt XXV s. 384(1)-(8): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXV s. 384(1)-(8): United Kingdom

Law In Force

385.— Warning notices.

(1) If [a regulator]¹ 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 regulator]² proposes to require the person concerned to pay or distribute as mentioned in section 384(5).

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.24(2) (April 1, 2013)

² Words substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.24(3) (April 1, 2013)

Commencement

Pt XXV s. 385(1)-(2): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXV s. 385(1)-(2): United Kingdom

Law In Force

386.— Decision notices.

(1) If the [regulator]¹ 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 [regulator]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(5) para.25 (April 1, 2013)

Commencement

Pt XXV s. 386(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXV s. 386(1)-(3): United Kingdom

PART XXVI

NOTICES

Warning notices

Law In Force

387.— Warning notices.

(1) A warning notice must—

- (a) state the action which the [regulator giving the notice (“the regulator concerned”)]¹ proposes to take;
- (b) be in writing;
- (c) give reasons for the proposed action;
- (d) state whether section 394 applies; and
- (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.

[(1A) Where the PRA is the regulator concerned and the FCA proposes to refuse consent for the purposes of section 55F, 55I or 59 or to give conditional consent as mentioned in section 55F(5) or 55I(8), the warning notice given by the PRA must—

- (a) state that fact, and

(b) give the reasons for the FCA's proposal.

] ²

(2) [A warning] ³ notice must specify a reasonable period (which may not be less than [14 days] ⁴) within which the person to whom it is given may make representations to the [regulator concerned] ⁵ .

(3) [The regulator concerned] ⁶ may extend the period specified in the notice.

[(3A) Where the PRA receives any representations in response to a warning notice given by it under section 55X(1) or (2) or 62(2) in a case falling within subsection (1A) it must—

(a) if the representations are in writing, give a copy to the FCA, or

(b) if they are not in writing and have not been given directly to the FCA by the person making them, provide the FCA with a record of them.

] ⁷

(4) [The regulator concerned] ⁸ must then decide, within a reasonable period, whether to give the person concerned a decision notice.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.26(2) (April 1, 2013)

² Added by Financial Services Act 2012 c. 21 Sch.9(6) para.26(3) (April 1, 2013)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.26(4)(a) (April 1, 2013)

⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.26(4)(b) (April 1, 2013)

⁵ Word substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.26(4)(c) (April 1, 2013)

⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.26(5) (April 1, 2013)

⁷ Added by Financial Services Act 2012 c. 21 Sch.9(6) para.26(6) (April 1, 2013)

⁸ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.26(7) (April 1, 2013)

Commencement

Pt XXVI s. 387(1)-(4): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XXVI s. 387(1)-(4): United Kingdom

Decision notices

Law In Force

388.— Decision notices.

(1) A decision notice must—

(a) be in writing;

(b) give [the reasons of the regulator giving the notice (“the regulator concerned”)] ¹ 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.

[(1A) Where the PRA is the regulator concerned and the FCA has decided to refuse consent for the purposes of section 55F, 55I or 59 or to give conditional consent as mentioned in section 55F(5) or 55I(8), the decision notice given by the PRA must—

- (a) state that fact, and
- (b) give the reasons for the FCA's decision.

]²

(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]³ 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]³ 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).

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.27(2) (April 1, 2013)

² Added by Financial Services Act 2012 c. 21 Sch.9(6) para.27(3) (April 1, 2013)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.27(4) (April 1, 2013)

Commencement

Pt XXVI s. 388(1)-(5): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XXVI s. 388(1)-(5): United Kingdom

Conclusion of proceedings

Law In Force

389.— Notices of discontinuance.

(1) If [a regulator]¹ decides not to take—

- (a) the action proposed in a warning notice [given by it]², or
- (b) the action to which a decision notice [given by it]² 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.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.28(a) (April 1, 2013)

² Words inserted by Financial Services Act 2012 c. 21 Sch.9(6) para.28(b) (April 1, 2013)

Commencement

Pt XXVI s. 389(1)-(3): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XXVI s. 389(1)-(3): United Kingdom

Law In Force

390.— Final notices.

(1) If [a regulator]¹ has given a person a decision notice and the matter was not referred to the Tribunal within the [time required by Tribunal Procedure Rules]², [the regulator]³ 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 [a regulator]⁴ has given a person a decision notice and the matter was referred to the Tribunal, [the regulator]⁵ must, on taking action in accordance with any directions given by—

(a) the Tribunal, or

[(b) a court on an appeal against the decision of the Tribunal,]⁶

give that person and any person to whom the decision notice was copied [the notice required by subsection (2A)]⁷.

[(2A) The notice required by this subsection is—

(a) in a case where the regulator is acting in accordance with a direction given by the Tribunal under section 133(6)(b), or by the court on an appeal from a decision by the Tribunal under section 133(6), a further decision notice, and

(b) in any other case, a final notice.

] ⁸

(3) A final notice about a statement must—

(a) set out the terms of the statement;

(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 regulator giving the notice]⁹ 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 regulator giving the notice]⁹, by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.29(2)(a) (April 1, 2013)
- ² Words substituted by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.47(a) (April 6, 2010)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.29(2)(b) (April 1, 2013)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.29(3)(a) (April 1, 2013)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.29(3)(b) (April 1, 2013)
- ⁶ Substituted by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.47(b) (April 6, 2010)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.29(3)(c) (April 1, 2013)
- ⁸ Added by Financial Services Act 2012 c. 21 Sch.9(6) para.29(4) (April 1, 2013)
- ⁹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.29(5) (April 1, 2013)

Commencement

Pt XXVI s. 390(1)-(10): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XXVI s. 390(1)-(10): United Kingdom

Publication

Law In Force

391.— Publication.

[(1) In the case of a warning notice falling within subsection (1ZB)—

- (a) neither the regulator 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 regulator giving the notice has published those details, and
- (c) after consulting the persons to whom the notice is given or copied, the regulator 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 regulator 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 192L;
- (k) section 207;
- (l) section 312G;
- (m) section 345B (whether as a result of section 345(2) or 345A(3) or section 249(1) [or 261K(1)]²).

] ¹

[(1A) A person to whom a decision notice is given or copied may not publish the notice or any details concerning it unless the [regulator giving the notice] ⁴ has published the notice or those details.] ³

(2) A notice of discontinuance must state that, if the person to whom the notice is given consents, the [regulator giving the notice] ⁴ 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 [regulator giving the notice] ⁴ may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.

(4) [The regulator giving a decision or final notice] ⁵ must publish such information about the matter to which [the notice] ⁶ relates as it considers appropriate.

(5) When a supervisory notice takes effect, the [regulator giving the notice]⁷ 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 137S(5) or (8)(a) (but see section 137S(11)).]⁸

[(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-authorized persons, or
- (c) in a case where section 2C applies, prejudicial to securing the appropriate degree of protection for policyholders.

] ⁹

(7) Information is to be published under this section in such manner as the [regulator]¹⁰ considers appropriate.

[(7A) Where [a regulator]¹² publishes information under subsection (4) or (5) in respect of a final notice or a supervisory notice which relates to a contravention of a requirement falling within subsection (7B) at the same time as it publishes the information it must notify ESMA that it has done so.

(7B) A requirement falls within this subsection if it is imposed—

- (a) by or under any provision made by or under this Act which implements Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse),
- (b) by any directly applicable EU regulation made under that directive,
- (c) by or under any provision made by or under this Act which implements the markets in financial instruments directive, or
- (d) by any directly applicable EU regulation made under the markets in financial instruments directive.

] ¹¹

(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.

[(11) Section 425A (meaning of “consumers”) applies for the purposes of this section.]¹³

Notes

- ¹ S.391(1)-(1ZB) substituted for s.391(1) by Financial Services Act 2012 c. 21 Sch.9(6) para.30(2) (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
- ² Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(18) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ³ Added by Financial Services Act 2010 c. 28 s.13(3) (October 12, 2010: insertion has effect subject to transitional provision specified in SI 2010/2480 art.4)
- ⁴ Word substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.30(3) (April 1, 2013)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.30(4)(a) (April 1, 2013)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.30(4)(b) (April 1, 2013)
- ⁷ Word substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.30(5) (April 1, 2013)
- ⁸ Added by Financial Services Act 2012 c. 21 Pt 2 s.24(2) (January 24, 2013 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ⁹ S.391(6)-(6A) substituted for s.391(6) by Financial Services Act 2012 c. 21 Sch.9(6) para.30(6) (April 1, 2013)
- ¹⁰ Word substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.30(7) (April 1, 2013)
- ¹¹ Added by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(13) (April 16, 2012)
- ¹² Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.30(8) (April 1, 2013)
- ¹³ Substituted by Financial Services Act 2010 c. 28 Sch.2(1) para.28 (April 8, 2010)

Commencement

Pt XXVI s. 391(1)-(11): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XXVI s. 391(1)-(11): United Kingdom

Third party rights and access to evidence

Law In Force

392. Application of sections 393 and 394.

Sections 393 and 394 apply to—

- (a) a warning notice given in accordance with [[section 55Z(1), 57(1), 63(3), 63B(1), 67(1), 88(4)(b), 88B(1), 92(1), 126(1), 131H(1), 192L(1), 207(1), 255(1), 261V(1), 280(1), 312G(1), 331(1), 345B(1)]² (whether as a result of section 345(2), 345A(3)]¹ or section 249(1) [or 261K(1)]³) [, 385(1) or 412B(4) or (8)]⁴ ;
- (b) a decision notice given in accordance with [[section 55Z(2), 57(3), 63(4), 63B(3), 67(4), 88(6)(b), 88B(5), 92(4), 127(1), 131H(4), 192L(4), 208(1), 255(2), 261V(2), 280(2), 312H(1), 331(3), 345B(4)]⁶ (whether as a result of section 345(2), 345A(3)]⁵ or section 249(1) [or 261K(1)]⁷) [, 386(1) or 412B(5) or (9)]⁸ .

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.13 para.8(2) (April 1, 2013)
- ² Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(19)(a)(i) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ³ Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(19)(a)(ii) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ⁴ Words substituted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.16(a) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.13 para.8(3) (April 1, 2013)
- ⁶ Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(19)(b)(i) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ⁷ Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(19)(b)(ii) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ⁸ Words substituted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.16(b) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

Commencement

Pt XXVI s. 392(a)-(b): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XXVI s. 392(a)-(b): United Kingdom

Law In Force

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 [regulator giving the notice]¹, 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 [regulator giving the notice]¹—

(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]²) within which he may make representations to [the regulator giving the notice]³.

- (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 regulator giving the notice]⁴, 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 regulator giving the notice]⁴ –
- (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 regulator giving the notice]⁴ 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 regulator giving the notice]⁴ in relation to him.
- (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 regulator giving the notice]⁴ 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]⁵ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.32(2) (April 1, 2013)

² Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.32(3)(a) (April 1, 2013)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.32(3)(b) (April 1, 2013)

⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.32(4) (April 1, 2013)

⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.32(5) (April 1, 2013)

Commencement

Pt XXVI s. 393(1)-(14): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XXVI s. 393(1)-(14): United Kingdom

✔ Law In Force

394.— Access to [FCA or PRA]¹ material.

- (1) If [a regulator]² 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 the regulator's opinion,]³ might undermine that decision.
- (2) But [the regulator giving the notice]⁴ 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 regulator giving the notice]⁴ in A's case only for purposes of comparison with other cases.
- (3) [The regulator giving the notice]⁵ may refuse A access 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 regulator giving the notice]⁶ 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 regulator's]⁷ decision not to allow him access to it.
- (5) If [the regulator giving the notice]⁸ 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 regulator giving the notice]⁹ in reaching the decision mentioned in that paragraph; or
 - (b) was obtained by [the regulator giving the notice in connection with the matter to which that notice]¹⁰ relates but which was not considered by it in reaching that decision.
- (7) “Excluded material” means material which—

[(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]¹¹
 (c) is a protected item (as defined in section 413).

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.33(8) (April 1, 2013)
² Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.33(2)(a) (April 1, 2013)
³ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.33(2)(b) (April 1, 2013)
⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.33(3) (April 1, 2013)
⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.33(4) (April 1, 2013)
⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.33(5)(a) (April 1, 2013)
⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.33(5)(b) (April 1, 2013)
⁸ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.33(6) (April 1, 2013)
⁹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.33(7)(a) (April 1, 2013)
¹⁰ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.33(7)(b) (April 1, 2013)
¹¹ S.394(7)(a) substituted for s.394(7)(a) and (b) by Regulation of Investigatory Powers Act 2000 c. 23 Sch.4 para.11 (September 3, 2001: substitution came into force on October 2, 2000 but could not take effect until the commencement of 2000 c.8 s.394 on September 3, 2001)

Commencement

Pt XXVI s. 394(1)-(7)(c): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XXVI s. 394(1)-(7)(c): United Kingdom

The [FCA's and PRA's]¹ procedures

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(15) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)

Law In Force

395.— The [FCA's and PRA's]¹ procedures.

[(1) Each regulator must determine the procedure that it proposes to follow in relation to the following—

- (a) a decision which gives rise to an obligation to give a supervisory notice,
- (b) in the case of the FCA, a decision which—
 - (i) gives rise to an obligation for it to give a warning notice or decision notice, or
 - (ii) gives rise to an obligation for the PRA to include a statement under section 387(1A) in a warning notice or a statement under section 388(1A) in a decision notice,

- (c) in the case of the PRA, a decision which gives rise to an obligation for it to give a warning notice or decision notice, other than a decision which depends entirely on a decision of the FCA of the kind mentioned in paragraph (b)(ii), and
- (d) a decision under section 391(1)(c) to publish information about the matter to which a warning notice relates.

] ²

(2) That procedure must be designed to secure, among other things, [that—] ³

[(a) a decision falling within any of paragraphs (a) to (c) of subsection (1) is taken—

- (i) by a person not directly involved in establishing the evidence on which the decision is based, or
- (ii) by 2 or more persons who include a person not directly involved in establishing that evidence,

(b) a decision falling within paragraph (d) of subsection (1) is taken—

- (i) by a person other than the person by whom the decision was first proposed, or
- (ii) by 2 or more persons not including the person by whom the decision was first proposed, and

(c) a decision falling within paragraph (d) of subsection (1) is taken in accordance with a procedure which is, as far as possible, the same as that applicable to a decision which gives rise to an obligation to give a warning notice and which falls within paragraph (b) or (c) of subsection (1).] ³

(3) But the procedure may permit a decision which gives rise to an obligation to give a supervisory notice to be [taken otherwise than as mentioned in subsection (2) if the person taking the decision is of a level of seniority laid down by the procedure and—] ⁴

[(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 any of its objectives.] ⁴

(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) [Each regulator] ⁵ must issue a statement of [its procedure] ⁶ .

(6) The statement must be published in the way appearing to [the regulator issuing [the statement] ⁸] ⁷ to be best calculated to bring it to the attention of the public.

(7) [The regulator issuing the statement] ⁹ may charge a reasonable fee for providing a person with a copy of the statement.

(8) [The regulator issuing a statement under this section] ¹⁰ must, without delay, give the Treasury a copy of [the statement] ¹¹ .

(9) When [a regulator gives] ¹² a supervisory notice, [other than a warning notice or decision notice relating to a decision of the PRA that is required by a a decision of the FCA of the kind mentioned in subsection (1)(b)(ii)] ¹³ or a warning notice or decision notice, [the regulator] ¹⁴ must follow its stated procedure.

[(9A) When the FCA takes a decision falling within subsection (1)(b)(ii), it must follow its stated procedure.] ¹⁵

(10) If [a regulator]¹⁶ changes [its procedure]¹⁷ in a material way, it must publish a revised statement.

(11) [A regulator's]¹⁸ 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.

(13) “Supervisory notice” means a notice [or notification]¹⁹ given in accordance with section—

[(a) 55Y(4), (7) or (8)(b);]²⁰

(b) 78(2) or (5);

[(bza) 78A(2) or (8)(b);]²¹

[(bzb) section 88F(2), (5) or (6)(b);]²²

[(bzc) section 89V(2), (5) or (6)(b);]²³

[(ba) 96C;]²⁴

[(bb) 87O(2) or (5);]²⁵

[(bba) section 137S(5) or (8)(a);]²⁶

[(bc) 191B(1);]²⁷

(c) 197(3), (6) or (7)(b);

(d) 259(3), (8) or (9)(b);

[(da) 261Z1(3), (8) or (9)(b);]²⁸

(e) 268(3), (7)(a) or (9)(a) (as a result of subsection (8) (b));

(f) 282(3), (6) or (7)(b);

[(fa) 301J(1);]²⁹

(g) 321(2) or (5).

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(14) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ² Substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(2) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(3) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(4) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(5)(a) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(5)(b) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(6)(a) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ⁸ Word substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(6)(b) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ⁹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(7) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ¹⁰ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(8)(a) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ¹¹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(8)(b) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)

- ¹² Word substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(9)(a) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ¹³ Words inserted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(9)(b) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ¹⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(9)(c) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ¹⁵ Added by Financial Services Act 2012 c. 21 Sch.9(6) para.34(10) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ¹⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(11)(a) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ¹⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(11)(b) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ¹⁸ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(12) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ¹⁹ Words inserted by Financial Services Act 2012 c. 21 Pt 2 s.17(3) (March 19, 2013 for purposes of making rules; April 1, 2013 otherwise)
- ²⁰ Substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.34(13) (January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure; April 1, 2013 otherwise)
- ²¹ Added by Regulatory Reform (Financial Services and Markets Act 2000) Order 2007/1973 art.8 (July 12, 2007)
- ²² Added by Financial Services Act 2012 c. 21 Pt 2 s.18(6) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.88C; March 19, 2013 for purposes of making rules; April 1, 2013 otherwise)
- ²³ Added by Financial Services Act 2012 c. 21 Pt 2 s.19(2) (January 24, 2013 for the purpose of the preparation and issue of a statement of policy under 2000 c.8 s.89S and for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ²⁴ Added by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005/381 reg.7 (July 1, 2005)
- ²⁵ Added by Prospectus Regulations 2005/1433 Sch.1 para.14 (July 1, 2005)
- ²⁶ Added by Financial Services Act 2012 c. 21 Pt 2 s.24(3) (January 24, 2013 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ²⁷ Added by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 reg.6(a) (March 21, 2009)
- ²⁸ Added by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(20) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)
- ²⁹ Added by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 reg.6(b) (March 21, 2009)

Commencement

Pt XXVI s. 395(1)-(13)(g): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XXVI s. 395(1)-(13)(g): United Kingdom

✔ Law In Force

396.— Statements under section 395: consultation.

- (1) Before issuing a statement of [its]¹ procedure under section 395 , [the regulator]² must publish a draft of the proposed statement in the way appearing to [it]³ to be best calculated to bring [the draft]⁴ 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 publishing the draft]⁵ within a specified time.
- (3) [Before a regulator issues the proposed statement of its procedure, it]⁶ must have regard to any representations made to it in accordance with subsection (2).
- (4) If the [regulator issues the proposed statement of its procedure,]⁷ 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 regulator's procedure differs from the draft published by it]⁸ under subsection (1) in a way which is [, in its opinion,]⁹ significant, [it must]¹⁰ (in addition to complying with subsection (4) publish details of the difference.
- (6) [The regulator publishing a draft under subsection (1)]¹¹ may charge a reasonable fee for providing a person with a copy of [the draft]¹² .
- (7) This section also applies to a proposal to revise a statement of policy.

Notes

- ¹ Word inserted by Financial Services Act 2012 c. 21 Sch.9(6) para.35(2)(a) (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.35(2)(b) (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.35(2)(c) (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ⁴ Word substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.35(2)(d) (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ⁵ Word substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.35(3) (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.35(4) (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.35(5) (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the

- procedure as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ⁸ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.35(6)(a) (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ⁹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.35(6)(b) (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ¹⁰ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.35(6)(c) (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ¹¹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.35(7)(a) (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ¹² Words substituted by Financial Services Act 2012 c. 21 Sch.9(6) para.35(7)(b) (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of the determination of a procedure and the issue of a statement of the procedure as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Commencement

Pt XXVI s. 396(1)-(7): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XXVI s. 396(1)-(7): United Kingdom

PART XXVII

OFFENCES

Miscellaneous offences

 Repealed

397.— [...] ¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 7 s.95 (April 1, 2013)

 Law In Force

398.— Misleading [FCA or PRA] ¹ : residual cases.

(1) A person who, in purported compliance with any requirement [falling within subsection (1A)] ² knowingly or recklessly gives [a regulator] ³ information which is false or misleading in a material particular is guilty of an offence.

[(1A) A requirement falls within this subsection if it is imposed by or under—

- (a) this Act;
- (b) the Alternative Investment Fund Managers Regulations 2013;
- (c) the short selling regulation;
- (d) Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds⁵; or
- (e) Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds⁶.

] ⁴

(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.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(7) para.36(3) (April 1, 2013)

² Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.30(a) (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

³ Words substituted by Financial Services Act 2012 c. 21 Sch.9(7) para.36(2) (April 1, 2013)

⁴ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.30(b) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

⁵ OJ L 115, 25.4.2013, p.1.

⁶ OJ L 115, 25.4.2013, p.18.

Commencement

Pt XXVII s. 398(1)-(3)(b): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XXVII s. 398(1)-(3)(b): United Kingdom

Law In Force

399. Misleading [the OFT] ¹ .

Section 44 of the Competition Act 1998 (offences connected with the provision of false or misleading information) applies in relation to any function of [the Office of Fair Trading] ² under this Act as if it were a function under Part I of that Act.

Notes

¹ Words substituted by Enterprise Act 2002 c. 40 Sch.25 para.40(16)(b) (April 1, 2003)

² Words substituted by Enterprise Act 2002 c. 40 Sch.25 para.40(16)(a) (April 1, 2003)

Commencement

Pt XXVII s. 399: June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XXVII s. 399: United Kingdom

Bodies corporate and partnerships

✔ Law In Force

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—

(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.

[(6A) References in this section to an offence under this Act include a reference to an offence under Part 7 of the Financial Services Act 2012 (offences relating to financial services).]¹

(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.

Notes


¹ Added by Financial Services Act 2012 c. 21 Sch.9(7) para.37 (April 1, 2013)

Commencement

Pt XXVII s. 400(1)-(7): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XXVII s. 400(1)-(7): United Kingdom

Institution of proceedings Partially In Force**401.— Proceedings for offences.**

[(1) In this section “offence” means—

- (a) an offence under this Act,
- (b) an offence under subordinate legislation made under this Act, or
- (c) an offence under Part 7 of the Financial Services Act 2012 (offences relating to financial services).

]¹

(2) Proceedings for an offence may be instituted in England and Wales only—

- (a) by the [appropriate regulator]² 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—

- (a) by the [appropriate regulator]² 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), unless the activity of effecting or carrying out long-term contracts of insurance is not to any extent a PRA-regulated activity;
- (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 any other offence.]³

(4) [...]⁴

- (5) In exercising its power to institute proceedings for an offence, the [appropriate regulator]⁵ 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.

Notes

- ¹ Substituted by Financial Services Act 2012 c. 21 Sch.9(7) para.38(2) (April 1, 2013)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.9(7) para.38(3) (April 1, 2013)
- ³ Added by Financial Services Act 2012 c. 21 Sch.9(7) para.38(4) (April 1, 2013)
- ⁴ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(14) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)
- ⁵ Word substituted by Financial Services Act 2012 c. 21 Sch.9(7) para.38(5) (April 1, 2013)

Commencement

Pt XXVII s. 401(1)-(6)(b): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XXVII s. 401(1)-(6)(b): United Kingdom

Law In Force

402.— Power of [FCA]¹ to institute proceedings for certain other offences.

- (1) Except in Scotland, the [FCA]² may institute proceedings for an offence under—
- (a) Part V of the Criminal Justice Act 1993 (insider dealing); [...]³
 - (b) prescribed regulations relating to money laundering [; or]⁴
 - [(c) Schedule 7 to the Counter-Terrorism Act 2008 (terrorist financing or money laundering).]⁴
- (2) In exercising its power to institute proceedings for any such offence, the [FCA]² 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.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.9(7) para.39(3) (April 1, 2013)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.9(7) para.39(2) (April 1, 2013)
- ³ Word repealed by Counter-Terrorism Act 2008 c. 28 Sch.7(7) para.33(4) (November 27, 2008)
- ⁴ Added by Counter-Terrorism Act 2008 c. 28 Sch.7(7) para.33(4) (November 27, 2008)

Commencement

Pt XXVII s. 402(1): February 25, 2001

Pt XXVII s. 402(1)(a), (2)-(3)(b): October 19, 2001 for the purposes of proceedings for offences under prescribed regulations relating to money laundering; December 1, 2001 otherwise (SI 2001/3436 art. 2; SI 2001/3538 art. 2(1))

Pt XXVII s. 402(1)(b): February 25, 2001 for the purposes of making orders or regulations; October 19, 2001 for the purposes of proceedings for offences under prescribed regulations relating to money laundering; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/3436 art. 2; SI 2001/3538 art. 2(1))

Extent

Pt XXVII s. 402(1)-(3)(b): United Kingdom

Law In Force

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).
- (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 Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980 (procedure) apply as they do in relation to a body corporate;
 - (b) section 70 of the Criminal Procedure (Scotland) Act 1995 (procedure) applies as if the association were a body corporate;
 - (c) section 18 of the Criminal Justice (Northern Ireland) Act 1945 and Schedule 4 to the 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 [or an offence under Part 7 of the Financial Services Act 2012 (offences relating to financial services)]¹.

Notes

¹ Words inserted by Financial Services Act 2012 c. 21 Sch.9(7) para.40 (April 1, 2013)

Commencement

Pt XXVII s. 403(1)-(7): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XXVII s. 403(1)-(7): United Kingdom

PART XXVIII
MISCELLANEOUS

[Consumer redress schemes]¹

Notes

- ¹ Ss 404-404F substituted for s.404 by Financial Services Act 2010 c. 28 s.14(1) (October 12, 2010: substitution has effect in relation to failures occurring before the commencement of 2010 c.28 s.14 as well as in relation to failures occurring at or after the commencement of that section)

Law In Force

[404 Consumer redress schemes

(1) This section applies if—

- (a) it appears to the [FCA]² 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; [...]³
- (b) payment service providers [; or]⁴
- [(c) electronic money issuers.]⁴

(3) The [FCA]² 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.

(9) Before making rules under this section, the [FCA]² must consult the scheme operator of the ombudsman scheme.

(10) For the meaning of consumers, see section 404E.

]¹

Notes

- ¹ Ss 404-404F substituted for s.404 by Financial Services Act 2010 c. 28 s.14(1) (October 12, 2010: substitution has effect in relation to failures occurring before the commencement of 2010 c.28 s.14 as well as in relation to failures occurring at or after the commencement of that section)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.18 (April 1, 2013)
- ³ Word repealed by Electronic Money Regulations 2011/99 Sch.4(1) para.2(4)(a) (February 9, 2011)
- ⁴ Added by Electronic Money Regulations 2011/99 Sch.4(1) para.2(4)(a) (February 9, 2011)

Commencement

Pt XXVIII s. 404(1)-(11): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXVIII s. 404(1)-(11): United Kingdom

Law In Force

[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 [FCA]² ;
- (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 [FCA]² of persons authorised under paragraph (i);
- (k) as to the circumstances in which, instead of a relevant firm, the [FCA]² (or one or more competent persons acting on the [FCA's]² behalf) may carry out the investigation and take the other relevant steps under any consumer redress scheme;
- (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 [FCA]² 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 [FCA]² 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 [FCA]² 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 [FCA]² .

(9) Nothing in this section is to be taken as limiting the power conferred by section 404.

]¹

Notes

¹ Ss 404-404F substituted for s.404 by Financial Services Act 2010 c. 28 s.14(1) (October 12, 2010: substitution has effect in relation to failures occurring before the commencement of 2010 c.28 s.14 as well as in relation to failures occurring at or after the commencement of that section)

² Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.19 (April 1, 2013)

Extent

Pt XXVIII s. 404A(1)-(9): United Kingdom

Law In Force

[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,

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.

] ¹

Notes

¹ Ss 404-404F substituted for s.404 by Financial Services Act 2010 c. 28 s.14(1) (October 12, 2010: substitution has effect in relation to failures occurring before the commencement of 2010 c.28 s.14 as well as in relation to failures occurring at or after the commencement of that section)

Extent

Pt XXVIII s. 404B(1)-(13): United Kingdom

Law In Force

[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.

] ¹

Notes

¹ Ss 404-404F substituted for s.404 by Financial Services Act 2010 c. 28 s.14(1) (October 12, 2010: substitution has effect in relation to failures occurring before the commencement of 2010 c.28 s.14 as well as in relation to failures occurring at or after the commencement of that section)

Extent

Pt XXVIII s. 404C(a)-(b): United Kingdom

✔ Law In Force

[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

(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.

]¹

Notes

¹ Ss 404-404F substituted for s.404 by Financial Services Act 2010 c. 28 s.14(1) (October 12, 2010: substitution has effect in relation to failures occurring before the commencement of 2010 c.28 s.14 as well as in relation to failures occurring at or after the commencement of that section)

Extent

Pt XXVIII s. 404D(1)-(14)(b): United Kingdom

Law In Force

[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) [...]²

(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; [...]³

(f) payment service providers in providing payment services [; or]⁴

[(g) electronic money issuers in issuing electronic money.]⁴

(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—

[...] ⁵

“credit institution” has the meaning given by section 138(1B);

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

[“electronic money” has the same meaning as in the Electronic Money Regulations 2011 and any reference to issuing electronic money must be read accordingly;] 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);

“relevant ancillary services” has the meaning given by section 138(1C).

] ¹

Notes

¹ Ss 404-404F substituted for s.404 by Financial Services Act 2010 c. 28 s.14(1) (October 12, 2010: substitution has effect in relation to failures occurring before the commencement of 2010 c.28 s.14 as well as in relation to failures occurring at or after the commencement of that section)

² Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(15)(a) (July 26, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/1998 art.11(2))

³ Word repealed by Electronic Money Regulations 2011/99 Sch.4(1) para.2(4)(b)(i) (February 9, 2011)

⁴ Added by Electronic Money Regulations 2011/99 Sch.4(1) para.2(4)(b)(i) (February 9, 2011)

⁵ Definitions repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(15)(b) (July 26, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/1998 art.11(2))

⁶ Definition inserted by Electronic Money Regulations 2011/99 Sch.4(1) para.2(4)(b)(ii) (February 9, 2011)

Extent

Pt XXVIII s. 404E(1)-(6) definition of "relevant ancillary services": United Kingdom

Law In Force

[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—

- (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.

[(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.]²

(7) If the [FCA]³ 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 [FCA]³ is a reference to—

- [(a) the variation under section 55H or 55J of a Part 4A permission,
- (aa) the imposition or variation of a requirement under section 55L, or]⁴
- (b) the variation under regulation 8 or 11 of the Payment Services Regulations 2009 of an authorisation under those regulations [; or]⁵
- [(c) the variation under regulation 8 or 11 of the Electronic Money Regulations 2011 of an authorisation under those regulations.]⁵

] ¹

Notes

¹ Ss 404-404F substituted for s.404 by Financial Services Act 2010 c. 28 s.14(1) (October 12, 2010: substitution has effect in relation to failures occurring before the commencement of 2010 c.28 s.14 as well as in relation to failures occurring at or after the commencement of that section)

² Added by Electronic Money Regulations 2011/99 Sch.4(1) para.2(5)(i) (February 9, 2011)

³ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.20(2) (April 1, 2013)

⁴ S.404F(8)(a) and (aa) substituted for s.404F(8)(a) by Financial Services Act 2012 c. 21 Sch.18(1) para.20(3) (April 1, 2013)

⁵ Added by Electronic Money Regulations 2011/99 Sch.4(1) para.2(5)(ii) (February 9, 2011)

Extent

Pt XXVIII s. 404F(1)-(8)(c): United Kingdom

Law In Force

[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.

] ¹

Notes

¹ Ss 404-404F substituted for s.404 by Financial Services Act 2010 c. 28 s.14(1) (October 12, 2010: substitution has effect in relation to failures occurring before the commencement of 2010 c.28 s.14 as well as in relation to failures occurring at or after the commencement of that section)

Extent

Pt XXVIII s. 404G(1)-(2): United Kingdom

Third countries

Law In Force

405.— Directions.

(1) For the purpose of implementing a third country decision, the Treasury may direct the [appropriate regulator] ¹ to—

- (a) refuse an application for permission under [Part 4A] ² 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 [section 178 notice] ³ 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 [section 178 notice] ³ .

(2) A direction may also be given in relation to—

- (a) any person falling within a class specified in the direction;
- (b) future applications, [section 178 notices] ⁴ 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.

[(4A) “The appropriate regulator” —

- (a) for the purposes of subsection (1)(a) and (b), is the regulator to which the application for permission under Part 4A is made;
- (b) for the purposes of subsection (1)(c) and (d), is the appropriate regulator as defined in section 178(2A).

(4B) “Section 178 notice” means a notice given under section 178.]⁵

(5) “Third country decision” means a decision of the Council or the Commission under—

- [(a) Article 15(3) of the markets in financial instruments directive;]⁶
- (b) [...] ⁷
- (c) Article 29b(4) of the first non-life insurance directive; or
- [(d) Article 59(4) of the life assurance consolidation directive.]⁸

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.21(2)(a) (April 1, 2013)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.21(2)(b) (April 1, 2013)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.21(2)(c) (April 1, 2013)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.21(3) (April 1, 2013)
- ⁵ Added by Financial Services Act 2012 c. 21 Sch.18(1) para.21(4) (April 1, 2013)
- ⁶ Substituted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.17 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ⁷ Repealed by Capital Requirements Regulations 2006/3221 Sch.3 para.1 (January 1, 2007)
- ⁸ Substituted by Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004/3379 Pt 2 reg.6(4) (January 11, 2005)

Commencement

Pt XXVIII s. 405(1)-(1)(b), (2)-(5)(d): September 3, 2001

Pt XXVIII s. 405(1)(c)-(1)(d): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXVIII s. 405(1)-(5)(d): United Kingdom

Law In Force

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—

- (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.

Commencement

Pt XXVIII s. 406(1)-(4): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXVIII s. 406(1)-(4): United Kingdom

Law In Force

407.— Consequences of a direction under section 405.

- (1) If [a regulator]¹ refuses an application for permission as a result of a direction under section 405(1)(a)–
- (a) [section 55X does]² not apply in relation to the refusal; but
 - (b) the [regulator]³ must notify the applicant of the refusal and the reasons for it.
- (2) If [a regulator]⁴ 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 [subsections (1) to (3) of section 55V]⁵ 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 [regulator]⁶ must notify the applicant of the deferral and the reasons for it.
- (3) If [a regulator]⁷ 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 [regulator]⁸ must state in the notice the reasons for it.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.22(2)(a) (April 1, 2013)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.22(2)(b) (April 1, 2013)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.22(2)(c) (April 1, 2013)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.22(3)(a) (April 1, 2013)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.22(3)(b) (April 1, 2013)
- ⁶ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.22(3)(c) (April 1, 2013)
- ⁷ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.22(4)(a) (April 1, 2013)
- ⁸ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.22(4)(b) (April 1, 2013)

Commencement

Pt XXVIII s. 407(1)-(2)(b): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Pt XXVIII s. 407(3)-(3)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Pt XXVIII s. 407(1)-(3)(b): United Kingdom

Law In Force

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.
 - (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.
-

Commencement

Pt XXVIII s. 408(1)-(9): September 3, 2001 for the purposes of determinations coming into force not sooner than December 1, 2001, the commencement date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XXVIII s. 408(1)-(9): United Kingdom

Law In Force

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) [...] ¹
 - (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 4A permission] ² .
- (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 [EU] ³ instrument.
- (5) “Specified” means specified in the order.
- (6) “UK firm” and “EEA right” have the same meaning as in Schedule 3.

Notes

- ¹ Repealed by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(30) (July 1, 2011)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.23 (April 1, 2013)
- ³ Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(d) (April 22, 2011)

Commencement

Pt XXVIII s. 409(1)-(6): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XXVIII s. 409(1)-(6): United Kingdom

International obligations

Law In Force

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 [EU] ¹ 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 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;]²
 - (b) [...] ³
 - (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.

Notes

- ¹ Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(e) (April 22, 2011)
- ² S.410(4)(a)-(ab) substituted for s.410(4)(a) by Financial Services Act 2012 c. 21 Pt 2 s.47 (April 1, 2013)
- ³ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(i) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Commencement

Pt XXVIII s. 410(1)-(4)(f): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Pt XXVIII s. 410(1)-(4)(f): United Kingdom

Tax treatment of levies and repayments

■ Repealed

411.— [...] ¹

Notes

- ¹ Repealed by Corporation Tax Act 2009 c. 4 Sch.3(1) para.1 (April 1, 2009: repeal has effect subject to savings and transitional provisions specified in 2009 c.4 Sch.2)
-

Gaming contracts

■ Law In Force

412.— Gaming contracts.

- (1) No contract to which this section applies is void or unenforceable because of—

- (a) [...] ¹ Article 170 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985; or
 (b) [...] ²

(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).

(5) “Investment” includes any asset, right or interest.

(6) “Specified” means specified in an order made by the Treasury.

Notes

¹ Words repealed by Gambling Act 2005 c. 19 Sch.17 para.1 (September 1, 2007 as SI 2006/3272)

² Repealed by Gambling Act 2005 c. 19 Sch.17 para.1 (September 1, 2007 as SI 2006/3272)

Commencement

Pt XXVIII s. 412(1)-(6): February 25, 2001 for the purposes of making orders or regulations; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XXVIII s. 412(1)-(6): United Kingdom

[Trade-matching and reporting systems]¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.18 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

Law In Force

[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] ² 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]² 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 (“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]² is not satisfied as mentioned in that subsection, it may suspend or withdraw the approval.

(5) The [FCA]² 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 subsection the [FCA]² 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]² 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]².

(7) The [FCA]² 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.

]¹


Notes

¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.18 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

² Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.38 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XXVIII s. 412A(1)-(9): United Kingdom

 Law In Force

[412B.— Procedure for approval and suspension or withdrawal of approval

(1) If the [FCA]² 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]² proposes to refuse to approve a relevant system, it must give the operator of the system a warning notice.

- (3) If the [FCA]² decides to refuse to approve a relevant system, it must give the operator of the system a decision notice.
- (4) If the [FCA]² 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]² 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]² 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]² must grant the application if it is satisfied as mentioned in section 412A(2); and in such a case the [FCA]² must give written notice to the operator that the suspension is to be cancelled from the date specified in the notice.
- (8) If the [FCA]² proposes to refuse the application, it must give the operator a warning notice.
- (9) If the [FCA]² 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.
-] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.18 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.8 para.39 (January 24, 2013 for the purpose of making rules; April 1, 2013 otherwise)

Extent

Pt XXVIII s. 412B(1)-(10): United Kingdom

Limitation on powers to require documents

Law In Force

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.

Commencement

Pt XXVIII s. 413(1)-(4): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XXVIII s. 413(1)-(4): United Kingdom

Service of notices

Law In Force

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 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.

Commencement

Pt XXVIII s. 414(1)-(3): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Pt XXVIII s. 414(4): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

ExtentPt XXVIII s. 414(1)-(4): United Kingdom

Jurisdiction

☑ Law In Force

415.— Jurisdiction in civil proceedings.

(1) Proceedings arising out of any act or omission (or proposed act or omission) of—

- [(a) the FCA,
- (aa) the PRA,
- (ab) the Bank of England,]¹
- (b) [...]²
- (c) the scheme manager, or
- (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.

Notes¹ S.415(1)(a)-(ab) substituted for s.415(1)(a) by Financial Services Act 2012 c. 21 Sch.18(1) para.24 (April 1, 2013)² Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(j) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)**Commencement**

Pt XXVIII s. 415(1)-(2): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

ExtentPt XXVIII s. 415(1)-(2): United Kingdom

[Powers [under the Act]²]¹

Notes¹ Added by Financial Services Act 2010 c. 28 Sch.2(1) para.30 (April 8, 2010)² Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.25(3) (April 1, 2013)

✔ Law In Force

[415A Powers [under the Act]²

Any power which the [FCA, the PRA or the Bank of England]³ 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.]¹

Notes

¹ Added by Financial Services Act 2010 c. 28 Sch.2(1) para.30 (April 8, 2010)

² Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.25(3) (April 1, 2013)

³ Word substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.25(2) (April 1, 2013)

Extent

Pt XXVIII s. 415A: United Kingdom

[Consultation]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.9(8) para.41 (April 1, 2013: insertion has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

✔ Law In Force

[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-authorized person, or
 - (b) has a qualifying relationship with a PRA-authorized 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.),
 - (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-authorised 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 as in section 59.

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.9(8) para.41 (April 1, 2013: insertion has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Pt XXVIII s. 415B(1)-(4)(b): United Kingdom

Removal of certain unnecessary provisions

✓ Law In Force

416.— Provisions relating to industrial assurance and certain other enactments.

(1) The following enactments are to cease to have effect—

- (a) the Industrial Assurance Act 1923;
- (b) the Industrial Assurance and Friendly Societies Act 1948;
- (c) the Insurance Brokers (Registration) Act 1977.

(2) The 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.

Commencement

Pt XXVIII s. 416(1), (1)(c), (3)(a): April 30, 2001

Pt XXVIII s. 416(1)(a)-(1)(b), (2), (3)(d): December 1, 2001 (SI 2001/3538 art. 2(1))

Pt XXVIII s. 416(3): March 2, 2001

Pt XXVIII s. 416(3)(b)-(3)(c): March 2, 2002 (SI 2001/3538 art. 2(4)(a))

Pt XXVIII s. 416(4)-(5): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XXVIII s. 416(1)-(5): United Kingdom

PART XXIX

INTERPRETATION

Law In Force

417.— Definitions.

(1) In this Act—

[“AIF” has the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013;]¹

“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);

[...] ²

“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;

[“claim”, in relation to the Financial Services Compensation Scheme under Part XV, is to be construed in accordance with section 214(1B);]³

“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 137P]⁴;

[“credit-related regulated activity” has the meaning given in section 23(1B);]⁵

“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 production include references to producing a copy of the information in legible form [, or in a form from which it can readily be produced in visible and legible form]⁶ ;

[“EBA” means the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority)⁸];]⁷

[“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);]⁹

[“ESMA” means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority);]¹⁰

“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 any of subsections (2) to (3C) of section 285]¹¹ ;

[“the FCA” means the Financial Conduct Authority;]¹²

“financial promotion rules” means rules made under [section 137R]¹³ ;

“friendly society” means an incorporated or registered friendly society;

[“full-scope UK AIFM” has the meaning given in regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;]¹

“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 137G(2);

] ¹⁴

“incorporated friendly society” means a society incorporated under the Friendly Societies Act 1992;

“industrial and provident society” means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969;

[“information society service” means an information society service within the meaning of Article 2(a) of the electronic commerce directive;]¹⁵

[“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 , [...]¹⁷
- (b) Article 52 of Commission Directive 2006/73/EC of 10 August 2006 [, and]¹⁸
- [(c) Article 6(5) of the emission allowance auctioning regulation;]¹⁸

] ¹⁶

“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; [...]¹⁹ [...]²⁰

“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);]²¹

“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;]²²

“prescribed” (where not otherwise defined) means prescribed in regulations made by the Treasury;

“price stabilising rules” means rules made under [section 137Q]²³;

[“principal” in relation to an appointed representative, is to be read in accordance with section 39;]²⁴

“private company” has [the same meaning as in the Companies Acts (see section 4 of the Companies Act 2006)]²⁵;

“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 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]²⁶;

[“regulator” has the meaning given in section 3A(2);]²⁷

[...]²⁸

[“rule” means a rule made by the FCA or the PRA under this Act;]²⁹

“rule-making instrument” has the meaning given in [section 138G]³⁰;

“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);

[“short selling regulation” means Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps;]³¹

[“Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council;]³²

[“threshold conditions”, in relation to a regulated activity, has the meaning given in section 55B(1);]³³

“the Treaty” means [the Treaty on the Functioning of the European Union]³⁴;

[“the Tribunal” means the Upper Tribunal;]³⁵

“trust scheme rules” has the meaning given in section 247(1);

“UK authorised person” has the meaning given in [section 191G(1)]³⁶ ; [...]³⁷

[“the UK financial system” has the meaning given in [section 11]³⁸ ; and]³⁷
 “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 [(other than a provision of Part 6)]³⁹ 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.

[(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 or a company or firm as mentioned in [Article 54]³⁴ 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.

] ⁴⁰

Notes

- ¹ Definition inserted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.31 (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ² Definition repealed by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(a) (April 1, 2013)
- ³ Definition inserted by Banking Act 2009 c. 1 Pt 4 s.174(2) (February 21, 2009)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(b) (April 1, 2013)
- ⁵ Definition inserted by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(c) (April 1, 2013)
- ⁶ Words added by Criminal Justice and Police Act 2001 c. 16 Sch.2(2) para.16(2)(f) (April 1, 2003)
- ⁷ Definition inserted by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(14)(a) (April 16, 2012)
- ⁸ O.J. No. L331, 15.12.2010 p.12
- ⁹ Definition inserted by Electronic Commerce Directive (Financial Services and Markets) Regulations 2002/1775 Pt 5 reg.13(2)(a) (July 18, 2002 for the purpose of enabling the Authority to make rules; August 21, 2002 otherwise)
- ¹⁰ Definition inserted by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(14)(b) (April 16, 2012)
- ¹¹ Words substituted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(15) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
- ¹² Definition inserted by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(d) (January 24, 2013)
- ¹³ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(e) (April 1, 2013)
- ¹⁴ Definition substituted by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(f) (April 1, 2013)
- ¹⁵ Definition inserted by Electronic Commerce Directive (Financial Services and Markets) Regulations 2002/1775 Pt 5 reg.13(2)(b) (July 18, 2002 for the purpose of enabling the Authority to make rules; August 21, 2002 otherwise)

- 16 Definition inserted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.19(a) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- 17 Word repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.3(14)(a) (July 20, 2012)
- 18 Added by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.3(14)(b) (July 20, 2012)
- 19 Definition repealed by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(g) (April 1, 2013)
- 20 Definition repealed by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(h) (April 1, 2013)
- 21 Definition substituted by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(i) (April 1, 2013)
- 22 Definitions inserted by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(j) (January 24, 2013)
- 23 Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(k) (April 1, 2013)
- 24 Definition inserted by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(l) (April 1, 2013)
- 25 Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.181(4) (October 1, 2009)
- 26 Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(m) (April 1, 2013)
- 27 Definition inserted by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(n) (January 24, 2013)
- 28 Definitions repealed by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(o) (April 1, 2013)
- 29 Definition substituted by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(p) (April 1, 2013)
- 30 Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(q) (April 1, 2013)
- 31 Definition inserted by Financial Services and Markets Act 2000 (Short Selling) Regulations 2012/2554 reg.2(15) (November 1, 2012)
- 32 Definition inserted by Companies Act 2006 c. 46 Pt 28 c.1 s.964(6) (April 6, 2007 subject to transitional adaptations specified in SI 2007/1093 art.3 and Sch.1)
- 33 Definition substituted by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(r) (April 1, 2013)
- 34 Words substituted by Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012/1809 Sch.1(1) para.1 (August 1, 2012: substitution has effect subject to savings specified in SI 2012/1809 art.2(2))
- 35 Definition inserted by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.48 (April 6, 2010)
- 36 Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(s) (April 1, 2013)
- 37 Definition inserted by Financial Services Act 2010 c. 28 Sch.2(1) para.31 (April 8, 2010)
- 38 Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.48(1)(t) (April 1, 2013)
- 39 Words inserted by Prospectus Regulations 2005/1433 Sch.1 para.15 (July 1, 2005)
- 40 Added by Electronic Commerce Directive (Financial Services and Markets) Regulations 2002/1775 Pt 5 reg.13(2)(c) (July 18, 2002 for the purpose of enabling the Authority to make rules; August 21, 2002 otherwise)

Commencement

Pt XXIX s. 417(1)-(3): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XXIX s. 417(1)-(4)(d): United Kingdom

Law In Force

Amendment(s) Pending

418.— Carrying on regulated activities in the United Kingdom.

- (1) In the [five]¹ 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 [EU]² 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.

[(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.

]³

(6) For the purposes of subsections (2) to [(5A)]⁴ it is irrelevant where the person with whom the activity is carried on is situated.

[(7) For the purposes of subsection (2)(b) and (c), the emission allowance auctioning regulation is a single market directive.]⁵

Notes

¹ Word substituted by Electronic Commerce Directive (Financial Services and Markets) Regulations 2002/1775 Pt 5 reg.13(3)(a) (July 18, 2002 for the purpose of enabling the Authority to make rules; August 21, 2002 otherwise)

² Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(d) (April 22, 2011)

³ Added by Electronic Commerce Directive (Financial Services and Markets) Regulations 2002/1775 Pt 5 reg.13(3)(b) (July 18, 2002 for the purpose of enabling the Authority to make rules; August 21, 2002 otherwise)

⁴ Figure substituted by Electronic Commerce Directive (Financial Services and Markets) Regulations 2002/1775 Pt 5 reg.13(3)(c) (July 18, 2002 for the purpose of enabling the Authority to make rules; August 21, 2002 otherwise)

⁵ Added by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.3(15) (July 20, 2012)

Amendments Pending

Pt XXIX s. 418(5B)(c): repealed by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 2(1) para. 1 (date to be appointed)

Pt XXIX s. 418(6): word substituted by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 1 para. 1(4)(c) (date to be appointed)

Pt XXIX s. 418(5B)-(5C): added by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 1 para. 1(4)(b) (date to be appointed)

Pt XXIX s. 418(1): word substituted by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 1 para. 1(4)(a) (date to be appointed)

Commencement

Pt XXIX s. 418(1)-(6): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Pt XXIX s. 418(1)-(7): United Kingdom

Law In Force

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).
-

Commencement

Pt XXIX s. 419(1)-(5): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XXIX s. 419(1)-(5): United Kingdom

✔ Law In Force

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 [the Companies Acts (see section 1162 of, and Schedule 7 to, the Companies Act 2006)]¹.

(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);

(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 Friendly Societies Act 1992 (and “parent undertaking” is to be read accordingly).

Notes

¹ Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.212(1) (April 6, 2008)

Commencement

Pt XXIX s. 420(1)-(3): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XXIX s. 420(1)-(3): United Kingdom

✔ Law In Force

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 Friendly Societies Act 1992).

(2) “Participating interest” [has the meaning given in section 421A]¹; 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 Building Societies Act 1986.

Notes

¹ Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.212(2) (April 6, 2008)

Commencement

Pt XXIX s. 421(1)-(3): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XXIX s. 421(1)-(3): United Kingdom

Law In Force

[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.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.48(2) (January 24, 2013)

Extent

Pt XXIX s. 421ZA(a)-(e): United Kingdom

Law In Force

[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).

] ¹

Notes

¹ Inserted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.212(3) (April 6, 2008)

Extent

Pt XXIX s. 421A(1)-(5): United Kingdom

Law In Force

[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.

(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.

] ¹

Notes

- ¹ Ss 422 and 422A substituted for s.422 by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.3 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)

Commencement

Pt XXIX s. 422(1)-(7): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XXIX s. 422(1)-(7): United Kingdom

Law In Force

[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 2.1(b)]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.
- (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.

]¹

Notes

- ¹ Ss 422 and 422A substituted for s.422 by Financial Services and Markets Act 2000 (Controllers) Regulations 2009/534 Sch.3 para.1 (March 21, 2009: substitution has effect subject to transitional provisions specified in SI 2009/534 reg.8)
- ² Words substituted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(31) (July 1, 2011)

Extent

Pt XXIX s. 422A(1)-(10)(b): United Kingdom

Law In Force

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.

Commencement

Pt XXIX s. 423(1)-(3): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XXIX s. 423(1)-(3): United Kingdom

Law In Force

424.— Insurance.

(1) In this Act, references to—

- (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.

Commencement

Pt XXIX s. 424(1)-(2): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Pt XXIX s. 424(3): February 25, 2001 for the purposes of making orders or regulations; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Pt XXIX s. 424(1)-(3): United Kingdom

Law In Force

[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).

[(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.]²

(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.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Modification of Powers) Regulations 2006/2975 reg.10 (December 6, 2006)

- ² Substituted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.21 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

Extent

Pt XXIX s. 424A(1)-(5)(b): United Kingdom

Law In Force

425.— Expressions relating to authorisation elsewhere in the single market.

(1) In this Act—

[(a) [“alternative investment fund managers directive”,]²“banking consolidation directive”, [“life assurance consolidation directive”,]³[“EEA AIFM”,]⁴“EEA authorisation”, “EEA firm”, “EEA right”, “EEA State”, [“emission allowance auctioning regulation”]⁵[...]“first non-life insurance directive”, “insurance directives”, [“reinsurance directive”,]⁷“insurance mediation directive”, [...]“markets in financial instruments directive”,]⁹“single market directives” [, “tied agent”]¹⁰ and “UCITS directive”] have the meaning given in Schedule 3; and.]¹

(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;

(b) “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.

Notes

- ¹ Substituted by Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003/2066 Pt 2 reg.2(1) (February 13, 2004)
- ² Words inserted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.32(a) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ³ Words inserted by Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004/3379 Pt 2 reg.6(5)(a) (January 11, 2005)
- ⁴ Words inserted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.32(b) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁵ Words inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.3(16) (July 20, 2012)
- ⁶ Words repealed by Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004/3379 Pt 2 reg.6(5)(b) (January 11, 2005)
- ⁷ Words inserted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.5 (December 10, 2007)
- ⁸ Words repealed by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.22(a) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ⁹ Words inserted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Modification of Powers) Regulations 2006/2975 reg.11 (December 6, 2006)
- ¹⁰ Words inserted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.5 para.22(b) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

Commencement

Pt XXIX s. 425(1)-(2)(c): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XXIX s. 425(1)-(2)(c): United Kingdom

Law In Force

[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—
- (a) use, have used or may use any of the services within subsection (3); [...]²
 - (b) have relevant rights or interests in relation to any of those services [; or]³
 - [(c) whose rights, interests or obligations are affected by the level of a regulated benchmark.]³
- (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;
 - [“regulated benchmark” means a benchmark, as defined in section 22(6), in relation to which any provision made under section 22(1A)(b) has effect;]⁴
 - “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.

] ¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 Sch.2(1) para.32 (April 8, 2010)
- ² Word repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013/655 Pt 2 art.3(4)(a) (April 2, 2013: repeal has effect subject to transitional provisions specified in SI 2013/655 Pt 4)
- ³ Added by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013/655 Pt 2 art.3(4)(b) (April 2, 2013: insertion has effect subject to transitional provisions specified in SI 2013/655 Pt 4)
- ⁴ Definition inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013/655 Pt 2 art.3(4)(c) (April 2, 2013: insertion has effect subject to transitional provisions specified in SI 2013/655 Pt 4)

Extent

Pt XXIX s. 425A(1)-(7) definition of "relevant ancillary service": United Kingdom

Law In Force

[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.

] ¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 Sch.2(1) para.32 (April 8, 2010)

Extent

Pt XXIX s. 425B(1)-(2): United Kingdom

Law In Force

[425C "Qualifying EU provision"

- (1) In this Act "qualifying EU provision" means a provision of—
- (a) a directly applicable EU regulation, or
 - (b) an EU decision for whose enforcement the United Kingdom is required by an EU obligation to make provision.

- (2) In subsection (1)(b) "EU decision" means a decision under an EU directive or EU regulation.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.48(3) (January 24, 2013)

Extent

Pt XXIX s. 425C(1)-(2): United Kingdom

PART XXX
SUPPLEMENTAL

✔ Law In Force

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.

Commencement

Pt XXX s. 426(1)-(4): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XXX s. 426(1)-(4): United Kingdom

✔ Law In Force

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 reapply 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;
- (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 [the Office of Fair Trading]¹ ;
- (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.

Notes

¹ Words substituted by Enterprise Act 2002 c. 40 Sch.25 para.40(18) (April 1, 2003)

Commencement

Pt XXX s. 427(1)-(4): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XXX s. 427(1)-(4): United Kingdom

Law In Force

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.

Commencement

Pt XXX s. 428(1)-(3)(b): June 14, 2000 (2000 c. 8 Pt XXX s. 431(1)(b))

Extent

Pt XXX s. 428(1)-(3)(b): United Kingdom

Law In Force

429.— Parliamentary control of statutory instruments.

(1) No order is to be made under—

- (a) [section 1J, 3B(4), 3F(6), 55C, 144(4), 192(b) or (e), 138K(6)(c), 192B(6), 204A(7), 213(1A), 236(5), 285(4), 380(12), 382(15), 384(13), 404G, or 419]¹, or
- (b) [...] ²

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 90B, 214A, 214B, 214D or 262]³ 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 3G(1), 137D(1)(b), 165A(2)(d), 192A(4) or 431(2)]⁴ or to which [section 22B or 23A or paragraph 26 of Schedule 2]⁵ applies, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Notes

- ¹ Words inserted by Financial Services Act 2012 c. 21 Pt 2 s.49(2)(a)(iii) (January 24, 2013)
- ² Repealed by Financial Services Act 2012 c. 21 Pt 2 s.49(2)(b) (January 24, 2013)
- ³ Word inserted by Financial Services Act 2010 c. 28 Sch.2(1) para.33(3) (April 8, 2010)
- ⁴ Words inserted by Financial Services Act 2012 c. 21 Pt 2 s.49(3)(b) (January 24, 2013)
- ⁵ Words inserted by Financial Services Act 2012 c. 21 Pt 2 s.49(3)(c) (January 24, 2013)

Commencement

Pt XXX s. 429(1)-(8): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Pt XXX s. 429(1)-(8): United Kingdom

Law In Force

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.

Commencement

Pt XXX s. 430(1)-(3): June 14, 2000 (2000 c. 8 Pt XXX s. 431(1)(b))

Extent

Pt XXX s. 430(1)-(3): United Kingdom

✔ Law In Force

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.

Commencement

Pt XXX s. 431(1)-(2): June 14, 2000 (2000 c. 8 Pt XXX s. 431(1)(a))

Extent

Pt XXX s. 431(1)-(2): United Kingdom

✔ Law In Force

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.

Commencement

Pt XXX s. 432(1): July 3, 2001 for provisions specified in SI 2001/2364 art.2(b); September 3, 2001 for provisions specified in SI 2001/2632 art.2(2); December 1, 2001 otherwise (SI 2001/2364 art. 2(1); SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Pt XXX s. 432(2): June 14, 2000 (2000 c. 8 Pt XXX s. 431(1)(c))

Pt XXX s. 432(3): April 30, 2001 for repeals specified in SI 2001/1282 art.2(b); December 1, 2001 for repeals specified in SI 2001/3538 art.2(1); July 2, 2002 for repeals specified in SI 2001/3538 art.2(5)(b) (SI 2001/1282 art. 2(b); SI 2001/3538 art. 2(1), art. 2(5)(b))

Extent

Pt XXX s. 432(1)-(3): United Kingdom

✔ Law In Force

433. Short title.

This Act may be cited as the Financial Services and Markets Act 2000.

Commencement

Pt XXX s. 433: June 14, 2000 (2000 c. 8 Pt XXX s. 431(1)(b))

Extent

Pt XXX s. 433: United Kingdom

SCHEDULE 1
THE FINANCIAL SERVICES AUTHORITY

Section 1.

PART I
GENERAL

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

1.— [...]¹**Notes**

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

 Repealed

England, Scotland and Wales

2.— [...] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

3.— [...] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

4.— [...] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

5.— [...] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
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As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
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As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

6.— [...] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
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As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
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As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

7.— [...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
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As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
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As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

8.— [...] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
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As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

9. [...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
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As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

10.— [...] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

11.— [...] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
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As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

12. [...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
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As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

PART II

STATUS

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

13. [...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Exemption from requirement of “limited” in Authority's name

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

14. [...] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

15. [...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

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Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

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PART III

PENALTIES AND FEES

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

16.— [...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

17.— [...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

18. [...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

PART IV

MISCELLANEOUS

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

19.— [...] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

19A [...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

19B [...] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

20. [...] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England, Scotland and Wales](#) | [Other Application](#)

R Repealed

England, Scotland and Wales

21. [...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Other Application

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 4: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (February 19, 2013: substitution has effect on February 19, 2013 as SI 2013/113 for the purposes of making appointments subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 2: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

As part of the substitution of new Schs 1ZA and 1ZB and in relation to the application of those new Schs as brought into force by SI 2013/113 art.2 and Sch.1 Pt 3: Sch.1 is repealed.[...]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for purposes and provisions specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

[SCHEDULE 1ZA**THE FINANCIAL CONDUCT AUTHORITY****Section 1A****] ¹**

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 or the making of rules

as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; ; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

[PART 1

GENERAL

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

[Interpretation]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Law In Force

[1

In this Schedule—

“the Bank” means the Bank of England;

“functions”, in relation to the FCA, means functions conferred on the FCA by or under any provision of this Act (see section 1A(6) which affects the meaning of references to such functions).

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(1) para. 1 definition of "the Bank"- definition of "functions": United Kingdom

[Constitution]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; February 19, 2013 for the purposes of making appointments as specified in SI 2013/113 art.2 and Sch.1 Pt 4 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[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.
- (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 nonexecutive 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).

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; February 19, 2013 for the purposes of making appointments as specified in SI 2013/113 art.2 and Sch.1 Pt 4 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(1) para. 2(1)-(6): United Kingdom

Law In Force

[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 subparagraphs (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.
-] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; February 19, 2013 for the purposes of making appointments as specified in SI 2013/113 art.2 and Sch.1 Pt 4 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(1) para. 3(1)-(7): United Kingdom

Law In Force

[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.
-] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8

Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(1) para. 4(1)-(2): United Kingdom

Law In Force

[5

The validity of any act of the FCA is not affected—

- (a) by any vacancy in any of the offices mentioned in paragraph 2(2)(a), (b) or (c), or
- (b) by a defect in the appointment of a person—
 - (i) to any of those offices, or
 - (ii) as an appointed member.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preperation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(1) para. 5(a)-(b)(ii): United Kingdom

Law In Force

[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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preperation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(1) para. 6(a)-(b): United Kingdom

*[Remuneration]¹***Notes**

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Law In Force

[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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(1) para. 7(a)-(b): United Kingdom

*[Arrangements for discharging functions]¹***Notes**

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Law In Force

[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 its legislative functions, the FCA must act through its governing body.
- (3) For that purpose, the following are the FCA's legislative functions—
 - (a) making rules;
 - (b) issuing codes under section 64 or 119;

(c) issuing statements under—

- (i) section 63C, 64, 69, 88C, 89S, 93, 124, 131J, 138N, 192H, 192N, 210 or 312J,
- (ii) section 345D (whether as a result of section 345(2)[, section 249(1) or 261K(1)]²), or
- (iii) section 80 of the Financial Services Act 2012;

(d) giving directions under section 316, 318 or 328.

(4) The function of issuing general guidance (as defined in section 139B(5)) may not be discharged by an officer or member of staff of the FCA.

] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

² Words inserted by Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013/1388 Pt 2 reg.3(21) (June 6, 2013: insertion has effect subject to transitional provision specified in SI 2013/1388 reg.24)

Extent

Sch. 1ZA(1) para. 8(1)-(4): United Kingdom

*[Records]*¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Law In Force

[9

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.

] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(1) para. 9(a)-(b): United Kingdom

*[Publication of record of meetings of governing body]¹***Notes**

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Law In Force

[10

- (1) The FCA must publish a record of each meeting of its governing body—
- (a) before the end of the period of 6 weeks beginning with the day of the meeting, or
 - (b) if no meeting of the governing body is subsequently held during that period, before the end of the period of 2 weeks beginning with the day of the next meeting.
- (2) The record must specify any decision taken at the meeting (including decisions to take no action) and must set out, in relation to each decision, a summary of the deliberations of the governing body.
- (3) Sub-paragraphs (1) and (2) do not require the publication of information whose publication within the time required by subparagraph (1) would in the opinion of the governing body be against the public interest.
- (4) Publication under this section is to be in such manner as the FCA thinks fit.

] ¹**Notes**

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(1) para. 10(1)-(4): United Kingdom

*[Annual report]¹***Notes**

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional

provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

✔ Law In Force

[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, in its opinion, it has complied with the duty in section 1B(4),
 - (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 3I or 3J during the period to which the report relates,
 - (i) how it has complied with section 354A(1) so far as relating to co-operation with persons outside the United Kingdom, and
 - (j) 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—
 - (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.
- (4) The Treasury must lay before Parliament a copy of each report received by them under this paragraph.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(1) para. 11(1)-(4): United Kingdom

*[Annual public meeting]*¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8

Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

✔ Law In Force

[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
 - (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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(1) para. 12(1)-(6)(b): United Kingdom

[Report of annual meeting]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[13

Not later than one month after its annual meeting, the FCA must publish a report of the proceedings of the meeting.

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(1) para. 13: United Kingdom

[Accounts and audit]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[14

(1) 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 provision of that Act about accounts and their audit is to apply to the FCA with such modifications as are specified in the direction, whether or not the provision would otherwise apply to the FCA.

(2) Compliance with any requirement under sub-paragraph (1)(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.

(3) Proceedings under sub-paragraph (2) may be brought only by the Treasury.

] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(1) para. 14(1)-(3): United Kingdom

Law In Force

[15

(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 on accounts received under this paragraph, and
- (b) send a copy of the certified accounts and the report to the Treasury.

(3) The Treasury must lay the copy of the certified accounts and the report before Parliament.

(4) Except as provided by paragraph 14(1), 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.

(5) In this paragraph “annual accounts” has the meaning given in section 471 of the Companies Act 2006.

] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(1) para. 15(1)-(5): United Kingdom

**[PART 2
STATUS**

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

[Status]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Law In Force

[16

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.

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(2) para. 16(a)-(b): United Kingdom

[Exemption from requirement for use of “limited” in name of FCA]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Law In Force

[17

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.

] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(2) para. 17: United Kingdom

Law In Force

[18

If the Secretary of State is satisfied that any action taken by the FCA makes it inappropriate for the exemption given by paragraph 17 to continue, the Secretary of State may, after consulting the Treasury, give a direction removing it.

] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(2) para. 18: United Kingdom

[PART 3

PENALTIES AND FEES

] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations as specified

in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 or the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; ; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

[Penalties]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 or the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; ; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[19

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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(3) para. 19: United Kingdom

Law In Force

[20

(1) The FCA must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.

(2) The FCA's "penalty receipts" in respect of a financial year are any amounts received by it during the year by way of penalties imposed under this Act.

(3) The FCA's "enforcement costs" in respect of a financial year are the expenses incurred by it during the year in connection with—

- (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
- (b) the recovery of penalties imposed under this Act.

- (4) For this purpose the FCA's enforcement powers are—
- (a) its powers under any of the provisions mentioned in section 133(7A),
 - (b) its powers under section 56 (prohibition orders),
 - (c) its powers under Part 25 of this Act (injunctions and restitution),
 - (d) its powers under any other enactment specified by the Treasury by order,
 - (e) its powers in relation to the investigation of relevant offences, and
 - (f) its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.
- (5) “Relevant offences” are—
- (a) offences under FSMA 2000,
 - (b) offences under subordinate legislation made under that Act,
 - (c) offences falling within section 402(1) of that Act,
 - (d) offences under Part 7 of the Financial Services Act 2012, and
 - (e) any other offences specified by the Treasury by order.
- (6) The Treasury may give directions to the FCA as to how the FCA is to comply with its duty under sub-paragraph (1).
- (7) The directions may in particular—
- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in sub-paragraph (3),
 - (b) relate to the calculation and timing of the deduction in respect of the FCA's enforcement costs, and
 - (c) specify the time when any payment is required to be made to the Treasury.
- (8) The directions may also require the FCA to provide the Treasury at specified times with specified information relating to—
- (a) penalties that the FCA has imposed under this Act, or
 - (b) the FCA's enforcement costs.
- (9) The Treasury must pay into the Consolidated Fund any sums received by them under this paragraph.
-] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 or the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; ; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(3) para. 20(1)-(9): United Kingdom

✔ Law In Force

[21

(1) The FCA must prepare and operate a scheme (“the financial penalty scheme”) for ensuring that the amounts that, as a result of the deduction for which paragraph 20(1) provides, are retained by the FCA in respect of amounts paid to it by way of penalties imposed under this Act are applied for the benefit of regulated persons.

(2)

“Regulated persons” means —

- (a) authorised persons,
- (b) recognised investment exchanges,
- (c) issuers of securities admitted to the official list, and
- (d) 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 regulated person.

(4) The financial penalty scheme must ensure that those who have become liable to pay a penalty to the FCA in any financial year of the FCA do not receive any benefit under the scheme in the following financial year.

(5) Up-to-date details of the financial penalty scheme must be set out in a document (“the scheme details”).

] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(3) para. 21(1)-(5): United Kingdom

✔ Law In Force

[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 subparagraph (3), and
 - (b) its response to them.
- (6) If the scheme differs from the draft published under subparagraph (2) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subparagraph (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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(3) para. 22(1)-(9): United Kingdom

[Fees] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[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 qualifying functions, 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) The “qualifying functions” of the FCA are—
- (a) its functions under or as a result of this Act or any of the [other enactments mentioned in section 1A(6)(a) to (ca)]², and
 - (b) its functions under or as a result of a qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order.
- (3) 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.
- (4) Neither section 1A(6)(d) nor the definition of “functions” in paragraph 1 applies for the purposes of sub-paragraph (2).
- (5) For the purposes of sub-paragraph (3) 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).
- (6) 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.
- (7) 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.
- (8) 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.

] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

² Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.33 (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Extent

Sch. 1ZA(3) para. 23(1)-(8): United Kingdom

[Services for which fees may not be charged]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(3) para. 24(a)-(b): United Kingdom

[PART 4**MISCELLANEOUS**

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

[Exemption from liability in damages]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[25

(1) None of the following is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the FCA's functions—

- (a) the FCA;
- (b) any person (“P”) who is, or is acting as, a member, officer or member of staff of the FCA;
- (c) any person who could be held vicariously liable for things done or omitted by P, but only in so far as the liability relates to P's conduct.

(2) Anything done or omitted by a person mentioned in subparagraph (1)(a) or (b) while acting, or purporting to act, as a result of an appointment under any of sections 166 to 169 is to be taken for the purposes of sub-paragraph (1) to have been done or omitted in the discharge, or as the case may be purported discharge, of the FCA's functions.

(3) 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 Human Rights Act 1998.

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(4) para. 25(1)-(3)(b): United Kingdom

[Accredited financial investigators]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Law In Force

[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—

- (a) is, or is acting as, an officer of, or member of the staff of, the FCA, or
- (b) is 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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(4) para. 26(a)-(b): United Kingdom

[Amounts required by rules to be paid to the FCA]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 in relation to the preparation of a scheme under 2000 c.8 Sch.1ZA para.21 and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 1ZA(4) para. 27: United Kingdom

[SCHEDULE 1ZB**THE PRUDENTIAL REGULATION AUTHORITY****Section 2A**

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

[PART 1**GENERAL**

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

[Interpretation]¹**Notes**

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

 Law In Force**[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 (see section 2A(6) which affects the meaning of references to such functions).

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 1 definition of "the Bank"- definition of "functions": United Kingdom

*[Constitution]¹***Notes**

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Law In Force

[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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 2: United Kingdom

Law In Force

[3

(1) The Governing Body must consist of—

- (a) the chair,
- (b) the chief executive,
- (c) the Bank's Deputy Governor for financial stability,
- (d) the chief executive of the FCA
- (e) other members (in this Schedule referred to as “appointed members”).

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 3: United Kingdom

Law In Force

[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.

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 4(a)-(b)(ii): United Kingdom

Law In Force

[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.

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 5(a)-(b): United Kingdom

[Appointed members of governing body]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Law In Force

[6

The appointed members must be appointed by the court of directors of the Bank with the approval of the Treasury.

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 6: United Kingdom

Law In Force

[7

Paragraphs 8 to 12 apply to the exercise by the court of directors of the Bank of its power to appoint appointed members.

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 7: United Kingdom

Law In Force

[8 Arrangements for discharging functions

The court of directors must secure that the majority of the members of the governing body of the PRA are non-executive members.

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (April 1, 2013: substitution has effect on April 1, 2013 as specified in SI 2013/423 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 8: United Kingdom

Law In Force

[9

For the purposes of paragraph 8, and for the purposes of the PRA's duty in section 3C (duty to follow principles of good governance) none of the following is a non-executive member—

- (a) the members referred to in paragraph 3(a), (b) and (c), and
- (b) a member who is an employee of the PRA or of the Bank.

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 9(a)-(b): United Kingdom

Law In Force

[10

The court of directors must have regard to generally accepted principles of good practice relating to the making of public appointments.

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 10: United Kingdom

✔ Law In Force

[11

(1) Before appointing a person as an appointed member, the court of directors 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.

] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 11(1)-(3): United Kingdom

✔ Law In Force

[12

An employee of the FCA is disqualified for appointment as an appointed member.

] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 12: United Kingdom

✔ Law In Force

[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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 13: United Kingdom

Law In Force

[14

The court of directors of 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.

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 14(a)-(b): United Kingdom

[Terms of service]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Law In Force

[15

(1) The terms of service of the members of the governing body are to be determined by [the Oversight Committee of the Bank]² .

(2) The PRA must pay to the members of its governing body such remuneration as may be determined by [that Committee]³ .

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
- ² Substituted by Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013/161 Pt 5 art.12(3)(a) (April 1, 2013)
- ³ Words substituted by Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013/161 Pt 5 art.12(3)(b) (April 1, 2013)

Extent

Sch. 1ZB(1) para. 15(1)-(2): United Kingdom

[Arrangements for discharging functions]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Law In Force

[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 provision.
- (2) In exercising its legislative functions or its functions under section 2E (strategy), the PRA must act through its governing body.
- (3) For that purpose, the following are the PRA's legislative functions—
- (a) making rules;
 - (b) issuing codes under section 64;
 - (c) issuing statements under—
 - (i) section 63C, 64, 69, 192H, 192N, 210 or 345D, or
 - (ii) section 80 of the Financial Services Act 2012;
 - (d) giving directions under section 316 or 318;
 - (e) issuing guidance under section 2I.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 16(1)-(3)(e): United Kingdom

[Records]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Law In Force

[17

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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 17(a)-(b): United Kingdom

[Budget]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Law In Force

[18

(1) The PRA must, for each of its financial years, adopt an annual budget which has been approved by the Bank.

(2) The budget must be adopted before the start of the financial year to which it relates, except that the first budget must be adopted as soon as reasonably practicable after the coming into force of this paragraph.

(3) The PRA may, with the approval of the Bank, vary the budget for a financial year at any time after its adoption.

(4) The PRA must publish each budget, and each variation of a budget, in such manner as the PRA thinks fit.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 18(1)-(4): United Kingdom

[Annual report]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Law In Force

[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 and of the matter mentioned in section 2H(1)(b),
 - (d) how it has complied with section 3D,
 - (e) any direction given under section 3I or 3J during the period to which the report relates,
 - (f) how it has complied with section 354B(1) so far as relating to co-operation with persons outside the United Kingdom, and
 - (g) 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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 19(1)-(4): United Kingdom

[Consultation about annual report]¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Law In Force

[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 and the matter mentioned in section 2H(1)(b).

(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.

]¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 20(1)-(2): United Kingdom

[Report on consultation]¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

✔ Law In Force

[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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 21(1)-(3): United Kingdom

[Accounts and audit] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

✔ Law In Force

[22

- (1) 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 provision of that Act about accounts and their audit is to apply to the PRA with such modifications as are specified in the direction, whether or not the provision would otherwise apply to the PRA.
- (2) Compliance with any requirement under sub-paragraph (1)(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.
- (3) Proceedings under sub-paragraph (2) may be brought only by the Treasury.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 22(1)-(3): United Kingdom

Law In Force

[23

- (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 certified accounts and the report to the Treasury.
- (3) The Treasury must lay the copy of the certified accounts and the report before Parliament.
- (4) The PRA must send a copy of the certified accounts and the report to the Bank.
- (5) Except as provided by paragraph 22(1), 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.
- (6) In this paragraph “annual accounts” has the meaning given in section 471 of the Companies Act 2006.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(1) para. 23(1)-(6): United Kingdom

[PART 2**STATUS**

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

[Status]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Law In Force

[24

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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(2) para. 24(a)-(b): United Kingdom

[Exemption from requirement for use of “limited” in name of PRA]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Law In Force

[25

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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(2) para. 25: United Kingdom

Law In Force

[26

If the Secretary of State is satisfied that any action taken by the PRA makes it inappropriate for the exemption given by paragraph 25 to continue, the Secretary of State may, after consulting the Treasury, give a direction removing it.

] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(2) para. 26: United Kingdom

[PART 3

PENALTIES AND FEES

] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

[Penalties] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Law In Force

[27

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.

] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

ExtentSch. 1ZB(3) para. 27: United Kingdom

✔ Law In Force

[28

- (1) The PRA must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.
- (2) The PRA's "penalty receipts" in respect of a financial year are any amounts received by it during the year by way of penalties imposed under this Act.
- (3) The PRA's "enforcement costs" in respect of a financial year are the expenses incurred by it during the year in connection with—
 - (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
 - (b) the recovery of penalties imposed under this Act.
- (4) For this purpose the PRA's enforcement powers are—
 - (a) its powers under any of the provisions mentioned in section 133(7A),
 - (b) its powers under section 56 (prohibition orders),
 - (c) its powers under Part 25 of this Act (injunctions and restitution),
 - (d) its powers under any other enactment specified by the Treasury by order,
 - (e) its powers in relation to the investigation of relevant offences, and
 - (f) its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.
- (5) "Relevant offences" are—
 - (a) offences under FSMA 2000,
 - (b) offences under subordinate legislation made under that Act, and
 - (c) any other offences specified by the Treasury by order.
- (6) The Treasury may give directions to the PRA as to how the PRA is to comply with its duty under sub-paragraph (1).
- (7) The directions may in particular—
 - (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in sub-paragraph (3),
 - (b) relate to the calculation and timing of the deduction in respect of the PRA's enforcement costs, and
 - (c) specify the time when any payment is required to be made to the Treasury.
- (8) The directions may also require the PRA to provide the Treasury at specified times with information relating to—
 - (a) penalties that the PRA has imposed under FSMA 2000, or
 - (b) the PRA's enforcement costs.
- (9) The Treasury must pay into the Consolidated Fund any sums received by them under this paragraph.

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(3) para. 28(1)-(9): United Kingdom

Law In Force

[29

(1) The PRA must prepare and operate a scheme (“the financial penalty scheme”) for ensuring that the amounts that, as a result of the deduction for which paragraph 28(1) provides, are retained by the PRA in respect of amounts paid to it by way of penalties imposed under this Act are applied for the benefit of PRA-authorized persons.

(2) The financial penalty scheme may, in particular, make different provision with respect to different classes of PRA-authorized person.

(3) The financial penalty scheme must ensure that those who have become liable to pay a penalty to the PRA in any financial year of the PRA do not receive any benefit under the scheme in the following financial year.

(4) Up-to-date details of the financial penalty scheme must be set out in a document (“the scheme details”).

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(3) para. 29(1)-(4): United Kingdom

Law In Force

[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 subparagraph (3), and
 - (b) its response to them.
- (6) If the scheme differs from the draft published under subparagraph (2) in a way which is, in the opinion of the PRA, significant, the PRA must (in addition to complying with subparagraph (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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(3) para. 30(1)-(9): United Kingdom

[Fees] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Law In Force

[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 qualifying functions, 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) The “qualifying functions” of the PRA are—

- (a) its functions under or as a result of this Act or any of the other Acts mentioned in section 2A(6), and
- (b) its functions under or as a result of a qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order.
- (3) 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—
- (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.
- (4) Neither section 2A(6)(d) nor the definition of “functions” in paragraph 1 applies for the purposes of sub-paragraph (2).
- (5) For the purposes of sub-paragraph (3) 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).
- (6) 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.
- (7) 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.

] ¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(3) para. 31(1)-(7): United Kingdom

*[Services for which fees may not be charged]*¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Law In Force

[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.

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(3) para. 32(a)-(b): United Kingdom

[PART 4

MISCELLANEOUS

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

[Exemption from liability in damages]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Law In Force

[33

(1) None of the following is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the PRA's functions—

- (a) the PRA;
- (b) any person (“P”) who is, or is acting as, a member, officer or member of staff of the PRA;
- (c) any person who could be held vicariously liable for things done or omitted by P, but only in so far as the liability relates to P's conduct.

(2) Anything done or omitted by a person mentioned in subparagraph (1)(a) or (b) while acting, or purporting to act, as a result of an appointment under any of sections 97, 166 to 169 and 284 is to be taken for the purposes of sub-paragraph (1) to have been done or omitted in the discharge, or as the case may be purported discharge, of the PRA's functions.

(3) 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 Human Rights Act 1998.

] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(4) para. 33(1)-(3)(b): United Kingdom

[Accredited financial investigators] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Law In Force

[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—

(a) is, or is acting as, an officer of, or member of the staff of, the PRA, or

(b) is 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.

] ¹

Notes

¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(4) para. 34(a)-(b): United Kingdom

[Amounts required by rules to be paid to the PRA]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)
-

Law In Force

[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.

]¹

Notes

- ¹ Existing Sch.1 is substituted for new Schs 1ZA and 1ZB by Financial Services Act 2012 c. 21 Sch.3 para.1 (January 24, 2013: substitution has effect on January 24, 2013 as SI 2013/113 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7)

Extent

Sch. 1ZB(4) para. 35: United Kingdom

[SCHEDULE 1A

FURTHER PROVISION ABOUT THE CONSUMER FINANCIAL EDUCATION BODY

[Section 3S]²]¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.15 para.16 (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
-

[PART 1

GENERAL

]¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))
-

[Ensuring exercise of consumer financial education function etc]¹

Notes

¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))

Law In Force

[1

(1) The [FCA]² 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 [FCA]² may, in particular, provide services to that body which the [FCA]² considers would facilitate the exercise of that function.
]¹

Notes

¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))

² Word substituted by Financial Services Act 2012 c. 21 Sch.15 para.2 (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Sch. 1A(I) para. 1(1)-(2): United Kingdom

[Constitution]¹

Notes

¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))

Law In Force

[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 [FCA]² (acting, in the case of the chair or chief executive, with the approval of the Treasury).

(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 [FCA]² in the exercise of the consumer financial education function.

(4) The [FCA]² 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.

] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))

² Word substituted by Financial Services Act 2012 c. 21 Sch.15 para.3 (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Sch. 1A(I) para. 2(1)-(4): United Kingdom

[Status]¹

Notes

¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))

Law In Force

[3

(1) The consumer financial education body is not to be regarded as exercising functions on behalf of the Crown.

(2) The body's [...] ² officers and staff are not to be regarded as Crown servants.

] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))

² Words repealed by Financial Services Act 2012 c. 21 Sch.15 para.4 (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Sch. 1A(I) para. 3(1)-(2): United Kingdom

[Discharge of function by others]¹

Notes

¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))

✔ Law In Force

[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 3S(3)]²; 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.

] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))

² Words substituted by Financial Services Act 2012 c. 21 Sch.15 para.5 (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Sch. 1A(I) para. 4(1)-(4): United Kingdom

✔ Law In Force

[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 3S(3)]².

(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.

] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))

² Words substituted by Financial Services Act 2012 c. 21 Sch.15 para.6 (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Sch. 1A(I) para. 5(1)-(2): United Kingdom

[[Discharge of functions: considerations]²]¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))
- ² Sch.1A paras 6-6B substituted for Sch.1A para.6 by Financial Services Act 2012 c. 21 Sch.15 para.7 (January 24, 2013 in relation to the preparation of a memorandum under 2000 c.8 Sch.1A para.6A and for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
-

Law In Force

[6

In discharging the consumer financial education function the consumer financial education body must have regard to the duty of the FCA to advance its operational objectives.

] ¹

Notes

- ¹ Sch.1A paras 6-6B substituted for Sch.1A para.6 by Financial Services Act 2012 c. 21 Sch.15 para.7 (January 24, 2013 in relation to the preparation of a memorandum under 2000 c.8 Sch.1A para.6A and for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Sch. 1A(I) para. 6(a)-(b): United Kingdom

[Relationship with the FCA]¹

Notes

- ¹ Sch.1A paras 6-6B substituted for Sch.1A para.6 by Financial Services Act 2012 c. 21 Sch.15 para.7 (January 24, 2013 in relation to the preparation of a memorandum under 2000 c.8 Sch.1A para.6A and for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
-

Law In Force

[6A

(1) The consumer financial education body 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 Act.

(2) The consumer financial education body and the FCA must prepare and maintain a memorandum describing how they intend to comply with sub-paragraph (1).

(3) The consumer financial education body must ensure that the memorandum 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.


] ¹

Notes

- ¹ Sch.1A paras 6-6B substituted for Sch.1A para.6 by Financial Services Act 2012 c. 21 Sch.15 para.7 (January 24, 2013 in relation to the preparation of a memorandum under 2000 c.8 Sch.1A para.6A and for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Sch. 1A(I) para. 6A(1)-(3): United Kingdom

 Law In Force

[6B

If the consumer financial education body 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.

]¹

Notes

¹ Sch.1A paras 6-6B substituted for Sch.1A para.6 by Financial Services Act 2012 c. 21 Sch.15 para.7 (January 24, 2013 in relation to the preparation of a memorandum under 2000 c.8 Sch.1A para.6A and for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)


Extent

Sch. 1A(I) para. 6B: United Kingdom

[Budget]¹

Notes

¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))

 Partially In Force

[7

(1) The consumer financial education body must adopt an annual budget which has been approved by the [FCA]² .

(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 [FCA]² , 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; [and]³

(c) [...] ³

(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.

]¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.15 para.8 (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ³ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(16)(a) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

Extent

Sch. 1A(I) para. 7(1)-(5): United Kingdom

*[Annual plan]¹***Notes**

- ¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))

 Partially In Force

[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 [FCA]² .
- (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 [FCA]² , 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) [...] ³
 - (d) the Practitioner Panel;
 - [(da) the Smaller Business Practitioner Panel;] ⁴
 - (e) the Consumer Panel; and

(f) such other persons (if any) as the body considers appropriate.

(7) The consumer financial education body must publish each annual plan, and each variation of an annual plan, in the way it considers appropriate.

] ¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.15 para.9(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ³ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(16)(b) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)
- ⁴ Added by Financial Services Act 2012 c. 21 Sch.15 para.9(b) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Sch. 1A(I) para. 8(1)-(7): United Kingdom

[Annual reports] ¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))
-

Law In Force

[9

(1) At least once a year, the consumer financial education body must make a report to the [FCA] ² 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 [FCA] ² .

(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.

[(5) The Treasury may—

- (a) require the consumer financial education body to comply with any provision of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
- (b) direct that any provision of that Act about accounts and their audit is to apply to the consumer financial education body with such modifications as are specified in the direction, whether or not the provision would otherwise apply to it.

(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.]³
] ¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.15 para.10(a) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
- ³ Added by Financial Services Act 2012 c. 21 Sch.15 para.10(b) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Sch. 1A(I) para. 9(1)-(7): United Kingdom

[Audit of accounts]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.15 para.11 (April 1, 2013 as SI 2013/423)
-

Law In Force

[9A

(1) The consumer financial education body must send a copy of its annual accounts to the Comptroller and Auditor General and the Treasury 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 certified accounts and the report to the Treasury.

(3) The Treasury must lay the copy of the certified accounts and the report before Parliament.

(4) The consumer financial education body must send a copy of the certified accounts and the report to the FCA.

(5) Except as provided for by paragraph 9(5), the consumer financial education body 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 by section 471 of the Companies Act 2006.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.15 para.11 (April 1, 2013 as SI 2013/423)

Extent

Sch. 1A(I) para. 9A(1)-(6): United Kingdom

 Partially In Force**[10**

(2) Nothing in Part 4 or 10 of [the Consumer Credit Act 1974]² (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).

] ¹**Notes**


- ¹ Sch.1A para.10 is moved under the heading "Audit of accounts" by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(16)(c) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)
- ² Words substituted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(16)(d) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

Extent

Sch. 1A(I) para. 10(2)-(2)(b): United Kingdom

[...]¹**Notes**

- ¹ Sch.1A para.10 is moved under the heading "Audit of accounts" by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(16)(c) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

 Partially In Force**[10**(1) [...]²

[Sch.1A para.10 is not repealed but has been moved under the heading entitled "Audit of accounts".]³]¹

Notes

- ¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))
- ² Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(16)(c) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)
- ³ Sch.1A para.10 is moved under the heading "Audit of accounts" by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(16)(c) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

Extent

Sch. 1A(I) para. 10(1)-(2)(b): United Kingdom

[PART 2**FUNDING**]¹**Notes**¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k)) Law In Force**[11 Meaning of “the relevant costs”**

(1) In this Part of this Schedule “the relevant costs” means—

- (a) the expenses incurred by the [FCA]² 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.

]¹**Notes**¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))² Word substituted by Financial Services Act 2012 c. 21 Sch.15 para.12 (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)**Extent**

Sch. 1A(II) para. 11(1)-(2): United Kingdom

 Law In Force**[12 Funding of the relevant costs by authorised persons [, payment service providers or electronic money issuers]²**(1) For the purpose of meeting a proportion of the relevant costs the [FCA]³ may make rules requiring—

- (a) authorised persons [, electronic money issuers]⁴ or payment service providers, or
- (b) any specified class of authorised person [, electronic money issuer]⁵ or payment service provider,

to pay to the [FCA]³ specified amounts or amounts calculated in a specified way.(2) Before making the rules the [FCA]³ 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 [FCA]³ in collecting the payments (“collection costs”).

(4) The [FCA]³ 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).

[(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).]⁶

(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.
] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))

² Words substituted by Electronic Money Regulations 2011/99 Sch.4(1) para.2(6)(a) (February 9, 2011)

³ Word substituted by Financial Services Act 2012 c. 21 Sch.15 para.13 (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)


⁴ Words inserted by Electronic Money Regulations 2011/99 Sch.4(1) para.2(6)(b) (February 9, 2011)

⁵ Words inserted by Electronic Money Regulations 2011/99 Sch.4(1) para.2(6)(c) (February 9, 2011)

⁶ Added by Electronic Money Regulations 2011/99 Sch.4(1) para.2(6)(d) (February 9, 2011)

Extent


Sch. 1A(II) para. 12(1)-(6): United Kingdom

 Partially In Force

13 [...] ¹

Notes

¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(16)(e) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

 Law In Force

[14 Funding by grants or loans etc made by Treasury or Secretary of State

(1) The Treasury or the Secretary of State may—

(a) make grants or loans, or

(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.

] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 8, 2010: as specified in 2010 c.28 s.26(1)(k))

Extent

Sch. 1A(II) para. 14(1)-(3): United Kingdom

[PART 3

REVIEWS

] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 1, 2011 as SI 2010/2480)

Law In Force

[15 Reviews of economy etc of the consumer financial education body

(1) The [FCA] ² 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 [FCA] ² 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 [FCA] ²

—
(a) setting out the result of the review; and

(b) making such recommendations (if any) as the person considers appropriate.

(5) The [FCA] ² 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 [FCA] ²

.

(7) “Independent” means appearing to the [FCA] ² to be independent of the consumer financial education body .

] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 1, 2011 as SI 2010/2480)

² Word substituted by Financial Services Act 2012 c. 21 Sch.15 para.15 (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Extent

Sch. 1A(III) para. 15(1)-(7): United Kingdom

Law In Force

[16 Right to obtain documents and information

(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.

(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.

] ¹

Notes

¹ Added by Financial Services Act 2010 c. 28 Sch.1 para.1 (April 1, 2011 as SI 2010/2480)

Extent

Sch. 1A(III) para. 16(1)-(3): United Kingdom

SCHEDULE 2**REGULATED ACTIVITIES**

Section 22(2).

PART I**[REGULATED ACTIVITIES: GENERAL] ¹****Notes**

¹ Words substituted by Dormant Bank and Building Society Accounts Act 2008 c. 31 Sch.2 para.1(2) (March 12, 2009)

Law In Force

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.

Commencement

Sch. 2(I) para. 1: February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(I) para. 1: United Kingdom

Law In Force

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.

Commencement

Sch. 2(I) para. 2(1)-(2): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(I) para. 2(1)-(2): United Kingdom

Law In Force

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.

Commencement

Sch. 2(I) para. 3(a)-(b): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(I) para. 3(a)-(b): United Kingdom

Law In Force

Deposit taking**4.****Accepting deposits.**

Commencement

Sch. 2(I) para. 4: February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(I) para. 4: United Kingdom

Law In Force

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.

Commencement

Sch. 2(I) para. 5(1)-(2): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(I) para. 5(1)-(2): United Kingdom

Law In Force

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.

Commencement

Sch. 2(I) para. 6(a)-(b): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(I) para. 6(a)-(b): United Kingdom

Law In Force

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.

Commencement

Sch. 2(I) para. 7(a)-(b): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(I) para. 7(a)-(b): United Kingdom

Law In Force

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.

Commencement

Sch. 2(I) para. 8(a)-(c): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(I) para. 8(a)-(c): United Kingdom

Law In Force

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.

Commencement

Sch. 2(I) para. 9(1)-(4): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(I) para. 9(1)-(4): United Kingdom

[PART 1A

REGULATED ACTIVITIES: RECLAIM FUNDS

] ¹

Notes

¹ Added by Dormant Bank and Building Society Accounts Act 2008 c. 31 Sch.2 para.1(3) (March 12, 2009)

Law In Force

[9A Activities of reclaim funds

- (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.

] ¹

Notes

¹ Added by Dormant Bank and Building Society Accounts Act 2008 c. 31 Sch.2 para.1(3) (March 12, 2009)

Extent

Sch. 2(IA) para. 9A(1)-(2): United Kingdom

PART II
INVESTMENTS

Law In Force

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.

Commencement

Sch. 2(II) para. 10: February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(II) para. 10: United Kingdom

Law In Force

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.

Commencement

Sch. 2(II) para. 11(1)-(2)(b): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(II) para. 11(1)-(2)(b): United Kingdom

Law In Force

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.

Commencement

Sch. 2(II) para. 12(a)-(f): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(II) para. 12(a)-(f): United Kingdom

Law In Force

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.

Commencement

Sch. 2(II) para. 13(1)-(2)(c): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(II) para. 13(1)-(2)(c): United Kingdom

Law In Force

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.

Commencement

Sch. 2(II) para. 14(1)-(2): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(II) para. 14(1)-(2): United Kingdom

Law In Force

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.

Commencement

Sch. 2(II) para. 15(a)-(b): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(II) para. 15(a)-(b): United Kingdom

Law In Force

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.

Commencement

Sch. 2(II) para. 16(1)-(2): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(II) para. 16(1)-(2): United Kingdom

Law In Force

Options

17.

Options to acquire or dispose of property.

Commencement

Sch. 2(II) para. 17: February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(II) para. 17: United Kingdom

Law In Force

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.

Commencement

Sch. 2(II) para. 18: February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(II) para. 18: United Kingdom

Law In Force

Contracts for differences

19.

Rights under–

- (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.
-

Commencement

Sch. 2(II) para. 19(a)-(b)(ii): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(II) para. 19(a)-(b)(ii): United Kingdom

Law In Force

Contracts of insurance

20.

Rights under a contract of insurance, including rights under contracts falling within head C of Schedule 2 to the Friendly Societies Act 1992.

Commencement

Sch. 2(II) para. 20: February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(II) para. 20: United Kingdom

Law In Force

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.

Commencement

Sch. 2(II) para. 21(1)-(2): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(II) para. 21(1)-(2): United Kingdom

Law In Force

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.

Commencement

Sch. 2(II) para. 22: February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(II) para. 22: United Kingdom

✔ Law In Force

[23 Loans and other forms of credit

- (1) Rights under any contract under which one person provides another with credit.
- (2) “Credit” includes any cash loan or other financial accommodation.
- (3) “Cash” includes money in any form.
- (4) It is immaterial for the purposes of sub-paragraph (1) whether or not the obligation of the borrower is secured on property of any kind.

] ¹

Notes

¹ Substituted by Financial Services Act 2012 c. 21 Pt 2 s.7(3) (January 24, 2013)

Commencement

Sch. 2(II) para. 23(1)-(3): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(II) para. 23(1)-(4): United Kingdom

✔ Law In Force

[23A Other finance arrangements involving land

(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
- (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.

] ¹

Notes

¹ Added by Regulation of Financial Services (Land Transactions) Act 2005 c. 24 s.1 (February 19, 2006)

Extent

Sch. 2(II) para. 23A(1)-(3)(b): United Kingdom

Law In Force

[23B Contracts for hire of goods

(1) Rights under a contract for the bailment or (in Scotland) hiring of goods to a person other than a body corporate.

(2) “Goods” has the meaning given in section 61(1) of the Sale of Goods Act 1979.

(3) It is immaterial for the purposes of sub-paragraph (1) whether the rights of the person to whom the goods are bailed or hired have been assigned to a body corporate.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(4) (January 24, 2013)

Extent

Sch. 2(II) para. 23B(1)-(3): United Kingdom

Law In Force

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).

Commencement

Sch. 2(II) para. 24: February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(II) para. 24: United Kingdom

[PART 2A**REGULATED ACTIVITIES RELATING TO INFORMATION ABOUT
PERSONS' FINANCIAL STANDING**

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)

[General]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)

Law In Force

[24A

The matters with respect to which provision may be made under section 22(1A)(a) include, in particular, those described in general terms in this Part of this Schedule.

]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)

Extent

Sch. 2(IIA) para. 24A: United Kingdom

[Providing credit reference services]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)

Law In Force

[24B

Furnishing persons with information that—

- (a) is relevant to the financial standing of persons other than bodies corporate, and
- (b) is collected for that purpose by the person furnishing it.

]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)


Extent

Sch. 2(IIA) para. 24B(a)-(b): United Kingdom

[Providing credit information services]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)

 Partially In Force

[24C

(1) Taking steps on behalf of a person other than a body corporate in connection with information relevant to that person's financial standing that is or may be held by a [person who is carrying on a regulated activity]² .

(2) [...] ³
]¹

Notes


¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)

² Words substituted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(17)(a) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

³ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(17)(b) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

Extent

Sch. 2(IIA) para. 24C(1)-(2)(b): United Kingdom

 Law In Force

[24D

Giving advice to a person other than a body corporate in relation to the taking of any steps of the kind mentioned in paragraph 24C(1).

]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)

Extent

Sch. 2(IIA) para. 24D: United Kingdom

[PART 2B**REGULATED ACTIVITIES RELATING TO THE SETTING OF BENCHMARKS**

]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)

[General]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)

Law In Force

[24E

The matters with respect to which provisions may be made under section 22(1A)(b) include, in particular, those described in general terms in this Part of this Schedule.

]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)

Extent

Sch. 2(IIB) para. 24E: United Kingdom

[Providing information]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)

Law In Force

[24F

Providing any information or expression of opinion that—

- (a) is required by another person in connection with the determination of a benchmark, and
- (b) is provided to that person for that purpose.

]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)

Extent

Sch. 2(IIB) para. 24F(a)-(b): United Kingdom

[Administration]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)

Law In Force

[24G

(1) Administering the arrangements for determining a benchmark.

(2) Collecting, analysing or processing information or expressions of opinion for the purpose of the determination of a benchmark.

]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)

Extent

Sch. 2(IIB) para. 24G(1)-(2): United Kingdom

[Determining or publishing benchmark or publishing connected information]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)

Law In Force

[24H

(1) Determining a benchmark.

(2) Publishing a benchmark or information connected with a benchmark.

]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Pt 2 s.7(5) (January 24, 2013)

Extent

Sch. 2(IIB) para. 24H(1)-(2): United Kingdom

PART III
SUPPLEMENTAL PROVISIONS

✔ Law In Force

The order-making power

25.—

- (1) An order under [section 22(1) or (1A)]¹ may—
- (a) provide for exemptions;
 - (b) confer powers on the Treasury or [either regulator]² ;
 - (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 [either regulator]² 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 [either regulator]² , 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.
- (3) “Relevant provision” means any provision—
- (a) of section 22 or this Schedule; or
 - (b) made under that section or this Schedule.

Notes

¹ Words inserted by Financial Services Act 2012 c. 21 Pt 2 s.8(2)(a) (January 24, 2013)

² Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.8(2)(b) (January 24, 2013)

Commencement

Sch. 2(III) para. 25(1)-(3)(b): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(III) para. 25(1)-(3)(b): United Kingdom

✔ Law In Force

[26 Parliamentary control

- (1) This paragraph applies to any order made under section 22(1) or (1A) 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.
- (2) No order to which this paragraph applies may be made unless—

- (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
 - (b) sub-paragraph (4) applies.
- (3) Sub-paragraph (4) applies if an order to which this paragraph applies also 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.
- (4) Where this sub-paragraph applies 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 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) The “relevant period” is 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.
-] ¹

Notes


- ¹ Substituted by Financial Services Act 2012 c. 21 Pt 2 s.8(3) (January 24, 2013)

Commencement

Sch. 2(III) para. 26(1)-(5): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(III) para. 26(1)-(6): United Kingdom

 Law In Force

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).

Commencement

Sch. 2(III) para. 27(1)-(3): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 2(III) para. 27(1)-(3): United Kingdom

SCHEDULE 3

EEA PASSPORT RIGHTS

Sections 31(1)(b) and 37

PART I

DEFINED TERMS

Law In Force

The single market directives

1.

“The single market directives” means—

- [(a) the banking consolidation directive;]¹
- (c) the insurance directives; [...]²
- [(ca) the reinsurance directive;]³
- (d) the [markets in financial instruments directive]⁴ [; [...]⁶]⁵
- [(e) the insurance mediation directive; [...]⁸]⁷
- [(f) the UCITS directive [; and]⁹]⁵
- [(g) the alternative investment fund managers directive.]⁹

Notes

- ¹ Sch.3 para.1(a) substituted for Sch.3 para.1(a)-(b) by Banking Consolidation Directive (Consequential Amendments) Regulations 2000/2952 reg.8(5)(a) (December 1, 2001: substitution came into force on November 22, 2000 but could not take effect until the commencement of 2000 c.8 Sch.3 para.1 on December 1, 2001 as specified in SI 2001/3538 art.2(1))
- ² Word repealed by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.2(2)(a)(i) (January 14, 2005)
- ³ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.6(a) (December 10, 2007)
- ⁴ Words substituted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.2 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ⁵ Added by Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003/2066 Pt 2 reg.2(2)(a)(ii) (February 13, 2004)


- ⁶ Word repealed by Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003/2066 Pt 2 reg.2(2)(a)(i) (January 14, 2005: repeal came into force on February 13, 2004 but could not take effect until the commencement of SI 2003/1473 reg.2(2)(a)(ii) on January 14, 2005)
- ⁷ Added by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.2(2)(a)(ii) (January 14, 2005)
- ⁸ Word repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(2) (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁹ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(2) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Commencement

Sch. 3(I) para. 1(a)-(d): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(I) para. 1(a)-(g): United Kingdom

 Law In Force

[The banking co-ordination directives

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 [as last amended [by Directive 2011/89/EU]³ of the European Parliament and of the Council]².

] ¹

Notes

- ¹ Substituted by Capital Requirements Regulations 2006/3221 Sch.3 para.2(2) (January 1, 2007)
- ² Words inserted by Capital Requirements (Amendment) Regulations 2010/2628 Sch.1 para.2 (December 31, 2010)
- ³ Words substituted by Financial Conglomerates and Other Financial Groups (Amendment) Regulations 2013/1162 reg.12 (June 10, 2013)

Commencement

Sch. 3(I) para. 2(1)-(2): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(I) para. 2(1)-(2): United Kingdom

Law In Force

The insurance directives

3.—

(1) “The insurance directives” means the first, second and third non-life insurance directives and the [life assurance consolidation directive]¹.

(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).

[(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.]²

Notes

¹ Words substituted by Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004/3379 Pt 2 reg.6(6)(a)(i) (January 11, 2005)

² Sch.3 para.3(8) substituted for Sch.3 para.3(5)-(7) by Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004/3379 Pt 2 reg.6(6)(a)(ii) (January 11, 2005)

Commencement

Sch. 3(I) para. 3(1)-(7): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(I) para. 3(1)-(7): United Kingdom

Law In Force

[3A. The reinsurance directive

“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.

] ¹

Notes

¹ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.6(b) (December 10, 2007)


Extent

Sch. 3(I) para. 3A: United Kingdom

 Repealed

4. [...]¹**Notes**

¹ Repealed by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.3 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

 Law In Force

[The insurance mediation directive**4A.**

“The insurance mediation directive” means the European Parliament and Council Directive of 9th December 2002 on insurance mediation (No. 2002/92/EC).


]¹

Notes

¹ Added by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.2(2)(b) (January 14, 2005)

Extent

Sch. 3(I) para. 4A: United Kingdom

 Law In Force

[4B.

“The UCITS directive” means the Directive of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No 2009/65/EC).


]¹

Notes

¹ Substituted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(a) (July 1, 2011)

Extent

Sch. 3(I) para. 4B: United Kingdom

 Law In Force

[The markets in financial instruments directive

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.


] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Modification of Powers) Regulations 2006/2975 reg.13 (December 6, 2006)

Extent

Sch. 3(I) para. 4C: United Kingdom

 Law In Force

[4D. The emission allowance auctioning regulation

“The emission allowance auctioning regulation” means Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community.


] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(2) (July 20, 2012)

Extent

Sch. 3(I) para. 4D: United Kingdom

 Law In Force

[The alternative investment fund managers directive

4E.

“The alternative investment fund managers directive” means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.

] ¹

Notes

¹ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(3) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Extent

Sch. 3(I) para. 4E: United Kingdom

✔ Law In Force

! Amendment(s) Pending

EEA firm**5.**

“EEA firm” means any of the following if it does not have its [relevant office]¹ in the United Kingdom–

(a) an investment firm (as defined in [Article 4.1.1 of the markets in financial instruments directive]²) which is authorised (within the meaning of [Article 5]³) by its home state regulator;

[(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;]⁴

(d) an undertaking pursuing the activity of direct insurance (within the meaning of [Article 2 of the life assurance consolidation directive or Article 1 of the first non-life insurance directive]⁵) which has received authorisation under [Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive]⁶ from its home state regulator [; [...]]⁸]⁷

[(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;]⁹

[(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 ; [...]]¹¹]¹⁰

[(f) a management company (as defined in paragraph 11B) which is authorised (within the meaning of Article 6 of the UCITS directive) by its home state regulator [; [...]]¹⁴]¹³]¹²

[(g) a person who has received authorisation under Article 18.2 of the emission allowance auctioning regulation [; or]¹⁵]¹³

[(h) an AIFM (as defined in Article 4.1(b) of the alternative investment fund managers directive) which is authorised (in accordance with Article 6.1 of that directive) by its home state regulator.]¹⁵

Notes

¹ Words substituted by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.2(2)(c)(i) (January 14, 2005)

² Words substituted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.4(a) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

- ³ Words substituted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.4(b) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ⁴ Substituted by Capital Requirements Regulations 2006/3221 Sch.3 para.2(3) (January 1, 2007)
- ⁵ Words substituted by Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004/3379 Pt 2 reg.6(6)(b)(i) (January 11, 2005)
- ⁶ Words substituted by Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004/3379 Pt 2 reg.6(6)(b)(ii) (January 11, 2005)
- ⁷ Added by Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003/2066 Pt 2 reg.2(2)(c)(ii) (February 13, 2004)
- ⁸ Word repealed by Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003/2066 Pt 2 reg.2(2)(c)(i) (January 14, 2005: repeal came into force on February 13, 2004 but could not take effect until the coming into force of SI 2004/1473 reg.2(2)(c)(iii) on January 14, 2005)
- ⁹ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.6(c) (December 10, 2007)
- ¹⁰ Added by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.2(2)(c)(iii) (January 14, 2005)
- ¹¹ Word repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(3)(a) (July 20, 2012)
- ¹² Substituted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(b) (July 1, 2011)
- ¹³ Added by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(3)(b) (July 20, 2012)
- ¹⁴ Word repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(4) (July 22, 2013: repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ¹⁵ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(4) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Amendments Pending

Sch. 3(I) para. 5(h): words repealed by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 1 para. 1(5)(a) (date to be appointed)

Commencement

Sch. 3(I) para. 5(a)-(d): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(I) para. 5(a)-(h): United Kingdom

Law In Force

[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;

[(aa) in relation to a firm falling within sub-paragraph (h) of that paragraph, its registered office;]²

(b) in relation to any other firm, its head office.

] ¹

Notes

- ¹ Added by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.2(2)(d) (January 14, 2005)
- ² Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(5) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Extent

Sch. 3(I) para. 5A(a)-(b): United Kingdom

Law In Force

[EEA authorisation

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 [or, as the case may be, the emission allowance auctioning regulation]² .

] ¹

Notes

- ¹ Substituted by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.2(2)(e) (January 14, 2005)
- ² Words inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(4) (July 20, 2012)

Commencement

Sch. 3(I) para. 6: February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(I) para. 6(a)-(b): United Kingdom

Law In Force

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 [relevant office]¹ –

- (a) in accordance with the Treaty as applied in the EEA; and

(b) subject to the conditions of the relevant single market directive [or, as the case may be, the emission allowance auctioning regulation]² .

Notes

- ¹ Words substituted by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.2(2)(f) (January 14, 2005)
- ² Words inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(4) (July 20, 2012)

Commencement

Sch. 3(I) para. 7(a)-(b): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(I) para. 7(a)-(b): United Kingdom

Law In Force

Amendment(s) Pending

[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;
 [(aa) in relation to a person whose entitlement is subject to the conditions of the alternative investment fund managers directive, its registered office;]²
 (b) in relation to any other person, his head office.

] ¹

Notes

- ¹ Added by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.2(2)(g) (January 14, 2005)
- ² Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(6) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Amendments Pending

Sch. 3(I) para. 7A(aa): substituted by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 1 para. 1(5)(b) (date to be appointed)

Extent

Sch. 3(I) para. 7A(a)-(b): United Kingdom

Law In Force

[EEA State

8.

“EEA State” has the meaning given by Schedule 1 to the Interpretation Act 1978².

] ¹

Notes

¹ Substituted by Financial Services (EEA State) Regulations 2007/108 reg.2 (February 13, 2007)

² 1978 c.30; the definition of “EEA state” was inserted by section 26 of the Legislative and Regulatory Reform Act 2006 (c. 51).

Commencement

Sch. 3(I) para. 8: February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(I) para. 8: United Kingdom

Law In Force

Home state regulator

9.

“Home state regulator” means the competent authority (within the meaning of the relevant single market directive [or, as the case may be, the emission allowance auctioning regulation] ¹) of an EEA State (other than the United Kingdom) in relation to the EEA firm concerned .

Notes

¹ Words inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(4) (July 20, 2012)

Commencement

Sch. 3(I) para. 9: February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(I) para. 9: United Kingdom

✔ Law In Force

UK firm

10.

“UK firm” means a person whose [relevant office]¹ is in the UK and who has an EEA right to carry on activity in an EEA State other than the United Kingdom .

Notes

¹ Words substituted by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.2(2)(h) (January 14, 2005)

Commencement

Sch. 3(I) para. 10: February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(I) para. 10: United Kingdom

✔ Law In Force

! Amendment(s) Pending

[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;

[(aa) in relation to a firm whose EEA right derives from the alternative investment fund managers directive, its registered office;]²

(b) in relation to any other firm, its head office.

] ¹

Notes

¹ Added by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.2(2)(i) (January 14, 2005)

² Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(7) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Amendments Pending

Sch. 3(I) para. 10A(aa): substituted by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 1 para. 1(5)(c) (date to be appointed)

Extent

Sch. 3(I) para. 10A(a)-(b): United Kingdom

Law In Force

[UK investment firm

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.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.5 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

Extent

Sch. 3(I) para. 10B(a)-(b): United Kingdom

Law In Force

Host state regulator

11.

“Host state regulator” means the competent authority (within the meaning of the relevant single market directive [or, as the case may be, the emission allowance auctioning regulation] ¹) of an EEA State (other than the United Kingdom) in relation to a UK firm's exercise of EEA rights there

Notes

¹ Words inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(4) (July 20, 2012)

Commencement

Sch. 3(I) para. 11: February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(I) para. 11: United Kingdom

Law In Force

[Tied agent

11A.

“Tied agent” has the meaning given in Article 4.1.25 of the markets in financial instruments directive.

] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.6 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

Extent

Sch. 3(I) para. 11A: United Kingdom

Law In Force

[11B. Management company

“Management company” has the meaning given in Article 2.1(b) of the UCITS directive.

]¹

Notes

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(c) (July 1, 2011)

Extent

Sch. 3(I) para. 11B: United Kingdom

Law In Force

[11C. UCITS

“UCITS” has the meaning given in Article 1.2 of the UCITS directive.

]¹

Notes

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(c) (July 1, 2011)

Extent

Sch. 3(I) para. 11C: United Kingdom

Law In Force

[EEA AIFM**11D.**

“EEA AIFM” means an EEA firm falling within paragraph 5(h) which is exercising in the United Kingdom a right deriving from the alternative investment fund managers directive.


]¹

Notes

- ¹ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(8) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Extent

Sch. 3(I) para. 11D: United Kingdom

PART II**EXERCISE OF PASSPORT RIGHTS BY EEA FIRMS** Law In Force

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.

[(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.

] ¹

[(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).] ²

[(7) Sub-paragraph (2) does not apply to an EEA firm which falls within paragraph 5(a), (b) or (g), and only provides services in the exercise of its right under Article 18 of the emission allowance auctioning regulation.

(8) An EEA firm which falls within paragraph 5(g) qualifies for authorisation.

(9) An EEA firm which falls within paragraph 5(a) or (b) but does not qualify for authorisation under sub-paragraph (1) or (2) qualifies for authorisation under this sub-paragraph if it—

- (a) has received authorisation from its home state regulator under Article 18.3 of the emission allowance auctioning regulation; and
- (b) is seeking to provide services or establish a branch in the United Kingdom in the exercise of the EEA right arising under that provision.

] ³

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.7 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ² Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.6(d) (December 10, 2007)
- ³ Added by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(5) (July 20, 2012)

Commencement

Sch. 3(II) para. 12(1)-(2): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(II) para. 12(1)-(9)(b): United Kingdom

Law In Force

Establishment**13.—**

(1) [If the firm falls within [paragraph 5(a), (b), (c), (d), (f) or (h)]², the]¹ establishment conditions are that—

(a) the [appropriate UK regulator]³ 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; [...]⁴

[(ba) in the case of a firm falling within paragraph 5(a), the [appropriate UK regulator]³ 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; [...]⁶]⁵

(c) [in the case of a firm falling within paragraph 5(b), (c), (d) or (f),]⁷ the firm has been informed of the applicable provisions or two months have elapsed beginning with the date when the [appropriate UK regulator]³ received the consent notice [; and]⁸

[(d) in the case of a firm falling within paragraph 5(h), its home state regulator has informed it that the consent notice has been sent to the appropriate UK regulator.]⁸

[(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]³ 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]³ ; 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]³

] ⁹

[(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,
- (b) a PRA-authorised person, or
- (c) a person whose immediate group includes a PRAauthorised 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, or
- (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.

] ¹⁰

(2) If the [appropriate UK regulator]¹¹ has received a consent notice, it must—

- (a) [...]¹²
- (b) [except if the firm falls within paragraph 5(a),]¹³ notify the firm of the applicable provisions (if any); and
- (c) if the firm falls within paragraph 5(d) [or (h)]¹⁴, 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]¹⁵ 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;

[“the appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the relevant single market directive;]¹⁶

“host state rules” means rules—

- (a) made in accordance with the relevant single market directive [or for the purposes of the emission allowance auctioning regulation]¹⁷ ; 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 [or for the purposes of that regulation]¹⁸ ; and

“permitted activity” means an activity identified in the consent notice [or regulator's notice, as the case may be]¹⁹ .

Notes


- ¹ Words inserted by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.3(2) (January 14, 2005)
- ² Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(9)(a) (July 22, 2013; substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.2(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁴ Word repealed subject to saving and transitional provisions specified in SI 2007/126 reg.6(1) by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.8(a)(i) (April 1, 2007; repeal has effect subject to saving and transitional provisions specified in SI 2007/126 reg.6(1))
- ⁵ Subject to saving and transitional provisions specified in SI 2007/126 reg.6(1) by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.8(a)(ii) (April 1, 2007; insertion has effect subject to saving and transitional provisions specified in SI 2007/126 reg.6(1))
- ⁶ Word repealed by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(9)(b) (July 22, 2013; repeal has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁷ Words inserted subject to saving and transitional provisions specified in SI 2007/126 reg.6(1) by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.8(a)(iii) (April 1, 2007; insertion has effect subject to saving and transitional provisions specified in SI 2007/126 reg.6(1))
- ⁸ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(9)(c) (July 22, 2013; insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁹ Added by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.3(3) (January 14, 2005)
- ¹⁰ Added by Financial Services Act 2012 c. 21 Sch.4(1) para.2(3) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ¹¹ Word substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.2(4)(a) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ¹² Repealed by Financial Services Act 2012 c. 21 Sch.4(1) para.2(4)(b) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ¹³ Words inserted subject to saving and transitional provisions specified in SI 2007/126 reg.6(1) by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.8(b) (April 1, 2007; insertion has effect subject to saving and transitional provisions specified in SI 2007/126 reg.6(1))
- ¹⁴ Words inserted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(9)(d) (July 22, 2013; insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ¹⁵ Word substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.2(5) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ¹⁶ Definition inserted by Financial Services Act 2012 c. 21 Sch.4(1) para.2(6) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ¹⁷ Words inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(6)(a) (July 20, 2012)
- ¹⁸ Words inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(6)(b) (July 20, 2012)
- ¹⁹ Words inserted by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.3(4) (January 14, 2005)

Commencement

Sch. 3(II) para. 13(1)-(4) definition of "permitted activity": February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(II) para. 13(1)-(4) definition of "permitted activity": United Kingdom

 Law In Force

 Amendment(s) Pending

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 [paragraph 5(a), (d), (e), (f) or (h)]¹, the [appropriate UK regulator]² has received notice (“a regulator's notice”) from the firm's home state regulator containing such information as may be prescribed; [...]³

[(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]² 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;]⁴

(c) if the firm falls within [paragraph 5(d), (e) or (h)]⁵, its home state regulator has informed it that the regulator's notice has been sent to the [appropriate UK regulator]² [; and]⁶

[(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]².]⁶

[(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.

(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, or

(b) receives under sub-paragraph (1C) a copy of a relevant notice which identifies PRA-regulated activities or relates to a PRA-authorized person,

it must, unless the firm falls within paragraph 5(e), prepare for the firm's supervision.

] ⁷

[(2) If the appropriate UK regulator has received a relevant notice, it must, unless the firm falls within [paragraph 5(a), (e) or (h)]⁹, notify the firm of the applicable provisions (if any).]⁸

(2A) [...] ¹⁰

(3) A notice under sub-paragraph [(2)]¹¹ 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]¹².

[(3A) In cases where the firm is an EEA AIFM that seeks to market an AIF in exercise of its rights under Article 32 of the alternative investment fund managers directive, the appropriate UK regulator must ensure that the regulator's notice may be transmitted to it electronically.]¹³

(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;

[“the appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the relevant single market directive;]¹⁴

“host state rules” means rules–

(a) made in accordance with the relevant single market directive [or for the purposes of the emission allowance auctioning regulation]¹⁵; 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 [or for the purposes of that regulation]¹⁶; 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.

Notes

- ¹ Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(10)(a) (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.3(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ³ Word repealed by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.4(2)(b) (January 14, 2005)
- ⁴ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.9(a) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ⁵ Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(10)(b) (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁶ Added by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.4(2)(d) (January 14, 2005)
- ⁷ Added by Financial Services Act 2012 c. 21 Sch.4(1) para.3(3) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁸ Substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.3(4) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁹ Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(10)(c) (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ¹⁰ Repealed by Financial Services Act 2012 c. 21 Sch.4(1) para.3(5) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ¹¹ Word substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.3(6)(a) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

- ¹² Words substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.3(6)(b) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ¹³ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(10)(d) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ¹⁴ Definition inserted by Financial Services Act 2012 c. 21 Sch.4(1) para.3(7) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ¹⁵ Words inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(7)(a) (July 20, 2012)
- ¹⁶ Words inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(7)(b) (July 20, 2012)

Amendments Pending


Sch. 3(II) para. 14(3A): words inserted by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 1 para. 1(5)(d) (date to be appointed)

Commencement

Sch. 3(II) para. 14(1)-(4) definition of "permitted activity" (b): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(II) para. 14(1)-(4) definition of "permitted activity" (b): United Kingdom

 Partially In Force

Grant of permission

15.—

(1) On qualifying for authorisation as a result of [paragraph 12(1), (2) or (3)]¹, 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).

[(1A) Sub-paragraph (1) is to be read subject to [paragraphs 15A(3) and 15ZA(1)]³.]²

(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)-(4) [...] ⁴

[(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").

(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.]⁵

Notes

- ¹ Words substituted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.6(e)(i) (December 10, 2007)
- ² Added by Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003/2066 Pt 2 reg.3(1)(c) (February 13, 2004)
- ³ Words substituted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(8) (July 20, 2012)
- ⁴ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(18)(a) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)
- ⁵ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.6(e)(ii) (December 10, 2007)

Commencement

Sch. 3(II) para. 15(1)-(4): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(II) para. 15(1)-(7): United Kingdom

Law In Force

[15ZA.— Grant of permission: bidding for emission allowances

(1) A firm that qualifies for authorisation as a result of paragraph 12(1) or (2) has permission to receive, transmit or submit a bid on behalf of its clients in the exercise of its rights under Article 18.3 of the emission allowance auctioning regulation if it has received authorisation under that provision from its home state regulator.

(2) Permission under sub-paragraph (1) is to be treated as being on terms equivalent to those appearing in the authorisation granted to the firm pursuant to Article 18.3 of the emission allowance auctioning regulation.

(3) A firm which qualifies for authorisation as a result of paragraph 12(9) has permission to receive, transmit and submit a bid on behalf of its clients in the exercise of its rights under Article 18.3 of the emission allowance auctioning regulation.

(4) A firm which qualifies for authorisation as a result of paragraph 12(8) has permission to receive, transmit and submit a bid on its own account or on behalf of clients of its main business under Article 18.2 of the emission allowance auctioning regulation.

(5) The permissions referred to in sub-paragraphs (3) and (4) are to be treated as being on terms equivalent to those appearing in the authorisation granted to the firm pursuant to Article 18.2 or 18.3 of the emission allowance auctioning regulation.

] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(9) (July 20, 2012)

Extent

Sch. 3(II) para. 15ZA(1)-(5): United Kingdom

Law In Force

[15A.— Application for approval to manage UCITS

(1) An EEA firm falling within paragraph 5(f) which wishes to manage a UK UCITS must apply to the [appropriate UK regulator]² in the specified form for approval to manage that UCITS.

(2) Where the EEA firm satisfies the conditions in paragraph 13 (establishment conditions) or paragraph 14 (service conditions), the [appropriate UK regulator]² may only refuse the application if it determines that one of the grounds set out in sub-paragraph (3) applies.

(3) The grounds referred to in sub-paragraph (2) are—

- (a) that the EEA firm does not comply with the UCITS home state rules;
- (b) that the firm is not authorised by its home state regulator to manage the type of collective investment scheme for which authorisation is requested; or
- (c) that the firm has not provided the documentation required under Article 20(1) of the UCITS directive.

(4) The [appropriate UK regulator]² must give a notice to the EEA firm, the firm's home state regulator and the Commission of the [appropriate UK regulator's]² determination under sub-paragraph (2).

(5) Before giving a notice under sub-paragraph (4), the [appropriate UK regulator]² must consult the home state regulator of the firm.

(6) A notice given by the [appropriate UK regulator]² under sub-paragraph (4) must—

- (a) give the [appropriate UK regulator's]² reasons for considering that one of the grounds set out in sub-paragraph (3) is satisfied; 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 [appropriate UK regulator]²

[(6A) If—

- (a) the FCA is the appropriate UK regulator, and
- (b) the firm is, or the firm's immediate group includes, a PRA authorised person,

the FCA must give the PRA a copy of the notice under subparagraph (4).

] ³

(7) In this paragraph—

[“the appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the UCITS directive;]⁴

“specified” means specified—

- (a) in rules made by the [appropriate UK regulator]² to implement the UCITS directive, or
- (b) in any directly applicable Community regulation or decision made under the UCITS directive;

“UCITS home state rules” means requirements which are imposed by or under this Act so far as relating to matters falling within Article 19(3) and (4) of the UCITS directive.

] ¹**Notes**

- ¹ Sch.3 paras 15A-15C substituted for Sch.3 para.15A by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(d) (July 1, 2011)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.4(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ³ Added by Financial Services Act 2012 c. 21 Sch.4(1) para.4(3) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁴ Definition inserted by Financial Services Act 2012 c. 21 Sch.4(1) para.4(4) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Extent

Sch. 3(II) para. 15A(1)-(7)(b)(iii): United Kingdom

Law In Force

[15B.— Representations and references to the Tribunal

(1) Within a reasonable time after the end of the period for making representations, the [appropriate UK regulator] ² must decide, in the light of any representations made to it during that period by a person to whom notice has been given under paragraph 15A(4), whether to withdraw the notice.

(2) If the [appropriate UK regulator] ² decides not to withdraw its notice, it must—

- (a) give a decision notice to each person to whom the notice under paragraph 15A(4) was given, and
- (b) inform the firm's home state regulator and the Commission that authorisation has been refused, and of the grounds for the refusal.

(3) The management company to whom the decision notice is given may refer the matter to the Tribunal.

[(4) In this paragraph “the appropriate UK regulator” has the same meaning as in paragraph 15A.] ³

] ¹

Notes

- ¹ Sch.3 paras 15A-15C substituted for Sch.3 para.15A by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(d) (July 1, 2011)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.5(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ³ Added by Financial Services Act 2012 c. 21 Sch.4(1) para.5(3) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Extent

Sch. 3(II) para. 15B(1)-(4): United Kingdom

✔ Law In Force

[15C.— Information to home state regulator

(1) Where an EEA firm falling within paragraph 5(f) has applied to manage a UCITS established in the United Kingdom, the [appropriate UK regulator, as defined in paragraph 15A(7),]² must without delay inform the home state regulator of that firm of any problem of which they are aware that may materially affect the ability of the firm—

- (a) to perform its duties properly, or
- (b) to comply with the home state rules.

(2) In sub-paragraph (1), “home state rules” means rules—

- (a) made by the EEA State concerned in accordance with the UCITS directive; and
- (b) which are the responsibility of that EEA State (both as to implementation and as to supervision of compliance) in accordance with that directive.

] ¹

Notes

- ¹ Sch.3 paras 15A-15C substituted for Sch.3 para.15A by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(d) (July 1, 2011)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.6 (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Extent

Sch. 3(II) para. 15C(1)-(2)(b): United Kingdom

✔ Law In Force

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.

Commencement

Sch. 3(II) para. 16(1)-(4): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(II) para. 16(1)-(4): United Kingdom

 Law In Force

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;]¹

(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;

(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 FCA or the PRA]² 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.

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.4(1) para.7(a) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)


² Words substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.7(b) (January 24, 2013 for the purposes of making orders or regulations; April 1, 2013 otherwise)

Commencement

Sch. 3(II) para. 17(a)-(c): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(II) para. 17(za)-(c): United Kingdom

 Law In Force

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]¹ .

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.8 (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Commencement

Sch. 3(II) para. 18(a)-(b): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(II) para. 18(a)-(b): United Kingdom

PART III**EXERCISE OF PASSPORT RIGHTS BY UK FIRMS***[Meaning of “the appropriate UK regulator”]¹***Notes**

¹ Added by Financial Services Act 2012 c. 21 Sch.4(1) para.9 (February 27, 2013: insertion has effect on February 27, 2013 as SI 2013/423 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Law In Force

[18A

In this Part of this Schedule “the appropriate UK regulator” means—

- (a) where the UK firm is a PRA-authorized person, the PRA;
- (b) in any other case, the FCA.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.4(1) para.9 (February 27, 2013: insertion has effect on February 27, 2013 as SI 2013/423 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Extent

Sch. 3(III) para. 18A(a)-(b): United Kingdom

Establishment

Law In Force

Amendment(s) Pending

19.—

(1) [Subject to [sub-paragraphs (5ZA) [, (5ZB)]³ [, (5A) and (7BC)]⁴]², a]¹ 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]⁵, 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) [Subject to sub-paragraph (5B), the]⁶ activities identified in a notice of intention may include activities which are not regulated activities.

[(4) The second is that—

- (a) the [appropriate UK regulator]⁵ has given notice in specified terms (“a consent notice”) to the host state regulator; and
- (b) where the firm is a management company which wishes to pursue the activity of collective portfolio management referred to in Annex II to the UCITS directive, the [appropriate UK regulator]⁵ has provided to the host state regulator—
 - (i) confirmation that the firm has been authorised as a management company pursuant to the provisions of the UCITS directive;
 - (ii) a description of the scope of the management company's authorisation; and
 - (iii) details of any restriction on the types of UCITS that the management company is authorised to manage.

] ⁷

[(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]⁵ 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]⁵) of the applicable provisions; or
 - (ii) two months have elapsed beginning with the date on which the [appropriate UK regulator]⁵ gave the consent notice.

] ⁸

[(5ZA) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the reinsurance directive.] ⁹

[(5ZB) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the emission allowance auctioning regulation, in respect of its exercise of that EEA right.] ¹⁰

[(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).

] ¹¹

[(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.]¹²

(6) If the firm's EEA right derives from [the banking consolidation directive, [...]¹⁵ or, in the case of a credit institution authorised under the banking consolidation directive, the markets in financial instruments directive]¹⁴]¹³ and the first condition is satisfied, the [appropriate UK regulator]⁵ 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.

[(6A) If the firm's EEA right derives from the UCITS directive and the first condition is satisfied, the [appropriate UK regulator]⁵ must give a consent notice and information about the compensation scheme to the host state regulator unless it has reason to doubt the adequacy of the firm's resources or its administrative structure, and must do so within two months beginning with the date on which it received the firm's notice of intention.]¹⁶

(7) If the firm's EEA right derives from any of the insurance directives and the first condition is satisfied, the [appropriate UK regulator]⁵ 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.

[(7A) If—

- (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]⁵ 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.

] ¹⁷

[(7B) If the firm is a UK investment firm and the first condition is satisfied, the [appropriate UK regulator]⁵ 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]⁵ has reason to doubt the adequacy of the firm's resources or its administrative structure.]¹⁸

[(7BA) Sub-paragraph (7BB) applies where—

- (a) the firm's EEA right derives from the alternative investment fund managers directive,
- (b) the first condition is satisfied, and
- (c) the appropriate UK regulator is satisfied that the firm complies, and will continue to comply, with—
 - (i) the provisions implementing the alternative investment fund managers directive, and
 - (ii) any directly applicable EU regulation made under that directive.

(7BB) The appropriate UK regulator must—

- (a) within two months of receiving the firm's notice of intention, give a consent notice to the host state regulator,
- (b) send with that notice confirmation that the firm has been authorised by it pursuant to Article 6.1 of the alternative investment fund managers directive, and

- (c) immediately notify the firm that it has given the consent notice to the host state regulator.
- (7BC) If the firm's EEA right derives from the alternative investment fund managers directive, the third condition does not apply.]¹⁹
- [(7C) Where the PRA is the appropriate UK regulator, it must consult the FCA before deciding whether to give a consent notice, except where sub-paragraph (7A) applies.
- (7D) 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-authorized person.]²⁰
- (8) If the [appropriate UK regulator]⁵ 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]⁵ must inform the firm of those provisions.
- (10) Rules may specify the procedure to be followed by the [appropriate UK regulator]⁵ in exercising its functions under this paragraph.
- (11) If the [appropriate UK regulator]⁵ gives a consent notice it must give written notice that it has done so to the firm concerned.
- (12) If the [appropriate UK regulator]⁵ decides to refuse to give a consent notice—
- (a) it must, [within the relevant period]²¹, give the person who gave that notice a decision notice to that effect; and
 - (b) that person may refer the matter to the Tribunal.
- [(12ZA) If the firm's EEA right derives from the UCITS directive, the [appropriate UK regulator]⁵ must inform [ESMA and]²³ the Commission if it decides to refuse to give a consent notice, giving the reasons for that refusal.]²²
- [(12A) In sub-paragraph (12), “the relevant period” means—
- (a) if the firm's EEA right derives from the UCITS directive [or the alternative investment fund managers directive]²⁵, two months beginning with the date on which the [appropriate UK regulator]⁵ received the notice of intention;
 - (b) in any other case, three months beginning with that date.
-] ²⁴
- (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
 - (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.

Notes

¹ Words inserted by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.5(2) (January 14, 2005)

- ² Words substituted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.6(f) (December 10, 2007)
- ³ Word inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(10)(a) (July 20, 2012)
- ⁴ Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(11)(a) (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ⁵ Word substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.10(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁶ Word substituted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.10(a) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ⁷ Substituted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(e) (July 1, 2011)
- ⁸ Substituted by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.5(3) (January 14, 2005)
- ⁹ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.6(g) (December 10, 2007)
- ¹⁰ Added by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(10)(b) (July 20, 2012)
- ¹¹ Added by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.5(4) (January 14, 2005)
- ¹² Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.10(b) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ¹³ Words substituted by Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003/2066 Pt 2 reg.4(1)(a)(i) (February 13, 2004)
- ¹⁴ Words substituted subject to savings specified in SI 2007/126 reg.8 by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.10(c) (April 1, 2007: substitution has effect subject to savings specified in SI 2007/126 reg.8)
- ¹⁵ Words repealed by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(f) (July 1, 2011)
- ¹⁶ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(g) (July 1, 2011)
- ¹⁷ Added by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.5(5) (January 14, 2005)
- ¹⁸ Subject to savings specified in SI 2007/126 reg.8 by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.10(d) (April 1, 2007: insertion has effect subject to savings specified in SI 2007/126 reg.8)
- ¹⁹ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(11)(b) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ²⁰ Added by Financial Services Act 2012 c. 21 Sch.4(1) para.10(3) (February 27, 2013: insertion has effect on February 27, 2013 as SI 2013/423 for the purpose of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; not yet in force otherwise)
- ²¹ Words substituted by Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003/2066 Pt 2 reg.4(1)(a)(ii) (February 13, 2004)
- ²² Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(h) (July 1, 2011)
- ²³ Words inserted by Financial Services (Omnibus 1 Directive) Regulations 2012/916 reg.2(15) (April 16, 2012)
- ²⁴ Added by Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003/2066 Pt 2 reg.4(1)(a)(iii) (February 13, 2004)
- ²⁵ Words inserted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(11)(c) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Amendments Pending

Sch. 3(III) para. 19(7BB)(b): words repealed by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 1 para. 1(5)(e) (date to be appointed)

Commencement

Sch. 3(III) para. 19(1)-(15): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; September 3, 2001 for the purposes of giving notice under 2000 c.8 Sch.3 para.19(2) of intention to establish a branch not sooner than December 1, 2001, the coming into force date of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(III) para. 19(1)-(15): United Kingdom

Services

☑ Law In Force

! Amendment(s) Pending

20.—

(1) [Subject to [sub-paragraphs (4D) to (4F)]² , a]¹ UK firm may not exercise an EEA right to provide services unless the firm has given the [appropriate UK regulator]³ , 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) [Subject to sub-paragraph (2A), the]⁴ activities identified in a notice of intention may include activities which are not regulated activities.

[(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.]⁵

(3) If the firm's EEA right derives from [the banking consolidation directive, the [markets in financial instruments directive]⁷ or the UCITS directive]⁶ , the [appropriate UK regulator]³ must, within one month of receiving a notice of intention, send a copy of it to the host state regulator [with such other information as may be specified]⁸ .

[(3A) If the firm's EEA right derives from the UCITS directive, the [appropriate UK regulator]³ must provide information about the compensation scheme with the information provided to the host state regulator under sub-paragraph (3).]⁹

[(3A) If the firm's EEA right derives from any of the insurance directives, the [appropriate UK regulator]³ 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.

] ¹⁰

[(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-authorized person.] ¹¹

[(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] ³ 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] ³, 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
- (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.

] ¹²

[(3C) If the firm is a management company which wishes to pursue the activity of collective portfolio management referred to in Annex II to the UCITS directive, the [appropriate UK regulator] ³ must send with the documentation provided to the host state regulator under sub-paragraph (3)—

- (a) confirmation that the firm has been authorised as a management company pursuant to the provisions of the UCITS directive;
- (b) a description of the scope of the management company's authorisation; and
- (c) details of any restriction on the types of UCITS that the management company is authorised to manage.

] ¹³

[(3D) If the firm's EEA right derives from the alternative investment fund managers directive, the appropriate UK regulator must—

- (a) if the condition in sub-paragraph (3E) is satisfied—
 - (i) within one month of receiving the firm's notice of intention, send a copy of the firm's notice of intention to the host state regulator;
 - (ii) send with that notice confirmation that the firm has been authorised by it pursuant to Article 6.1 of that directive, with such other information as may be specified; and
 - (iii) immediately notify the firm that it has given the notice and confirmation to the host state regulator; or
- (b) give the firm written notice of its refusal to send a copy of the notice of intention to the host state regulator and its reasons for that refusal.

(3E) The condition is that the appropriate UK regulator is satisfied that the firm complies, and will continue to comply, with—

- (a) the provisions implementing the alternative investment fund managers directive, and
- (b) any directly applicable EU regulation made under that directive.

] ¹⁴

(4) When the [appropriate UK regulator]³ sends the copy under sub-paragraph (3) [or gives a consent notice]¹⁵, it must give written notice to the firm concerned.

[(4A) If the firm is given notice under sub-paragraph (3A)(b) [or (3D)(b)]¹⁷, it may refer the matter to the Tribunal.

(4B) If the firm's EEA right derives from any of the insurance directives [or from [the alternative investment fund managers directive,]¹⁹ the markets in financial instruments directive]¹⁸ [or the UCITS directive]²⁰, it must not provide the services to which its notice of intention relates until it has received written notice under sub-paragraph (4).

[(4BA) If the firm's EEA right derives from the markets in financial instruments directive, the [appropriate UK regulator]³ 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.]²¹

(4C) Rules may specify the procedure to be followed by the [appropriate UK regulator]³ under this paragraph.]¹⁶

[(4D) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the reinsurance directive.]²²

[(4E) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the emission allowance auctioning regulation, in respect of its exercise of that EEA right.]²³

[(4F) This paragraph does not apply to—

- (a) the operator of a UCITS established in the United Kingdom seeking to exercise an EEA right to market the units of that UCITS in the territory of another EEA State; or
- (b) a UK firm seeking to exercise an EEA right under the alternative investment fund managers directive to market an AIF.

] ²⁴

(5) [...]²⁵

(6) “Specified” means specified in rules.

Notes

¹ Words inserted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.6(h) (December 10, 2007)

² Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(12)(a) (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

³ Word substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.11(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

⁴ Word substituted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.11(a) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

⁵ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.11(b) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

⁶ Words substituted by Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003/2066 Pt 2 reg.4(1)(b)(i) (February 13, 2004)

⁷ Words substituted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.11(c) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

- ⁸ Words inserted by Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003/2066 Pt 2 reg.4(1)(b)(ii) (February 13, 2004)
- ⁹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(i) (July 1, 2011)
- ¹⁰ Added by Financial Services (EEA Passport Rights) Regulations 2001/1376 reg.2(2) (April 30, 2001)
- ¹¹ Added by Financial Services Act 2012 c. 21 Sch.4(1) para.11(3) (February 27, 2013: insertion has effect on February 27, 2013 for the purpose of making orders or regulations subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ¹² Added by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.6(1) (January 14, 2005)
- ¹³ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(j) (July 1, 2011)
- ¹⁴ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(12)(b) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ¹⁵ Words added by Financial Services (EEA Passport Rights) Regulations 2001/1376 reg.2(3) (April 30, 2001)
- ¹⁶ Added by Financial Services (EEA Passport Rights) Regulations 2001/1376 reg.2(4) (April 30, 2001)
- ¹⁷ Words inserted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(12)(c) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ¹⁸ Words inserted by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.11(d) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ¹⁹ Words inserted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(12)(d) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ²⁰ Words inserted by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(k) (July 1, 2011)
- ²¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.11(e) (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
- ²² Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.6(i) (December 10, 2007)
- ²³ Added by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012/1906 Pt 3 art.4(11)(b) (July 20, 2012)
- ²⁴ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(12)(e) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ²⁵ Repealed by Financial Services (EEA Passport Rights) Regulations 2001/1376 reg.2(5) (April 30, 2001)

Amendments Pending

Sch. 3(III) para. 20(3D)(a)(ii): words repealed by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 1 para. 1(5)(f) (date to be appointed)

Commencement

Sch. 3(III) para. 20(1)-(6): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; September 3, 2001 for the purposes of giving notice under 2000 c.8 Sch.3 para.20(1) of intention to provide services not sooner than December 1, 2001, the coming into force of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(III) para. 20(1)-(6): United Kingdom

[Information for host state regulator]¹

Notes

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(I) (July 1, 2011)
-

Law In Force

[20ZA.—

(1) The [appropriate UK regulator]² must keep a record of the confirmation and other information provided to the host state regulator under paragraph 19(4) or paragraph 20(3C) in relation to a UK firm which is a management company.

(2) The [appropriate UK regulator]² must inform the host state regulator whenever there is a change in the confirmation or other information referred to in sub-paragraph (1).

]¹

Notes

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(I) (July 1, 2011)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.12 (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Extent

Sch. 3(III) para. 20ZA(1)-(2): United Kingdom

[Tied agents]¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.12 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)
-

Law In Force

[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.

] ¹**Notes**

¹ Added by Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007/126 Sch.4 para.12 (April 1, 2007 for the purposes specified in SI 2007/126 reg.1(2); November 1, 2007 otherwise)

Extent

Sch. 3(III) para. 20A(1)-(2)(b): United Kingdom

[Notice of intention to market[a UCITS]²]¹

Notes

¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(m) (July 1, 2011)

² Words inserted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(13) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Law In Force

[20B.—

(1) The operator of a UCITS established in the United Kingdom may not exercise an EEA right to market the units of that UCITS in the territory of another EEA State unless the operator has given the [appropriate UK regulator] ², in the specified way, notice of its intention to market the units (“notice of intention”) which contains, and is accompanied by, such information as may be specified in rules, or in regulations made by the European Commission under the UCITS directive.

(2) The [appropriate UK regulator] ² must ensure that the information referred to in sub-paragraph (1) may be transmitted to it electronically.

(3) The [appropriate UK regulator] ² must verify whether the information submitted with the notice of intention is complete and, within 10 days of the date on which the [appropriate UK regulator] ² received the complete information required, send to the host state regulator—

- (a) a copy of the notice of intention;
- (b) the accompanying information; and
- (c) confirmation that the operator and the UCITS fulfil the conditions imposed by the UCITS directive.

(4) The [appropriate UK regulator] ² must ensure that the host state regulator has electronic access to the information and documents referred to in sub-paragraph (3).

(5) The [appropriate UK regulator] ² must notify the operator immediately that the information referred to in sub-paragraph (3) has been sent to the competent authorities of the host state regulator.

(6) The operator may market the units of the UCITS in the territory of the host state regulator from the moment it receives the notification referred to in sub-paragraph (5).

(7) In this paragraph—

- “operator” has the same meaning as in section 237 of this Act;
- “specified” means specified in rules.

] ¹**Notes**

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(m) (July 1, 2011)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.13 (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Extent

Sch. 3(III) para. 20B(1)-(7) definition of "specified": United Kingdom

*[Notice of intention to market an AIF]¹***Notes**

- ¹ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(14) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

✔ Law In Force

! Amendment(s) Pending

[20C.—

(1) A full-scope UK AIFM may not exercise in the territory of another EEA State an EEA right under the alternative investment fund managers directive to market a UK AIF or EEA AIF managed by it unless two conditions are satisfied.

(2) The first condition is that the full-scope UK AIFM has given the appropriate UK regulator, in the specified way, notice of its intention to market the AIF (“notice of intention”) which contains, and is accompanied by, such information as may be specified.

(3) The appropriate UK regulator must ensure that the notice of intention and any accompanying information may be transmitted to it electronically.

(4) The second condition is that the appropriate UK regulator has sent a copy of the notice of intention to the host state regulator, and has given written notice to the full-scope UK AIFM that it has done so.

(5) Sub-paragraph (6) applies where—

- (a) the appropriate UK regulator is satisfied that the full-scope UK AIFM complies, and will continue to comply, with—
- (i) the provisions implementing the alternative investment fund managers directive, and
 - (ii) any directly applicable EU regulation made under that directive, and
- (b) if the UK AIF or EEA AIF is a feeder AIF, its master AIF is a UK AIF or EEA AIF that is managed by—
- (i) a full-scope UK AIFM, or
 - (ii) an AIFM authorised in another EEA State in accordance with Article 6.1 of the alternative investment fund managers directive.

- (6) The appropriate UK regulator must send a copy of the notice of intention to the host state regulator within 20 working days of receiving it.
- (7) When sending a copy of the notice of intention to the host state regulator, the appropriate UK regulator must send with the notice confirmation that the full-scope UK AIFM concerned is authorised to manage AIFs with a particular investment strategy, and a statement of that strategy.
- (8) If the notice of intention relates to an EEA AIF, the appropriate UK regulator must, when it sends a copy of the notice to the host state regulator, also inform the competent authority of the EEA AIF that the full-scope UK AIFM may start marketing the AIF in the EEA States covered by the notice.
- (9) The appropriate UK regulator must notify the full-scope UK AIFM immediately that the copy of the notice of intention has been sent to the host state regulator.
- (10) The full-scope UK AIFM may market the AIF in the territory of the host state regulator from the date it receives the notification referred to in sub-paragraph (9).
- (11) If the appropriate UK regulator refuses to send a copy of the notice of intention to the host state regulator—
- (a) the appropriate UK regulator must give the AIFM written notice of its refusal and its reasons for that refusal; and
 - (b) the AIFM may refer the matter to the Tribunal.
- (12) In this paragraph—
- “competent authority” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013;
 - “EEA AIF” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013;
 - “feeder AIF” has the meaning given in Article 4.1(m) of the alternative investment fund managers directive;
 - “master AIF” has the meaning given in Article 4.1(y) of that directive;
 - “specified” means specified in rules;
 - “UK AIF” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013.

] ¹

Notes

- ¹ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(14) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Amendments Pending

Sch. 3(III) para. 20C(12) definition of "third country AIF"-AIFM": definitions inserted by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 1 para. 1(5)(g)(iii) (date to be appointed)

Sch. 3(III) para. 20C(12) definition of "relevant third country": definition inserted by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 1 para. 1(5)(g)(iii) (date to be appointed)

Sch. 3(III) para. 20C(5)(b): substituted by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 1 para. 1(5)(g)(ii) (date to be appointed)

Sch. 3(III) para. 20C(1): words substituted by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 1 para. 1(5)(g)(i) (date to be appointed)

Extent

Sch. 3(III) para. 20C(1)-(12) definition of "UK AIF": United Kingdom

Offence relating to exercise of passport rights

Law In Force

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
- (b) [sub-paragraph (1), (3B)(c) or (4B) of paragraph 20]¹,

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.

Notes

¹ Words substituted by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.6(2) (January 14, 2005)

Commencement

Sch. 3(III) para. 21(1)-(3): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(III) para. 21(1)-(3): United Kingdom

Continuing regulation of UK firms

Law In Force

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]¹ to a change (or proposed change)–

(a) consent may be refused only on prescribed grounds; and

(b) if [the FCA or the PRA]² decides to refuse consent, the firm concerned may refer the matter to the Tribunal.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.14(a) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

² Words substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.14(b) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Commencement

Sch. 3(III) para. 22(1)-(3)(b): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(III) para. 22(1)-(3)(b): United Kingdom

R Repealed

23.— [...] ¹

Notes

¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(18)(b) (July 26, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/1998 art.11(10))

✓ Law In Force

24.—

(1) Sub-paragraph (2) applies if a UK firm–

(a) is not required to have a [Part 4A permission]¹ in relation to the business which it is carrying on; and

(b) is exercising the right conferred by [[Article 24]³ of the banking consolidation directive]² 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]⁴ may impose any requirement in relation to the firm which it could impose if–

(a) the firm had a [Part 4A permission]⁵ in relation to the business which it is carrying on; and

(b) [that regulator]⁶ was entitled to exercise its power under that Part to vary that permission.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.16(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ² Words substituted by Banking Consolidation Directive (Consequential Amendments) Regulations 2000/2952 reg.8(5)(f) (December 1, 2001: substitution came into force on November 22, 2000 but could not take effect until the commencement of 2000 c.8 Sch.3 para.24 on December 1, 2001 as specified in SI 2001/3538 art.2(1))
- ³ Words substituted by Capital Requirements Regulations 2006/3221 Sch.3 para.2(4) (January 1, 2007)
- ⁴ Words substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.16(3)(a) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.16(3)(b) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁶ Words substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.16(3)(c) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Commencement

Sch. 3(III) para. 24(1)-(2)(b): February 25, 2001 for the purposes of making orders or regulations; June 18, 2001 for the purposes of making rules; December 1, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/1820 art. 2, Sch. 1 para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 3(III) para. 24(1)-(2)(b): United Kingdom

*[Arrangements between FCA and PRA]¹***Notes**

- ¹ Added by Financial Services Act 2012 c. 21 Sch.4(1) para.17 (January 24, 2013: insertion has effect on January 24, 2013 for the purpose of the making of arrangements as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Law In Force

[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 20(3AA) or (3AB) 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.

(5) The regulators must publish any arrangements under this paragraph in such manner as they think fit.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.4(1) para.17 (January 24, 2013: insertion has effect on January 24, 2013 for the purpose of the making of arrangements as specified in SI 2013/113 art.2 and Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 3(III) para. 24A(1)-(5): United Kingdom

*[Information to be included in the public record]*¹

Notes

¹ Added by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.7 (January 14, 2005)

Law In Force

[25.

The [FCA]² 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.

] ¹

Notes

¹ Added by Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003/1473 Pt 2 reg.7 (January 14, 2005)

² Word substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.18 (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Extent

Sch. 3(III) para. 25(a)-(b): United Kingdom

[UK management companies: delegation of functions]¹

Notes

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(n) (July 1, 2011)
-

Law In Force

[26.

Where a UK firm which is a management company and is providing services in the exercise of an EEA right to an EEA UCITS informs the [appropriate UK regulator]² that it has delegated one or more of its functions to a third party, the [appropriate UK regulator]² must transmit that information to the home state regulator of the EEA UCITS without delay.
] ¹

Notes

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(n) (July 1, 2011)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.19 (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Extent

Sch. 3(III) para. 26: United Kingdom

[UK management companies: withdrawal of authorisation]¹

Notes

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(n) (July 1, 2011)
-

Law In Force

[27.

Where a UK firm which is a management company has exercised an EEA right deriving from the UCITS directive to establish a branch or to provide services in another EEA State, the [appropriate UK regulator]² must consult the home state regulator of any UCITS managed by that management company before taking a decision to withdraw the authorisation of the management company under section 33.
] ¹

Notes

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(n) (July 1, 2011)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.20 (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Extent

Sch. 3(III) para. 27: United Kingdom

[Management companies: request for information]¹

Notes

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(n) (July 1, 2011)
-

Law In Force

[28.—

(1) Where a UK firm has applied to manage a UCITS which is established in another EEA State, the home state regulator of the UCITS may—

- (a) request further information from the [appropriate UK regulator]² regarding the documents referred to in Article 20.1 of the UCITS directive, and
- (b) ask the [appropriate UK regulator]² whether the type of UCITS for which the UK firm has applied to provide its services falls within the scope of the authorisation of the UK firm.

(2) The [appropriate UK regulator]² must respond to a request under sub-paragraph (1)(a) or (b) within 10 working days of the date on which the request was received.

]¹

Notes

- ¹ Added by Undertakings for Collective Investment in Transferable Securities Regulations 2011/1613 Pt 2 reg.2(33)(n) (July 1, 2011)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.4(1) para.21 (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Extent

Sch. 3(III) para. 28(1)-(2): United Kingdom

[Full-scope UK AIFMs: notification of breach by host state regulator]¹

Notes

- ¹ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(15) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
-

Law In Force

[29.—

If a host state regulator informs the FCA in accordance with paragraph 5 of Article 45 of the alternative investment fund managers directive that a full-scope UK AIFM has refused to provide

the information or to take the steps referred to in that paragraph, the appropriate UK regulator must—

- (a) take steps to ensure that the AIFM provides the information or complies with the rules of which it is in breach;
- (b) request any necessary information from a supervisory authority in a country that is not an EEA State; and
- (c) notify the host state regulator of the steps taken under paragraph (a).

] ¹

Notes

- ¹ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.34(15) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Extent

Sch. 3(III) para. 29(a)-(c): United Kingdom

SCHEDULE 4

TREATY RIGHTS

Section 31(1)(c).

Law In Force

Definitions

1.

[(1) In this Schedule—

“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)).

] ¹

[(2) Section 425A (meaning of “consumers”) applies for the purposes of this Schedule.] ¹

Notes

- ¹ Existing text renumbered as Sch.4 para.1(1) and Sch.4 para.1(2) inserted by Financial Services Act 2010 c. 28 Sch.2(1) para.35 (April 8, 2010)

Commencement

Sch. 4 para. 1 definition of "consumers"- definition of "home state regulator": September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 4 para. 1(1)- definition of "home state regulator": United Kingdom

Law In Force

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.

Commencement

Sch. 4 para. 2: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 4 para. 2: United Kingdom

Law In Force

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 [an EU]¹ 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 [appropriate UK regulator]² in writing.

[(2A) In sub-paragraph (2) “the appropriate UK regulator” means—

- (a) where any of the activities to which the notification under that sub-paragraph relates is a PRA-regulated activity, the PRA;
- (b) in any other case, the FCA.

(2B) Where the PRA receives a notification under sub-paragraph (2), it must give a copy to the FCA without delay.

(2C) Where the FCA receives a notification under sub-paragraph (2), it must in prescribed cases give a copy to the PRA without delay.”]³

(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.

Notes

- ¹ Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(d) (April 22, 2011)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.4(2) para.23(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ³ Added by Financial Services Act 2012 c. 21 Sch.4(2) para.23(3) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Commencement

Sch. 4 para. 3(1)-(4): September 3, 2001 for the purposes of issuing certificates under 2000 c.8 Sch.4 para.3(4); December 1, 2001 otherwise (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 4 para. 3(1)-(4): United Kingdom

Law In Force

[3A Notification between UK regulators

Regulations may require the PRA and the FCA to notify each other about Treaty firms qualifying for authorisation.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.4(2) para.24 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 4 para. 3A: United Kingdom

Law In Force

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]¹ which includes permission to carry on a permitted activity, the [appropriate UK regulator]² must give a direction cancelling the permission so far as it relates to that activity.

(4) The [appropriate UK regulator]³ 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.

] ⁴

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Sch.4(2) para.25(2)(a) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.4(2) para.25(2)(b) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ³ Word substituted by Financial Services Act 2012 c. 21 Sch.4(2) para.25(3) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁴ Added by Financial Services Act 2012 c. 21 Sch.4(2) para.25(4) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Commencement

Sch. 4 para. 4(1)-(4): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 4 para. 4(1)-(5)(b): United Kingdom

Law In Force

Notice to [UK regulator]¹

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]² 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-authorized person, or

(b) a person whose immediate group includes a PRA-authorized person,

it must give a copy to the PRA without delay.

] ³

(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.] ⁴

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.4(2) para.26(5) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ² Words substituted by Financial Services Act 2012 c. 21 Sch.4(2) para.26(2) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ³ Added by Financial Services Act 2012 c. 21 Sch.4(2) para.26(3) (February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)
- ⁴ Substituted by Financial Services Act 2012 c. 21 Sch.4(2) para.26(4) (January 24, 2013 for the purposes of giving directions or the imposition of requirements; February 27, 2013 for the purpose of making orders or regulations; April 1, 2013 otherwise)

Commencement

Sch. 4 para. 5(1)-(4): September 3, 2001 for the purposes of giving notice of intention to carry on regulated activities under 2000 c.8 Sch.4 para.5(2) not sooner than December 1, 2001, the coming into force of 2000 c.8 s.19; December 1, 2001 otherwise (2000 c. 8 Pt II s. 19; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1; SI 2001/3538 art. 2(1))

Extent

Sch. 4 para. 5(1)-(4): United Kingdom

Law In Force

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.

Commencement

Sch. 4 para. 6(1)-(4)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 4 para. 6(1)-(4)(b): United Kingdom

SCHEDULE 5

PERSONS CONCERNED IN COLLECTIVE INVESTMENT SCHEMES

Section 36.

Law In Force

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.

[(4) A body—

(a) incorporated by virtue of regulations made under section 1 of the Open-Ended Investment Companies Act (Northern Ireland) 2002² 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).]¹

Notes

¹ Added by Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003/2066 Pt 4 reg.10(a) (February 13, 2004)

² Act of the Northern Ireland Assembly; 2002 c. 13.

Commencement

Sch. 5 para. 1(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 5 para. 1(1)-(5): United Kingdom

Law In Force

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) or (4)]¹ has permission to carry on, so far as it is a regulated activity [other than the activity of managing an AIF]² –

- (a) the operation of the scheme;
 - (b) any activity in connection with, or for the purposes of, the operation of the scheme.
-

Notes

¹ Words inserted by Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003/2066 Pt 4 reg.10(b) (February 13, 2004)

² Words inserted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.35 (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Commencement

Sch. 5 para. 2(1)-(2)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 5 para. 2(1)-(2)(b): United Kingdom

SCHEDULE 6**THRESHOLD CONDITIONS**

[Section 55B]¹

Notes

¹ Words substituted by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(1) (April 1, 2013)

PART I**[Introduction]¹**

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)
-

Law In Force

1.—

[Existing Sch.1 Pt I is not repealed but has been substituted for a new Sch.1 Pt I consisting of para.1A.]¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Commencement

Sch. 6(I) para. 1(1)-(2)(b): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 6(I) para. 1(1)-(2)(b): United Kingdom

Law In Force

2.—

[Existing Sch.1 Pt I is not repealed but has been substituted for a new Sch.1 Pt I consisting of para.1A.]¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Commencement

Sch. 6(I) para. 2(1)-(2): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 6(I) para. 2(1)-(6)(c): United Kingdom

✔ Law In Force

[2A.—

[Existing Sch.1 Pt I is not repealed but has been substituted for a new Sch.1 Pt I consisting of para.1A.]²¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2002/2707 art.2 (January 19, 2003)
- ² Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(I) para. 2A(1)-(4): United Kingdom

✔ Law In Force

3.—

[Existing Sch.1 Pt I is not repealed but has been substituted for a new Sch.1 Pt I consisting of para.1A.]¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Commencement

Sch. 6(I) para. 3(1)-(3): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 6(I) para. 3(1)-(3): United Kingdom

✔ Law In Force

4.—

[Existing Sch.1 Pt I is not repealed but has been substituted for a new Sch.1 Pt I consisting of para.1A.]¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Commencement

Sch. 6(I) para. 4(1)-(2)(b)(ii): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 6(I) para. 4(1)-(2)(b)(ii): United Kingdom

Law In Force

5.

[Existing Sch.1 Pt I is not repealed but has been substituted for a new Sch.1 Pt I consisting of para.1A.]¹

Notes

¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Commencement

Sch. 6(I) para. 5(a)-(c): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 6(I) para. 5(a)-(c): United Kingdom

Law In Force

[1A.—

(1) In this Schedule—

“assets” includes contingent assets;

“consolidated supervision” has the same meaning as in section 3M²;

“consumers” has the meaning given in section 425A³;

“financial crime” is to be read with section 1H(3)²;

“functions”, in relation to the FCA or the PRA, means functions conferred on that regulator by or under this Act;

“liabilities” includes contingent liabilities;

“relevant directives” has the same meaning as in section 3M;

“Society” means the society incorporated by Lloyd's Act 1871⁴ by the name of Lloyd's;

“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.

(2) For the purposes of this Schedule, the “non-financial resources” of a person include any systems, controls, plans or policies that the person maintains, any information that the person holds and the human resources that the person has available.

(3) In this Schedule, References to “integrity” of the UK financial system are to be read in accordance section 1D(2)².

(4) References to the failure of a person are to be read in accordance with section 2J(3) and (4)².]¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)
- ² Inserted by section 6 of the Financial Services Act 2012.
- ³ Inserted by section 24 of and Schedule 2 to the Financial Services Act 2010 (c.28).
- ⁴ 34 Vict c xxi.

Extent

Sch. 6(I) para. 1A(1)-(4): United Kingdom

PART II

[...]¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)
-

R Repealed

6. [...]¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)
-

R Repealed

7. [...]¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)
-

[PART 1B**Part 4A permission: authorised persons who are not PRA-authorised persons**

]¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)
-

✔ Law In Force

[2A. Introduction

If the person concerned (“A”) carries on, or is seeking to carry on, regulated activities which do not consist of or include a PRA-regulated activity, the threshold conditions that are relevant to the discharge by the FCA of its functions in relation to A are the conditions set out in paragraphs 2B to 2F.

] ¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1B) para. 2A: United Kingdom

✔ Law In Force

! Amendment(s) Pending

[2B.— Location of offices

(1) Unless sub-paragraph (3) [, (4)(a) or (7)]² applies, if A is a body corporate incorporated in the United Kingdom—

- (a) A's head office, and
- (b) if A has a registered office, that office,

must be in the United Kingdom.

(2) If A is not a body corporate but A's head office is in the United Kingdom, A must carry on business in the United Kingdom.

(3) If—

- (a) A is seeking to carry on, or is carrying on, a regulated activity which is any of the investment services and activities,
- (b) A is a body corporate with no registered office, and
- (c) A's head office is in the United Kingdom,

A must carry on business in the United Kingdom.

(4) If A is seeking to carry on, or is carrying on, an insurance mediation activity—

- (a) where A is a body corporate incorporated in the United Kingdom, A's registered office, or if A has no registered office, A's head office, must be in the United Kingdom;
- (b) where A is an individual, A is to be treated for the purposes of sub-paragraph (2) as having a head office in the United Kingdom if A is resident in the United Kingdom.

- (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 paragraphs (a) to (d).
- (6) Sub-paragraph (5) must be read with—
- (a) section 22,
 - (b) any relevant order under that section, and
 - (c) Schedule 2.

[(7) If A is seeking to carry on, or is carrying on, the regulated activity of managing an AIF and is, or upon being granted Part 4A permission to carry on that regulated activity would be, a full-scope UK AIFM, A's head office and registered office must be in the United Kingdom.]³
]¹

Notes


- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)
- ² Words substituted by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.36(a) (July 22, 2013: substitution has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)
- ³ Added by Alternative Investment Fund Managers Regulations 2013/1773 Sch.1(1) para.36(b) (July 22, 2013: insertion has effect subject to transitional provisions specified in SI 2013/1773 Pt 9)

Amendments Pending

Sch. 6(1B) para. 2B(7): words substituted by Alternative Investment Fund Managers (Amendment) Regulations 2013/1797, Sch. 1 para. 1(6) (date to be appointed)

Extent

Sch. 6(1B) para. 2B(1)-(7)(b): United Kingdom

 Partially In Force

[2C.— Effective supervision

- (1) A must be capable of being effectively supervised by the FCA having regard to all the circumstances including—
- (a) the nature (including the complexity) of the regulated activities that A carries on or seeks to carry on;
 - (b) the complexity of any products that A provides or will provide in carrying on those activities;
 - (c) the way in which A's business is organised;
 - (d) if A is a member of a group, whether membership of the group is likely to prevent the FCA's effective supervision of A;
 - (e) whether A is subject to consolidated supervision required under any of the relevant directives;
 - (f) if A has close links with another person (“CL”)—

- (i) the nature of the relationship between A and CL,
- (ii) whether those links are or that relationship is likely to prevent the FCA's effective supervision of A, and
- (iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State (“the foreign provisions”), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA's effective supervision of A.

[(1A) Paragraphs (a), (b) and (e) of sub-paragraph (1) do not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are relevant credit activities.]²

(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.

] ¹


Notes

¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

² Added by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(19)(a) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

Extent

Sch. 6(1B) para. 2C(1)-(2)(f): United Kingdom

 Partially In Force

[2D.— Appropriate resources

(1) The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.

(2) The matters which are relevant in determining whether A has appropriate resources include—

- (a) the nature and scale of the business carried on, or to be carried on, by A;
- (b) the risks to the continuity of the services provided by, or to be provided by, A;
- (c) A's membership of a group and any effect which that membership may have.

(3) [Except in a case within sub-paragraph (3A), the matters]² which are relevant in determining whether A has appropriate financial resources include—

- (a) the provision A makes and, if A is a member of a group, which other members of the group make, in respect of liabilities;
- (b) the means by which A manages and, if A is a member of a group, by which other members of the group manage, the incidence of risk in connection with A's business.

[(3A) Where the only regulated activities that A carries on, or seeks to carry on, are relevant credit activities, A has adequate financial resources if A is capable of meeting A's debts as they fall due.]³

(4) The matters which are relevant in determining whether A has appropriate non-financial resources include—

- (a) the skills and experience of those who manage A's affairs;
- (b) whether A's non-financial resources are sufficient to enable A to comply with—
 - (i) requirements imposed or likely to be imposed on A by the FCA in the exercise of its functions, or
 - (ii) any other requirement in relation to whose contravention the FCA would be the appropriate regulator for the purpose of any provision of Part 14 of this Act.

] ¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)
- ² Words substituted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(19)(b)(i) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)
- ³ Added by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(19)(b)(ii) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

Extent

Sch. 6(1B) para. 2D(1)-(4)(b)(ii): United Kingdom

Law In Force

[2E.— Suitability

A must be a fit and proper person having regard to all the circumstances, including—

- (a) A's connection with any person;
- (b) the nature (including the complexity) of the regulated activities that A carries on or seeks to carry on;
- (c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
- (d) whether A has complied and is complying with requirements imposed by the FCA in the exercise of its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where A has so complied or is so complying, the manner of that compliance;
- (e) whether those who manage A's affairs have adequate skills and experience and have acted and may be expected to act with probity;
- (f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner;
- (g) the need to minimise the extent to which it is possible for the business carried on by A, or to be carried on by A, to be used for a purpose connected with financial crime.

] ¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1B) para. 2E(a)-(g): United Kingdom

 Partially In Force**[2F.— Business model**

(1) A's business model (that is, A's strategy for doing business) must be suitable for a person carrying on the regulated activities that A carries on or seeks to carry on.

(2) The matters which are relevant in determining whether A satisfies the condition in sub-paragraph (1) include—

- (a) whether the business model is compatible with A's affairs being conducted, and continuing to be conducted, in a sound and prudent manner;
- (b) the interests of consumers;
- (c) the integrity of the UK financial system.

[(3) This paragraph does not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are relevant credit activities.]²


] ¹**Notes**

¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

² Added by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(19)(c) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

Extent

Sch. 6(1B) para. 2F(1)-(3): United Kingdom

 Partially In Force**[2G.— Interpretation**

(1) In this Part of this Schedule, each of the following is a “relevant credit activity”—

- (a) an activity of the kind specified by article 36A of the Regulated Activities Order (credit broking) when carried on in the case specified in sub-paragraph (3), (4) or (5),
- (b) an activity of the kind specified by article 39D of that Order (debt adjusting) when carried on—
 - (i) in the case specified in sub-paragraph (3), by a person who also carries on an activity of the kind specified by paragraph (a),
 - (ii) by a person who also carries on an activity of the kind specified by paragraph (d) or (e), or
 - (iii) by a not-for-profit body,
- (c) an activity of the kind specified by article 39E of that Order (debt-counselling) when carried on—
 - (i) in the case specified in sub-paragraph (3), by a person who also carries on an activity of the kind specified by paragraph (a),

- (ii) by a person who also carries on an activity of the kind specified by paragraph (d) or (e), or
 - (iii) by a not-for-profit body,
 - (d) an activity of the kind specified by article 60B of that Order (regulated credit agreements) if—
 - (i) it is carried on by a supplier,
 - (ii) no charge (by way of interest or otherwise) is payable by the borrower in connection with the provision of credit under the regulated credit agreement, and
 - (iii) the regulated credit agreement is not a hire-purchase agreement or a conditional sale agreement,
 - (e) an activity of the kind specified by article 60N of that Order (regulated consumer hire agreements),
 - (f) an activity of the kind specified by article 89A of that Order (providing credit information services) where carried on by a person who also carries on an activity of the kind specified by any of paragraphs (a) to (e), or
 - (g) an activity of the kind specified by article 64 of that Order (agreeing to carry on specified kinds of activity) so far as relevant to any of the activities specified in paragraphs (a) to (f).
- (2) But an activity is not a relevant credit activity for the purposes of—
- (a) paragraph (a) to (e) of sub-paragraph (1), and
 - (b) paragraph (g) of that sub-paragraph so far as it relates to activities of the kind specified by any of those paragraphs,
- if it relates to an agreement under which the obligation of the borrower to repay is secured, or is to be secured, by a legal mortgage on land.
- (3) The case specified in this sub-paragraph is where a supplier (other than a domestic premises supplier) carries on the activity for the purposes of, or in connection with, the sale of goods or supply of services by the supplier to a customer (who need not be the borrower under the credit agreement or the hirer under the consumer hire agreement).
- (4) The case specified in this sub-paragraph is where the activity relates to a green deal plan.
- (5) The case specified in this sub-paragraph is where the activity relates to a consumer hire agreement where the goods being hired is a vehicle.
- (6) For the purposes of this paragraph—
- “borrower” includes—
 - (a) any person providing a guarantee or indemnity under an agreement, and
 - (b) a person to whom the rights and duties of the borrower under an agreement or a person falling within paragraph (a) have passed by assignment or operation of law;
 - “conditional sale agreement” has the meaning given by article 60L of the Regulated Activities Order;
 - “customer” means a person to whom a supplier sells goods or supplies services or agrees to do so;
 - “domestic premises supplier” means a supplier who sells goods or supplies services to customers who are individuals while physically present in the dwelling of the customer or in consequence of an agreement concluded whilst the supplier was physically present in the dwelling of the customer (though a supplier who does so on an occasional basis is not to be treated as a “domestic premises supplier”);

“green deal plan” has the meaning given by section 1 of the Energy Act 2011;
 “hire-purchase agreement” has the meaning given by the Regulated Activities Order;
 “not-for-profit body” means a body which, by virtue of its constitution or any enactment—
 (a) is required (after payment of outgoings) to apply the whole of its income and any capital it expends for charitable or public purposes, and
 (b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes);
 “Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
 “regulated credit agreement” has the meaning given by the Regulated Activities Order;
 “supplier” means a person whose main business is to sell goods or supply services and not to carry on a regulated activity, other than an activity of the kind specified by article 60N of the Regulated Activities Order (regulated consumer hire agreements).

] ¹**Notes**

¹ Added by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(19)(d) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

Extent

Sch. 6(1B) para. 2G(1)-(6) definition of "supplier": United Kingdom

[PART 1C**Part 4A permission: conditions for which FCA is responsible in relation to PRA-authorised persons**] ¹**Notes**

¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Law In Force

[3A. Introduction

If the person concerned (“B”) carries on, or is seeking to carry on, regulated activities which consist of or include a PRA-regulated activity, the threshold conditions which are relevant to the discharge by the FCA of its functions in relation to B are the conditions set out in paragraphs 3B to 3E.

] ¹**Notes**

¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

ExtentSch. 6(1C) para. 3A: United Kingdom

✔ Law In Force

[3B.— Effective supervision

(1) B must be capable of being effectively supervised by the FCA having regard to all the circumstances including—

- (a) the nature (including the complexity) of the regulated activities that B carries on or seeks to carry on;
- (b) the complexity of any products that B provides or will provide in carrying on those activities;
- (c) the way in which B's business is organised;
- (d) if B is a member of a group, whether membership of the group is likely to prevent the FCA's effective supervision of B;
- (e) whether B is subject to consolidated supervision required under any of the relevant directives;
- (f) if B has close links with another person (“CL”)—
 - (i) the nature of the relationship between B and CL,
 - (ii) whether those links are or that relationship is likely to prevent the FCA's effective supervision of B, and
 - (iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State (“the foreign provisions”), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA's effective supervision of B.

(2) B has close links with CL if—

- (a) CL is a parent undertaking of B,
- (b) CL is a subsidiary undertaking of B,
- (c) CL is a parent undertaking of a subsidiary undertaking of B,
- (d) CL is a subsidiary undertaking of a parent undertaking of B,
- (e) CL owns or controls 20% or more of the voting rights or capital of B, or
- (f) B owns or controls 20% or more of the voting rights or capital of CL.

] ¹**Notes**

¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

ExtentSch. 6(1C) para. 3B(1)-(2)(f): United Kingdom

✔ Law In Force

[3C.— Appropriate non-financial resources

(1) The non-financial resources of B must be appropriate in relation to the regulated activities that B carries on or seeks to carry on, having regard to the operational objectives of the FCA.

(2) The matters which are relevant in determining whether the condition in sub-paragraph (1) is met include—

- (a) the nature and scale of the business carried on, or to be carried on, by B;
- (b) the risks to the continuity of the services provided by, or to be provided by, B;
- (c) B's membership of a group and any effect which that membership may have;
- (d) the skills and experience of those who manage B's affairs;
- (e) whether B's non-financial resources are sufficient to enable B to comply with—
 - (i) requirements imposed or likely to be imposed on B by the FCA in the exercise of its functions, or
 - (ii) any other requirement in relation to whose contravention the FCA would be the appropriate regulator for the purpose of any provision of Part 14 of this Act.

] ¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1C) para. 3C(1)-(2)(e)(ii): United Kingdom

✔ Law In Force

[3D.— Suitability

(1) B must be a fit and proper person, having regard to the operational objectives of the FCA.

(2) The matters which are relevant in determining whether B satisfies the condition in sub-paragraph (1) include—

- (a) B's connection with any person;
- (b) the nature (including the complexity) of the regulated activities that B carries on or seeks to carry on;
- (c) the need to ensure that B's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
- (d) whether B has complied and is complying with requirements imposed by the FCA in the exercise its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where B has so complied or is so complying, the manner of that compliance;
- (e) whether those who manage B's affairs have adequate skills and experience and have acted and may be expected to act with probity;
- (f) the need to minimise the extent to which it is possible for the business carried on by B, or to be carried on by B, to be used for a purpose connected with financial crime.

] ¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1C) para. 3D(1)-(2)(f): United Kingdom

Law In Force

[3E. Business model

B's business model (that is, B's strategy for doing business) must be suitable for a person carrying on the regulated activities that B carries on or seeks to carry on, having regard to the FCA's operational objectives.

] ¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1C) para. 3E: United Kingdom

[PART 1D**Part 4A permission: conditions for which the PRA is responsible in relation to insurers etc.**

] ¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)
-

Law In Force

[4A.— Introduction

(1) If the person concerned (“C”) carries on, or is seeking to carry on, regulated activities which consist of or include a PRA-regulated activity relating to the effecting or carrying out of contracts of insurance, the threshold conditions which are relevant to the discharge by the PRA of its functions in relation to C are the conditions set out in paragraphs 4B to 4F.

(2) If the person concerned (“C”) carries on, or is seeking to carry on, regulated activities which consist of or include a PRA-regulated activity relating to managing the underwriting capacity of a

Lloyd's syndicate as a managing agent at Lloyd's, the conditions which are relevant to the discharge by the PRA of its functions in relation to C are the conditions set out in paragraphs 4C to 4F except for sub-paragraphs (5)(d) and (5)(e) of paragraph 4D which are not relevant for that purpose.

(3) If the person concerned (“C”) carries on, or is seeking to carry on, regulated activities which consist of or include a PRA-regulated activity relating to the arranging, by the Society, of deals in contracts of insurance written at Lloyd's, the conditions which are relevant to the discharge by the PRA of its functions in relation to C are the conditions set out in paragraphs 4C to 4F, subject to sub-paragraph (4).

(4) Paragraph 4D has effect in relation to persons of the kind specified by sub-paragraph (3) as if—
 (a) for paragraph (d) and (e) of sub-paragraph (5) there were substituted—

“(d) the effect that the carrying on of business by C might be expected to have on the stability of the UK financial system or on those who are or may become policyholders of members of C;

(e) the effect that the failure of C might be expected to have on the stability of the UK financial system or on those who are or may become policyholders of members of C;”, and

(b) sub-paragraph (6) were omitted.

] ¹

Notes

¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1D) para. 4A(1)-(4)(b): United Kingdom

Law In Force

[4B.— Legal status

C must be—

- (a) a body corporate (other than a limited liability partnership),
- (b) a registered friendly society, or
- (c) a member of Lloyd's.

] ¹

Notes

¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1D) para. 4B(a)-(c): United Kingdom

✔ Law In Force

[4C.— Location of offices

(1) If C is a body corporate incorporated in the United Kingdom—

- (a) C's head office, and
- (b) if C has a registered office, that office,

must be in the United Kingdom.

(2) If C is not a body corporate but C's head office is in the United Kingdom, C must carry on business in the United Kingdom.

] ¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1D) para. 4C(1)-(2): United Kingdom

✔ Law In Force

[4D.— Business to be conducted in a prudent manner

(1) The business of C must be conducted in a prudent manner.

(2) To satisfy the condition in sub-paragraph (1), C must in particular have appropriate financial and non-financial resources.

(3) To have appropriate financial resources C must satisfy the following conditions—

- (a) C's assets must be appropriate given C's liabilities, and
- (b) the liquidity of C's resources must be appropriate given C's liabilities and when they fall due or may fall due.

(4) To have appropriate non-financial resources C must satisfy the following conditions—

- (a) C must be willing and able to value C's assets and liabilities appropriately,
- (b) C must have resources to identify, monitor, measure and take action to remove or reduce risks to the safety and soundness of C,
- (c) C must have resources to identify, monitor, measure and take action to remove or reduce risks to the accuracy of C's valuation of C's assets and liabilities,
- (d) the effectiveness with which C's business is managed must meet a reasonable standard of effectiveness, and
- (e) C's non-financial resources must be sufficient to enable C to comply with—
 - (i) requirements imposed or likely to be imposed on C by the PRA in the exercise of its functions, and
 - (ii) any other requirement in relation to whose contravention the PRA would be the appropriate regulator for the purpose of any provision of Part 14 of this Act.

(5) The matters which are relevant in determining whether C satisfies the condition in sub-paragraph (1) or (2) include—

- (a) the nature (including the complexity) of the regulated activities that C carries on or seeks to carry on;
- (b) the nature and scale of the business carried on or to be carried on by C;
- (c) the risks to the continuity of the services provided by, or to be provided by, C;
- (d) the effect that the carrying on of the business of effecting or carrying out contracts of insurance by C might be expected to have on the stability of the UK financial system or on those who are or may become C's policyholders;
- (e) the effect that C's failure or C being closed to new business might be expected to have on the stability of the UK financial system or on those who are or may become C's policyholders;
- (f) C's membership of a group and any effect which that membership may have.

(6) C is “closed to new business” for the purposes of this paragraph if C has ceased to effect contracts of insurance or has substantially reduced the number of such contracts which C effects.

] ¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1D) para. 4D(1)-(6): United Kingdom

Law In Force

[4E.— Suitability

- (1) C must be a fit and proper person, having regard to the PRA's objectives.
- (2) The matters which are relevant in determining whether C satisfies the condition in sub-paragraph (1) include—
 - (a) whether C has complied and is complying with requirements imposed by the PRA in the exercise of its functions, or requests made by the PRA relating to the provision of information to the PRA and, if C has so complied or is so complying, the manner of that compliance;
 - (b) whether those who manage C's affairs have adequate skills and experience and have acted and may be expected to act with probity.

] ¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1D) para. 4E(1)-(2)(b): United Kingdom

✔ Law In Force

[4F.— Effective supervision

(1) C must be capable of being effectively supervised by the PRA.

(2) The matters which are relevant in determining whether C satisfies the condition in sub-paragraph (1) include—

- (a) the nature (including the complexity) of the regulated activities that C carries on or seeks to carry on;
- (b) the complexity of any products that C provides or will provide in carrying on those activities;
- (c) the way in which C's business is organised;
- (d) if C is a member of a group, whether membership of the group is likely to prevent the PRA's effective supervision of C;
- (e) whether C is subject to consolidated supervision required under any of the relevant directives;
- (f) if C has close links with another person (“CL”)—
 - (i) the nature of the relationship between C and CL,
 - (ii) whether those links are or that relationship is likely to prevent the PRA's effective supervision of C, and
 - (iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State (“the foreign provisions”), whether those foreign provisions, or any deficiency in their enforcement, would prevent the PRA's effective supervision of C.

(3) C has close links with CL if—

- (a) CL is a parent undertaking of C,
- (b) CL is a subsidiary undertaking of C,
- (c) CL is a parent undertaking of a subsidiary undertaking of C,
- (d) CL is a subsidiary undertaking of a parent undertaking of C,
- (e) CL owns or controls 20% or more of the voting rights or capital of C, or
- (f) C owns or controls 20% or more of the voting rights or capital of CL.

]¹

Notes

¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1D) para. 4F(1)-(3)(f): United Kingdom

[PART 1E

Part 4A permission: conditions for which the PRA is responsible in relation to other PRA-authorized persons

]¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)
-

Law In Force

[5A.— Introduction

If the person concerned (“D”) carries on, or is seeking to carry on, PRA-regulated activities which do not consist of or include a regulated activity relating to—

- (a) the effecting or carrying out of contracts of insurance,
- (b) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyds, or
- (c) arranging, by the Society, of deals in contracts of insurance written at Lloyd's,

the threshold conditions which are relevant to the discharge by the PRA of its functions in relation to D are the conditions set out in paragraphs 5B to 5F.

] ¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1E) para. 5A(a)-(c): United Kingdom

Law In Force

[5B.— Legal status

If D carries on or is seeking to carry on a regulated activity which consists of or includes accepting deposits or issuing electronic money, D must be—

- (a) a body corporate, or
- (b) a partnership.

] ¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1E) para. 5B(a)-(b): United Kingdom

✔ Law In Force

[5C.— Location of offices

(1) If D is a body corporate incorporated in the United Kingdom—

- (a) D's head office, and
- (b) if D has a registered office, that office,

must be in the United Kingdom.

(2) If D is not a body corporate but D's head office is in the United Kingdom, D must carry on business in the United Kingdom.

] ¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1E) para. 5C(1)-(2): United Kingdom

✔ Law In Force

[5D.— Business to be conducted in a prudent manner

(1) The business of D must be conducted in a prudent manner.

(2) To satisfy the condition in sub-paragraph (1), D must in particular have appropriate financial and non-financial resources.

(3) To have appropriate financial resources D must satisfy the following conditions—

- (a) D's assets must be appropriate given D's liabilities, and
- (b) the liquidity of D's resources must be appropriate given D's liabilities and when they fall due or may fall due.

(4) To have appropriate non-financial resources D must satisfy the following conditions—

- (a) D must be willing and able to value D's assets and liabilities appropriately,
- (b) D must have resources to identify, monitor, measure and take action to remove or reduce risks to the safety and soundness of D,
- (c) D must have resources to identify, monitor, measure and take action to remove or reduce risks to the accuracy of D's valuation of D's assets and liabilities,
- (d) the effectiveness with which D's business is managed must meet a reasonable standard of effectiveness, and
- (e) D's non-financial resources must be sufficient to enable D to comply with—
 - (i) requirements imposed or likely to be imposed on D by the PRA in the exercise of its functions, and
 - (ii) any other requirement in relation to whose contravention the PRA would be the appropriate regulator for the purpose of any provision of Part 14 of this Act.

(5) The matters which are relevant in determining whether D satisfies the condition in sub-paragraph (1) or (2) include—

- (a) the nature (including the complexity) of the regulated activities that D carries on or seeks to carry on;
- (b) the nature and scale of the business carried on or to be carried on by D;
- (c) the risks to the continuity of the services provided or to be provided by D;
- (d) the effect that the carrying on of the business carried on or to be carried on by D might be expected to have on the stability of the UK financial system;
- (e) the effect that D's failure might be expected to have on the stability of the UK financial system;
- (f) D's membership of a group and any effect which that membership may have.

]¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1E) para. 5D(1)-(5)(f): United Kingdom

Law In Force

[5E.— Suitability

- (1) D must be a fit and proper person, having regard to the PRA's objectives.
- (2) The matters which are relevant in determining whether D satisfies the condition in sub-paragraph (1) include—
 - (a) whether D has complied and is complying with requirements imposed by the PRA in the exercise of its functions, or requests made by the PRA relating to the provision of information to the PRA and, if D has so complied or is so complying, the manner of that compliance;
 - (b) whether those who manage D's affairs have adequate skills and experience and have acted and may be expected to act with probity.

]¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1E) para. 5E(1)-(2)(b): United Kingdom

Law In Force

[5F.— Effective supervision

- (1) D must be capable of being effectively supervised by the PRA.

(2) The matters which are relevant in determining whether D satisfies the condition in sub-paragraph (1) include—

- (a) the nature (including the complexity) of the regulated activities that D carries on or seeks to carry on;
- (b) the complexity of any products that D provides or will provide in carrying on those activities;
- (c) the way in which D's business is organised;
- (d) if D is a member of a group, whether membership of the group is likely to prevent the PRA's effective supervision of D;
- (e) whether D is subject to consolidated supervision required under any of the relevant directives;
- (f) if D has close links with another person (“CL”)—
 - (i) the nature of the relationship between D and CL,
 - (ii) whether those links are or that relationship is likely to prevent the PRA's effective supervision of D, and
 - (iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State (“the foreign provisions”), whether those foreign provisions, or any deficiency in their enforcement, would prevent the PRA's effective supervision of D.

(3) D has close links with CL if—

- (a) CL is a parent undertaking of D,
- (b) CL is a subsidiary undertaking of D,
- (c) CL is a parent undertaking of a subsidiary undertaking of D,
- (d) CL is a subsidiary undertaking of a parent undertaking of D,
- (e) CL owns or controls 20% or more of the voting rights or capital of D, or
- (f) D owns or controls 20% or more of the voting rights or capital of CL.

]¹

Notes

¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1E) para. 5F(1)-(3)(f): United Kingdom

[PART 1F

Authorisation under Schedule 3

]¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)
-

Law In Force

[6A.—

(1) In relation to an EEA firm qualifying for authorisation under Schedule 3 which carries on PRA-regulated activities which consist of or include a regulated activity relating to the effecting or carrying out of contracts of insurance—

- (a) the conditions in paragraphs 3B to 3E apply so far as relevant to the discharge by the FCA of its relevant functions, and
- (b) the conditions in paragraphs 4B, 4D, 4E and 4F apply so far as relevant to the discharge by the PRA of its relevant functions.

(2) In relation to an EEA firm qualifying for authorisation under Schedule 3 which carries on PRA-regulated activities which do not consist of or include a regulated activity relating to the effecting or carrying out of contracts of insurance—

- (a) the conditions in paragraphs 3B to 3E apply so far as relevant to the discharge by the FCA of its relevant functions, and
- (b) the conditions in paragraphs 5B, 5D, 5E and 5F apply so far as relevant to the discharge by the PRA of its relevant functions.

(3) In relation to an EEA firm qualifying for authorisation under Schedule 3 which carries on regulated activities which do not consist of or include a PRA-regulated activity, the conditions in paragraphs 2C, 2D, 2E and 2F apply so far as relevant to the discharge by the FCA of its relevant functions.

(4) In this paragraph, “relevant functions”, in relation to the FCA or the PRA, means functions of that regulator in relation to—

- (a) an application for permission under Part 4A, or
- (b) the exercise by that regulator of its own-initiative requirement power or own-initiative variation power in relation to a Part 4A permission.

]¹

Notes

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1F) para. 6A(1)-(4)(b): United Kingdom

[PART 1G**Authorisation under Schedule 4**] ¹**Notes**

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

 Law In Force**[7A.—**

(1) In relation to a person who qualifies for authorisation under Schedule 4 who carries on PRA-regulated activities which consist of or include a regulated activity relating to the effecting or carrying out of contracts of insurance—

- (a) the conditions in paragraphs 3B to 3E apply so far as relevant to the discharge by the FCA of its relevant functions, and
- (b) the conditions in paragraphs 4B, 4D, 4E and 4F apply so far as relevant to the discharge by the PRA of its relevant functions.

(2) In relation to a person who qualifies for authorisation under Schedule 4 who carries on PRA-regulated activities which do not consist of or include a regulated activity relating to the effecting or carrying out of contracts of insurance—

- (a) the conditions in paragraphs 3B to 3E apply so far as relevant to the discharge by the FCA of its relevant functions, and
- (b) the conditions in paragraphs 5B, 5D, 5E and 5F apply so far as relevant to the discharge by the PRA of its relevant functions.

(3) In relation to a person who qualifies for authorisation under Schedule 4 who carries on regulated activities which do not consist of or include a PRA-regulated activity, the conditions in paragraphs 2C, 2D, 2E and 2F apply so far as relevant to the discharge by the FCA of its relevant functions.

(4) In this paragraph, “relevant functions”, in relation to the FCA or the PRA, means functions of that regulator in relation to—

- (a) an application for an additional permission, or
- (b) the exercise by that regulator of its own-initiative requirement power or own-initiative variation power in relation to an additional permission.

] ¹**Notes**

- ¹ Existing Sch.1 Pt I is substituted for a new Sch.1 Pt I consisting of para.1A, Sch.1 Pts 1B-1G are inserted and as a result of this amendment Sch.1 Pt II is repealed by Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013/555 art.2(2) (April 1, 2013)

Extent

Sch. 6(1G) para. 7A(1)-(4)(b): United Kingdom

PART III

ADDITIONAL CONDITIONS

Law In Force

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 [such of the FCA or the PRA as may be specified,]¹ 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.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Sch.18(1) para.26 (April 1, 2013)

Commencement

Sch. 6(III) para. 8(1)-(3): February 25, 2001 for the purposes of making orders or regulations; September 3, 2001 otherwise (SI 2001/516 art. 2, Sch. 001(2) para. 1; SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 6(III) para. 8(1)-(3): United Kingdom

Repealed

9. [...] ¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.11(3) (April 1, 2013)

SCHEDULE 7

THE AUTHORITY AS COMPETENT AUTHORITY FOR PART VI

Section 72(2).

Repealed

1. [...] ¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(k) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

R Repealed

2. [...]¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(k) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

R Repealed

3. [...]¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(k) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

R Repealed

4.— [...]¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(k) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

R Repealed

5.— [...]¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(k) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

R Repealed

6. [...]¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(k) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

R Repealed

7. [...]¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(k) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

R Repealed

8. [...]¹

Notes

- ¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(k) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
-

SCHEDULE 8**TRANSFER OF FUNCTIONS UNDER PART VI****Section 72(3).***The power to transfer*

R Repealed

1.— [...] ¹**Notes**

- ¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(l) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
-

Supplemental

R Repealed

2.— [...] ¹**Notes**

- ¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(l) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
-

R Repealed

3. [...] ¹**Notes**

- ¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.16(14)(l) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)
-

SCHEDULE 9
NON-LISTING PROSPECTUSES

Section 87(5).

R Repealed

1. [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

2.— [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

3.— [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

4. [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

5.— [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

6. [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

7. [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

SCHEDULE 10**COMPENSATION: EXEMPTIONS****Section 90(2) and (5).**

Law In Force

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 [FCA]¹, 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—

- (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.

Notes

¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(13) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Commencement

Sch. 10 para. 1(1)-(3)(d): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 10 para. 1(1)-(3)(d): United Kingdom

Law In Force

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 [FCA]¹, 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.

Notes

- ¹ Words substituted by Financial Services Act 2012 c. 21 Pt 2 s.16(13) (January 24, 2013 for the purpose of making rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

Commencement

Sch. 10 para. 2(1)-(3)(d): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 10 para. 2(1)-(3)(d): United Kingdom

Law In Force

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—

- (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.

Commencement

Sch. 10 para. 3(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 10 para. 3(1)-(3): United Kingdom

Law In Force

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.

Commencement

Sch. 10 para. 4(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 10 para. 4(1)-(3): United Kingdom

Law In Force

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.

Commencement

Sch. 10 para. 5(a)-(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 10 para. 5(a)-(b): United Kingdom

Law In Force

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.

Commencement

Sch. 10 para. 6(a)-(c): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 10 para. 6(a)-(c): United Kingdom

Law In Force

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.

Commencement

Sch. 10 para. 7: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 10 para. 7: United Kingdom

Law In Force

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.

Commencement

Sch. 10 para. 8: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 10 para. 8: United Kingdom

[SCHEDULE 10A

LIABILITY OF ISSUERS IN CONNECTION WITH PUBLISHED INFORMATION

Section 90A

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 Sch.1 para.1 (October 1, 2010: insertion has effect subject to transitional provisions specified in SI 2010/1192, reg.3)

[PART 1

SCOPE OF THIS SCHEDULE

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 Sch.1 para.1 (October 1, 2010: insertion has effect subject to transitional provisions specified in SI 2010/1192, reg.3)

Law In Force

[1.— Securities to which this Schedule applies

(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 directive² 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.

] ¹**Notes**

- ¹ Added by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 Sch.1 para.1 (October 1, 2010: insertion has effect subject to transitional provisions specified in SI 2010/1192, reg.3)
- ² As defined in section 103(1) of the Financial Services and Markets Act 2000, as amended by the Companies Act 2006 (c. 46), section 1265.

Extent

Sch. 10A(1) para. 1(1)-(3)(b): United Kingdom

Law In Force

[2.— Published information to which this Schedule applies

- (1) This Schedule applies to information published by the issuer of securities to which this Schedule applies—
- (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.

] ¹**Notes**

- ¹ Added by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 Sch.1 para.1 (October 1, 2010: insertion has effect subject to transitional provisions specified in SI 2010/1192, reg.3)

Extent

Sch. 10A(1) para. 2(1)-(4)(c): United Kingdom

[PART 2**LIABILITY IN CONNECTION WITH PUBLISHED INFORMATION**] ¹**Notes**

- ¹ Added by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 Sch.1 para.1 (October 1, 2010: insertion has effect subject to transitional provisions specified in SI 2010/1192, reg.3)

[Liability of issuer for misleading statement or dishonest omission] ¹**Notes**

- ¹ Added by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 Sch.1 para.1 (October 1, 2010: insertion has effect subject to transitional provisions specified in SI 2010/1192, reg.3)

Law In Force

[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

(b) at a time when, and in circumstances in which, it was reasonable for him to rely on it.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 Sch.1 para.1 (October 1, 2010: insertion has effect subject to transitional provisions specified in SI 2010/1192, reg.3)

Extent

Sch. 10A(2) para. 3(1)-(4)(b): United Kingdom

Law In Force

[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.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 Sch.1 para.1 (October 1, 2010: insertion has effect subject to transitional provisions specified in SI 2010/1192, reg.3)

Extent

Sch. 10A(2) para. 4(a)-(b): United Kingdom

[Liability of issuer for dishonest delay in publishing information] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 Sch.1 para.1 (October 1, 2010: insertion has effect subject to transitional provisions specified in SI 2010/1192, reg.3)

✔ Law In Force

[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.

]¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 Sch.1 para.1 (October 1, 2010: insertion has effect subject to transitional provisions specified in SI 2010/1192, reg.3)

Extent

Sch. 10A(2) para. 5(1)-(2): United Kingdom

[Meaning of dishonesty]¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 Sch.1 para.1 (October 1, 2010: insertion has effect subject to transitional provisions specified in SI 2010/1192, reg.3)

✔ Law In Force

[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.

]¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 Sch.1 para.1 (October 1, 2010: insertion has effect subject to transitional provisions specified in SI 2010/1192, reg.3)

Extent

Sch. 10A(2) para. 6(a)-(b): United Kingdom

[Exclusion of certain other liabilities]¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 Sch.1 para.1 (October 1, 2010: insertion has effect subject to transitional provisions specified in SI 2010/1192, reg.3)
-

Law In Force

[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—

(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.

]¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 Sch.1 para.1 (October 1, 2010: insertion has effect subject to transitional provisions specified in SI 2010/1192, reg.3)

Extent

Sch. 10A(2) para. 7(1)-(5): United Kingdom

[PART 3**SUPPLEMENTARY PROVISIONS**] ¹**Notes**

¹ Added by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 Sch.1 para.1 (October 1, 2010: insertion has effect subject to transitional provisions specified in SI 2010/1192, reg.3)

Law In Force

[8.— Interpretation

(1) In this Schedule—

(a) “securities” means transferable securities within the meaning of Article 4.1.18 of the markets in financial instruments directive², 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.

(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”)³;
- (b) section 102C (meaning of “home State” in relation to transferable securities).

] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010/1192 Sch.1 para.1 (October 1, 2010: insertion has effect subject to transitional provisions specified in SI 2010/1192, reg.3)
- ² As defined in section 425(1)(a) of, and paragraph 46 of Schedule 3 to the Financial Services and Markets Act 2000, as amended by regulations 2 and 13 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments)(Modification of Powers) Regulations 2006(S.I.2006/2975).
- ³ Sections 102A to 102C and 103 were substituted for section 103 as originally enacted by regulation 2(1) of and paragraph 1 of Schedule 11 to the Prospectus Regulations 2005(S.I. 2005/1433).

Extent

Sch. 10A(3) para. 8(1)-(6)(b): United Kingdom

SCHEDULE 11

OFFERS OF SECURITIES

Section 103(6).

R Repealed

1.— [...] ¹

Notes

- ¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)
-

R Repealed

2.— [...] ¹

Notes

- ¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)
-

R Repealed

3. [...] ¹

Notes

- ¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)
-

R Repealed

4.— [...] ¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

5. [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

6.— [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

7. [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

8.— [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

9.— [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

10.— [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

11.— [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

12.— [...] ¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

13. [...] ¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

14.— [...] ¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

15. [...] ¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

16.— [...] ¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

17.— [...] ¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

18. [...] ¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

19. [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

20.— [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

21. [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

22. [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

23. [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

24. [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

R Repealed

24A. [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

Repealed

25. [...]¹

Notes

¹ Repealed by Prospectus Regulations 2005/1433 Sch.1 para.16 (July 1, 2005)

[SCHEDULE 11A**TRANSFERABLE SECURITIES****Section 85(5)(a)**

]¹

Notes

¹ Added by Prospectus Regulations 2005/1433 Sch.2 para.1 (July 1, 2005)

[PART 1

]¹

Notes

¹ Added by Prospectus Regulations 2005/1433 Sch.2 para.1 (July 1, 2005)

Law In Force

[1.

Units (within the meaning in section 237(2)) in an open-ended collective investment scheme.

]¹

Notes

¹ Added by Prospectus Regulations 2005/1433 Sch.2 para.1 (July 1, 2005)

Extent

Sch. 11A(I) para. 1: United Kingdom

Law In Force

[2.

Non-equity transferable securities issued by

- (a) the government of an EEA State;
- (b) a local or regional authority of an EEA State;
- (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.

] ¹**Notes**

¹ Added by Prospectus Regulations 2005/1433 Sch.2 para.1 (July 1, 2005)

Extent

Sch. 11A(I) para. 2(a)-(e): United Kingdom

Law In Force

[3.

Shares in the share capital of the central bank of an EEA State.

] ¹**Notes**

¹ Added by Prospectus Regulations 2005/1433 Sch.2 para.1 (July 1, 2005)

Extent

Sch. 11A(I) para. 3: United Kingdom

Law In Force

[4.

Transferable securities unconditionally and irrevocably guaranteed by the government, or a local or regional authority, of an EEA State.

] ¹**Notes**

¹ Added by Prospectus Regulations 2005/1433 Sch.2 para.1 (July 1, 2005)

Extent

Sch. 11A(I) para. 4: United Kingdom

Law In Force

[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.

] ¹**Notes**¹ Added by Prospectus Regulations 2005/1433 Sch.2 para.1 (July 1, 2005)**Extent**

Sch. 11A(I) para. 5(1)-(2)(d): United Kingdom

 Law In Force**[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.

] ¹**Notes**¹ Added by Prospectus Regulations 2005/1433 Sch.2 para.1 (July 1, 2005)**Extent**

Sch. 11A(I) para. 6(a)-(b): United Kingdom

[PART 2] ¹**Notes**¹ Added by Prospectus Regulations 2005/1433 Sch.2 para.1 (July 1, 2005) Law In Force**[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 [—] ²
 - [(i) as defined by section 1(1) of the Charities Act 2011, or] ²

- (ii) [within the meaning of]² section 35 of the Charities Act (Northern Ireland) 1964 (c. 33 (N.I.));
- [(b) a body entered in the Scottish Charity Register;]³
- (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).

] ¹

Notes

- ¹ Added by Prospectus Regulations 2005/1433 Sch.2 para.1 (July 1, 2005)
- ² Words substituted by Charities Act 2011 c. 25 Sch.7(2) para.86 (March 14, 2012: substitution has effect subject to transitional provisions and savings specified in 2011 c.25 Sch.7 para.2 and Sch.8)
- ³ Substituted by Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006/242 Sch.1(1) para.7 (April 1, 2006)

Extent

Sch. 11A(II) para. 7(1)-(2)(e): United Kingdom

 Law In Force
[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 for the transferable securities being offered in the EEA States is less than 75,000,000 euros (or an equivalent amount); and]²
 - (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 [Article 4(1)]³ of the banking consolidation directive.

] ¹

Notes

¹ Added by Prospectus Regulations 2005/1433 Sch.2 para.1 (July 1, 2005)

² Substituted by Prospectus Regulations 2012/1538 reg.2(4)(a) (July 1, 2012)

³ Word substituted by Electronic Money Regulations 2011/99 Sch.4(1) para.2(7) (February 9, 2011)

Extent

Sch. 11A(II) para. 8(1)-(6): United Kingdom

Law In Force

[9.—

(1) Transferable securities included in an offer where [[the total consideration for the transferable securities being offered in the EEA States]³ is less than 5,000,000 euros (or an equivalent amount)]² .

(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)”.

] ¹

Notes

¹ Added by Prospectus Regulations 2005/1433 Sch.2 para.1 (July 1, 2005)

² Words substituted by Prospectus Regulations 2011/1668 reg.1(3) (July 31, 2011)

³ Words substituted by Prospectus Regulations 2012/1538 reg.2(5) (July 1, 2012)

Extent

Sch. 11A(II) para. 9(1)-(2): United Kingdom

[SCHEDULE 11B**CONNECTED PERSONS****Section 96B(2)**

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Amendment) Regulations 2009/2461 Sch.1 para.1 (October 1, 2009)

[PART 1

MEANING OF “CONNECTED PERSON”

] ¹**Notes**

¹ Added by Financial Services and Markets Act 2000 (Amendment) Regulations 2009/2461 Sch.1 para.1 (October 1, 2009)

Law In Force

[1.— Introduction

(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).

] ¹**Notes**

¹ Added by Financial Services and Markets Act 2000 (Amendment) Regulations 2009/2461 Sch.1 para.1 (October 1, 2009)

Extent

Sch. 11B(1) para. 1(1)-(2): United Kingdom

Law In Force

[2.— Meaning of “connected person”

(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
- (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.

] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Amendment) Regulations 2009/2461 Sch.1 para.1 (October 1, 2009)

Extent

Sch. 11B(1) para. 2(1)-(2): United Kingdom

Law In Force

[3.— Family members

(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.

] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Amendment) Regulations 2009/2461 Sch.1 para.1 (October 1, 2009)

Extent

Sch. 11B(1) para. 3(1)-(2)(c): United Kingdom

Law In Force

[4.— Associated bodies corporate

(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.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Amendment) Regulations 2009/2461 Sch.1 para.1 (October 1, 2009)

Extent

Sch. 11B(1) para. 4(1)-(5): United Kingdom

Law In Force

[5.— Control of a body corporate

(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.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Amendment) Regulations 2009/2461 Sch.1 para.1 (October 1, 2009)

Extent

Sch. 11B(1) para. 5(1)-(5): United Kingdom

Law In Force

[6. Supplementary provisions

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.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Amendment) Regulations 2009/2461 Sch.1 para.1 (October 1, 2009)

Extent

Sch. 11B(1) para. 6(a)-(b): United Kingdom

[PART 2**CONNECTED PERSONS: REFERENCES TO AN INTEREST IN SHARES OR DEBENTURES**

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Amendment) Regulations 2009/2461 Sch.1 para.1 (October 1, 2009)

Law In Force

[7.— Introduction

(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.

] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Amendment) Regulations 2009/2461 Sch.1 para.1 (October 1, 2009)

Extent

Sch. 11B(2) para. 7(1)-(2): United Kingdom

Law In Force

[8.— General provisions

- (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.

] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Amendment) Regulations 2009/2461 Sch.1 para.1 (October 1, 2009)

Extent

Sch. 11B(2) para. 8(1)-(4): United Kingdom

Law In Force

[9.— Rights to acquire shares

- (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.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Amendment) Regulations 2009/2461 Sch.1 para.1 (October 1, 2009)

Extent

Sch. 11B(2) para. 9(1)-(4)(c): United Kingdom

Law In Force

[10.— Right to exercise or control exercise of rights

(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.

] ¹

Notes

¹ Added by Financial Services and Markets Act 2000 (Amendment) Regulations 2009/2461 Sch.1 para.1 (October 1, 2009)

Extent

Sch. 11B(2) para. 10(1)-(3)(b): United Kingdom

Law In Force

[11.— Bodies corporate

(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
- (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.
-] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Amendment) Regulations 2009/2461 Sch.1 para.1 (October 1, 2009)

Extent

Sch. 11B(2) para. 11(1)-(2)(b): United Kingdom

Law In Force

[12.— Trusts

- (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.)) [section 24 or 25 of the Charities Act 1993 or section 96 or 100 of the Charities Act 2011] ², 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).

] ¹**Notes**

¹ Added by Financial Services and Markets Act 2000 (Amendment) Regulations 2009/2461 Sch.1 para.1 (October 1, 2009)

² Words substituted by Charities Act 2011 c. 25 Sch.7(2) para.87 (March 14, 2012: substitution has effect subject to transitional provisions and savings specified in 2011 c.25 Sch.7 para.2 and Sch.8)

Extent

Sch. 11B(2) para. 12(1)-(5)(b): United Kingdom

SCHEDULE 12**TRANSFER SCHEMES: CERTIFICATES****Sections 111(2) and 115****PART I****INSURANCE BUSINESS TRANSFER SCHEMES**

Law In Force

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 [;] ¹
- [(e) if sub-paragraph (5) applies, the certificates under paragraph 5A.] ¹

(2) This sub-paragraph applies if—

- (a) the authorised person concerned is a UK authorised person which has received authorisation under [Article 4 of the life assurance consolidation directive or Article 6] ² of the first non-life insurance directive from [the appropriate regulator] ³ ; 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 [[Article 4 or Article 51] ⁵ of the life assurance consolidation directive] ⁴ from [the appropriate regulator] ³ ;
- (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 or Article 23]⁶ of the first non-life insurance directive from [the appropriate regulator]³ ;
- (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.

[(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 appropriate regulator]³ ; 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.

] ⁷

Notes


- ¹ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(5)(a) (December 10, 2007)
- ² Words substituted by Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004/3379 Pt 2 reg.6(7)(a)(i) (January 11, 2005)
- ³ Words substituted by Financial Services Act 2012 c. 21 Sch.6 para.10 (April 1, 2013 as SI 2013/423)
- ⁴ Words substituted by Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004/3379 Pt 2 reg.6(7)(a)(ii) (January 11, 2005)
- ⁵ Words inserted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(5)(b) (December 10, 2007)
- ⁶ Words inserted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(5)(c) (December 10, 2007)
- ⁷ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(5)(d) (December 10, 2007)

Commencement

Sch. 12(I) para. 1(1)-(4)(c): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 12(I) para. 1(1)-(5)(b): United Kingdom

 Law In Force

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 [appropriate regulator]¹ .

(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 [appropriate regulator]² 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 [certification]³ 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.
- (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) or (da) of Schedule 3]⁴, its home state regulator;
 - [(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;]⁵
 - (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 [paragraph (a), (aa)]⁶ or (b) [—]⁷
 - [(i) the PRA, if the transferee is a PRA-authorised person with a Part 4A permission or with permission under Schedule 4;
 - (ii) the FCA, if the transferee is a person with a Part 4A permission or with permission under Schedule 4 but is not a PRA-authorised person.]⁷
- (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.
- [(7A) “Competent authorities” has the same meaning as in the insurance directives.]⁸
- (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.
- [(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.]⁹

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.6 para.11(2)(a) (April 1, 2013)


- ² Word substituted by Financial Services Act 2012 c. 21 Sch.6 para.11(2)(b) (April 1, 2013)
- ³ Word inserted by Financial Services Act 2012 c. 21 Sch.6 para.11(3) (April 1, 2013)
- ⁴ Words inserted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(5)(e)(i) (December 10, 2007)
- ⁵ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(5)(e)(ii) (December 10, 2007)
- ⁶ Words substituted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(5)(e)(iii) (December 10, 2007)
- ⁷ Word substituted by Financial Services Act 2012 c. 21 Sch.6 para.11(4) (April 1, 2013)
- ⁸ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(5)(e)(iv) (December 10, 2007)
- ⁹ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(5)(e)(v) (December 10, 2007)

Commencement

Sch. 12(I) para. 2(1)-(8)(c): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 12(I) para. 2(1)-(9): United Kingdom

 Law In Force

Certificates as to consent

3.

A certificate under this paragraph is one given by the [appropriate regulator]¹ 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.

Notes


- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.6 para.12 (April 1, 2013)

Commencement

Sch. 12(I) para. 3(a)-(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 12(I) para. 3(a)-(b): United Kingdom

 Law In Force

Certificates as to long-term business

4.

A certificate under this paragraph is one given by the [appropriate regulator]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.6 para.13 (April 1, 2013)

Commencement

Sch. 12(I) para. 4(a)-(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 12(I) para. 4(a)-(b): United Kingdom

Law In Force

Certificates as to general business

5.

A certificate under this paragraph is one given by the [appropriate regulator]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.6 para.14 (April 1, 2013)

Commencement

Sch. 12(I) para. 5(a)-(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 12(I) para. 5(a)-(b): United Kingdom

Law In Force

[5A.— Certificates as to legality and as to consent

(1) The certificates under this paragraph are to be given—

- (a) in the case of the certificate under sub-paragraph (2), by [the appropriate regulator]² ;
- (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.

] ¹


Notes

¹ Added by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(5)(f) (December 10, 2007)

² Words substituted by Financial Services Act 2012 c. 21 Sch.6 para.15 (April 1, 2013)

Extent

Sch. 12(I) para. 5A(1)-(4): United Kingdom

 Law In Force

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.

[(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).] ¹

Notes

- ¹ Added by Financial Services and Markets Act 2000 (Motor Insurance) Regulations 2007/2403 reg.2(2) (September 5, 2007)

Commencement

Sch. 12(I) para. 6(1)-(1)(b), (3)-(3)(d)(ii): December 1, 2001 (SI 2001/3538 art. 2(1))

Sch. 12(I) para. 6(2): February 25, 2001 (SI 2001/516 art. 2(a), Sch. 001(1) para. 1)

Extent

Sch. 12(I) para. 6(1)-(4): United Kingdom

PART II**BANKING BUSINESS TRANSFER SCHEMES**

Law In Force

7.—

(1) For the purposes of section 111(2) the appropriate certificates, in relation to a banking business transfer scheme, are—

- (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.

Commencement

Sch. 12(II) para. 7(1)-(2): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 12(II) para. 7(1)-(2): United Kingdom

Law In Force

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 PRA-authorised person with a Part 4A permission or with permission under Schedule 4, the PRA;

- (aa) if the transferee is a person with Part 4A permission or with permission under Schedule 4 but is not a PRA-authorised person, the FCA;]¹
- (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) [, (aa)]² 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.

Notes

¹ Sch.12 para.8(2)(a)-(aa) substituted for Sch.12 para.8(2)(a) by Financial Services Act 2012 c. 21 Sch.6 para.16(a) (April 1, 2013)


² Word inserted by Financial Services Act 2012 c. 21 Sch.6 para.16(b) (April 1, 2013)

Commencement

Sch. 12(II) para. 8(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 12(II) para. 8(1)-(3): United Kingdom

 Law In Force

Certificates as to consent of home state regulator

9.

A certificate under this paragraph is one given by the [appropriate regulator]¹ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.6 para.17 (April 1, 2013)

Commencement

Sch. 12(II) para. 9(a)-(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 12(II) para. 9(a)-(b): United Kingdom

[PART 2A**RECLAIM FUND BUSINESS TRANSFER SCHEMES**] ¹**Notes**

¹ Added by Dormant Bank and Building Society Accounts Act 2008 c. 31 Sch.2 para.5 (March 12, 2009)

Law In Force

[9A Certificate as to financial resources

[(1) 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 relevant regulator certifying that, taking the proposed transfer into account, the transferee possesses, or will possess before the scheme takes effect, adequate financial resources.

(2) In this paragraph the “relevant regulator” means—

- (a) if the transferee is a PRA-authorised person, the PRA;
- (b) in any other case, the FCA.

] ²
] ¹**Notes**

¹ Added by Dormant Bank and Building Society Accounts Act 2008 c. 31 Sch.2 para.5 (March 12, 2009)

² Sch.12 para.9A is renumbered as Sch.12 para.9A(1), a word is substituted and Sch.12 para.9A(2) is inserted by Financial Services Act 2012 c. 21 Sch.6 para.18 (April 1, 2013)

Extent

Sch. 12(IIA) para. 9A(1)-(2)(b): United Kingdom

PART III**INSURANCE BUSINESS TRANSFERS EFFECTED OUTSIDE THE UNITED KINGDOM**

Law In Force

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) or (da) of Schedule 3]¹ and the transferee is an authorised person whose margin of solvency is supervised by the [FCA or the PRA]² .

(3) The transferor is a company authorised in an EEA State other than the United Kingdom under [Article 51 of the life assurance consolidation directive]³ , or Article 23 of the first non-life insurance directive and the transferee is a UK authorised person which has received authorisation under [Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive]⁴ .

(4) The transferor is a Swiss general insurer and the transferee is a UK authorised person which has received authorisation under [Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive]⁵ .

(5) In relation to a proposed transfer to which this paragraph applies, the [regulator which supervises the transferee's margin of solvency]⁶ 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 [FCA or the PRA]⁷ 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.

Notes

¹ Words inserted by Reinsurance Directive Regulations 2007/3253 Sch.1 para.2(5)(g) (December 10, 2007)

² Word substituted by Financial Services Act 2012 c. 21 Sch.6 para.19(2) (April 1, 2013)

³ Words substituted by Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004/3379 Pt 2 reg.6(7)(b)(i) (January 11, 2005)

⁴ Words substituted by Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004/3379 Pt 2 reg.6(7)(b)(ii) (January 11, 2005)

⁵ Words substituted by Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004/3379 Pt 2 reg.6(7)(c) (January 11, 2005)

⁶ Word substituted by Financial Services Act 2012 c. 21 Sch.6 para.19(3) (April 1, 2013)

⁷ Word substituted by Financial Services Act 2012 c. 21 Sch.6 para.19(4) (April 1, 2013)

Commencement

Sch. 12(III) para. 10(1)-(9): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 12(III) para. 10(1)-(9): United Kingdom

SCHEDULE 13

THE FINANCIAL SERVICES AND MARKETS TRIBUNAL

Section 132(4).

PART I

GENERAL

R Repealed

1. [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.49 (April 6, 2010)

PART II

THE TRIBUNAL

R Repealed

2.— [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.49 (April 6, 2010)

R Repealed

3.— [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.49 (April 6, 2010)

R Repealed

4.— [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.49 (April 6, 2010)

R Repealed

5. [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.49 (April 6, 2010)

R Repealed

6.— [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.49 (April 6, 2010)

PART III

CONSTITUTION OF TRIBUNAL

R Repealed

7.— [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.49 (April 6, 2010)

PART IV

TRIBUNAL PROCEDURE

R Repealed

8. [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.49 (April 6, 2010)

R Repealed

9. [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.49 (April 6, 2010)

R Repealed

10. [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.49 (April 6, 2010)

R Repealed

11.— [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.49 (April 6, 2010)

R Repealed

12.— [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.49 (April 6, 2010)

R Repealed

13.— [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.2 para.49 (April 6, 2010)

SCHEDULE 14**ROLE OF THE COMPETITION COMMISSION****Section 162.**

R Repealed

1.— [...]¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.24(4) (January 24, 2013 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

R Repealed

2. [...]¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.24(4) (January 24, 2013 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

R Repealed

2A.— [...]¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.24(4) (January 24, 2013 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

R Repealed

2B.— [...]¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.24(4) (January 24, 2013 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

R Repealed

2C.— [...]¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.24(4) (January 24, 2013 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000 c.8 s.137S(5) or (8)(a) and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

R Repealed

3. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

4. [...]¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Pt 2 s.24(4) (January 24, 2013 for the purpose of giving directions under 2000 c.8 s.138A, the issue of a statement of policy under 2000 c.8 s.138N, the giving of guidance under 2000 c.8 s.139A, the determination of a procedure and the issue of a statement of procedure under 2000 c.8 s.395 in relation to the procedure to be followed in relation to the giving of supervisory notices in accordance with 2000

c.8 s.137S(5) or (8)(a) and the making of rules as specified in SI 2013/113 art.2 and Sch.1 Pt 3; April 1, 2013 otherwise)

SCHEDULE 15

INFORMATION AND INVESTIGATIONS: CONNECTED PERSONS

Sections 165(11) and 171(4)

PART I

RULES FOR SPECIFIC BODIES

Law In Force

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.

Commencement

Sch. 15(I) para. 1(a)-(c): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 15(I) para. 1(a)-(c): United Kingdom

Law In Force

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.

Commencement

Sch. 15(I) para. 2: September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 15(I) para. 2: United Kingdom

Law In Force

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.

Commencement

Sch. 15(I) para. 3: September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 15(I) para. 3: United Kingdom

Law In Force

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 Friendly Societies Act 1992.

Commencement

Sch. 15(I) para. 4(1)-(2): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 15(I) para. 4(1)-(2): United Kingdom

Law In Force

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 Building Societies Act 1986.

Commencement

Sch. 15(I) para. 5(1)-(2): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 15(I) para. 5(1)-(2): United Kingdom

Law In Force

Individuals**6.**

If the authorised person (“IP”) is an individual, a person who is or has been an employee or agent of IP.

Commencement

Sch. 15(I) para. 6: September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 15(I) para. 6: United Kingdom

Law In Force

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.

Commencement

Sch. 15(I) para. 7: September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 15(I) para. 7: United Kingdom

PART II

ADDITIONAL RULES

Law In Force

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.

Commencement

Sch. 15(II) para. 8(a)-(e): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 15(II) para. 8(a)-(e): United Kingdom

SCHEDULE 16

PROHIBITIONS AND RESTRICTIONS IMPOSED BY [OFFICE OF FAIR TRADING]¹

Section 203(8)

Notes

¹ Words substituted by Enterprise Act 2002 c. 40 Sch.25 para.40(21)(a) (April 1, 2003)

Repealed

1. [...] ¹

Notes

¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(20) (July 26, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/1998 art.11(4))

Repealed

2.— [...] ¹

Notes

¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(20) (July 26, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/1998 art.11(4))

R Repealed

3. [...]¹

Notes

¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(20) (July 26, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/1998 art.11(4))

R Repealed

4.— [...]¹

Notes

¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(20) (July 26, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/1998 art.11(4))

R Repealed

5. [...]¹

Notes

¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(20) (July 26, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/1998 art.11(4))

SCHEDULE 17

THE OMBUDSMAN SCHEME

Section 225(4)

PART I

GENERAL

Law In Force

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.


Commencement

Sch. 17(I) para. 1 definition of "ombudsman"- definition of "the panel": June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(I) para. 1 definition of "ombudsman"- definition of "the panel": United Kingdom

PART II**THE SCHEME OPERATOR**

 Law In Force

[2 Duty of FCA

The FCA must take such steps as are necessary to ensure that the body corporate established by the Financial Services Authority under this Schedule as originally enacted is, at all times, capable of exercising the functions conferred on the scheme operator by or under this Act.

] ¹

Notes


¹ Substituted by Financial Services Act 2012 c. 21 Sch.11 para.14 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Commencement

Sch. 17(II) para. 2(1)-(2): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(II) para. 2(1)-(2): United Kingdom

 Partially In Force

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] ¹ (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] ¹ in the operation of the scheme.

(4) The function of making voluntary jurisdiction rules under section 227[...] ² and the functions conferred by [paragraphs 4, 5, 7, 9, 9A or 14] ³ 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.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.11 para.15(a) (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

² Words repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(21)(a) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

³ Word inserted by Financial Services Act 2012 c. 21 Sch.11 para.15(b) (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Commencement

Sch. 17(II) para. 3(1)-(5)(b): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(II) para. 3(1)-(5)(b): United Kingdom

Law In Force

[3A Relationship with FCA

(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 of this Act.

(2) The scheme operator and the FCA must prepare and maintain a memorandum describing how they intend to comply with subparagraph (1).

(3) The scheme operator must ensure that the memorandum 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.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.11 para.16 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Extent

Sch. 17(II) para. 3A(1)-(3): United Kingdom

Law In Force

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.

Commencement

Sch. 17(II) para. 4(1)-(2)(b): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(II) para. 4(1)-(2)(b): United Kingdom

Law In Force

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.

Commencement

Sch. 17(II) para. 5(1)-(2): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(II) para. 5(1)-(2): United Kingdom

Law In Force

Status

6.—

- (1) The scheme operator is not to be regarded as exercising functions on behalf of the Crown.
- (2) The scheme operator's [...] 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.

Notes


- ¹ Words repealed by Financial Services Act 2012 c. 21 Sch.11 para.17 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Commencement

Sch. 17(II) para. 6(1)-(3): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(II) para. 6(1)-(3): United Kingdom

 Partially In Force

Annual reports**7.—**

- (1) At least once a year—
- (a) the scheme operator must make a report to the [FCA]¹ on the discharge of its functions; and
 - (b) the Chief Ombudsman must make a report to the [FCA]¹ on the discharge of his functions.
- (2) Each report must distinguish between functions in relation to the scheme's compulsory jurisdiction [...] ² and functions in relation to its voluntary jurisdiction.
- (3) Each report must also comply with any requirements specified in rules made by the [FCA]¹.
- (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 provision of that Act about accounts and their audit is to apply to the scheme operator with such modifications as are specified in the direction, whether or not the provision would otherwise apply to the scheme manager.
- (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.]³

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.11 para.18(a) (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)
- ² Words repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(21)(b) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)
- ³ Added by Financial Services Act 2012 c. 21 Sch.11 para.18(b) (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Commencement

Sch. 17(II) para. 7(1)-(4): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(II) para. 7(1)-(7): United Kingdom

Law In Force

[7A Audit of accounts

(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—

- (a) examine, certify and report on accounts received under this paragraph, and
- (b) send a copy of the certified accounts and the report to the Treasury.

(3) The Treasury must lay the copy of the certified accounts and the report before Parliament.

(4) The scheme operator must send a copy of the certified accounts and the report to the FCA.

(5) 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.

(6) In this paragraph “annual accounts” has the meaning given by section 471 of the Companies Act 2006.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.11 para.19 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Extent

Sch. 17(II) para. 7A(1)-(6): United Kingdom

Law In Force

[Information, advice and guidance] ¹**8.**

The scheme operator may publish [such information, guidance or advice] ² as it considers appropriate and may charge for it or distribute it free of charge.

Notes

¹ Heading substituted by Financial Services Act 2012 c. 21 Sch.11 para.20 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

² Words substituted by Financial Services Act 2012 c. 21 Sch.11 para.21 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Commencement

Sch. 17(II) para. 8: June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(II) para. 8: United Kingdom

 Partially In Force

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]¹.
- (2) The scheme operator may, with the approval of the [FCA]¹, 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 [...]² and voluntary jurisdiction.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.11 para.22 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)


² Words repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(21)(c) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

Commencement

Sch. 17(II) para. 9(1)-(3)(b): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(II) para. 9(1)-(3)(b): United Kingdom

 Law In Force

[9A Annual plan

- (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.
- (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.


] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.11 para.23 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Extent

Sch. 17(II) para. 9A(1)-(6): United Kingdom

 Partially In Force

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 [...] ¹ .

(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 Human Rights Act 1998.

Notes


¹ Words repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(21)(d) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

Commencement

Sch. 17(II) para. 10(1)-(2)(b): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(II) para. 10(1)-(2)(b): United Kingdom

 Partially In Force

Privilege

11.

For the purposes of the law relating to defamation, proceedings in relation to a complaint which is subject to the compulsory jurisdiction [...] ¹ are to be treated as if they were proceedings before a court.

Notes

- ¹ Words repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(21)(e) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

Commencement

Sch. 17(II) para. 11: June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(II) para. 11: United Kingdom

PART III**THE COMPULSORY JURISDICTION**

Law In Force

Introduction**12.**

This Part of this Schedule applies only in relation to the compulsory jurisdiction.

Commencement

Sch. 17(III) para. 12: June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(III) para. 12: United Kingdom

Law In Force

[FCA's]¹ procedural rules

13.—

(1) The [FCA]² 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]² 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]² may make rules requiring an authorised person [, [an electronic money issuer within the meaning of the Electronic Money Regulations 2011]⁴ or a payment service provider

within the meaning of the Payment Services Regulations 2009,]³ who may become subject to the compulsory jurisdiction as a respondent to establish such procedures as the [FCA]² 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]¹ powers under [Part 9A]⁵ do not apply.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.11 para.24(b) (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)
- ² Word substituted by Financial Services Act 2012 c. 21 Sch.11 para.24(a) (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)
- ³ Words inserted by Payment Services Regulations 2009/209 Sch.6(1) para.1(2) (March 2, 2009)
- ⁴ Words inserted by Electronic Money Regulations 2011/99 Sch.4(1) para.2(8) (February 9, 2011)
- ⁵ Words substituted by Financial Services Act 2012 c. 21 Sch.11 para.24(c) (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Commencement

Sch. 17(III) para. 13(1)-(4)(b): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(III) para. 13(1)-(4)(b): United Kingdom

 Law In Force

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;]¹
- (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.
- (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]² is required before any scheme rules may be made.

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.11 para.25(a) (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)


² Word substituted by Financial Services Act 2012 c. 21 Sch.11 para.25(b) (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Commencement

Sch. 17(III) para. 14(1)-(7): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(III) para. 14(1)-(7): United Kingdom

 Law In Force

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—

- (a) provide for the scheme operator to reduce or waive a fee in a particular case;
- (b) set different fees for different stages of the proceedings on a complaint;
- (c) provide for fees to be refunded in specified circumstances;
- (d) make different provision for different kinds of complaint.

Commencement

Sch. 17(III) para. 15(1)-(2)(d): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(III) para. 15(1)-(2)(d): United Kingdom

✔ Law In Force

! Amendment(s) Pending

Enforcement of money awards**16.**

A money award, including interest, which has been registered in accordance with scheme 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 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.

Amendments Pending

Sch. 17(III) para. 16(a): words substituted by Crime and Courts Act 2013 c. 22, Sch. 9(3) para. 52(1)(b) (date to be appointed: substitution has effect subject to savings and transitional provisions specified in 2013 c.22 s.15 and Sch.8)

Sch. 17(III) para. 16(a): words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15, Sch. 13 para. 134 (date to be appointed)

Commencement

Sch. 17(III) para. 16(a)-(c): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent


Sch. 17(III) para. 16(a)-(c): United Kingdom

[PART 3A**THE CONSUMER CREDIT JURISDICTION**

]¹

Notes


¹ Added by Consumer Credit Act 2006 c. 14 Sch.2 para.1 (June 16, 2006)

 Partially In Force

16A [...]¹

Notes


¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(21)(f) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

 Partially In Force

16B [...]¹

Notes


¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(21)(f) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

 Partially In Force

16C [...]¹

Notes


¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(21)(f) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

 Partially In Force

16D [...]¹

Notes


¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(21)(f) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

 Partially In Force

16E [...]¹

Notes


¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(21)(f) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)

 Partially In Force

16F [...]¹

Notes

- ¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(21)(f) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)
-

 Partially In Force

16G [...]¹

Notes

- ¹ Repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881 Pt 3 art.10(21)(f) (July 26, 2013 for purposes specified in SI 2013/1881 art.1(2); April 1, 2014 otherwise)
-

PART IV**THE VOLUNTARY JURISDICTION**

 Law In Force

Introduction**17.**

This Part of this Schedule applies only in relation to the voluntary jurisdiction.

Commencement

Sch. 17(IV) para. 17: June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(IV) para. 17: United Kingdom

 Law In Force

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]¹.
- (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]¹.

(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.

Notes


¹ Word substituted by Financial Services Act 2012 c. 21 Sch.11 para.28 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; March 19, 2013 in relation to the fixing of standard terms; April 1, 2013 otherwise)

Commencement

Sch. 17(IV) para. 18(1)-(5)(d): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(IV) para. 18(1)-(5)(d): United Kingdom

 Law In Force

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]¹.

Notes

¹ Word substituted by Financial Services Act 2012 c. 21 Sch.11 para.29 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Commencement

Sch. 17(IV) para. 19(1)-(3): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(IV) para. 19(1)-(3): United Kingdom

Law In Force

Voluntary jurisdiction rules: procedure**20.—**

- (1) If the scheme operator makes voluntary jurisdiction rules, it must give a copy to the [FCA]¹ without delay.
- (2) If the scheme operator revokes any such rules, it must give written notice to the [FCA]¹ 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.

Notes

- ¹ Word substituted by Financial Services Act 2012 c. 21 Sch.11 para.30 (January 24, 2013 for the purpose of the preparation of a memorandum under 2000 c.8 Sch.17 para.3A and the making of rules; April 1, 2013 otherwise)

Commencement

Sch. 17(IV) para. 20(1)-(5): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(IV) para. 20(1)-(5): United Kingdom

Law In Force

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.

Commencement

Sch. 17(IV) para. 21(1)-(3): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(IV) para. 21(1)-(3): United Kingdom

Law In Force

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.

Commencement

Sch. 17(IV) para. 22(1)-(4): June 18, 2001 (SI 2001/1820 art. 2, Sch. 1 para. 1)

Extent

Sch. 17(IV) para. 22(1)-(4): United Kingdom

[SCHEDULE 17A**FURTHER PROVISION IN RELATION TO EXERCISE OF PART 18 FUNCTIONS BY
BANK OF ENGLAND****Section 285A**

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

[PART 1**CO-OPERATION BETWEEN APPROPRIATE REGULATORS**] ¹**Notes**

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

*[Memorandum of understanding between appropriate regulators and PRA]¹***Notes**

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Law In Force

[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.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(1) para. 1(1)-(3): United Kingdom

Law In Force

[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 PRAauthorised 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.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(1) para. 2(1)-(3): United Kingdom

Law In Force

[3

The parties to a memorandum under paragraph 1 or 2 must review the memorandum at least once in each calendar year.

]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(1) para. 3: United Kingdom

Law In Force

[4

The parties to a memorandum under paragraph 1 or 2 must give the Treasury a copy of the memorandum and any revised memorandum.

]¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(1) para. 4: United Kingdom

Law In Force

[5

The Treasury must lay before Parliament a copy of any document received by them under paragraph 4.

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(1) para. 5: United Kingdom

Law In Force

[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.

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(1) para. 6: United Kingdom

[Notification by FCA of action in relation to recognised clearing houses]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[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).

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(1) para. 7: United Kingdom

Law In Force

[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).

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(1) para. 8: United Kingdom

[PART 2**APPLICATION OF PROVISIONS OF THIS ACT IN RELATION TO BANK OF ENGLAND**

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

*[Introduction]*¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[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.

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 9(1)-(2)(b): United Kingdom

*[Rules]*¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

✔ Law In Force

[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 137T (general supplementary powers);
- (b) sections 138A and 138B (modification or waiver of rules), but with the omission of subsection (4)(b) of section 138A and subsection (4) of section 138B;
- (c) section 138C (evidential provisions);
- (d) section 138D (actions for damages), but with the omission

of subsection (2);

- (e) section 138E (limits on effect of contravening rules);
- (f) section 138F (notification of rules);
- (g) section 138G (rule-making instruments);
- (h) section 138H (verification of rules);
- (i) section 138J (consultation), but with the omission of subsections (1)(a), (2)(c) and (5)(b); and
- (j) section 138L (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 138J(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 the provisions mentioned in section 138J(2)(d) were a reference to their compatibility with the Bank's financial stability objective.

(4) Section 138L(2) has effect as if for paragraphs (a) and (b) there were substituted “be prejudicial to financial stability”.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 10(1)-(4): United Kingdom

*[Information gathering and investigations]*¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI

2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

✔ Law In Force

[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;
- (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; [...]²
- (c) information or documents which the Bank reasonably considers may enable or assist the FCA in discharging functions conferred on the FCA by or under this Act [; and]³
- [(d) information or documents reasonably required in connection with the exercise by the Bank of its functions under the EMIR regulation.]³

(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.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

² Word repealed by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(16)(a)(i) (April 1, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

³ Added by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(16)(a)(ii) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

Extent

Sch. 17A(2) para. 11(1)-(3): United Kingdom

✔ Law In Force

[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.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 12: United Kingdom

✔ Law In Force

[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).

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 13(1)-(2): United Kingdom

✔ Law In Force

[14

(1) The power conferred by section 168(5) (appointment of persons to carry out investigations in particular cases) is exercisable by the Bank.

(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 this Part of this Act;
- (c) a clearing house may have contravened the recognition requirements;
- (d) a clearing house may have contravened any qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order;
- (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).]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 14(1)-(3): United Kingdom

Law In Force

[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).]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 15: United Kingdom

✔ Law In Force

[16

The power to give 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.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 16: United Kingdom

[Powers in relation to parent undertakings] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

✔ Law In Force

[17

(1) The following provisions of Part 12A of this Act are to apply in relation to the Bank—

- (a) section 192C (power to direct qualifying parent undertaking);
- (b) section 192D (requirements that may be imposed);
- (c) section 192E (direction: procedure);
- (d) section 192G (references to Tribunal);
- (e) section 192H (statement of policy);
- (f) section 192I (statement of policy: procedure);
- (g) section 192J (rules requiring provision of information);
- (h) sections 192K to 192N (enforcement).

(2) For the purposes of those provisions section 192B (meaning of “qualifying parent undertaking”) is to apply as if the reference in subsection (1) to a qualifying authorised person or recognised UK investment exchange were a reference to a recognised clearing house other than an overseas clearing house.

(3) Section 192C has effect as if—

- (a) the general condition in subsection (2) were that the Bank considers that it is desirable to give the direction for the purpose of the effective regulation of one or more recognised clearing houses in the group of the qualifying parent undertaking,
- (b) subsections (3) and (4) were omitted, and
- (c) the reference in subsection (5)(a) to authorised persons or recognised investment exchanges were a reference to recognised clearing houses.

(4) Section 192E has effect as if the reference in subsection (1) to an authorised person or recognised investment exchange were a reference to a recognised clearing house.

(5) Section 192I has effect as if the reference in subsection (1)(a) to the other regulator and the Bank were a reference to the FCA and the PRA.

(6) Before the Bank gives a notice under section 192E(1) or (8)(b)—

- (a) if the notice relates to the parent undertaking of an authorised person or recognised investment exchange, the Bank must consult the FCA, and
- (b) if the notice relates to the parent undertaking of a PRA authorised person, the Bank must also consult the PRA.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 17(1)-(6)(b): United Kingdom

[Auditors] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Law In Force

[18

(1) Section 342 (information given by auditor to a regulator) applies in relation to a relevant auditor as if—

- (a) the references in that section to a recognised investment exchange were to a recognised clearing house,

(b) in the case of an auditor of a recognised clearing house which is also an authorised person or recognised investment exchange, the references to a regulator included the Bank, and

(c) in the case of an auditor of a recognised clearing house not falling within paragraph (b), the references to a regulator were to the Bank.

(2) A “relevant auditor” is a person who is, or has been, an auditor of a recognised clearing house appointed under or as a result of a statutory provision [or the EMIR regulation]².
] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

² Words inserted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(16)(b) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

Extent

Sch. 17A(2) para. 18(1)-(2): United Kingdom

Law In Force

[19

(1) Section 343 (information given by auditor: person with close links) applies in relation to a relevant auditor as if—

(a) the references in that section to a recognised investment exchange were to a recognised clearing house,

(b) in the case of an auditor of a recognised clearing house which is an authorised person or which is a recognised investment exchange, the references to a regulator included the Bank, and

(c) in the case of an auditor of a recognised clearing house not falling within paragraph (b), the references to a regulator were to the Bank.

(2) A “relevant auditor” is a person who—

(a) is, or has been, an auditor of a recognised clearing house appointed under or as a result of a statutory provision [or the EMIR regulation]², and

(b) is, or has been, an auditor of a person who has close links with the recognised clearing house.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI

2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

- ² Words inserted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(16)(c) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

Extent

Sch. 17A(2) para. 19(1)-(2)(b): United Kingdom

Law In Force

[20

Section 344 (duty of auditor resigning to give notice) applies to an auditor to whom section 342 applies (whether by virtue of paragraph 18 or otherwise) as if—

- (a) the references in that section to a recognised investment exchange were to a recognised clearing house,
- (b) in the case of an auditor of a recognised clearing house which is neither an authorised person nor a recognised investment exchange, the reference in the definition of “the appropriate regulator” to the FCA were a reference to the Bank,
- (c) in the case of an auditor of a recognised clearing house which is a PRA-authorized person, the reference in the definition of “the appropriate regulator” to the PRA were a reference to the PRA and the Bank, and
- (d) in the case, not falling within paragraph (c), of an auditor of a recognised clearing house which is an authorised person or which is a recognised investment exchange, the reference in the definition of “the appropriate regulator” to the FCA were a reference to the FCA and the Bank.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 20(a)-(d): United Kingdom

Law In Force

[21

Sections 345A to 345E apply to auditors to whom section 342 applies only by virtue of paragraph 18 as if—

- (a) the references in those sections to an auditor or actuary to whom section 342 applies were to an auditor to whom section 342 applies by virtue of paragraph 18,

- (b) the references in those sections to a PRA-authorised person were to a recognised clearing house,
- (c) in a case where the Bank disqualifies a person from being an auditor of a recognised clearing house that is also a recognised investment exchange, section 345A(5)(a) required the Bank to notify the FCA, and
- (d) the references in sections 345D and 345E to a regulator included the Bank.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 21(a)-(d): United Kingdom

*[Public record and disclosure of information]*¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[22

Section 347 (record of authorised persons, recognised investment exchanges, etc), so far as it relates to recognised investment exchanges, applies in relation to the Bank as if references in that section to a recognised investment exchange were to a recognised clearing house.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 22: United Kingdom

✔ Law In Force

[23

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 [or any of its functions under the EMIR regulation]² .
] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ² Words inserted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(16)(d) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

Extent

Sch. 17A(2) para. 23: United Kingdom

[Insolvency]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

✔ Law In Force

[24

- (1) The following provisions of Part 24 of this Act are to apply in relation to the Bank—
- (a) section 356 (powers to participate in proceedings: company voluntary arrangements);
 - (b) section 358 (powers to participate in proceedings: trust deeds for creditors in Scotland);
 - (c) section 359 (administration order);
 - (d) section 362 (powers to participate in administration proceedings);
 - (e) section 362A (consent to appointment of administrator);
 - (f) section 363 (powers to participate in proceedings: receivership);
 - (g) section 365 (powers to participate in proceedings: voluntary winding-up);
 - (h) section 367 (winding-up petitions);
 - (i) section 371 (powers to participate in proceedings: winding-up).
- (2) Those provisions are to apply as if any reference to an authorised person or recognised investment exchange were a reference to a recognised clearing house.

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 24(1)-(2): United Kingdom

Law In Force

[25

In the case of any regulated activity which is carried on for the purposes of, or in connection with, the provision of clearing services, the reference to the FCA in section 375(1) is to be read as including a reference to the Bank.

]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 25: United Kingdom

[Injunctions and restitution]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[26

(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 this Part 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 qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order; or
- (d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the Bank has power to prosecute under this Act (see section 401, as applied by paragraph 31).

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 26(1)-(2)(d): United Kingdom

Law In Force

[27

(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 26(2) of this Schedule.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 27(1)-(2): United Kingdom

☑ Law In Force

[28

(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 26(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 subparagraph (2) of this paragraph.

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 28(1)-(4)(b): United Kingdom

*[Notices]*¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

✔ Law In Force

[29

The provisions of Part 26 of this Act (notices) apply in relation to a warning or decision notice given by the Bank under section 192L, 312G or 312H as they apply in relation to such a notice given by the FCA under that section.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 29: United Kingdom

[Offences] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

✔ Law In Force

[30

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 qualifying EU provision specified, or of a description specified, for the purposes of this paragraph by the Treasury by order.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 30(a)-(c): United Kingdom

Law In Force

[31

(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;
- (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).

] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 31(1)-(2): United Kingdom

[Records] ¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

✔ Law In Force

[32

Paragraph 17 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.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 32: United Kingdom

*[Annual report]*¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

✔ Law In Force

[33

Paragraph 19 of Schedule 1ZB (annual report by PRA) applies in relation to the Bank, but—

(a) as if for paragraphs (a) to (f) of sub-paragraph (1) there were substituted—

“(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

(b) as if sub-paragraph (3) were omitted.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(2) para. 33(a)-(b): United Kingdom

[PART 3**WINDING UP, ADMINISTRATION OR INSOLVENCY OF [RECOGNISED CLEARING HOUSES]²****]**¹**Notes**

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ² Words substituted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(16)(e) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)
-

*[Notice to Bank of England of preliminary steps]¹***Notes**

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
-

Law In Force

[34

- (1) An application for an administration order in respect of a [recognised clearing house]² may not be determined unless the conditions below are satisfied.
- (2) A petition for a winding up order in respect of a [recognised clearing house]² may not be determined unless the conditions below are satisfied.
- (3) A resolution for voluntary winding up of a [recognised clearing house]² may not be made unless the conditions below are satisfied.
- (4) An administrator of a [recognised clearing house]² may not be appointed unless the conditions below are satisfied.
- (5) Condition 1 is that the Bank of England has been notified—
- (a) by the applicant for an administration order, that the application has been made,

- (b) by the petitioner for a winding up order, that the petition has been presented,
 - (c) by the [recognised clearing house]², that a resolution for voluntary winding up may be made, or
 - (d) by the person proposing to appoint an administrator, of the proposed appointment.
- (6) Condition 2 is that a copy of the notice complying with Condition 1 has been filed (in Scotland, lodged) with the court (and made available for public inspection by the court).
- (7) Condition 3 is that—
- (a) the period of 2 weeks, beginning with the day on which the notice is received, has ended, or
 - (b) the Bank of England has informed the person who gave the notice that—
 - (i) it has no objection to the order, resolution or appointment being made, and
 - (ii) it does not intend to exercise a stabilisation power under Part 1 of the Banking Act 2009.
- (8) Arranging for the giving of notice in order to satisfy Condition 1 can be a step with a view to minimising the potential loss to a [recognised clearing house]²'s creditors for the purpose of section 214 of the Insolvency Act 1986 (wrongful trading).
- (9) In this paragraph “the court” means—
- (a) in England and Wales, the High Court,
 - (b) in Scotland, the Court of Session, and
 - (c) in Northern Ireland, the High Court.

] ¹**Notes**

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)
- ² Words substituted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(16)(f) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

Extent

Sch. 17A(3) para. 34(1)-(9)(c): United Kingdom

*[Power to give directions to insolvency practitioner]¹***Notes**

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

✔ Law In Force

[35

(1) This paragraph applies where a person has been appointed to act as an insolvency practitioner (within the meaning of section 388 of the Insolvency Act 1986 or Article 3 of the Insolvency (Northern Ireland) Order 1989) in relation to a company which is, or has been, a [recognised clearing house]² .

(2) The Bank of England may give directions to the person if satisfied that it is desirable to give the directions, having regard to the public interest in—

- (a) protecting and enhancing the stability of the UK financial system,
- (b) protecting and enhancing public confidence in the stability of the UK financial system, and
- (c) maintaining the continuity of [...] ³ clearing services.

(3) Before giving directions the Bank of England must consult—

- (a) the Treasury,
- (b) (if the clearing house is a PRA-authorized person) the PRA, and
- (c) the FCA.

(4) Directions are enforceable, on an application by the Bank of England, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(5) A person is not liable for damages in respect of action or inaction in accordance with directions.

(6) The immunity does not extend to action or inaction—

- (a) in bad faith, or
- (b) in contravention of section 6(1) of the Human Rights Act 1998.

] ¹

Notes

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

² Words substituted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(16)(g)(i) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

³ Words repealed by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(16)(g)(ii) (April 1, 2013: substitution has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

Extent

Sch. 17A(3) para. 35(1)-(6)(b): United Kingdom

[PART 4**FEES**] ¹**Notes**

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Law In Force

[36

(1) The Bank of England may, in connection with the discharge of any of its qualifying functions, require recognised clearing houses [, EEA central counterparties or third country central counterparties]² to pay fees to the Bank.

(2) The “qualifying functions” of the Bank are—

(a) its functions under or as a result of this Part of this Act, [...] ³

(b) its functions under or as a result of a qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order [, and] ⁴

[(c) its functions under or as a result of Part 7 of the Companies Act 1989.] ⁴

(3) 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.

(4) 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).

] ¹**Notes**

¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

² Words inserted by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(16)(h)(i) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

³ Word repealed by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(16)(h)(ii) (April 1, 2013: repeal has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

- ⁴ Added by Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504 Pt 2 reg.3(16)(h)(iii) (April 1, 2013: insertion has effect subject to transitional and savings provisions specified in SI 2013/504 Pt 9)

Extent

Sch. 17A(4) para. 36(1)-(4): United Kingdom

Law In Force

[37

Any fee which is owed to the Bank under paragraph 36 may be recovered as a debt due to the Bank.
]¹

Notes

- ¹ Added by Financial Services Act 2012 c. 21 Sch.7 para.1 (January 24, 2013: insertion has effect on January 24, 2013 for the purposes of making orders or regulations as specified in SI 2013/113 art.2 and Sch.1 Pt 2 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; January 24, 2013 for the purposes of the preparation of memorandum, the making of rules or the preparation and issue of a statement of policy as specified in SI 2013/113 art.2 Sch.1 Pt 3 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7; April 1, 2013 subject to transitional provisions as specified in 2012 c.21 Sch.20 para.7 otherwise)

Extent

Sch. 17A(4) para. 37: United Kingdom

SCHEDULE 18**MUTUALS**

Sections 334, 336 and 338.

PART I**FRIENDLY SOCIETIES**

The Friendly Societies Act 1974 (c.46)

Law In Force

1.

Omit sections 4 (provision for separate registration areas) and 10 (societies registered in one registration area carrying on business in another).

Commencement

Sch. 18(I) para. 1: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(I) para. 1: United Kingdom

Law In Force

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”.

Commencement

Sch. 18(I) para. 2: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(I) para. 2: United Kingdom

Law In Force

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”.

Commencement

Sch. 18(I) para. 3: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(I) para. 3: United Kingdom

Law In Force

4.

In section 99(4) (punishment of fraud etc and recovery of property misapplied), omit “in the central registration area”.

Commencement

Sch. 18(I) para. 4: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(I) para. 4: United Kingdom

The Friendly Societies Act 1992 (c.40)

Law In Force

5.

Omit sections 31 to 36A (authorisation of friendly societies business).

Commencement

Sch. 18(I) para. 5: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(I) para. 5: United Kingdom

Law In Force

6.

In section 37 (restrictions on combinations of business), omit subsections (1), (1A) and (7A) to (9).

Commencement

Sch. 18(I) para. 6: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(I) para. 6: United Kingdom

Law In Force

7.

Omit sections 38 to 43 (restrictions on business of certain authorised societies).

Commencement

Sch. 18(I) para. 7: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(I) para. 7: United Kingdom

Law In Force

8.

Omit sections 44 to 50 (regulation of friendly societies business).

Commencement

Sch. 18(I) para. 8: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(I) para. 8: United Kingdom

PART II**FRIENDLY SOCIETIES: SUBSIDIARIES AND CONTROLLED BODIES**

Law In Force

Interpretation**9.**

In this Part of this Schedule—

“the 1992 Act” means the Friendly Societies Act 1992; and
“section 13” means section 13 of that Act.

Commencement

Sch. 18(II) para. 9 definition of "the 1992 Act"- definition of "section 13": December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(II) para. 9 definition of "the 1992 Act"- definition of "section 13": United Kingdom

Law In Force

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).

Commencement

Sch. 18(II) para. 10(1)-(2)(b): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(II) para. 10(1)-(2)(b): United Kingdom

Law In Force

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;”.

Commencement

Sch. 18(II) para. 11: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(II) para. 11: United Kingdom

Law In Force

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;”.

Commencement

Sch. 18(II) para. 12: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(II) para. 12: United Kingdom

Law In Force

Acquisition of joint control

13.

In section 13(9), in the words following paragraph (d), after “paragraph (c)” insert “or (cc)”.

Commencement

Sch. 18(II) para. 13: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(II) para. 13: United Kingdom

Law In Force

Amendment of Schedule 8 to the 1992 Act

14.—

- (1) Schedule 8 to the 1992 Act (provision 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—
 - (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”.

Commencement

Sch. 18(II) para. 14(1)-(4): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(II) para. 14(1)-(4): United Kingdom

 Law In Force

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.

Commencement

Sch. 18(II) para. 15(1)-(5): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(II) para. 15(1)-(5): United Kingdom

 Law In Force

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.

Commencement

Sch. 18(II) para. 16: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(II) para. 16: United Kingdom

PART III
BUILDING SOCIETIES

The Building Societies Act 1986 (c.53)

Law In Force

17.

Omit section 9 (initial authorisation to raise funds and borrow money).

Commencement

Sch. 18(III) para. 17: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(III) para. 17: United Kingdom

Law In Force

18.

Omit Schedule 3 (supplementary provisions about authorisation).

Commencement

Sch. 18(III) para. 18: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(III) para. 18: United Kingdom

PART IV

INDUSTRIAL AND PROVIDENT SOCIETIES

The Industrial and Provident Societies Act 1965 (c.12)

Law In Force

19.

Omit section 8 (provision for separate registration areas for Scotland and for England, Wales and the Channel Islands).

Commencement

Sch. 18(IV) para. 19: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(IV) para. 19: United Kingdom

Law In Force

20.

Omit section 70 (scale of fees to be paid in respect of transactions and inspection of documents).

Commencement

Sch. 18(IV) para. 20: December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 18(IV) para. 20: United Kingdom

PART V

CREDIT UNIONS

The Credit Unions Act 1979 (c.34)

Law In Force

21.

In section 6 (minimum and maximum number of members), omit subsections (2) to (6).

Commencement

Sch. 18(V) para. 21: July 2, 2002 (SI 2001/3538 art. 2(5)(a))

Extent

Sch. 18(V) para. 21: United Kingdom

Law In Force

22.

In section 11 (loans), omit subsections (2) and (6).

Commencement

Sch. 18(V) para. 22: July 2, 2002 (SI 2001/3538 art. 2(5)(a))

Extent

Sch. 18(V) para. 22: United Kingdom

Law In Force

23.

Omit sections 11B (loans approved by credit unions), 11C (grant of certificates of approval) and 11D (withdrawal of certificates of approval).

Commencement

Sch. 18(V) para. 23: July 2, 2002 (SI 2001/3538 art. 2(5)(a))

Extent

Sch. 18(V) para. 23: United Kingdom

Law In Force

24.

In section 12, omit subsections (4) and (5).

Commencement

Sch. 18(V) para. 24: July 2, 2002 (SI 2001/3538 art. 2(5)(a))

Extent

Sch. 18(V) para. 24: United Kingdom

Law In Force

25.

In section 14, omit subsections (2), (3), (5) and (6).

Commencement

Sch. 18(V) para. 25: July 2, 2002 (SI 2001/3538 art. 2(5)(a))

Extent

Sch. 18(V) para. 25: United Kingdom

Law In Force

26.

In section 28 (offences), omit subsection (2).”

Commencement

Sch. 18(V) para. 26: July 2, 2002 (SI 2001/3538 art. 2(5)(a))

Extent

Sch. 18(V) para. 26: United Kingdom

SCHEDULE 19**COMPETITION INFORMATION****Section 351.****PART I****PERSONS AND FUNCTIONS FOR THE PURPOSES OF SECTION 351**

Repealed

1. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

PART II**THE ENACTMENTS**

Repealed

1. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

2. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

3. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

4. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

5. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

6. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

7. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

8. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

9. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

10. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

11. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

12. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

13. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

14. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

15. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

16. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

17. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

R Repealed

18. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)


R Repealed

19. [...]¹

Notes

¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (June 20, 2003 as SI 2003/1397)

SCHEDULE 20**MINOR AND CONSEQUENTIAL AMENDMENTS****Section 432(1)**

 Law In Force

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”

[.]¹
 (b) [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.4(2) para.1 (April 6, 2010)

Commencement

Sch. 20 para. 1(a): December 1, 2001 (SI 2001/3538 art. 2(1))

Sch. 20 para. 1(b): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 20 para. 1(a)-(b): United Kingdom

Law In Force

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”

[.]¹
 (b) [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.4(2) para.1 (April 6, 2010)

Commencement

Sch. 20 para. 2(a): December 1, 2001 (SI 2001/3538 art. 2(1))

Sch. 20 para. 2(b): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 20 para. 2(a)-(b): United Kingdom

Law In Force

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”.

Commencement

Sch. 20 para. 3: September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Extent

Sch. 20 para. 3: United Kingdom

Law In Force

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) [...] ¹

(4) [...] ²

(5) [...] ³

(6) [...] ⁴

Notes

¹ Repealed by Corporation Tax Act 2010 c. 4 Sch.3(1) para.1 (April 1, 2010 and has effect for corporation tax purposes for accounting periods ending on or after that day, and for income tax and capital gains tax purposes, for the tax year 2010-11 and subsequent tax years, subject to transitional provisions and savings specified in 2010 c.4 Sch.2)

² Repealed by Income Tax Act 2007 c. 3 Sch.3(1) para.1 (April 6, 2007: for income tax purposes, for the tax year 2007-08 and subsequent tax years and for corporation tax purposes for accounting periods ending after April 5, 2007, subject to savings and transitional provisions specified in 2007 c.3 s.1030(1) and Sch.2)

³ Repealed by Finance Act 2009, Schedule 47 (Consequential Amendments) Order 2009/2035 Sch.1 para.60(h) (August 13, 2009)

⁴ Repealed by Finance Act 2007 c. 11 Sch.27(6)(5) para.1 (July 19, 2007)

Commencement

Sch. 20 para. 4(1)-(6): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 20 para. 4(1)-(6): United Kingdom

✔ Law In Force

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”.

Commencement

Sch. 20 para. 5(1)-(3): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 20 para. 5(1)-(3): United Kingdom

❌ Repealed

6.— [...]¹**Notes**

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.4(2) para.1 (April 6, 2010)

✔ Law In Force

The Judicial Pensions and Retirement Act 1993 (c. 8)

7.—

- (1) The Judicial Pensions and Retirement Act 1993 is amended as follows.
- (2) [...]¹
- (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”

[.]¹

(b) [...]¹

Notes

¹ Repealed by Transfer of Tribunal Functions Order 2010/22 Sch.4(2) para.1 (April 6, 2010)

Commencement

Sch. 20 para. 7(1)-(3), (3)(b): September 3, 2001 (SI 2001/2632 art. 2(2), Sch. 1(2) para. 1)

Sch. 20 para. 7(3)(a): December 1, 2001 (SI 2001/3538 art. 2(1))

Extent

Sch. 20 para. 7(1)-(3)(b): United Kingdom

SCHEDULE 21**TRANSITIONAL PROVISIONS AND SAVINGS****Section 432(2).**

Law In Force

Self-regulating organisations**1.—**

(1) No new application under section 9 of the 1986 Act (application for recognition) may be entertained.

(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 Financial Services Act 1986.

Commencement

Sch. 21 para. 1(1)-(9): June 14, 2000 (2000 c. 8 Pt XXX s. 431(1)(c))

Extent

Sch. 21 para. 1(1)-(9): United Kingdom

Law In Force

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.

(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 Financial Services Act 1986.

Commencement

Sch. 21 para. 2(1)-(8): June 14, 2000 (2000 c. 8 Pt XXX s. 431(1)(c))

Extent

Sch. 21 para. 2(1)-(8): United Kingdom

SCHEDULE 22**REPEALS****Section 432(3).**

Law In Force

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. 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 Disqualification 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 words from “or where” to the end. Schedule 7. In Schedule 8, paragraph 3 (2).

Chapter	Short title	Extent of repeal
1993 c. 8.	The Judicial Pensions and Retirement Act 1993.	In Schedule 5, “Member of the Financial Services Tribunal appointed by the Lord Chancellor”.

Commencement

Sch. 22 para. 1: April 30, 2001 for repeal specified in SI 2001/1282 art.2(b); December 1, 2001 for repeals specified in SI 2001/3538 art.2(1); July 2, 2002 for repeals specified in SI 2001/3538 art.2(5)(b) (SI 2001/1282 art. 2(b); SI 2001/3538 art. 2(1), art. 2(5)(b))

Extent

Sch. 22 para. 1: United Kingdom

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Financial Services and Markets Act 2000 (“the Act”) which received Royal Assent on 14 June 2000. They have been prepared by HM Treasury in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act provides the framework within which a single regulator for the financial services industry, the Financial Services Authority (“the Authority”), will operate. It equips the Authority with a full range of statutory powers and creates the Financial Services and Markets Tribunal (“the Tribunal”). The Act also establishes the framework for single ombudsman and compensation schemes to provide further protection for consumers.
4. The Act makes provision, amongst other things, with respect to:
 - the constitution and accountability of the Authority;
 - the definition of the scope of regulated activities;
 - the control of financial promotion;
 - powers of the Authority to authorise, regulate, investigate and discipline authorised persons;
 - the recognition of investment exchanges and clearing houses;
 - arrangements for the approval of controllers and the performance of regulated activities;
 - the oversight of financial services provided by members of the professions;
 - regulation and marketing of collective investment schemes;
 - certain criminal offences;
 - powers to impose penalties for market abuse; and

- the transfer to the Authority of registration functions in respect of building societies, friendly societies, industrial and provident societies and certain other mutual societies.

5. An overview of the Act is set out below. A detailed description of each Part and the sections is contained in the commentary. Terms used are defined in the text where they first appear. There is a glossary of certain terms defined in the Act and certain other terms which are used throughout these notes.

BACKGROUND

Financial Services Overview

6. The UK financial services industry accounts for approximately 7 per cent of GDP, employing over 1 million people in the City of London and across the country.

7. Businesses to be authorised and regulated under the Act include:

- Banks
- Building societies
- Insurance companies
- Friendly societies
- Credit unions
- Lloyd's
- Investment and pensions advisers
- Stockbrokers
- Professional firms offering certain types of investment services
- Fund managers
- Derivatives traders

Regulatory Framework

8. The regulation of financial services has, historically, been the responsibility of a range of different bodies:

- the Authority (formerly the Securities and Investment Board);
- the Self-Regulating Organisations (“SROs”): most recently the Personal Investment Authority, the Investment Management Regulatory Organisation and the Securities and Futures Authority;
- the former Supervision and Surveillance Branch of the Bank of England;
- the Building Societies Commission;
- the Insurance Directorate of the Treasury;
- the Friendly Societies Commission; and
- the Registry of Friendly Societies.

9. Following the Government's announcement of its proposals to introduce legislation to reform the regulation of financial services in May 1997, steps were taken to transfer responsibility for regulation to the Authority. Certain functions under the Banking Act 1987 (“Banking Act”) were transferred by the Bank of England Act 1998. In other cases, the Authority entered into contracts with the relevant bodies to perform regulatory functions on their behalf. For example, the Treasury contracted with the Authority for the performance of certain functions under the Insurance Companies Act 1982 (“ICA 1982”). Many relevant staff transferred to the Authority and relocated to its headquarters building. This process of integration will be completed when the Act is brought into force.

10. The Act will broadly continue the regime for recognised investment exchanges and clearing houses under the Financial Services Act 1986 (“FS Act 1986”), although the Authority's powers under the Act will be widened as compared with those under the predecessor legislation. The Authority will have powers to regulate the Lloyd's insurance market, and have powers of direction over the Council of Lloyd's, although the latter will retain its responsibilities under Lloyd's Acts for the superintendence and governance of the Society of Lloyd's. The recognised professional bodies regime under the FS Act 1986 will not continue. Professional firms (such as solicitors, accountants and actuaries) carrying on mainstream regulated activities will be authorised and regulated directly by the Authority. However, some categories of professional firm will benefit from an exclusion from the scope of regulation under the Act, subject to arms-length oversight by and certain powers of the Authority. The Act does not affect the professional bodies' wider powers to regulate the professional activities of members of their respective professions.

11. The Act is intended to coordinate and modernise financial regulatory arrangements which are currently established under a number of different enactments:

- the Credit Unions Act 1979
- the Insurance Companies Act 1982
- the Financial Services Act 1986
- the Building Societies Act 1986
- the Banking Act 1987
- the Friendly Societies Act 1992

12. Those enactments are generally supplemented by secondary legislation or rules. It is intended that the powers conferred by section 426 will be used so that the relevant parts of that legislation, and rules and regulations made under it, will be substantially repealed when the Act comes into force. Certain other enactments will also be repealed, or substantially repealed, including the Policyholders Protection Acts 1975–97, the Industrial Assurance Acts 1923–48 and the Insurance Brokers (Registration) Act 1977.

13. The Act also provides for the transfer of the remaining functions, including for example functions relating to the registration of mutual societies, of the Building Societies Commission, the Friendly Societies Commission and the Registry of Friendly Societies.

Consultation and scrutiny

14. In July 1998, the Treasury published a paper entitled *Financial Services and Markets Bill: A Consultation Document* which explained its policy in detail and included a draft of the Bill. That consultation exercise attracted comments from over 220 firms and bodies interested in the regulation of financial services, including those representing consumers. The Treasury also published a number of relevant consultation papers, including drafts of secondary legislation to be made under the Act. Copies of relevant documents, including consultation papers and press notices, were made available at the Treasury's website (www.hm-treasury.gov.uk).

15. The draft Bill was subject to pre-legislative scrutiny prior to its introduction into the House of Commons. The Treasury Committee published its third report of Session 1998–1999 on Financial Services Regulation in February 1999 (*Financial Services Regulation, Volumes I and II*; House of Commons 73 I–II). The Government's response was published in March 1999 (*Financial Services Regulation: The Government's Response to the Third Report from the Committee of Session 1998–99*; House of Commons 347).

16. A Joint Committee of both Houses of Parliament was also established to consider aspects of the draft Bill. That committee was also able to consider the Treasury's Progress Report published in March 1999. The Joint Committee published its first report on 29 April 1999 (*Draft Financial Services and Markets Bill: First Report*; House of Lords, 50 I–II; House of Commons, HC328 I–II) and its second report on 2 June 1999 (*Draft Financial Services and Markets Bill: Second Report*; House of Lords, 66; House of Commons, HC465). The Government response to the reports of the Joint Committee on Financial Services and Markets was published in June 1999.

17. The Bill was introduced into the House of Commons on 17 June 1999 and given its second reading on 28 June 1999. The Bill was the first public Bill to be carried over from session of Parliament to the another, under a new procedure recommended by the Select Committee on Modernisation of the House of Commons. The Bill was scrutinised in Standing Committee A between 6 July 1999 and 9 December 1999 (35 sessions). Report Stage took place on 27 January 2000 and on 1 and 9 February 2000. The Bill also received its third reading in the House of Commons on 9 February 2000.

18. The Bill was introduced into the House of Lords on 10 February 2000. It received its second reading on 21 February 2000. There were five Committee days, between 16 and 30 March 2000, followed by three days on Report, on 13 and 18 April 2000 and on 9 May 2000. The Bill received its third reading on 18 May 2000.

19. While the Bill was before the House of Lords, the Treasury also submitted a number of memoranda on the powers to make delegated legislation under the Bill to the Delegated Powers and Deregulation Committee. The Committee reported its view in a number of published reports. The relevant reports were the Seventh Report (16 February 2000), Eighth Report (8 March 2000), Tenth Report (15 March 2000) Twelfth Report (12 April 2000) and Sixteenth Report (17 May 2000). The Treasury's memorandum in each case was annexed to the report.

20. The Bill returned to the Commons for consideration of Lords Amendments on 5 June 2000. It was subsequently returned to the Lords for consideration of Commons amendments on 12 June 2000. This completed the Bill's Parliamentary passage. Royal Assent was given on 14 June 2000.

21. The Authority consults widely on the way it proposes to use its powers and carry out functions under the Act in accordance with the requirements under the Act. Full details of the Authority's consultation papers are available on its website (www.fsa.gov.uk) from where copies of current documents can be downloaded.

INTERPRETATION

22. There are many defined words and expressions in the Act.

23. Most of the definitions are for the purpose only of the section or Schedule in which they are used. So, for example, the three words defined in subsections (13), (14) and (15) of section 21 are defined only for the purposes of that section.

24. Where there is no indication that a definition is intended to apply to a group of provisions, a Part of the Act or the Act as a whole, it applies only for the purposes of the section or Schedule in which it appears.

25. Many of these single-provision definitions are just drafting devices to avoid clumsy repetition which would make an already long Act even longer. For example, in section 38 the word “specified” is used on its own on five occasions. The definition in subsection (4) is there to save repeating the words “in an exemption order” each time it is used.

26. Some of the words and expressions that are defined just for the purposes of the particular provision in which the definition occurs are used (and defined separately) in other provisions — where they may have a different meaning. For example “consumers” is defined separately for the purposes of sections 5(3), 10(7), 14(5) and 138(7) (the definition in section 10(7) differing from the others).

27. The Act consists of a large number of separate Parts. Where a particular Part deals with a self-contained subject there may be a separate interpretation section within the Part (for example section 193, which deals with the interpretation of Part XIII).

28. For the Act as a whole, Part XXIX contains a group of nine sections which deal with expressions used in a number of provisions and other matters which bear on the interpretation of provisions of the Act.

29. The purpose of this glossary is to provide the reader with a guide to words or expressions which are defined generally and so liable to be met in provisions which do not themselves contain the definition.

<u>Expression</u>	<u>Where defined (references are to sections, unless otherwise specified)</u>
appointed representative	39(2)
approved person	64(13)
auditors and actuaries rules	417
Authority	1(1)
authorised person	31(2)
authorisation offence	23(2)
body corporate	417(1)
chief executive	417(1)
collective investment scheme	235
Commission	417(1)
compensation scheme	213(2)
compulsory jurisdiction	226(8)
control of information rules	147(1)
controller	422
director	417(1)
documents	417(1)
EEA authorisation	425(1) and Sch 3, para 6
EEA firm	425(1) and Sch 3, para 5
EEA right	425(1) and Sch 3, para 7
EEA State	425(1) and Sch 3, para 8
exempt person	417(1)
financial promotion rules	417(1)
first banking co-ordination directive	425(1) and Sch 3, para 2(1)
first life insurance directive	425(1) and Sch 3, para 3(2)
first non-life insurance directive	425(1) and Sch 3, Para 3(5)
friendly society	417(1)

Expression	Where defined (references are to sections, unless otherwise specified)
general guidance	158(3)
general prohibition	19(2)
general rules	138(2)
group	421
home state authorisation	425(2) and Sch 4, para 1
home state regulator	425(1) and Sch 3, para 9
host state regulator	425(1) and Sch 3, para 11
incorporated friendly society	417(1)
industrial and provident society	417(1)
insurance business rules	141(5)
insurance directives	425(1) and Sch 3, para 3(1)
investment services directive	425(1) and Sch 3, para 4
legal assistance scheme	134(4)
listed securities	14(7)
manager	423
market abuse	118(1)
Minister of the Crown	417(1)
money laundering rules	417(1)
notice of control	178(5)
ombudsman scheme	225(3)
open-ended investment company	236
own initiative power	45(5)
parent undertaking	420
Part IV permission	40(4)
partnership	417(1)
policy	424(2)
prescribed	417(1)
price stabilising rules	417(1)
private company	417(1)
prohibition order	56(2)
recognised clearing house	285
recognised investment exchange	285
recognised scheme	237(3)
registered friendly society	417(1)
regulated activity	22
regulating provisions	159(1)
regulatory objectives	2
regulatory provisions	302(1)
rule	417(1)
rule-making instrument	153

<u>Expression</u>	<u>Where defined (references are to sections, unless otherwise specified)</u>
scheme manager	212(1)
scheme operator	225(2)
scheme particulars rules	248(1)
second banking co-ordination directive	425(1) and Sch 3, para 2(2)
second life insurance directive	425(1) and Sch 3, para 3(6)
second non-life insurance directive	425(1) and Sch 3, para 3(3)
seventh company law directive	417(1)
single market directives	425(1) and Sch 3, para 1
subsidiary undertaking	420
supervisory notice	395(13)
third life insurance directive	425(1) and Sch 3, para 3(7)
third non-life insurance directive	425(1) and Sch 3, para 3(4)
threshold conditions	41
Treaty	417(1)
Treaty firm	425(2) and Sch 4, para 1
Tribunal	132(1)
trust scheme rules	247(1)
UK authorised person	178(4)
UK firm	425(1) and Sch 3, para 10
unit trust scheme	237
voluntary jurisdiction	227(12)

Notices

30. The Act frequently refers to the Authority proceeding by way of giving a “warning notice” or a “decision notice”. The requirement to proceed in this way has particular procedural consequences, both in terms of the contents of those types of notice and of how action initiated by them must be taken forward. Those consequences are governed by the provisions of Part XXVI of the Act, to which reference should be made whenever the Authority is directed to proceed in this way.

GLOSSARY OF TERMS USED IN THE EXPLANATORY NOTE

31. In addition to the defined terms above, for convenience, these explanatory notes also use certain other abbreviated terms as set out below.

<u>Term used in these notes</u>	<u>Meaning</u>
Banking Act	Banking Act 1987
CC Act 1974	Consumer Credit Act 1974
Companies Act	Companies Act 1985
competent authority	the competent authority for listing
DGFT	Director General of Fair Trading
EC directives	Directives adopted by the relevant European Community institution
FS Act 1986	Financial Services Act 1986

<u>Term used in these notes</u>	<u>Meaning</u>
ICA 1982	Insurance Companies Act 1982
oeic	open-ended investment company
SROs	Self-Regulating Organisations, which are responsible for the regulation of investment business under the FS Act 1986

THE ACT

32. The Act is in 30 Parts.

- **Part I, The Regulator.** This Part sets out the Authority's general duties and statutory objectives. It also, with Schedule 1, imposes requirements about the Authority's constitution and accountability and about the exercise of certain of its functions.
- **Part II, Regulated and Prohibited Activities.** This Part provides a power for the Treasury to set the scope of regulation by order, within the overall object and purpose of the Act. It prohibits persons who are not authorised (or exempt) from carrying on a regulated activity in the United Kingdom and from holding themselves out as being authorised or exempt. It also sets out arrangements for the regulation of financial promotion.
- **Part III, Authorisation and Exemption.** This Part sets out which persons are to be authorised for the purposes of the Act and gives the Treasury power to exempt certain persons from the requirement to be authorised. Authorised persons will include those persons given permission under Part IV and certain persons from other member States who are authorised in accordance with arrangements under the Treaty of Rome (the "Treaty") and the single market directives.

Part IV, Permission to Carry on Regulated Activities. This Part entitles persons to apply for the Authority's permission to carry on particular regulated activities and makes provision about the giving, variation and revocation of such permissions by the Authority.

Part V, Performance of Regulated Activities. This Part requires persons, such as employees and office holders, who perform specified types of function for authorised persons, to be approved by the Authority. It requires such approved persons to behave in a way that complies with any statements of principle issued by the Authority and gives the Authority certain disciplinary powers. It also gives the Authority powers to prohibit persons from carrying out functions in relation to regulated activities.

Part VI, Official Listing. This Part sets out the powers of the competent authority and the obligations of issuers listed securities. It makes provision for the maintenance of, and admission to, the official list, and for the making of listing rules (including listing rules in relation to sponsors).

Part VII, Control of Business Transfers. This Part creates a mechanism for the transfer of banking and insurance business, subject to a court procedure and regulatory scrutiny.

Part VIII, Penalties for Market Abuse. This Part confers on the Authority power to impose penalties for market abuse. The Act sets out the kinds of behaviour which constitute market abuse and requires the Authority to produce a code which help to determine whether particular behaviour amounts to market abuse.

Part IX, Hearings and Appeals. This Part establishes the Tribunal and sets out the procedure for referring cases to it where the Authority has decided to take regulatory action under the various powers conferred by the Act. It gives a right to appeal against a decision of the Tribunal on a point of law.

Part X, Rules and Guidance. This Part confers powers upon the Authority to set regulatory requirements for persons authorised under the Act. It gives the Authority power to issue guidance on requirements imposed by and under the Act. It also sets out the procedures that the Authority must follow in exercising those powers.

Part XI, Information Gathering and Investigations. This Part sets out the powers of the Authority and of the Secretary of State to require the production of information and documents, to require reports to be prepared, to conduct investigations and to gain access to premises with a warrant.

Part XII, Control over Authorised Persons. This Part requires persons who propose to acquire control over certain authorised persons to notify, and secure the approval of, the Authority.

Part XIII, Incoming Firms: Intervention by the Authority. This Part confers power on the Authority to intervene in the activities of authorised persons from other member States who are authorised in accordance with rights under the Treaty and EC directives. It sets out the grounds on which the power is exercisable and the procedure for exercising it.

Part XIV, Disciplinary Measures. This Part gives the Authority powers to issue public statements about, or impose penalties on, authorised persons who fail to comply with requirements imposed by or under the Act.

Part XV, The Financial Services Compensation Scheme. This Part requires the Authority to create a scheme for the payment of compensation to consumers who suffer financial loss as a consequence of the inability of an authorised person to meet its liabilities. It also confers a certain number of powers on the manager of the scheme.

Part XVI, The Ombudsman Scheme. This Part requires the Authority to establish a single, compulsory ombudsman scheme for the speedy and informal resolution of disputes between members of the public and authorised persons and confers certain powers on the operator of the ombudsman scheme for that purpose. It also provides for the ombudsman to adjudicate on certain other types of dispute, on a voluntary basis.

Part XVII, Collective Investment Schemes. This Part provides for the regulation of collective investment schemes.

Part XVIII, Recognised Investment Exchanges and Clearing Houses. This Part sets out the regulatory regime for investment exchanges and clearing houses and provides for competition scrutiny of the regulatory provisions and practices of those bodies.

Part XIX, Lloyd's. This Part makes the Society of Lloyd's an authorised person and gives the Authority certain powers to direct the affairs of the Society, its members and Lloyd's managing and members' agents. It also provides for the regulation of former underwriting members of the Society.

Part XX, Provision of Financial Services by Members of the Professions. This Part creates an exemption for members of the professions providing financial services to clients in particular circumstances and gives the Authority an oversight role and certain powers in relation to firms that benefit from the exemption.

Part XXI, Mutual Societies. This Part confers powers on the Treasury to transfer to the Authority and to the Treasury certain functions relating to the registration and regulation of building societies, friendly societies and industrial and provident societies and certain other mutual societies. It also confers powers to dissolve certain statutory bodies.

Part XXII, Auditors and Actuaries. This Part concerns the appointment of auditors and actuaries by authorised persons and their responsibilities.

Part XXIII, Public Record and Disclosure of Information. This Part requires the Authority to maintain a public record of authorised (and certain other) persons, and makes provision about the purposes for which confidential information may be disclosed by and to the Authority and other persons having functions under the Act.

Part XXIV, Insolvency. This Part gives the Authority powers to ask the courts to wind up, or initiate other insolvency procedures against, authorised (and certain other) persons. It also enables the Authority to be heard by the court when such proceedings are commenced by third parties.

Part XXV, Injunctions and Restitution. This Part gives the Authority and the Secretary of State powers to seek injunctions in relation to regulatory contraventions and offences for which the Authority has powers to prosecute. It also provides for restitution to be paid to those who have incurred a loss as a result of such a contravention.

Part XXVI, Notices. This Part contains provisions relating to the procedures which the Authority must follow when giving notice of proposed actions under various provisions of the Act. It relates, for example, to decisions not to give permissions or to refuse applications for approvals and to decisions to take regulatory action, such as imposing penalties or making public statements.

Part XXVII, Offences. This Part creates certain offences, including making misleading statements and supplying false information to the Authority. It also makes general provision about offences under the Act and contains provision about the institution of proceedings, for example under Part V of the Criminal Justice Act 1993 (insider dealing) and in relation to money laundering.

Part XXVIII, Miscellaneous. This Part contains provisions giving the Treasury power to direct the Authority and certain other bodies to comply with the UK's international obligations, including European Union decisions to take reciprocal trade action. It also contains provisions concerning gaming contracts, reviews of past business and a number of other matters.

Part XXIX, Interpretation.

Part XXX, Supplemental. This Part contains provisions dealing with the commencement of the legislation and its territorial scope. It confers certain powers on the Treasury in relation to consequential and transitional provisions and with Schedules 18 and 20 to 22 makes certain amendments to other legislation.

COMMENTARY ON SECTIONS

PART I: THE REGULATOR

33. This Part sets out the Authority's general duties and statutory objectives. Together with Schedule 1, it specifies statutory requirements for the Authority's constitution and status and the exercise of certain of its functions. It sets out arrangements which the Authority is required to make for consulting practitioners and consumers. It provides powers for the Treasury to commission reviews of the economy, efficiency and effectiveness with which the Authority has used its resources and to arrange independent inquiries into regulatory matters of serious concern.

Section 1: The Financial Services Authority

34. The Authority is a company limited by guarantee formed under the Companies Act 1985 (“Companies Act”) as the Securities and Investment Board for the purpose of carrying out functions under the FS Act 1986. It later assumed functions under the Banking Act and exercised functions under other financial regulatory legislation, including for example under the ICA 1982 on behalf of the Treasury.

Section 2: The Authority's general duties

35. This section requires the Authority to discharge its general functions in accordance with its objectives and with regard to a number of principles. The objectives do not in themselves impose specific statutory duties or functions on the Authority. Rather, the section requires the Authority to carry out its general functions insofar as possible in a way which is compatible with the objectives and which, taking into account any need to balance the objectives as a whole, it considers most appropriate to their fulfilment.

36. Subsection (2) lists the Authority's objectives — market confidence, public awareness, the protection of consumers and the reduction of financial crime — which are elaborated in sections 3 to 6.

37. Subsection (4) applies those objectives to the Authority's functions in two distinct ways:

- they apply directly to the exercise of the Authority's rule-making, code issuing and general guidance functions taken as a whole;
- they apply to the policy and principles by which it exercises its other functions.

38. Subsection (3) lists a number of matters to which the Authority must also have regard in making its rules and guidance and determining the policy and principles by which it exercises its other functions.

Section 5: The protection of consumers

39. Subsection (2) sets out factors to which the Authority must have regard when considering the appropriate degree of protection. These are, briefly, the degree of risk involved, the sophistication and experience of the parties to the transaction, the need of customers for advice and information and the general principle that consumers should take responsibility for their decisions. There is no obligation on the Authority to place particular weight on any one of these factors.

Section 6: The reduction of financial crime

40. This provision does not by itself impose any duties on firms. The Authority is expected to pursue this objective in co-operation with various law enforcement agencies.

Section 7: Duty of Authority to follow principles of good governance

41. Part I and Schedule 1 set out, amongst other things, certain requirements of the Authority's constitution. The effect of this section is to require the Authority to have regard, subject to those requirements, to such generally accepted principles of good corporate governance in managing its affairs as it is reasonable to regard as applicable to it. Such principles might include those contained in the Combined Code of the Committee on Corporate Governance. However, some principles, such as relations with shareholders, are not relevant to the Authority as it is a company limited by guarantee and so need not be taken into account.

Section 8: The Authority's general duty to consult

42. This section requires the Authority to make and maintain effective arrangements for consulting practitioners and consumers. These arrangements must include, but are not limited to, the

establishment of Practitioner and Consumer Panels. The statutory obligation for the Authority to maintain panels to represent the interests of practitioners and consumers was not present in previous financial services, banking or insurance legislation. The Authority established panels of practitioners and consumers, on a non-statutory basis, before such a requirement was imposed under the Act. The effect of sections 9 and 10 is to require the Authority to continue to maintain those panels.

Section 11: Duty to consider representations by the Panels

43. This section requires the Authority to consider representations made to it by either the Practitioner Panel or the Consumer Panel in accordance with the arrangements under section 8 and, where it disagrees with the views expressed or proposals made in such representations, to give its reasons in writing.

Section 12: Reviews

44. This section enables the Treasury to commission independent reviews of the economy, efficiency and effectiveness with which the Authority has used its resources.

Section 13: Right to obtain documents and information

45. The person appointed by the Treasury to perform a review under section 12 has a right of access to documents held by the Authority.

Section 14: Cases in which the Treasury may arrange independent inquiries

46. This section, together with sections 15 to 18, provides the mechanism for the Treasury to appoint a person to hold an independent inquiry into the circumstances surrounding regulatory events which give rise to serious questions or public concern about the regulatory framework or the effectiveness of regulation in practice. They provide a statutory basis for launching the type of inquiry which has been conducted in the past into the failures of the Bank of Credit & Commerce International (“BCCI”) in 1991 and Barings in 1995. The Bingham Inquiry into BCCI was conducted on a non-statutory basis and therefore had no powers to require witnesses to attend or give evidence. The Barings Inquiry was conducted by the Board of Banking Supervision, an advisory body within the Bank of England using powers under the Banking Act.

47. The types of events into which an inquiry may be held are set out in this section. There are two cases. The first case, set out in subsection (2), relates to events concerning persons carrying on regulated activities or collective investment schemes. To trigger the power, it must appear to the Treasury that two conditions are met. The first of these is that the events posed, or could have posed, a grave risk to the financial system, or caused, or could have caused, significant damage to the interests of consumers. The second condition is that a serious failure in the regulatory system, or in the operation of that system, might have caused or exacerbated the risk or damage, or potential risk or damage.

48. The second case, set out in subsection (3), relates to the listing function under Part VI. Here the Treasury must be concerned with the damage, or potential damage, that might have been caused by a serious failure in the listing regime or its operation.

49. Subsection (4) provides that in either case the Treasury may initiate an inquiry only where they consider that it is in the public interest to do so.

Section 15: Power to appoint person to hold an inquiry

50. Under subsection (1), the Treasury may appoint a person whom they consider appropriate to conduct an investigation and, under subsection (2), may give directions to that person concerning

the scope of the inquiry, how it is to be conducted, when it is to be completed by, and the form of any report of the inquiry. The power to direct the inquiry enables the Treasury to ensure that it focuses on the important questions, and that it is concluded in a manner and on a timescale that is appropriate in light of any public concern there might be.

Section 16: Powers of appointed person and procedure

51. This section gives the person holding the inquiry discretion as to how the inquiry is conducted, and provides that person with powers to obtain evidence, both in the form of documents and through the examination of witnesses. These powers are the same as those exercisable by the High Court, or the Court of Session in Scotland.

Section 17: Conclusion of inquiry

52. This section requires a written report setting out the results of the inquiry and, where appropriate, making recommendations. The Treasury then have discretion whether to publish all or part of the report. However, the Treasury must make sure that they do not publish any material contained in the report which, if published, they consider would seriously prejudice the interests of a particular person, for example because there was a likelihood of subsequent court action in relation to the events covered, or publication would be incompatible with the UK's international obligations, such as those under the confidentiality provisions of one of the single market directives. A copy of any part of the report which is published must be laid before Parliament by the Treasury.

Section 18: Obstruction and contempt

53. The powers of the person appointed to conduct an inquiry are enforceable through certification to the High Court or Court of Session. The person conducting the inquiry must provide the court with a certificate stating the requirement that was imposed and the nature and facts of the alleged failure to comply. The court may then enquire into the matter, hearing witnesses and seeing documents as necessary. If it finds that a person has failed to comply with requirements placed upon him by the person holding the investigation, the court may deal with them as it would with a person in contempt of court.

PART II: REGULATED AND PROHIBITED ACTIVITIES

54. This Part provides the mechanism for defining the scope of regulation under the Act and for establishing the extent of the prohibition on issuing unapproved financial promotions.

Section 19: The general prohibition

55. This section contains the basic prohibition on unauthorised persons carrying on regulated activities in the United Kingdom. It is referred to in the Act as “the general prohibition” and prohibits persons who are not authorised or exempt under Part III from carrying on any regulated activity in the United Kingdom. Section 418 elaborates on when regulated activities will be considered to be carried on in the United Kingdom. Contravention of the general prohibition is a criminal offence (see section 23). Agreements made in the course of carrying on an activity in contravention of the general prohibition may be unenforceable (see sections 26, 27 and 29).

Section 20: Authorised persons acting without permission

56. Authorised persons may only carry on in the United Kingdom those regulated activities for which they have been given permission by the Authority under Part IV or by or under any other provision of the Act, for example under Schedule 3, 4 or 5.

57. If an authorised person carries on regulated activities for which he does not have permission the consequences may include any of the sanctions available under Parts IV (Permission to Carry on Regulated Activities), XIII (Incoming Firms: Intervention by Authority) or XIV (Disciplinary Measures). However, if an authorised person acts outside the scope of his permission, he will not commit a criminal offence, and any contract which a person enters into when acting outside the scope of his permission will not be made unenforceable simply by virtue of that fact. Subsection (3) permits the Treasury to prescribe cases in which a breach permission gives rise to a right of action for damages.

Section 21: Restrictions on financial promotion

58. This section prohibits unauthorised persons from issuing financial promotions, unless the content of the promotion is approved by an authorised person (who will be subject to rules made by the Authority), or unless an exemption applies. The regulation of financial promotions under the Act is similar to the regulation of investment advertisements and cold-calling under the FS Act 1986. However, section 21 reflects changing technologies and the fact that the borderline between advertisements and unsolicited calls has become blurred. Sections 238 to 241 contain additional provisions relating to the promotion of collective investment schemes.

59. The prohibition applies to “invitations” or “inducements” to engage in investment activity, which are made in the course of business. The Treasury are given power, if necessary, to determine the meaning of “in the course of business”. The prohibition will potentially catch communications whether they are made in the United Kingdom, into the United Kingdom from elsewhere, or from the United Kingdom to another country. Communications from outside the United Kingdom can potentially be caught only if they can have an effect in the United Kingdom (subsection (3)). It is expected that the exemption order which the Treasury intends to make under subsection (5) will further limit the territorial application of the financial promotion regime, so that communications issuing from overseas will generally only be caught if they are directed at the United Kingdom. This will be of particular significance in the context of internet communications.

60. Subsection (5) confers a power on the Treasury to make exemptions from the prohibition, similar to the power to make exemptions from the investment advertisement prohibition under the FS Act 1986. It is possible for these exemptions to be made conditional on compliance with rules made by the Authority under section 145.

61. Subsection (6) makes clear that the circumstances that can be specified under subsection (5) extend to circumstances for which subsection (3) expressly makes provision. Subsection (6) thus clarifies that an exemption can be made for communications which originate outside the United Kingdom even if they are capable of having an effect here. Subsection (6)(a) and (b) deal expressly with the possibility of exemptions for communications originating in specific countries, or specific groups of countries such as EU countries. Subsection (6)(d) would allow all communications originating overseas to be exempted if that became appropriate. If such provision were made, subsection (7) would allow the Treasury to repeal subsection (3).

62. Subsections (8) to (12) govern what constitutes “engaging in investment activity”. Subsections (9) and (10) give the Treasury power to determine the scope of the prohibition on financial promotion. It is expected that “controlled activities” will be the activities which are regulated under the Act, together with activities which would be regulated, but for an exclusion in an order made under section 22(1). This broad approach reflects the position under the FS Act 1986.

Section 22: The classes of activity and categories of investment

63. This section makes provision as to the classes of regulated activity, if carried on by way of business, and types of investment which are to be regulated under the Act. These are to be prescribed by the Treasury by order to be made under subsection (1). An activity will only be a regulated activity if it is carried on by way of business and is specified in the order under subsection (1). The Treasury will have the power under section 419 to specify circumstances in which an activity shall or shall not be regarded as being carried on by way of business.

64. Schedule 2 indicates the general range of activities and investments that the Treasury may include within the order defining the scope of regulation, but it does not exhaustively list them. It is therefore possible that other activities or investments may be brought within the scope of the regulation under the Act. However, the general nature of the activities set out in Schedule 2 serves as a limitation on the extent of the Treasury's power to bring further activities within the scope of the Act.

Section 23: Contravention of the general prohibition

65. This section makes carrying on a regulated activity in breach of the general prohibition a criminal offence. It is a defence for a person to prove that he exercised due diligence and took all reasonable precautions to avoid committing the offence.

66. A person convicted of this offence, which is referred to as an "authorisation offence", may be subject to a term of imprisonment of up to 2 years if convicted on indictment (6 months on summary conviction) and/or a fine (the current statutory maximum for a fine on summary conviction is £5,000).

Section 24: False claims to be authorised or exempt

67. This creates an offence of falsely describing oneself, or holding oneself out, as authorised or exempt in relation to a particular regulated activity. It is a defence for a person accused of this offence to prove that he exercised due diligence and took all reasonable precautions to avoid committing the offence.

68. Under subsection (3) a person found guilty of this offence is liable on summary conviction to a maximum of 6 months imprisonment and/or a fine not exceeding level 5 on the standard scale (currently £5,000). If the offence results from the public display of material, subsection (4) permits a fine of up to the statutory maximum (currently £5,000), to be multiplied by the number of days for which any material giving rise to the offence was on public display.

Section 25: Contravention of section 21

69. This section provides that it is an offence to breach the financial promotion prohibition. The sanctions are the same as those which apply under section 23 for a breach of the general prohibition.

70. Subsection (2) provides a defence for a person accused of the offence if he can prove either that he believed on reasonable grounds that the content of the communication was prepared or approved by an authorised person, or that he exercised due diligence and took reasonable precautions to avoid committing the offence.

Section 26: Agreements made by unauthorised persons

71. Under this section, agreements concluded in the course of carrying on business in breach of the general prohibition will generally be unenforceable against the customer. However, the customer can still recover any money paid or property transferred and obtain compensation for any loss.

Section 27: Agreements made through unauthorised persons

72. Under this section, agreements made by an authorised person in the course of his authorised business may also be unenforceable by that person if the agreement was entered into as a result of a third party's unauthorised regulated activities. This might arise if, for example, a contract was entered into as a result of investment advice given by an unauthorised third party.

Section 28: Agreements made unenforceable by section 26 or 27

73. This section gives the court discretion to allow the contract which would otherwise be unenforceable under section 26 or 27 to be enforced against the customer. The section also allows for the method by which the amount of compensation which a person may obtain is to be fixed. In order to enforce the contract, the court must be satisfied that it would be “just and equitable” to do so having particular regard to whether:

- where the person contravening the prohibition is a party to the agreement, that he reasonably believed that he had not acted in breach of the prohibition; or
- where the contravention was by a third party, that the authorised person providing the service did not know that the agreement resulted from a contravention.

Section 29: Accepting deposits in breach of the general prohibition

74. This section concerns deposits accepted in contravention of the general prohibition under section 19. If the deposit agreement does not entitle the depositor to immediate repayment on demand, the section provides that the depositor may apply to the court to direct immediate repayment.

75. The court has discretion not to direct repayment if it is satisfied that it would not be just and equitable to direct repayment, having particular regard to whether the deposit-taker reasonably believed that it was not contravening the prohibition.

Section 30: Enforceability of agreements resulting from unlawful communications

76. When a customer enters into an agreement or exercises any rights as a result of a communication in breach of the financial promotion prohibition, the agreement will be unenforceable against him. The customer will also be entitled to recover any property transferred and to receive compensation for losses incurred, but if he chooses to recover property transferred or not to continue the contract, he must return any money received.

77. However, in certain circumstances the courts may enforce agreements made in contravention of the prohibition and allow money and property transferred under the agreement to be retained if it is satisfied that this would be just and equitable, having regard to whether:

- where the person seeking to enforce the agreement was the illegal promoter, that he reasonably believed that the promotion had not been made in breach of the prohibition; or
- where the contravention was by a third party, that the person seeking to enforce it did not know that the agreement resulted from an illegal promotion.

• PART III: AUTHORISATION AND EXEMPTION

78. This Part sets out who is to be authorised and how authorisation is obtained. It also deals with exemptions from the general prohibition for particular persons or classes of persons. The Act provides for a single route to authorisation to operate in the financial services industry, replacing several sector-based regimes.

79. The main route to authorisation is through an application for a permission under Part IV, but authorisation may also be obtained by virtue of:

- notification in accordance with the relevant single market directive from the competent authorities under that directive in another EEA member State. The directives in question are the 2nd Banking Co-ordination Directive for banks and other credit institutions, the Investment Services Directive for investment firms, and the 3rd Life and 3rd Non-life Insurance Directives for insurance companies, including mutual insurers such as friendly societies. The person, who must come from or be incorporated in, or formed under the law of, another member State, is referred to under the Act as an “EEA firm” as defined in Schedule 3;
- exercise, in accordance with Schedule 4, of EU Treaty rights other than or beyond those governed by the single market directives, in which case the person is then referred to in the Act as a “Treaty firm”. Again the person must come from, or be incorporated in, or formed under the law of another member State to qualify;
- exercise of rights under the EC directive relating to collective investment undertakings to market in the United Kingdom collective investment schemes or product authorisation of certain open-ended investment companies (“oeics”) under regulations to be made under Chapter IV of Part XVII;
- a person being “grandfathered” by virtue of the transitional provisions (see sections 426 and 427). Broadly, the arrangements will cover persons authorised (however described) under the Banking, Financial Services, Insurance, Building Societies, Friendly Societies, Credit Unions and Lloyd’s Acts (including members of self-regulating organisations and certain members of recognised professional bodies).

80. The Society of Lloyd's is an authorised purpose by virtue of section 315.

81. It is possible for a person who becomes authorised through one of these routes to carry on regulated activities by virtue of other routes. For instance an EEA firm that is authorised by virtue of its home State notification under a single market directive may extend the range of regulated activities it may carry on through notification under Schedule 4 or an application to the Authority under Part IV for an extension of its permission. A Treaty firm may also obtain additional permission under Part IV.

82. For a person authorised by virtue of having permissions under Part IV, authorisation generally ends when that person no longer has permission to carry on regulated activities, whether at the initiative of the Authority or themselves.

Section 32: Partnerships and unincorporated associations

83. This section makes particular provision for partnerships and unincorporated associations. In principle, it is possible to view a change of partners in a partnership, or a change of the membership of an unincorporated association, as the formation of a new partnership or association. It would be very burdensome and unsatisfactory if such changes meant that a partnership or association that was substantially the same had to renew its authorisation simply because of such a change to its membership. This section therefore ensures that in such circumstances the authorisation is not interrupted. It also allows the authorisation to pass to a successor partnership or association in the event of dissolution, but only where the members and the business of the successor are substantially the same as the original.

Section 33: Withdrawal of authorisation by the Authority

84. This section requires the Authority to withdraw authorisation from a person who does not have a permission.

Section 34: EEA firms

85. So long as an EEA firm retains its home State authorisation, the Authority may not remove the firm's authorisation under Schedule 3. Such a person will only cease to qualify for authorisation under Schedule 3 if their home State regulator, that is the competent authority under the relevant directive from the person's home State, notifies the Authority that it is withdrawing authorisation for the person to continue to carry on the regulated activities in the United Kingdom, which may or may not be as part of withdrawing the person's authorisation completely, including in the home State.

86. However, if the person has also obtained a permission under Part IV, loss of the grounds for its authorisation under Schedule 3 does not necessarily lead to loss of its authorisation unless the Authority decides that as a result of the changed circumstances it should also withdraw the permission granted by it under Part IV. The Authority may also cancel an authorisation under Schedule 3 if it is requested to do so by the EEA firm.

Section 35: Treaty firms

87. As for an EEA firm, a Treaty firm ceases to qualify for authorisation under Schedule 4 if the relevant home State authorisation is withdrawn. The Authority may remove any additional permission under Part IV, but loss of home State authorisation does not necessarily mean that Part IV permission would be withdrawn. The Authority can also cancel an authorisation on request from a Treaty firm.

Section 36: Persons authorised as a result of paragraph 1(4) of Schedule 5

88. This section enables the Authority to cancel the automatic authorisation under Schedule 5 of managers and depositaries of UCITS schemes at their request. However, if the person also has permissions under Part IV, he does not cease to be an authorised person as a result.

Section 37: Exercise of EEA rights by UK firms

89. Part III of Schedule 3 governs home State regulation by the Authority of UK credit institutions, investment firms and insurance companies exercising their passport rights under the single market directives to establish a branch or provide services in other EEA states.

90. UK firms do not need to be authorised persons in order to exercise EEA passport rights. For example, lending is covered by both the Second Banking Co-ordination directive and the Investment Services Directive. Consequently a firm holding a licence under the Consumer Credit Act 1974 may have an EEA right to carry on Consumer Credit Act business in another EEA state.

Section 38: Exemption orders

91. This section gives the Treasury the power by order to exempt specific natural or legal persons or classes of person from the general prohibition and therefore from the need to be authorised.

92. Subsection (2) provides that a person may not benefit from an exemption under an order made under this section if they hold a Part IV permission. However, if they cease to hold a Part IV permission and the exemption from which they formerly benefited is still extant, they may benefit from it again.

Section 39: Exemption of appointed representatives

93. This section makes an exemption from the general prohibition for appointed representatives of authorised persons. An authorised person cannot be an appointed representative. The exemption only applies if the authorised person, referred to as the principal, has:

- contracted with the representative for the latter to carry on the relevant sort of investment business on their behalf; and
- accepted responsibility in writing for the conduct of those regulated activities.

94. Any regulated activities which are carried on by the representative in accordance with such an arrangement are the responsibility of the principal, who must therefore have permission for all the regulated activities they carry on. The Authority may therefore take regulatory action against the principal in respect of anything said or done (or not said or not done) by the representative in carrying on the regulated activities as if they had expressly authorised the action or inaction in question. Such acts or omissions will be taken into account by the Authority in determining whether the principal has breached any rules or requirements under the Act. However, nothing in this section would make the principal liable to prosecution for a criminal offence in place of the representative. The representative may also be subject to the arrangements under Part V.

95. This section is similar to, and replaces, section 44 of the FS Act 1986. The Treasury have the power to limit the types of business that may be carried on under this exemption. The intention is that an order under subsection (1) will broadly reproduce the breadth of the provision under the FS Act 1986, except that it will no longer be possible under this section for an appointed representative to be exempt for some activities and authorised for others. Under a single authorisation regime, it would not be appropriate to allow an authorised person to obtain an exemption rather than have their permission extended to cover those additional activities.

96. The Treasury have the power to prescribe further conditions which the contract between the principal and his representative has to meet. The intention is that this power would be used to reproduce the detailed requirements in sections 44(4) and (5) of the FS Act 1986. These are aimed at ensuring that the principal has adequate control over the activities that the appointed representative may carry on for the benefit of, or on behalf of, other providers of investment products to ensure that the exemption is not misused.

PART IV: PERMISSION TO CARRY ON REGULATED ACTIVITIES

97. This Part governs the way in which a person can obtain permission to carry on regulated activities. It is through obtaining permission that authorisation is generally obtained under section 31(1). However, this route to authorisation does not apply to those EEA firms who qualify for authorisation by virtue of Schedule 3 or those Treaty firms who qualify by virtue of Schedule 4. These provisions only apply to EEA and Treaty firms to the extent that they have obtained additional permissions beyond those that they obtained under those Schedules.

Section 40: Application for permission

98. This sets out the type of person who can be given permission and therefore who can be authorised by this route. Permission can be applied for and granted to individuals, bodies corporate, partnerships and unincorporated associations. In the case of some regulated activities, however, there are specific constraints on the type of person which may be given permission under the threshold conditions in Schedule 6.

99. Permission may cover a number of regulated activities. Permission is only given once, after that it is simply changed. Thus, subsection (2) rules out an application for the grant of permission to an authorised person where he already has permission under this Part. Therefore, if a person wishes to carry on additional activities, he would need to apply for a variation of permission under section 44.

Section 41: The threshold conditions

100. This section requires the Authority to satisfy itself in giving or varying a Part IV permission, or imposing or varying any requirement, that the person concerned will satisfy the threshold conditions set out in Schedule 6 in relation to all the regulated activities covered by his permission. However, this does not prevent the Authority from taking such steps in relation to an authorised person as it considers necessary to secure its regulatory objective of the protection of consumers.

Section 42: Giving permission

101. Having received an application for permission, the Authority must consider it in the light of its duty under section 41. The Authority has discretion to grant permission for all the activities applied for, or just some of them.

102. The Authority can also frame the permission it grants so as to cover activities which are wider or narrower than the activities as described in the application, and may thus impose its own limitations on the way in which an activity may be carried on. This allows the Authority to design the permission in order to be satisfied that the threshold conditions are met in circumstances where it would not be satisfied if it granted the permission sought in full. The ability to grant a wider permission than was applied for would enable the Authority, if it so chose, to have standard types of permission that it granted. However, the Act does not require the Authority to operate in this way.

103. If the applicant is exempt for certain regulated activities by virtue of being a recognised investment exchange or a recognised clearing house, or by virtue of membership of a professional body designated under Part XX, his application, and any resulting permission, is not to be regarded as covering those exempt activities. For other exempt persons, an application under this section will be regarded as covering their exempt activities.

Section 43: Imposition of requirements

104. When granting permission, the Authority may impose what it considers to be appropriate requirements. Such requirements might include requirements on the authorised person to act, or refrain from acting, in a certain way. Subsection (5) allows the Authority to specify a period during which such requirements have effect. Thus the Authority might impose a limit on the amount of a certain type of business the person may conduct during the first five years after receiving the permission. This would enable the Authority to continue the current practice adopted by the insurance supervisors of restricting the premium income that can be received by an insurer in the period following its authorisation to undertake a new form of insurance business.

105. Under subsection (3), such requirements may also be imposed in respect of unregulated activities. For instance, the Authority might have misgivings about the way in which a regulated activity might be carried on in conjunction with an unregulated activity that the person already carries on, or which he proposes to carry on. Those misgivings may not justify preventing the person from commencing the regulated activity because the Authority may not consider that the unregulated activity, of itself, casts doubt about the person's fitness to carry on the regulated one. It may, however, be concerned that the juxtaposition of the two activities could be confusing to consumers, or that the manner in which the unregulated activity was carried on might pose a threat to their interests. Therefore, the Authority could place limitations on the way in which the unregulated activity was carried on for a period after the granting of the new permission in order that it could observe how the activities were carried on, or related to each other, in practice. Subsection (4)

enables the Authority to take account of the person's membership of a wider group (as defined in section 421).

Section 44: Variation etc at request of authorised person

106. The Authority may vary the permission, including cancelling it completely, at the request of the authorised person, subject to being satisfied that the person will satisfy the threshold conditions for any resulting permission in accordance with section 41. If it is not satisfied, it may refuse the request outright, grant a more limited permission than the one requested, or grant the requested permission, but subject to new requirements. The Authority may also refuse to grant a request for variation on the grounds that refusal is in the interests of consumers or potential consumers.

107. If as a result of the variation, the authorised person would no longer have permission to carry on any regulated activity, the Authority must consider whether it is still necessary for the person to hold a permission at all (and therefore continue to be an authorised person). If it is not necessary, the Authority should cancel the permission.

Section 45: Variation etc on the Authority's own initiative

108. This section gives the Authority the power to revoke or vary the terms of an authorised person's permission on its own initiative (referred to as its “own initiative power”). The power is exercisable on three grounds. These are where it appears to the Authority that:

- the person is failing, or likely to fail, to meet the threshold conditions in relation to the existing permission;
- the person has failed to make use of the permission to carry on a particular regulated activity for a year or more;
- it is desirable to do so in order to protect the interests of consumers or potential consumers.

109. As with the previous section, if as a result of the variation the authorised person no longer has permission to carry on any regulated activity, the Authority must consider whether it is necessary for that person to continue to hold a permission and be an authorised person. If it is not necessary, the Authority should cancel the permission.

Section 46: Variation of permission on acquisition of control

110. The Authority may also impose a new requirement or vary an existing one if:

- someone “acquires control” over the UK authorised person within the meaning of Part XII; and
- the result is that although the Authority does not consider that it has grounds to object to the acquisition, it nevertheless considers that there is some significant uncertainty about the impact of the acquisition, or further acquisition, of control on the conduct of the authorised person's business.

Section 47: Exercise of power in support of overseas regulator

111. This section enables the Authority to cancel or vary a permission on its own initiative on behalf of an overseas regulatory authority. The section gives the Treasury power to prescribe by regulations the sort of overseas authority that the Authority to help. The functions that it is proposed should be prescribed in this way are functions corresponding to those of:

- the Authority itself under this Act;
- the competent authority for listing;
- the Secretary of State under the Companies Act; and
- the prosecuting authorities for insider dealing and money laundering.

112. However, even where the overseas regulator and the provisions they are seeking to enforce meet these requirements, the Authority is not obliged to act in accordance with the request. The Authority must act reasonably, as it must in discharging any of its functions, but it is also directed to consider certain factors in particular. First among these is whether EC law obliges the Authority, as the competent authority under one of the single market directives or otherwise, to assist the overseas authority. Unless there is an EC obligation to act the Authority must consider the further factors listed in subsection (4) which include the seriousness of the case and the public interest. The Authority is also able to charge a contribution towards the costs of taking the enforcement action, and to make this a condition of exercising the power. (*Note:* The reference to subsection (4) in the definition of “request” in subsection (7) is an error. It should only refer to subsection (5).)

Section 48: Prohibitions and restrictions

113. Among the requirements which the Authority can impose on an authorised person when acting under this Part are:

- restrictions on the use or disposal of the authorised person's assets; or
- requirements to transfer its assets or assets it holds on behalf of investors to a trustee approved by the Authority.

114. The purpose of these types of restriction is to prevent an authorised person disposing of particular assets or making certain types of investment, in circumstances where the Authority is concerned about a person's solvency or where it wishes to investigate suspected fraudulent behaviour.

115. Where an authorised person's assets are held by a third party, for example by a bank, subsection (4) enables the Authority to give the institution notice of any restrictions it has placed on the authorised person's assets. This notice might state, for example, that a bank should not allow any payments to be made from the authorised person's account without the permission of the Authority. Subsection (5)(a) provides that if the institution refuses to comply with a request to make a payment from the account of an authorised person who is subject to a restriction notice, it is not to be taken as a breach of its contract with the authorised person. However, if the institution were to allow a payment to be made from such an account, in breach of a restriction, under subsection (5)(b) it would be liable to pay the same amount of money to the Authority.

116. Subsections (6) to (11) are concerned with the transfer of an authorised person's assets to a trustee approved by the Authority.

117. Subsection (6) requires a trustee not to deal with or release any of the assets transferred to them unless the Authority agrees. If the trustee does release assets without the Authority's consent, he is guilty of an offence under subsection (9). However subsection (11) protects the position of the persons who are beneficiaries of the trust by preserving all the remedies they would normally have under trust law. The beneficiaries of the trust are the owners of the assets transferred to the trustee. This will be either the authorised person or, where the assets transferred include assets the authorised person was holding or controlling on behalf of other investors, those investors.

118. Subsection (7) makes void any charge that the authorised person makes over his assets while they are held by a trustee. Any charges arranged before the assets were transferred to a trustee remain valid. The effect of this is that were the authorised person to enter into a contractual arrangement which gave a third person a right ahead of existing creditors or a liquidator to any of his assets which, as a result of a requirement made by the Authority under subsection (3)(b), were

held by a trustee, that contract would be void and the rights of the liquidator and existing creditors to the assets would be upheld.

Section 49: Persons connected with an applicant

119. Subsection (1) of this section makes it clear that, in deciding whether to approve an application for permission, the Authority may also have regard to other relevant persons who are related to the applicant in some way. What constitutes a relevant relationship is not defined, but is left to the Authority to interpret in the particular circumstances of the case.

120. The Authority is obliged under subsection (2) to consult with the home State regulator of an EEA firm before granting an application from a person who is a subsidiary undertaking of that firm or the subsidiary undertaking of a parent undertaking of that firm.

Section 50: Authority's duty to consider other permissions etc.

121. An EEA firm, Treaty firm or recognised collective investment scheme may have a Part IV permission in addition to a permission as such a firm or scheme. In considering the exercise of its own initiative power in relation to such an additional permission, the Authority must take account of the relevant EC law and of the home State authorisation of the person concerned. Such consideration may inform the Authority's view on whether the firm or scheme is fit and proper to continue to hold the additional permissions in question, or its view on whether the cancellation or variation it proposes is appropriate in light of the wider assessment of the firm which the home State regulator is responsible for making.

Section 51: Applications under this Part

122. This section sets out the minimum information that must be included in an application for a permission. It also enables the Authority to specify the manner in which an application may be made, for example whether applications by e-mail will be accepted, and such other things that should be included as the Authority considers necessary or appropriate. The Authority can require additional information after the application is received, and can require the applicant to verify any of the information supplied.

Section 52: Determination of applications

123. The Authority is required to determine an application within 6 months of receiving the completed application. The Authority has discretion whether to determine incomplete applications, but it must determine even incomplete applications within 12 months of the initial receipt of the application. The Authority may, of course, refuse an application on the grounds that it is incomplete where it is appropriate to do so. Under subsection (3) an applicant may withdraw an undetermined application at any time.

124. Once the Authority has determined an application it must give written notice of its decision and, if the application is to be granted, the date upon which the authorisation takes effect and from which the relevant activities may commence. If the Authority proposes to refuse all or part of the application, or impose an additional requirement, it must proceed by way of a warning and decision notice.

Section 53: Exercise of own initiative power: procedure

125. This section sets out the procedure the Authority must follow when it proposes to exercise its own-initiative power to vary an authorised person's Part IV permission. If, having regard to the ground on which it is exercising the power, the Authority considers it necessary, the variation may

take effect immediately or on a specified date. If no date is specified in this way the variation will take effect only after the time for referring the matter to the Tribunal has expired and any reference (and further appeal) has been finally determined (see the definition of “open to review” in section 391(8)). The Authority must give the authorised person a written notice which gives the details of the variation, the date on which it takes effect, the reasons for the imposing the variation and for the choice of date. The notice must also inform the person of his right to make representations to the Authority within a specified period, and to refer the matter to the Tribunal.

126. Subsections (7) to (10) require the Authority to give further written notice of its response to any representations which are made. This can be a decision not to proceed with the variation (or to cancel it if it has already taken effect), to propose a different variation (in which case the original notice procedure must be repeated), or to proceed with the variation (in which case the person concerned has a further right to refer the matter to the Tribunal).

Section 54: Cancellation of Part IV permission: procedure

127. This section requires the Authority to serve warning and decision notices when cancelling a Part IV permission on its own initiative, under section 45. Warning and decision notices given under this section also attract the rights set out in sections 393 and 394 by virtue of section 392.

Section 55: Right to refer matters to the Tribunal

128. This section confers a right to refer to the Tribunal a decision of the Authority to vary or cancel a permission on its own initiative. It also applies to decisions of the Authority in relation to applications under Part IV, such as a decision to refuse an applications for permission, to impose conditions or to vary a permission other than in the way requested.

PART V: PERFORMANCE OF REGULATED ACTIVITIES

129. This Part confers on the Authority a range of powers which will enable it to ensure that people who work for authorised persons for certain purposes are fit and proper to perform the functions for which they have been engaged. While the focus of regulation is on authorised firms, the Part gives the regulator powers to prevent harm which might otherwise be caused by persons attached to firms.

130. Under the preceding regulatory framework, there is considerable variation between the arrangements applying to employees working in different sectors. The SROs have introduced a contractual system which requires employees to sign up to regulatory and disciplinary arrangements. Lloyd's has applied similar regulation to employees of underwriting agents, using its byelaw making powers. Banking and insurance legislation provides for pre-vetting of certain senior management positions, in some cases as part of the regime for the regulation of controllers of such firms. That legislation does not provide for the regulator to take disciplinary action against those managers, although senior managers, as officers of the firm, could commit a criminal offence where the firm itself had committed such an offence. There is, in addition to the vetting arrangements, a power in section 59 of the FS Act 1986 for the Authority to prohibit a person's employment in connection with investment business. The above arrangements will be replaced by arrangements under this Part.

131. The Part seeks to harmonise these arrangements. It provides a power for the Authority to ban unfit individuals from carrying out specified functions within the financial services sector. It also provides for:

- the Authority to require its approval to be obtained before a person may perform specified functions;
- the Authority to issue statements of principle with which approved persons must comply, and codes of conduct elaborating on the statements; and
- a disciplinary regime for those who fail to comply with the statements of principle.

132. This Part provides for firms and individuals concerned to refer matters to the Tribunal if the Authority proposes to:

- issue a prohibition order;
- refuse an application to vary or revoke a prohibition order;
- refuse an application for approval;
- take disciplinary action; or
- withdraw approval.

133. The Part is primarily directed at the employees of authorised firms. However, it extends beyond employees to include, for example, directors, representatives and contractors of an authorised person, and extends to bodies corporate where relevant. If, for example, a life insurance company entered into a marketing agreement with a firm of estate agents to sell life insurance, the agency and relevant sales staff giving investment advice might need prior approval. Part V would also cover “matrix managers” who carry out certain functions, often on a fairly informal basis, for a group of companies even though technically they are “employees” of a sister company rather than of the authorised person for whom they carry out relevant functions. Such arrangements are increasingly common in multi-national groups.

Section 56: Prohibition orders

134. This section enables the Authority to make an order prohibiting any individual whom it considers is not fit and proper to perform functions in connection with regulated activities. A prohibition may relate to all functions in relation to any regulated activities carried on by all authorised (or exempt) persons or it can specify the kind of functions, activities or authorised (or exempt) persons to which it relates. A prohibition order may be varied or revoked.

135. Subsection (4) makes it an offence for an individual not to comply with a prohibition order. The maximum penalty for this offence is a fine at level 5 on the standard scale (currently £5,000). There is, however, a defence under subsection (5) for a person who can show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

136. Subsection (6) imposes an obligation on an authorised person to take reasonable care not to engage individuals who have been disqualified under this section from performing relevant functions. Failure to comply with this requirement could trigger the use of the Authority's powers to amend the authorised person's permission or discipline the firm. It also potentially gives rise to a cause of action under section 71 from a private person who suffers a loss as a consequence of the breach.

137. Subsection (8) enables a prohibition order to be issued preventing an individual from performing functions in relation to a regulated activity carried on by an exempt person or a person to whom section 327(1) applies, that is by members of a profession or persons controlled or managed by members of a profession, who benefit from the exemption from the general prohibition under Part XX.

Section 59: Approval for particular arrangements

138. This section requires authorised persons to take reasonable care not to allow persons, natural or corporate, to perform certain functions without the approval of the Authority. Subsection (2) similarly requires an authorised person to take reasonable steps to ensure that any contractor does not allow a person to perform such functions without the approval of the Authority. A person in respect of whom approval is given is an “approved person”. The nature of the functions requiring approval will be specified by the Authority's rules, within the limits set out in subsections (5) to (7) and subject to the normal consultation requirements under Part X. The limits can be summarised:

- The function may enable a person significantly to influence the conduct of the authorised person (for example a director). By virtue of subsection (9) account may be taken of influence which might result from a failure properly to carry out that function (for example a proprietary trader).
- The function involves dealing with customers (for example a financial adviser) or dealing with their property (such as a stockbroker) in a way that is substantially connected with the carrying on of a regulated activity by the firm.

139. Subsection (8) limits the application of this section in the case of EEA or Treaty firms. The Authority will only have powers to act in relation to functions over which it, rather than the home State regulator, has jurisdiction.

Section 60: Applications for approval

140. This section requires an application for approval to be submitted by the authorised person concerned or, in the case of new firms awaiting authorisation, a prospective authorised person.

141. Subsection (2) gives the Authority the powers to specify the information it will require to support applications for different types of posts and subsection (3) enables it to request any additional information it needs to assess the suitability of each candidate.

Section 61: Determination of applications

142. This section sets out the basis on which the Authority is to assess the suitability of a candidate for approval, whether they are an individual or a body corporate. Subsection (1) requires the Authority to be satisfied that a candidate is fit and proper to perform the functions in question before it is able to give its approval. Where the Authority proposes to refuse an application, section 62 requires it to give a warning and decision notice. Notice must be given to the authorised person, the candidate and, where relevant, a contractor.

Section 63: Withdrawal of approval

143. This section gives the Authority power to withdraw the approval granted for the purposes of section 59 where it no longer considers that the person is a fit and proper person to carry out the functions for which they had been approved, for example because the Authority had obtained new information which cast doubt over its initial assessment.

Section 64: Conduct: statements and code

144. This section gives the Authority power, as part of its wider rule-making functions, to issue statements of principle, setting out in general terms the kinds of behaviour which it requires from approved persons in respect of any particular type of function. Any statements of principle issued under this section must be elaborated by a code of practice. Such a code would not need to be exhaustive but it would have to illustrate the circumstances in which it would regard a principle as having been complied with, or not complied with, as the case may be. Different statements of principle and codes could be made to apply to employees of different categories. The purpose of

requiring a code to elaborate on a statement of principle is to prevent the Authority taking a disciplinary action for an alleged breach of a principle in cases where a person had acted in accordance with the code.

145. Subsection (8) makes it clear that failure to comply with a principle does not give a third party grounds for action against the approved person. Therefore, if for example a financial adviser employed by an insurance company failed to comply with a statement of principle when arranging a personal pension, that would not give a customer a right of action against the employee, with whom they had no contractual relationship. This provision would not remove or lessen any rights, including those under contract or by virtue of section 71, the customer may have against the authorised person who had entered into an agreement to provide the pension.

Section 65: Statements and codes: procedure

146. This section sets out the procedure that the Authority is required to follow when issuing a statement or code under section 64. The procedures, including the requirements to consult and publish a cost-benefit analysis, are broadly the same as the procedures that will apply when the Authority exercises other powers to issue codes (for example under section 119) and its rule-making powers under Part X.

Section 66: Disciplinary powers

147. This section gives the Authority a power to take disciplinary action against an approved person when the two conditions set out in subsection (1) have been met. The Authority must be satisfied that it is appropriate to take action against him. In this context, the Authority would have to have regard, among other things, to its regulatory objectives set out in Part I. The Authority would need to take into account whether disciplinary action against the approved person, rather than action against the authorised person for whom he works, would be appropriate, taking into account the responsibility of the senior management of the firm for the conduct of the firm and its employees. A second important factor would be to ensure that any action, or any particular course of action, it takes should be proportionate to the nature and seriousness of the misconduct.

148. In addition, the Authority must be satisfied that the person has engaged in misconduct, as defined in subsection (2). One possibility is that the approved person has acted in breach of a statement of principle, issued under section 64, as evidenced by a breach of a code of practice. The other possible situation is that an approved person has been knowingly involved in a breach by the authorised firm of rules made by the Authority or of any requirement imposed by or under the Act.

149. Subsection (3) gives the Authority powers to impose a penalty on an approved person or to make a public statement about their misconduct.

150. Subsection (4) restricts the period during which the Authority may take action under this section to a period of two years after the Authority became aware of the misconduct. This period reflects the time available to the Secretary of State to bring disqualification proceedings against a company director under the Company Directors Disqualification Act 1986.

Section 69: Statement of policy

151. This section requires the Authority to issue a statement of its policy on the circumstances in which it will impose penalties on approved persons under section 66 and the basis on which the level of penalties will be determined for different types of misconduct. The policy set out in the statement must take into account a number of factors which are set out in subsection (2).

152. Subsection (8) requires the Authority to have regard to the statement in force at the time of the misconduct when imposing penalties under this Part.

Section 70: Statements of policy: procedure

153. This section sets out the procedure for issuing a statement of policy under section 69. Before deciding on its policies in these areas, or changing those policies, the Authority will be required to consult the public on its proposals.

Section 71: Actions for damages

154. If a private person suffers a loss because an authorised person has acted in breach of the duty under section 56(6) or 59(1) or (2) (failing to take care to prevent a person carrying out functions in contravention of a prohibition under section 56, or without obtaining the Authority's approval under section 59) he may bring an action for damages against the authorised person (or an exempt person or person to whom clause 327(1) applies in the case of a contravention under section 56(6)). Subsections (2) and (3) confer powers on the Treasury, by regulations, to define a "private person" and to specify circumstances in which this section applies to a person other than a private person.

PART VI: OFFICIAL LISTING

155. EC law requires each member State to nominate or create a competent authority to maintain an official list of securities, to regulate the admission of securities to the Official List, and to monitor issuers' adherence to the listing rules (as explained below) thereafter. In the United Kingdom these functions are exercised by the Authority following the coming into force of the Official Listing of Securities (Change of Competent Authority) Regulations 2000 (SI 2000/968). Previously, the competent authority function was exercised by the London Stock Exchange. The provisions of this Part implement these requirements of EC directives. These provisions replace those in Part IV of the FS Act 1986.

156. There is no requirement for issuers of securities, for example companies issuing new shares, to apply for admission to the official list. However, admission to the official list signals that certain standards regarding the financial status and history of the company have been met; that adequate information about a security has been made available to investors at the time of application; and that information about the performance and plans of the issuer will continue to be made available on a continuing basis so long as the company has securities listed on the official list.

157. In carrying out its functions, the competent authority makes rules which govern the admission of securities to listing, the continuing obligations of issuers, the enforcement of those obligations and the suspension and cancellation of listing. These rules are collectively known as "listing rules", which have been published by the competent authority in the "yellow book". The competent authority also has a role in scrutinizing prospectuses and circulars where there is no application for admission to the official list.

Section 72: The competent authority

158. This section confers the functions of competent authority on the Authority. Subsection (2) and Schedule 7 make provision for the way in which other provisions of the Act apply to the Authority when exercising functions as the competent authority. However, subsection (3) and Schedule 8 provide a power for the Treasury to transfer some or all of the functions of the competent authority for the United Kingdom to another body.

Section 73: General duty of the competent authority

159. This section sets out the general duties of the competent authority. Subsection (1) sets out a number of principles to which the competent authority must have regard in discharging its general functions (as defined in subsection (2)).

160. Subsection (1) is similar to section 2(3). The requirements of subsection (1) are intended to act as constraints on the way the competent authority carries out its functions under Part VI. Unlike section 2(3), this section does not have a principle relating to the responsibilities of senior management. This is because the competent authority is not responsible for the conduct of business or the prudential regulation of listed companies.

Section 74: The official list

161. This section places a duty on the competent authority to continue to maintain the official list. Section 99 allows the competent authority to charge fees for this purpose. Before this Act comes into force, the official list will be made up of securities that have been admitted by the competent authority under the statutory provisions of Part IV of the FS Act 1986 and securities and other financial instruments which were admitted by the competent authority under contract with issuers (for example gilts and covered warrants). Under the Act there will be a single statutory regime for the official listing of all these securities and other instruments.

162. The legislation therefore gives the Treasury a power in subsection (3) to provide that certain categories of financial instrument cannot be admitted to the Official List. This is a reserve power to ensure that the Treasury could stop the admission to the list of financial instruments which they consider, for example, pose undue risks to investors. Subsection (4) confers powers on the Authority to make listing rules.

Section 75: Applications for listing

163. This section provides that only applications for listing which are by, or with the consent of, the issuer and meet the requirements imposed by the competent authority may be granted. The competent authority can refuse an application for listing where it considers that granting it would be detrimental to the interests of investors.

164. Subsection (3) provides that no application for listing can be entertained by the competent authority in respect of securities issued by a body of a prescribed kind. The Treasury intend to use this power to prescribe that securities issued by a private company or by an old public company (within the meaning of section 1 of the Companies Consolidation (Consequential Provisions) Act 1985) cannot be admitted to listing. This will replicate provisions in the FS Act 1986.

Section 77: Discontinuance and suspension of listing

165. Occasionally circumstances arise which mean that normal dealings in listed securities cannot take place. For example, a company may fail to comply with reporting requirements in the listing rules, so that investors and potential investors do not have sufficient information on which to make informed decisions about the company's securities in order to deal in the securities. Alternatively, a company may be in financial difficulties which it has not clarified or quantified. This section gives the competent authority the power to suspend or discontinue the listing of a company's securities in such circumstances. During a suspension, trading in the securities cannot take place on a recognised investment exchange. An issuer may refer a decision to discontinue or suspend listing to the Tribunal.

Section 78: Discontinuance and suspension: procedure

166. This section sets out the procedures to be followed by the competent authority when it suspends or discontinues the listing of any securities under section 77. The procedure is broadly similar to that which applies in the case of other supervisory decisions listed in section 395(13), and which is described in the context of section 53 above.

167. During the procedure for making representations and referring the matter to the Tribunal, it is possible for a suspension or discontinuance to be reversed. If a suspension is cancelled the securities simply remain listed. If a discontinuance is cancelled at this stage, either because the competent authority accedes to representations which are made under subsection (3)(c) or because it follows directions of the Tribunal to that effect, subsection (9) provides that the securities are regarded as being readmitted to the list as soon as the discontinuance is cancelled and without any fresh admission needing to be granted.

168. Subsections (10) to (12) set out a separate procedure which applies, after a suspension has taken effect and after the procedures for making representations and for referring the matter to the Tribunal have been exhausted, if there is a subsequent application for the suspension to be cancelled. In this case the standard warning and decision notice procedure applies as for other applications. However, at this stage in the process, a discontinuance is regarded as final and so there is no procedure for applying for it to be reversed. Instead a fresh application would need to be made for listing under section 75.

Section 79: Listing particulars and other documents

169. Under EC law, where there is an application for the listing of securities which are to be offered to the public in the United Kingdom for the first time, a prospectus must be approved by the competent authority and published. This is provided for by section 84. Where a prospectus is not required, for example because the securities have already been offered to the public or because there is an exemption (as set out in Schedule 11) the competent authority can provide that securities can only be admitted to the official list after publication of listing particulars and other documents approved by the competent authority. Listing particulars are documents which contain information on the nature and circumstances of the applicant and on the securities to be listed. The content is determined by listing rules. The existence of the power will allow investors to make informed decisions about that security.

170. Subsection (3) allows the Treasury to prescribe the persons responsible for listing particulars. The Treasury intend to exercise this power to prescribe those persons covered by section 152 of the FS Act 1986. However, the power will allow there to be some flexibility to reflect the admission of any possible types of financial instrument to the official list. This is necessary given the comprehensive nature of the statutory regime under section 74.

Section 80: General duty of disclosure in listing particulars

171. This section places a duty on those responsible for producing listing particulars to ensure that those particulars contain, at the very least, adequate information to enable investors and their professional advisers to make informed decisions about the issuer and securities in question. The competent authority can authorise the omission of certain information in certain circumstances, as set out in section 82.

Section 81: Supplementary listing particulars

172. This section provides that where there is any significant change following the submission of listing particulars to the competent authority but before dealings in the securities have started, supplementary listing particulars must be approved and published.

Section 82: Exemptions from disclosure

173. This section allows the competent authority to authorise the omission of information required by listing rules to be included in listing particulars in certain circumstances. These circumstances are set out in subsection (1); namely, that the disclosure of the information would be contrary to the public interest, would be seriously detrimental to the issuer (for example the disclosure of commercial secrets), or would be unnecessary given the kind of people who could be expected to buy or sell those securities (for example, if the securities were only dealt in by professionals).

174. Subsection (2) provides that information cannot be omitted where it would be seriously detrimental to the issuer if that information is essential in order for a person to make an informed assessment. (“Essential information” is defined in subsection (6).)

Section 83: Registration of listing particulars

175. This section requires listing rules to provide that listing particulars must be lodged with the registrar of companies on or before the date on which they are published. The same requirement applies to prospectuses because of section 86. Breach of this requirement is an offence under subsection (3), punishable by a fine.

Section 84: Prospectuses

176. This section provides that a prospectus must be published before securities are offered to the public in the United Kingdom for the first time before admission to the official list. Section 103(6) and Schedule 11 define the circumstances in which a person is to be treated as having offered securities to the public in the United Kingdom. For example, an offer is not regarded as being made, and the requirement to publish a prospectus therefore does not arise, where the offer is made to no more than 50 persons.

Section 85: Publication of prospectuses

177. This section makes it a criminal offence for a person to offer new securities to the public in the United Kingdom before a prospectus has been published. This offence only applies where listing rules require the publication of a prospectus before particular new securities are admitted to the official list.

Section 87: Approval of prospectus where no application for listing

178. Where securities are to be offered to the public in the United Kingdom for the first time and there has been no application for listing, listing rules may allow issuers to submit prospectuses to the competent authority for approval. This section refers to such prospectuses as “non-listing prospectuses”. Where such a prospectus has been approved by the competent authority, under EC law it must be recognised by competent authorities in other member States as complying with their own rules on prospectuses. Accordingly, there is no need in these circumstances to obtain further approval from another competent authority if the securities are to be issued in another member State.

Section 88: Sponsors

179. This section enables the competent authority to make listing rules requiring issuers of listed securities, or issuers seeking admission to the list, to appoint a sponsor.

180. Subsections (2) and (3) allow the competent authority to approve persons who may act as a sponsor, and to maintain a list of such persons. They also allow the relevant listing rules to specify particular services which must be performed by a sponsor (for example a sponsor might be required to certify that certain requirements for listing are met).

181. Subsections (4) to (7) apply the standard warning notice and decision notice procedure where the competent authority proposes to refuse a person's application for approval as a sponsor, or to cancel such approval, and provide the right to refer the matter to the Tribunal where a decision notice is given.

Section 89: Public censure of sponsor

182. This section permits the competent authority to make listing rules which allow it to make public statements to the effect that a sponsor has contravened a requirement imposed on him by the listing rules, subject to the warning and decision notice procedure and a right to refer the matter to the Tribunal. The power to impose financial penalties does not, however, apply to sponsors.

Section 90: Compensation for false or misleading particulars

183. This section provides that a person responsible for listing particulars (or, under this Part as applied by sections 86, 87(5) and Schedule 9, prospectuses or non-listing prospectuses) is liable to pay compensation to those who suffer loss as a result of untrue or misleading statements or the omission of any information which must be contained in those documents. There are some circumstances in which there is no liability to pay compensation. These are set out in Schedule 10.

Section 91: Penalties for breach of listing rules

184. This section gives the competent authority a power to impose financial penalties on issuers who have breached the listing rules. Under the FS Act 1986, the competent authority can issue private or public censures or suspend or cancel the listing of securities. The additional power conferred by this section is intended to provide further flexibility in this area. The competent authority will also be able to impose penalties upon present and former directors (which is defined in section 417 to include shadow directors) who were knowingly involved in a breach of the listing rules. However, it may not impose a penalty later than two years after it first became aware of the breach.

185. Section 92 sets out the procedures the competent authority must follow when imposing a penalty. The competent authority is also required to publish a statement of its policy as regards penalties (see sections 93 and 94). Before issuing or altering such a statement, the competent authority must consult on its proposals.

: Competition scrutiny

186. This section gives the Treasury a power to subject the “regulating provisions” of the competent authority (which is to say the listing rules and general guidance it produces) and its practices to a competition scrutiny regime. The Treasury proposes to use this power to create a competition scrutiny regime for the competent authority which is broadly similar to the regime for the Authority, in its role as financial services regulator, as provided for by Chapter III of Part X of the Act. The power will enable the Treasury to provide for exclusions from the provisions of the Competition Act 1998 analogous to those for which Chapter III of Part X of the Act makes provision.

187. Subsection (2) makes clear that such a regime will require the person responsible for the competition scrutiny procedure to consider whether any provision or practice, or combination of

provisions and practices, has at any time a significantly adverse effect on competition as defined in subsections (6) and (7).

Section 96: Obligations of issuers of listed securities

188. This section provides that listing rules may place obligations on issuers and may make provision for non-compliance. Subsection (2) provides that the competent authority can make listing rules which allow it to publish information which an issuer has been required but has failed to publish.

Section 97: Appointment by competent authority of persons to carry out investigations

189. This section allows the competent authority to appoint investigators if it appears to it that there are circumstances suggesting that there may have been a breach of the listing rules; that a director or former director of an issuer was knowingly concerned in a breach; or that there has been a contravention of the criminal offences in sections 83, 85, or 98. The section applies the provisions of Part XI as if the investigator were appointed under section 167(1). This means that the procedures set out in section 170 must be followed and that the investigator will have the powers set out in section 171.

Section 98: Advertisements etc in connection with listing applications

190. This section makes it an offence to issue an advertisement or other information of a kind specified in listing rules (for example an invitation to purchase securities) unless the contents have been approved by the competent authority or the issue of an unapproved advertisement or information has been authorised by the competent authority. This offence only applies where listing particulars are, or are to be, published.

191. Subsection (3) provides a defence against this criminal offence where someone reasonably believed that the advertisement had been approved or its issue authorised by the competent authority.

Section 100: Penalties

192. This section provides that the competent authority must not seek to recover its costs when imposing financial penalties. It also provides that it must operate a scheme to redistribute monies received from financial penalties to issuers. It must consult on the scheme and have regard to representations before making the scheme. The provisions of this section are analogous to those applying to the Authority more generally under paragraph 16 of Schedule 1.

Section 102: Exemption from liability in damages

193. This section gives the competent authority and its staff immunity against legal action for damages in respect of anything done or omitted in the discharge of its functions. This immunity does not apply where the act or omission was in bad faith or where it was unlawful as a result of section 6(1) of the Human Rights Act 1998. Section 6(1) of that Act makes it unlawful for a public authority to act in a way which is incompatible with a right conferred by the European Convention on Human Rights and Fundamental Freedoms which is included in Schedule 1 to the 1998 Act.

PART VII: CONTROL OF BUSINESS TRANSFERS

194. This Part provides a mechanism for transferring, with the sanction of the courts, all or part of the business of certain kinds of authorised persons. In broad terms, the mechanism covers 2 types of transfer:

- transfers of insurance business; and
- transfers of banking business.

195. The mechanism, as it relates to transfers of insurance business, replaces the arrangements under sections 49 to 52B of, and Schedule 2C to, the Insurance Companies Act 1982, which implement requirements of the EC insurance directives. Banking business transfers have usually required a private act of Parliament, which can involve a lengthy procedure and substantial cost to the firms concerned.

Section 104: Control of business transfers

196. This section establishes that the arrangements under Part VII are generally the exclusive route for giving effect to the types of transfer to which the Part applies. However, the definition of insurance business transfer schemes under section 105 provides for qualifying cross-border transfers to be approved in other member States, in accordance with the directives.

Section 105: Insurance business transfer schemes

197. This section defines the insurance business transfers covered by the new mechanism. It only applies to transfer schemes where, after the transfer, the business transferred will be carried on from an establishment in the EEA, and where prior to the transfer all or part of the business to be transferred is:

- carried on, wholly or in part, in the EEA by a “UK authorised person” (defined in subsection (8)); or
- reinsurance business and it is carried on in the UK branch of an EEA firm (see Schedule 3); or
- carried on, wholly or in part, in the United Kingdom by an authorised person who is neither a UK authorised person nor an EEA firm.

198. In each case the authorised person transferring the business must have the appropriate permission under Part IV of, or Schedule 3 to, the Act.

199. However, subsection (3) sets out a series of cases for which the new mechanism does not apply. The mechanism does not apply where the transferor is a friendly society (referred to as case 1). Such transfers are covered by provisions in the Friendly Societies Act 1992. The other cases are where the arrangements under this Part do not apply are:

- transfers of reinsurance business by UK authorised persons which have been approved by a court in another EEA State or by the relevant regulator in the State or States in which it is carried on (case 2);
- transfers of business carried on outside the EEA which do not include policies (other than reinsurance policies) against risks arising in the EEA, and which have been approved by the courts or relevant authorities in a non-EEA State (case 3);
- where each of the policyholders has consented to the transfer, in cases of reinsurance business and entities where the policyholders are ‘controllers’ (within the meaning of Part XII) of the firm or other firms in the same group, essentially “captive” insurers (case 4).

200. Subsections (5) to (7) ensure that the powers of a court to make orders under the Companies Act (and the equivalent Northern Ireland provisions) dealing with schemes for reconstruction (compromises or arrangements agreed with creditors) can apply in transfers covered by the arrangements under the Part.

Section 106: Banking business transfer schemes

201. This section enables parties to a transfer of business involving accepting deposits to apply to the court for an order sanctioning the transfer. Subsection (1) applies the arrangements under this

part to transfers of the business of authorised persons domiciled in the United Kingdom with permission to accept deposits, wherever the business is carried on. It also applies the arrangements where an overseas firm carrying on banking business in the United Kingdom transfers its business to another firm. However, the arrangements do not apply to transfers from building societies (for which separate arrangements exist under the Building Societies Act 1986) or credit unions or transfers falling within section 427A of the Companies Act.

Section 107: Application for order sanctioning transfer scheme

202. This section enables either a transferee, or the transferor, or both, to apply to the court for an order sanctioning a transfer of an insurance or banking business. Subsection (3) makes provision as to the court to which an application may be made. The appropriate court will depend on the country or territory in which the businesses are registered or have their head office.

Section 108: Requirements on applicants

203. This section confers on the Treasury a power to specify, by regulations, requirements with which firms must comply before seeking an order sanctioning a transfer under section 111. Where firms have not complied with those requirements, the court would not be able to sanction the transfer.

204. Subsection (3) confirms that regulations made under this section may include requirements to give notice and the way in which notice must be given. This may, for example, include giving notice of the proposed transfer to customers or creditors of the firm but the kinds of requirement are not limited.

205. Regulations made under this power may also specify the circumstances in which the court may decide that a firm need not comply with a requirement. This is necessary to ensure that in circumstances where a firm cannot reasonably comply with a requirement, it need not prevent a court from approving a transfer. An example where this might be necessary is in relation to a requirement to give notice to customers of the firm transferring its business to another, in circumstances where it did not have contact details for some of its customers, as sometimes happens in the case of dormant bank accounts or old life insurance policies.

Section 109: Scheme reports

206. Under this section, it is a requirement that a proposal to transfer insurance business is to be accompanied by a report by an expert. The coverage of the report may be determined by the Authority and the appointment of the expert is subject to the approval of the Authority. The purpose of this section is to ensure that the court is presented with a full and accurate report of the proposed transfer by an independent expert in order that the court may properly assess its impact, including the effect on policyholders of the authorised person in question (and any third parties who may rely on their policies).

Section 110: Right to participate in proceedings

207. This section gives the Authority and those affected by the proposed transfer a right to be heard by the court when it is considering an application under section 107. This will mean that the Authority will be able to make representations about matters which, as regulator, cause it concern. It also ensures that any person connected with either the transferor or transferee firm — including customers of either firm or their employees — may also make representations to the court about the implications for them. The court will be able to take these views into account when considering the application.

Section 107: Sanction of the court for business transfer schemes

208. This section sets out the conditions that must be met before the court may sanction a business transfer scheme. The conditions are that the transferee firm has obtained any necessary certificates, which are set out in Schedule 12, and also that court is satisfied that the firm will have the necessary authorisation to carry on that business after the transfer (unless no authorisation is required, as may be the case for some reinsurance undertakings in other territories).

209. The precise requirements imposed under the Schedule will depend on a number of factors including whether the business in question is insurance or banking business, and the location of the business (that is whether it is domiciled in the United Kingdom, another EEA member State or overseas).

210. An insurance business will require:

- a certificate about confirming that it has the necessary margin of solvency (paragraph 2 of the Schedule); and
- a certificate indicating that a host State regulator — in cases involving risks or firms located in another EEA member State — has consented (or failed to object within 3 months) to the transfer (paragraphs 3 to 5).

211. In the case of a bank it will need to produce:

- a certificate confirming that the bank has adequate resources; and
- in the case where either the transferor or transferee company is domiciled in another EEA state, a certificate confirming that the home state regulator has been informed about the transfer.

212. In deciding whether to sanction the scheme, the court must consider whether it is appropriate, in all the circumstances, to do so.

Section 112: Effect of order sanctioning business transfer scheme

213. This section makes it clear that any order of the court sanctioning a business transfer scheme may include any necessary provisions to ensure that any transfer is able to take proper effect. Accordingly, the court will be able to order either that all rights and liabilities of and against the firm whose business is being transferred become rights and liabilities of the transferee firm, or that appropriate measures are taken to extinguish or reduce such rights and liabilities.

214. A reduction may be necessary, for example, where a firm is insolvent and the transfer of business is part of a “rescue” proposal. In other cases, rights and liabilities may not be suitable for transfer and so alternative arrangements may be required, for example in the case where a bank had taken a floating charge over the assets of the firm in relation to a credit facility, where neither would be relevant to the ongoing business after the transfer.

215. These arrangements are consistent with the previous arrangements under Schedule 2C to the ICA 1982 and relevant companies and insolvency legislation.

Section 113: Appointment of actuary in relation to reduction of benefits

216. This section enables a court, in response to an application from the Authority, to appoint an independent actuary to report on a business transfer in particular circumstances. This is aimed particularly at situations where a company from which business is to be transferred is in financial difficulties and unlikely to be able to meet all of its obligations to policyholders or other creditors. By the application of insolvency law, the policyholders would only be entitled to recover a proportion of the amounts due to them.

217. Section 112 enables the court to sanction a transfer that has the effect of reducing liabilities to policyholders, since in many cases allowing the transfer to a solvent company will be preferable to leaving the policyholder to recover money due from the insolvent insurer. In practice, a transfer would most likely only be approved where the effect was no worse than if it did not go ahead. The purpose of this section is to enable the court to take an informed view about the proposed reduction in benefits, to ensure that policyholders interests are properly protected. A policyholder who suffered loss in such circumstances might be able to make a claim to the compensation scheme under Part XV of the Act.

Section 114: Rights of certain policyholders

218. This section provides that any EEA policyholders whose local law confers on them a right to cancel the policy in the event of a transfer have an adequate opportunity to exercise that right.

Section 115: Certificate for the purpose of insurance business transfers overseas

219. This section is a paving provision for Part III of Schedule 12 which enables the Authority to issue a certificate about the solvency of a UK authorised firm to which insurance business is to be transferred from overseas. Such a certificate would enable the Authority to confirm to a regulatory authority in another EEA member State or Switzerland that the transferee firm was financially sound and able to accept the business being transferred to it.

Section 116: Effect of insurance business transfers authorised in other EEA States

220. This section ensures that, where an insurance business transfer has been approved in another EEA member State in accordance with its domestic procedures, the transfer has effect in UK law. This means that where a person in the United Kingdom has an insurance policy with an EEA company whose business is in another member State, their contract is transferred so that the policyholder continues to enjoy the same rights and to be subject to the same obligations against the new company as they did against the company that issued the original policy.

Section 117: Power to modify this Part

221. This section allows the Treasury by regulations to modify the arrangements in relation to prescribed categories of transfer (for example, to ensure sufficient flexibility to allow for possible exclusions where transfers were subject to approval procedures in overseas jurisdictions). This section also allows the Treasury by regulations to amend the provisions of this Part to provide for its more effective operation.

PART VIII: PENALTIES FOR MARKET ABUSE

222. This Part confers power on the Authority to impose penalties for market abuse or to publish a public statement that someone has engaged in market abuse. The Act sets out the kinds of behaviour which will constitute market abuse and places a duty on the Authority to produce a code which will help to determine whether particular behaviour amounts to market abuse. This code will carry evidential weight, and in certain circumstances will provide a defence, or “safe harbour”, against allegations of abuse. This Part also gives the Treasury the power to prescribe the coverage of the regime by specifying both the markets and the investments traded on those markets to which it applies. It sets out the procedures the Authority must follow when proposing to impose a penalty. It also confers a right to refer a decision to impose a penalty to the Tribunal.

Section 118: Market abuse

223. This section sets out the behaviour which constitutes market abuse. It also confers on the Treasury an order-making power to specify which markets and which investments come within the scope of this section.

224. Subsections (1) and (2) set out the conditions which must be satisfied before behaviour can be regarded as market abuse (and a penalty possibly imposed or statement published). In order to be abuse the behaviour must:

- take place in relation to qualifying investments traded on a market to which the section applies;
- be behaviour of a particular kind, as set out in subsection (2); and
- be behaviour which is likely to be regarded by a regular user of the market as a failure on the part of the person (A) engaged in the behaviour to observe the standards which the regular user would reasonably expect of a person in A's position. The regular user of the market is defined in subsection (10) to be a reasonable person who regularly deals on the market. He is intended to represent the distillation of the standards expected by those who regularly use the market.

225. There are three kinds of behaviour set out in subsection (2). Broadly speaking, these are that the behaviour is based on information not generally available to the rest of the market; that the behaviour is likely to give the regular market user a false or misleading impression; or that the regular user would be likely to regard the behaviour as behaviour which would distort the market.

226. Subsection (6)(a) brings behaviour which takes place in relation to the subject matter of investments within the definition of behaviour which can be caught by these provisions. This means that, for example, behaviour in relation to a precious metal which affects the price of a futures contract in the metal can potentially be caught by these provisions if it is behaviour which falls within all of the tests set out above. Subsection (6)(b) also brings investments within the regime which are not themselves qualifying investments for the purposes of this section, but which are derivatives of a qualifying investment (for example options on options); or whose price or value is expressed by reference to the price or value of qualifying investments, for example spread bets. Subsection (8) allows the Authority to provide that behaviour conforming with a particular rule or rules does not amount to market abuse.

Section 119: The code

227. This section places a duty on the Authority to prepare and issue a code which will allow it to set out the kinds of behaviour which, in its opinion, amount or do not amount to market abuse. The purpose of this code is to give guidance as to whether or not behaviour is abusive.

228. Subsection (2) makes clear that the code may describe behaviour which, in the opinion of the Authority, either does or does not amount to abuse. (Section 122 provides that a statement in the code that a particular type of behaviour is not an abuse is conclusive evidence of this fact.) It may also set out factors which, in the Authority's opinion, should be taken into account when determining whether an abuse has occurred. An example of such factors might be an individual's expertise or the fact that someone holds a position of particular responsibility. Subsections (6) to (8) place the Authority under a duty to publish the code (including any amended or replacement version under subsections (4) and (5)). The Authority must consult on its proposed code, or on proposed alterations or replacements under section 121.

Section 120: Provisions included in the Authority's code by reference to the City Code

229. This section enables the Authority to include in the code produced by it under section 119 “safe-harbours” from proceedings for market abuse for behaviour in conformity with the City Code on Takeovers and Mergers produced by the Panel on Takeovers and Mergers. If the Authority includes any such provisions, then behaviour which complies with those provisions does not amount to market abuse (as a result of section 122(1)). The approval of the Treasury is required under subsection (2) before it can do so.

230. In considering whether market abuse has taken place, subsection (3) requires the Authority to keep itself informed as to the way in which the Panel interprets and administers the relevant provisions of the City Code.

Section 122: Effect of the code

231. Subsection (1) provides a safe harbour, by making it clear that if a person undertakes any behaviour which the code currently in force specifically states does not amount to market abuse, then he cannot be taken for the purposes of the Act to have abused the market. Subsection (2) makes clear that in other circumstances the code may be relied upon insofar as it indicates that the behaviour in question does or does not amount to market abuse.

Section 123: Power to impose penalties in cases of market abuse

232. This section allows the Authority to impose a monetary penalty on any person, whether an authorised person or not, who has engaged in market abuse or has required or encouraged another to engage in market abuse. Subsection (3) allows the Authority, as an alternative to imposing a penalty, to publish a public statement that a person has engaged in market abuse or has required or encouraged another person to do so. Subsection (2) provides that the Authority cannot impose a penalty or make a statement where a person has reasonable grounds for believing his behaviour did not constitute market abuse or that he was not requiring or encouraging another to engage in market abuse, or where the person concerned took all reasonable precautions and exercised all due diligence to avoid doing such things. The procedures for taking action under this section are set out in sections 126 and 127.

Section 124: Statement of policy

233. This section places a duty on the Authority to prepare and publish a statement of its policy in respect of penalties under section 123. The Authority will be able to set out in this document the circumstances in which it might impose a penalty and factors it will take into account in deciding what level of penalty to impose.

234. Subsection (2) requires that the Authority's policy for determining the amount of a penalty must take into account the effect and seriousness of the behaviour, whether or not it was deliberate or reckless and whether the person who engaged in the abuse was an individual. The Authority may also take into account other matters it considers appropriate. The Authority must consult on the initial version of the statement and on any subsequent changes as provided for in section 125. Subsection (3) requires the Authority to include in the statement an indication of when the Authority is to be expected to regard a person as benefiting from section 123(2). Subsection (6) makes clear that the Authority must then have regard to a statement issued under this section when using its powers.

Section 128: Suspension of investigations

235. This section allows the Authority to direct a recognised investment exchange or recognised clearing house not to conduct an inquiry or to stop any inquiry it is already undertaking where the

Authority is, or is considering, carrying out an investigation itself, or imposing a penalty on a person for market abuse.

Section 129: Power of court to impose penalty in cases of market abuse

236. This section allows the Authority to apply to the court to impose a penalty for market abuse where the court is considering whether to grant an injunction under section 381 or order restitution under section 383 in a case of market abuse.

Section 130: Guidance

237. This section allows the Treasury, with the approval of the Attorney General and the Secretary of State, if the need arises, to issue guidance to the relevant prosecuting authorities (as set out in subsection (3)). The purpose of this guidance would be to help those authorities in deciding whether a case should be subject to criminal prosecution, or the imposition of penalties under the market abuse provisions, in the area of overlap between these provisions and the criminal offences of insider dealing (in the Criminal Justice Act 1993) and misleading statements and practices (in section 397). Subsection (5) confers a power on the Lord Advocate to issue equivalent guidance in relation to Scotland, where there are different arrangements for prosecution of offences.

PART IX: HEARINGS AND APPEALS

238. This Part establishes the Financial Services and Markets Tribunal. Various sections in the Act provide a right to refer a matter to the Tribunal once the Authority has notified the person concerned of its decision. This Part sets out the procedural framework for referrals to the Tribunal and for appeals from the Tribunal to the Court of Appeal, or in Scotland to the Court of Session, on a point of law. The Part gives the Lord Chancellor a general power to make rules for the Tribunal's operation. Schedule 13 sets out further details of the Tribunal's constitution and operation.

239. This Part also confers on the Lord Chancellor a power to establish a scheme to provide subsidised legal assistance in proceedings before the Tribunal for individuals on whom the Authority seeks to impose a penalty for market abuse under Part VIII of the Act.

Section 132: The Financial Services and Markets Tribunal

240. This section establishes the Tribunal and gives the Lord Chancellor the power to set its procedural rules. The Council on Tribunals is given oversight of the new Tribunal under the Tribunal & Inquiries Act 1992. Schedule 13 sets out requirements for the appointment of the President of the Tribunal, and the "panel of chairmen" panel and lay panel from which members of the Tribunal will be drawn. It includes provision for their qualifications and terms of office. It also permits the appointment of a Deputy President and administrative staff. It further provides power for the Tribunal to summon witnesses and to award costs. Subsection (3) contains the power for the Lord Chancellor to make rules for the Tribunal. Paragraph 9 of Schedule 13 sets out examples of the aspects of the Tribunal's procedures which might be covered by the Lord Chancellor's rules (such as when hearings might be held in private). Subsection (4) provides that this does not limit the Lord Chancellor's power.

Section 133: Proceedings: general provision

241. This section sets the time limit for making a reference to the Tribunal. The time limit is 28 days from the date of the decision notice or supervisory notice, unless a different period is prescribed in the procedural rules made for the Tribunal by the Lord Chancellor under section 132. The Tribunal will also have discretion to allow references to be made after the time limit has expired, subject again to any provision in the Tribunal's procedural rules.

242. The section also makes clear that the Tribunal may hear any evidence it considers relevant in determining the case before it, including evidence that was not available to the Authority when it made its decision. The Tribunal must determine what action the Authority should take and may give directions to the Authority in order to give effect to its determination. The Tribunal may also make recommendations as to the Authority's rules and procedures.

243. A supervisory notice takes effect on the date it specifies. However, subsection (9) provides that the Authority may not take the action referred to in a decision notice until the time for making a reference to the Tribunal has expired or, if the case is referred, until the case has been finally disposed of, including any subsequent appeals to the Court of Appeal, Court of Session or House of Lords (see section 137 below). An order of the Tribunal may be enforced as if it were an order of a county court in England, Wales or Northern Ireland, or the Court of Session in Scotland.

Section 134: Legal assistance scheme

244. This section gives the Lord Chancellor the power to make regulations establishing a legal assistance scheme. It sets out the coverage that such a scheme should have, namely that a person should only be eligible for legal assistance if he is an individual who has referred a decision of the Authority to impose on him a penalty for market abuse and provided that he meets the eligibility criteria which are to be established under section 135(1)(d).

Section 135: Provisions of the legal assistance scheme

245. This section gives examples of the type of provision the Lord Chancellor may include in the regulations, for example:

- the form legal assistance may take;
- the persons who may be engaged to provide the assistance;
- eligibility criteria; and
- procedural details as to how an application is made, to whom, and as to what happens when assistance is granted.

Section 136: Funding of the legal assistance scheme

246. This section sets out the way in which the legal assistance scheme is to be funded. It will be a free-standing scheme rather than an extension of legal aid and will be paid for by levies raised from authorised persons. The Lord Chancellor will determine the potential or actual cost of the legal assistance scheme. The Authority will have responsibility for determining the distribution of levies across the regulated community, collecting them and paying them over to the Lord Chancellor's Department.

247. The money raised will be paid into the Consolidated Fund. Spending on the legal assistance scheme will be voted expenditure. The costs of administering the scheme will come out of the running costs of the Tribunal.

248. If the amount paid to the Lord Chancellor in any one year exceeds the cost of the legal assistance scheme (for example because the costs in that period prove to be lower than anticipated), he must decide either to repay the excess to the Authority or else take into account this amount in the next determination of costs, by reducing the amount which the Authority has to levy during the following year. If the excess amount is repaid to the Authority, the Authority has discretion whether to distribute the money amongst those persons upon whom the levy was imposed (or some of them) to offset it against future invoices, or else partly to distribute the amount and partly offset it. This enables the Authority to avoid costly redistribution of small amounts. If the Authority considers

that it is not practicable to deal with an excess in any of these ways, it may obtain the permission of the Lord Chancellor to use it in some other appropriate manner.

Section 137: Appeal on a point of law

249. This section establishes the right to appeal to the Court of Appeal or Court of Session on a point of law against a decision of the Tribunal. An appeal may be brought only with the permission of the Tribunal or the appeal court. If the appeal court considers that the decision is wrong in law it may remit the matter back to the Tribunal for a rehearing and decision or make a decision itself. An appeal may be made from the Court of Appeal or Court of Session to the House of Lords with the leave of the Court or the House of Lords. The Lord Chancellor may make procedural rules in relation to the exercise of these appeal rights.

PART X: RULES AND GUIDANCE

250. This Part of the Act confers powers upon the Authority and the Treasury to set regulatory requirements for authorised persons. It also gives the Authority power to issue guidance on requirements imposed by or under the Act.

Chapter I: Rule-Making Powers

251. Chapter I concerns the Authority's basic rule-making powers, the purpose for which rules can be made and the scope of the powers. There are other rule-making powers for specific purposes in relevant parts of the Act, including Parts XV, XVI, XVII, XX and XXII. This Chapter also sets out the relevant procedural requirements when making rules.

252. Parts V, VIII, XIX, and XX also contain specific powers which enable the Authority to impose requirements on particular classes of person. For example, through statements of principle, codes of practice and directions on approved persons; on any person in relation to market abuse; on members of Lloyd's; and on members of the professions. Those powers are described in the relevant Parts of these explanatory notes.

Section 138: General rule-making power

253. This section confers a power on the Authority to make rules applying to authorised persons with respect to their carrying on of regulated and unregulated activities. Rules made under this section are referred to as “general rules” and can only be made to protect the interests of consumers. There need not be a direct relationship between the authorised persons to whom the rules apply and the consumers who are protected by the rules — so, for example, the Authority will be able to make rules under this section to protect the interests of beneficiaries of trusts, to further market integrity, as required by the Investment Services Directive, or to protect against systemic risk.

254. The bulk of the Authority's handbook of rules and guidance will be constructed using the rule-making power in this section. The power will also enable the Authority to make other rules, including rules relating to firms' systems and controls and rules regulating the conduct of firms' business with customers. These could, for example, include “know your customer” rules and “disclosure” requirements.

255. The provisions in this section enable the Authority to make rules at differing levels of detail, from rules with a high level of generality, which the Authority refers to as principles, to detailed conduct of business provisions.

256. Sections 152 to 155 set down the procedural requirements which the Authority must follow when making rules.

Section 139: Miscellaneous ancillary matters

257. This section elaborates on the provisions which the Authority can make under the rule-making powers. It expressly enables the Authority to make rules in respect of the handling of client money by authorised persons. The rules could be used to require money to be held in trust.

258. This section also allows the Authority to make rules which require authorised persons to allow customers a “cooling off” period after entering into an agreement. For example, under section 76 of the ICA 1982, persons entering long-term insurance contracts have 14 days in which to cancel the policy and recover any premium paid. This section would allow the Authority to make rules requiring authorised persons to extend similar rights to customers.

Section 141: Insurance business rules

259. This section empowers the Authority to make insurance business rules prohibiting an authorised person who has permission to deal in contracts of insurance from carrying on a specified activity, which may be a non-regulated activity.

260. Subsection (3) enables the Authority to make rules in relation to contracts of long-term insurance entered into by an authorised person in the course of carrying on his business, in particular restricting the descriptions of property, or indices of value, by reference to which the benefits under such contracts may be determined.

Section 142: Insurance business: regulations supplementing Authority's rules

261. This section enables the Treasury to make regulations applicable to non-authorised persons connected with authorised persons with permission in relation to contracts of insurance, preventing them from taking actions which would weaken the effect of “asset identification rules” made by the Authority under the powers in this Part. Breaches of these regulations are subject to criminal sanctions.

262. Subsection (3) gives the Treasury powers to make regulations which would prevent a company paying dividends or creating a mortgage or charge over its property, and which would make void any mortgages or charges made, in breach of those regulations.

Section 143: Endorsement of codes etc

263. This section confers a power on the Authority to make rules endorsing the City Code on Takeovers and Mergers (“the Takeover Code”) and the Substantial Acquisition Rules (“SARs”), or particular provisions of them.

264. This section provides a mechanism enabling the Authority to exercise its disciplinary powers over authorised persons for a breach of the endorsed provisions of the Takeover Code or SARs. The arrangements are designed to ensure that an adviser will cease to act where the Takeover Code or SARs have been breached. Subsections (3) and (4) have the effect that disciplinary or intervention powers in respect of endorsed provisions may be taken by the Authority if the Takeover Panel has requested it to do so.

265. Before making rules which endorse the Takeover Code or the SARs, the Authority must follow the usual procedures set out in section 155 for consulting on a draft of the proposed rules. By applying relevant provisions of section 155, subsection (8) of this section also requires the Authority to consult if it wishes to give a notification to the Takeover Panel that it considers the Panel's own consultation procedures are satisfactory. If the Authority does give such a notification, the effect

under subsections (6) and (7) is that the Authority's endorsement of the Code or SARs extends automatically to subsequent amendments of the Code or SARs.

Section 144: Price stabilising rules

266. This section allows the Authority to make rules regarding actions which may be taken by authorised firms to stabilise the price of investments. Section 397(4) and 397(5)(b) provide that a person who is alleged to have created a false or misleading impression as to the market in certain investments has a defence to a charge under that section (such as misleading statements) if he proves that he was acting in conformity with rules made under this section.

267. Subsection (5) provides that the Authority may make rules which provide a similar defence to persons who have stabilised investments in compliance with the price stabilisation rules of an overseas body which is specified by the Authority. If an overseas body which is specified under this section changes its rules, the amended body's rules will be taken by the Authority to be endorsed under this section if the Authority has confirmed that it is satisfied with the overseas body's consultation procedures.

268. Subsection (4) confers on the Treasury a power to make regulations setting the outer boundaries of the Authority's power to make price stabilising rules.

Section 145: Financial promotion rules

269. This section confers a power on the Authority to make rules applying to authorised persons in relation to the regulation of financial promotion under Parts II and XVII of the Act.

270. Subsection (3) enables the Treasury to restrict this power.

Section 147: Control of information rules

271. Subsection (1) enables the Authority to make rules about the disclosure and use of information held by an authorised person. These rules are commonly known as "Chinese walls" rules. Chinese walls are barriers in the form of procedures, systems, management and physical separation which firms may employ in order to ensure that information obtained by one part of a firm is not communicated in inappropriate circumstances to another part of the firm (for example, where it would advantage one client at the expense of another). This power is broadly in line with that currently contained in section 48(2)(h) of the FS Act 1986.

272. Under subsections (2)(a) and (c), rules may require that information be withheld or not used for a customer's benefit where it would otherwise have to be disclosed or used, while subsections (2)(b) and (d) provide that rules may specify circumstances in which an authorised person may withhold or not use information which would otherwise have to be disclosed or used. This means that, if an authorised person maintains Chinese walls in accordance with Authority rules made under the section, then he will not be subject to obligations as to the disclosure and use of information that would otherwise apply.

Section 148: Modification or waiver of rules

273. This section concerns the power of the Authority to waive or modify certain kinds of rules, as set out in subsection (1), at the request of an authorised person or with their consent. Subsection (4) specifies the circumstances in which the Authority may waive or modify these rules.

274. Waivers or modifications of rules can have indefinite effect or can be revoked by the Authority. Breaches of conditions attached to a waiver or modification are equivalent to a breach of rules.

275. Subsections (6) and (7) concern the obligation on the Authority to publish rule waivers or modifications. They provide that the Authority must publish waivers or modifications in such a way as to bring them to the attention of the people who are likely to be affected, unless the Authority thinks it would be inappropriate to do so. In considering whether publication would be appropriate, the Authority should take into account whether it believes that publication would unreasonably prejudice the authorised person's commercial interests or contravene any international obligations of the United Kingdom. The Authority would also need to take into account whether a breach of the rule in question would give rise to a right of action by a person under section 150. Persons affected by the modification or waiver will include clients of the authorised person and other authorised persons who might wish to benefit from similar arrangements.

276. In deciding whether certain of the conditions for withholding publication are met, subsection (8) requires the Authority to consider whether it can publish a waiver or modification of a rule without disclosing the identity of the authorised person concerned.

Section 149: Evidential provisions

277. This section enables the Authority to make rules which, if breached, will not lead to any disciplinary or other sanction provided for under the Act. Rules made under this section must state that they will not give rise to sanctions under the Act, but they must also indicate that their contravention can be relied on as indicating that another rule has been contravened, or that compliance with the rule can be relied on as indicating that another rule has been complied with. In particular, this power will enable the Authority to elaborate on rules, including principles, which are framed at a higher level of generality. The power can be used to promulgate codes, such as a code of practice, whereby rules comprising the code carry evidential status as to whether a higher level principle, which is underpinned by the code, has been breached.

Section 150: Actions for damages

278. This section sets out the circumstances in which persons who suffer loss as a result of a rule breach by an authorised person have a right of action for damages for resulting losses. This section does not remove any common law cause of action which a person might otherwise have. It allows a class of people to recover losses just by showing that there has been a breach of a rule as a result of which they have suffered loss rather than having to rely on that breach as evidence of negligence.

279. The section creates a presumption that private persons (as defined by the Treasury) who suffer loss as a result of a rule breach have a right of action for damages. The right does not extend to breaches of financial resources rules, listing rules or other rules which may be specified by the Authority. Customers would only generally suffer loss as a result of a breach of financial resources rules if the authorised person concerned became insolvent. In those circumstances, the relevant person's rights in the insolvency would not be altered by a separate right of action. Additionally, it might not be appropriate to attach a right of action to certain other rules, such as those drawn at a high level of generality.

280. There is a presumption that persons other than private persons do not have a right of action for damages, although the Treasury may by regulations specify that breaches of certain rules are actionable by non-private persons.

Section 151: Limits on effect of contravening rules

281. Breach of the Authority's rules does not make a person guilty of an offence, nor does it make a transaction unenforceable or void.

Section 152: Notification of rules to the Treasury

282. This section places a requirement on the Authority to give copies of new rules to the Treasury or, when it amends or revokes a rule, to give written notice of the fact to the Treasury.

Section 153: Rule-making instruments

283. This section requires the Authority to publish its rules in writing. As a result of subsection (3), if rules do not specify the power under which they are made, they will not have effect.

Section 155: Consultation

284. This section imposes consultation requirements on the Authority when it proposes to exercise its rule-making powers. Generally, draft rules issued for consultation must, as a result of subsection (2), be accompanied by a cost-benefit analysis of the proposals, an explanation of the purpose of the proposed rules and a statement that representations about the Authority's proposals may be made to the Authority within a specified time. They must also be accompanied by a statement of the Authority's reasons for believing that the proposed rules are compatible with its objectives.

285. Subsection (4) provides that the Authority must have regard to representations made to it when consulting on proposals to make rules. Subsections (5) and (6) provide that if the Authority decides to make the rule, it must give a feedback statement on the representations it received. If the rules which are introduced differ significantly from those which the Authority consulted on, the Authority must publish a statement of that fact, together with a cost-benefit analysis concerning the new provisions.

286. The Authority does not have to prepare a cost-benefit analysis when it considers that its proposals will not result in a material increase in costs. It would, however, still need to consult on the content of the proposed rules. Also, where the Authority proposes to exercise its powers to charge fees, the requirement to produce a cost-benefit analysis does not apply but the Authority is required to consult on the proposed expenditure which would result from the fee-raising exercise. Part III of Schedule 1 contains further provisions regarding the Authority's fee-raising powers.

287. Consultation requirements will not apply if the Authority considers that any delay resulting from the consultation would harm consumers.

Section 156: General supplementary powers

288. This section confirms that the Authority's rules may make different provision for different cases and that the rules may make incidental, supplemental, consequential and transitional provisions.

Chapter II: Guidance

289. Chapter II concerns the Authority's power to issue and charge for guidance on its rules, the legislation and other matters relating to its functions, including its regulatory objectives.

Section 157: Guidance

290. This section enables the Authority to issue and charge for guidance on all the matters listed in subsection (1).

291. Subsection (2) confirms that the Authority can use its financial resources or its other resources to support the giving of information and advice by third parties where the Authority considers it could have given the advice or information under this section.

292. Subsection (3) provides that when giving guidance on its rules which is intended to have broad application, the Authority will need to meet various of the requirements of section 155, including those requiring consultation and the publication of a cost-benefit analysis. Subsection (4) clarifies that the Authority can charge for its guidance, whether it is offered generally or in response to a specific request.

Chapter III: Competition Scrutiny

293. Chapter III provides for competition scrutiny of the Authority's rules, guidance, codes and practices.

Section 160: Reports by the Director General of Fair Trading

294. This section concerns reports by the DGFT on possible adverse effects on competition of the Authority's regulating provisions and practices. A significant adverse effect on competition is defined in section 159(2) and (3). It includes things which have the effect of requiring or encouraging exploitation of the strength of a market position.

295. Subsection (1) provides that the DGFT must keep the Authority's practices and regulating provisions (which are defined in section 159 and include rules, guidance and codes) under review. The DGFT can, at any time, investigate the Authority's practices and regulating provisions under the powers conferred by section 161.

296. Following an investigation, if the DGFT finds that regulating provisions or practices, either singly or in combination, have a significant adverse effect on competition then he must produce a report. The DGFT has discretion as to whether to produce a report or not if he finds that there is no such effect.

297. Subsections (5) and (6) provide that the DGFT must send a copy of any report he produces to the Competition Commission (the "Commission"), the Treasury and the Authority. The DGFT must, so far as is practicable, exclude from the published version of the report any matter which relates to the affairs of a person which might seriously prejudice that person's interests. (Subsection (9) provides that such matters do not need to be excluded from the version which goes to the Commission, the Treasury and the Authority.)

Section 161: Power of Director to request information

298. This section provides that, in carrying out his functions under section 160, the DGFT has powers to request relevant documents from any person, and to request relevant information from any business.

299. Subsections (5) and (6) provide that if a person fails to produce a required document, or piece of information, then the DGFT may report the matter to the court, and if the court is satisfied that there was no reasonable excuse for this failure, that person may be dealt with as if he were in contempt of court.

Section 162: Consideration by the Competition Commission

300. This section concerns the role and duties of the Competition Commission following receipt of a report from the DGFT. It is supplemented by the provisions of Schedule 14.

301. There are two types of report which the Commission must consider under this section and on which it must produce a report. The first is a report by the DGFT which concludes that particular regulating provisions or practices of the Authority have a significantly adverse effect on competition (type A). The second is a report by the DGFT which concludes that particular regulating provisions

or practices do not have such an effect, but where the DGFT has referred the matter to the Commission for further consideration (type B). (If the DGFT does not ask the Commission to consider a type B report, then that is the end of the matter.)

302. Subsection (4) provides that the Commission's report must state its conclusions as to whether the regulatory provisions or practices have a significantly adverse effect on competition. If it concludes that there is no such effect (that is, it agrees with a type B report or disagrees with a type A report), then that is the end of the matter. No further action can be taken.

303. If, however, the Commission concludes that there is such an effect, then subsection (5) requires it to state in its report whether it considers that the effect is justified. In taking this decision, subsection (7) requires the Commission, as far as is reasonably possible, to reach a conclusion which the Authority could have reached given the obligations which the Act places on the Authority and the functions which it confers. In its report, the Commission has to state what action, if any, ought to be taken by the Authority in the light of the unjustified anti-competitive effect. This could include the Authority changing its rules or practices in specified ways.

304. Any report produced by the Commission under this section has to be sent to the Treasury, the Authority and the DGFT. Subsection (2) provides that the Commission does not need to produce a report where there has been a change of circumstances which makes it unnecessary. For example, the Authority may, once it has received the DGFT's report, change the rule in question, or stop engaging in a particular practice, so that the adverse effect on competition identified by the DGFT is removed.

Section 163: **Role of the Treasury**

305. This section concerns the Treasury's powers to take action following an adverse report from the Commission.

306. If the Commission's report is that the significantly adverse effect on competition is not justified, subsection (2) requires the Treasury, unless exceptional circumstances exist, to direct the Authority to take appropriate action. Subsection (4) provides that the Treasury must have regard to the Commission's conclusion as expressed in its report. The special circumstances in which the Treasury do not have to direct the Authority to make changes following an adverse Commission report are where:

- the Authority has already taken action, for example through changes to its rules or practices, which means that the Commission's recommendations are no longer relevant; or
- the Treasury concludes that the existence of exceptional circumstances mean that it would not be appropriate or necessary to direct the Authority to make changes. For example, the Treasury may conclude that there would be a grave risk to the financial system if certain regulating provisions were changed.

307. Subsection (7) provides that the Authority cannot be directed by the Treasury to take any action which it would not have the power to take itself. If the Commission were to recommend changes which did not, for example, provide an appropriate level of protection for consumers, the Treasury could not direct the Authority to make those changes.

308. If the Commission's view is that a significantly adverse effect is justified, subsections (5) and (6) allow the Treasury to override that decision and direct the Authority to make changes where there are exceptional circumstances, for example, in order to meet international obligations.

309. Subsections (10), (11) and (12) provide that if the Treasury decide, because of exceptional circumstances, not to take action following a Commission report that a regulating provision or practice has an adverse effect on competition, or decide to take action in the opposite case, they must produce a statement giving their reasons. Any such statement must be made available to the public and must be laid before Parliament.

Section 164: **The Competition Act 1998**

310. This section makes clear that neither the prohibition in Chapter I (of agreements preventing, restricting or distorting competition within the United Kingdom) nor the prohibition in Chapter II (of abuse of a dominant position in a market which may effect trade in the United Kingdom) of the Competition Act 1998 apply to any action taken by a person in order to comply with the Authority's regulating provisions or practices.

PART XI: INFORMATION GATHERING & INVESTIGATIONS

311. This Part sets out the powers of the Authority to require the production of information and documents, to require reports to be compiled, to conduct investigations and to obtain access to premises. Many of these powers are also held concurrently by the Secretary of State in recognition of his wider responsibilities in relation to company law.

312. The powers provided for in this Part are in addition to the specific powers conferred on the Authority by other provisions of the Act to request information from unauthorised persons in particular circumstances, such as in connection with an application for authorisation or recognition. They enable the Authority to require information on an ad hoc basis and therefore supplement the Authority's ability to make rules requiring authorised persons to provide it with information on a routine basis under its general rule-making power (section 138).

313. Under section 177, failure to comply with any requirement imposed using any of the powers in this Part can be certified to the court and dealt with by the court as if the defaulter were in contempt.

314. None of the powers in this Part may be used to require the disclosure of material which is protected by section 413.

Section 165: **Authority's power to require information**

315. This section gives the Authority a general power to require information or documents which may reasonably be required in connection with the discharge of its functions under the Act. The information or documents may be required from any person, including a legal person, who is any of the following:

- an authorised person;
- a formerly authorised person;
- a person connected with an authorised person, as defined in subsection (11);
- an operator, trustee or depository of an open-ended investment company;
- a recognised investment exchange;
- a recognised clearing house.

316. Either the Authority can write to the person asking for the production of the information or documents within a reasonable timescale, or it can send an officer to whom it has given written authorisation. The person is required to provide the information or documents without delay, and he may also be required to take any reasonable steps the Authority may specify to verify the information provided.

Section 166: Reports by skilled persons

317. This gives the Authority the power to require an authorised person or a formerly authorised person to commission and provide the Authority with a report into any relevant matter the Authority may specify. This must be a matter about which the Authority could require information under section 165, so the report must reasonably be required in connection with the discharge of the Authority's functions.

318. The power also enables the Authority to require such reports from other persons carrying on a business who are, or were, connected to the authorised or formerly authorised person in the ways specified in subsection (2). Essentially, these are members of the same group of companies, or companies closely linked through a common shareholder, or any partnership of which the authorised or formerly authorised person is or was a member. This is a more limited set of persons than under section 165 and Schedule 13.

319. The person making the report must be nominated by the Authority, or his appointment must be approved by it. The Authority has to be satisfied that he has the relevant skills to report on the matter concerned. In many cases this person may be an accountant, or they may be a person with some other suitable professional qualification, such as a lawyer or an actuary, or they may be a person with particular commercial or professional experience, such as a banker. The Authority may also specify the form of the report.

320. Subsection (5) imposes an obligation on any in-house expert working for the authorised or connected person to co-operate with the person appointed to produce the report. Thus, if the report is to be produced by an actuary then the in-house actuary who works for the firm is obliged to co-operate in the production of the report. This duty is enforceable by the Authority through an injunction, or a comparable order in Scotland.

Section 167: Appointment of persons to carry out general investigations

321. Under this section, either the Authority or the Secretary of State (the "investigating authority") may, where it appears that there are good reasons for doing so, appoint competent persons to conduct an investigation on their behalf into the business of an authorised person or appointed representative, or into the ownership or control of an authorised person. An "appointed representative" is a person who is exempt from the general prohibition in relation to particular regulated activities by virtue of a contract with an authorised person as described under section 39. An appointed representative and the authorised person who is the principal of that representative as a result of the contract may be investigated at the same time. An investigation may also be made into a formerly authorised person or a former appointed representative, although the scope of such investigations is limited by subsection (4) to the business they conducted while they were authorised or appointed or under the control or ownership of the former authorised person at that time. Written notice must be given to the person under investigation under section 170(2).

322. The people appointed to conduct the investigation may be employees of the investigating authority (under section 170(5)), or other people engaged specifically for the purpose. If they judge it necessary for the purposes of the investigation, they may also inquire into the business of other connected companies or partnerships, including those which were connected at some relevant time in the past (this extends to the same classes of connected company or partnership as section 166). The investigator(s) must give written notice to any other company or partnership whose business they intend to inquire into in this way.

Section 168: Appointment of persons to carry out investigations in particular cases

323. In addition to the general power under section 167 to investigate the business of authorised persons and appointed representatives where there is “good reason” to do so, this section gives the Authority or the Secretary of State (“the investigating authority”) the power to appoint competent persons (who can be employees of the investigating authority) to conduct investigations where it appears that there are circumstances suggesting that some specific contravention or offence may have taken place. The more specific grounds for the exercise of the powers under this section are reflected in the wider powers of the investigators (see notes on sections 171 to 173 below).

324. Among the contraventions that may be investigated by either the Authority or the Secretary of State under this section are a breach by an unauthorised person of the general prohibition, the commission of the misleading statements and practices offence under section 397, market abuse under section 118, or insider dealing under Part V of the Criminal Justice Act 1993. The Authority, but not the Secretary of State, may also launch an investigation under this section where a person is suspected of having committed an offence under prescribed money laundering regulations.

325. The Authority may also appoint investigators under this section to look into suspected contraventions of rules or regulations made under the Act, failures to comply with statements of principle made under section 64, or to investigate the fitness and properness of approved persons under Part V of the Act. The fitness and properness of authorised persons may be investigated under section 167.

Section 169: Investigations etc in support of overseas regulator

326. This section gives the Authority new powers comparable to those held concurrently by the Treasury and the Secretary of State under section 82 of the Companies Act 1989 to investigate matters on behalf of an overseas regulator. In deciding whether it is appropriate to exercise this power to require information or to appoint investigators on behalf of an overseas authority, the Authority is directed to take account of the factors listed in subsection (4), which include the seriousness of the case and the wider public interest in providing the assistance.

327. When the request comes from another competent authority under any of the single market directives (see the notes on Schedule 3 for a brief explanation), the Authority is also required to consider whether the assistance must be given in order to fulfil the obligations to co-operate imposed by those directives. If it decides that it is, the other factors fall away.

328. The Authority may make the exercise of the power conditional on the overseas authority making an appropriate contribution towards the cost of doing so, except where it considers that exercise is necessary in order to fulfil the obligations to co-operate under the directives.

329. Under subsection (7), the Authority may decide to permit representatives to attend and participate in any interview to be conducted by the investigators it has appointed. But in order to permit this, the Authority is required to be satisfied that the information thus obtained by the overseas regulator will be subject to equivalent safeguards on its subsequent use and disclosure as are contained in Part XXIII of the Act. The Authority must also prepare a statement of its policy on the exercise of this discretion, which must be approved by the Treasury and, if approved, published. The discretion may not be exercised until this statement has been approved and published.

Section 170: Investigations: general

330. Where an investigation has been launched into a person under section 167 or 168, the Authority or the Secretary of State (whichever is the investigating authority) must notify that person that the investigator has been appointed. They must also inform the person under investigation of the reason

for the appointment, and the particular provisions of the Act under which the appointment has been made.

331. However no notification is needed for investigations under section 168 into possible insider dealing, market abuse or misleading statements and practices, or into contraventions of the general prohibition under section 19, the financial promotion prohibition under section 21 or the prohibition on promoting collective investment schemes under section 238, since in those cases the investigator may not know the identity of the perpetrator or may be looking into market circumstances at the outset of the investigation rather than investigating a particular person. Nor is notification required if the investigating authority believes that it would be likely to result in the investigation being frustrated.

332. Subsection (5) allows employees of the investigating authority to act as investigators under this Part of the Act.

333. Subsections (7) and (8) allow the investigating authority to control the scope, timetable and form of the investigation by issuing directions to the investigator(s). Any directions must be notified to the person under investigation under subsection (9) except for those types of investigation where initial notice is not required, or where the investigating authority believes that notification would be likely to result in the investigation being frustrated.

Section 171: Powers of persons appointed under section 167

334. This section establishes the powers of investigators appointed under the general investigations power to require people to attend before them and answer questions, and to provide information or documents. The investigators may only impose these requirements where they reasonably consider that the questions, information or documents in question are relevant to the investigation. And they may only impose them on the person under investigation, or any other “connected person” as defined in subsection (4). These limitations reflect the broad grounds on which the general investigatory power is exercisable.

Section 172: Additional power of persons appointed under section 168(1) or (4)

335. This section establishes wider powers for investigators appointed under section 168(1) or (4), the power to investigate particular suspected contraventions or offences. It does not, therefore, apply to investigations into possible insider dealing, market abuse, misleading statements and practices or a breach of the general prohibition or the promotional prohibitions. Because the grounds required under section 168 are more specific, the powers available to the investigator are wider in terms of who may be required to give information. A person who is not the person under investigation or connected to that person may only be asked questions so long as the investigator is satisfied that it is necessary or expedient to do so. The term “connected” attracts the same meaning as under section 171.

Section 173: Powers of persons appointed as a result of section 168(2)

336. This section establishes wider powers for investigators appointed to investigate possible insider dealing, market abuse, misleading statements and practices or a breach of the general or the promotional prohibitions under sections 19, 21 or 238. Because these are liable to focus, at least initially, on market circumstances rather than the conduct or circumstances of any particular person, or the activities of persons unknown, there is no requirement to notify a particular person as the subject of the investigation. So the concept of connectedness does not apply. The investigator can

require any person to attend and answer questions, or to supply information or documents, so long as the investigator considers that they may be able to give information relevant to the investigation.

Section 174: Admissibility of statements made to investigators

337. A statement made by a person in compliance with a requirement imposed by an investigator under this Part is generally admissible in any proceedings. But it may not be adduced against the person who made the statement, or questions relating to it asked, by the prosecution in criminal proceedings other than for the charges listed in subsection (3), nor by the Authority in proceedings before the Tribunal to determine whether a penalty should be imposed for, or a public statement made in respect of, market abuse. It may, however, be adduced, or a question relating to it may be asked, by the person himself, or by those acting on his behalf. It can be used by the prosecution or the Authority in cases against another person, or in cases against that person where the charge is one of those listed in subsection (3). All of the charges mentioned in that subsection relate to the provision of false information.

338. The section is necessary to take into account the judgment by the European Court of Human Rights in the Saunders case ((1997) 23 E.H.H.R. 313).

Section 175: Information and documents: supplemental provisions

339. This section enables the Authority or an investigator appointed by either the Authority or the Secretary of State under this Part to compel the production of a document by a person who is holding a document on behalf of another person if they would have the power to compel the latter to produce the document if they held it. If any person required to produce a document fails to do so, they may be compelled to state where, to the best of their knowledge, the document is.

340. A document once obtained may be copied or have extracts taken from it, and the person producing the document, or any other relevant person, may be required to explain it. But the production of a document does not affect any rights a third party may have over it.

341. Documents subject to banking confidentiality may also be withheld unless the person holding the information, or the person to whom the duty of confidence is owed, is the person under investigation or a related company, or the person to whom the duty is owed consents to its disclosure, or the requirement to disclose has been specifically authorised by the Authority or the Secretary of State.

Section 176: Entry of premises under warrant

342. An investigator appointed by the Authority or the Secretary of State may obtain a warrant for entry to any premises from a justice of the peace, or in Scotland from a justice of the peace or a sheriff. Such a warrant can then be executed by a police constable (subsection (5) sets out what the constable may do in the exercise of the warrant).

343. To issue the warrant the justice of the peace or sheriff must be satisfied that there are reasonable grounds for believing:

- a request for information under this Part has not been wholly complied with, and that the documents or information may be found on the premises concerned; or
- the premises are the business premises of an authorised person or appointed representative, that information or documents on those premises could be required by the Authority or the investigator, but that a request for that information or those documents would not be complied with, or would result in the information or documents being removed, tampered with or destroyed; or

- a serious offence has or is in the process of being committed, and that there is information or are documents on those premises which are relevant to that offence, which could be required by the Authority or the investigator, but which would not be produced, or which might be removed, tampered with or destroyed.

344. Subsections (6) and (7) apply to these warrants certain safeguards and other protections that apply to warrants issued under the Police and Criminal Evidence Act 1984 and the equivalent order in Northern Ireland. This includes giving the constable the right to employ reasonable force to gain entry.

345. Subsection (8) provides for documents seized under a warrant to be held for up to 3 months, or for longer if relevant proceedings are instituted during that period.

Section 177: Offences

346. If a person fails to comply with a requirement imposed under this Part without a reasonable excuse, the Authority or the Secretary of State may certify the fact to a court and the court may then deal with the person as if he were in contempt. A person who intentionally obstructs the exercise of any rights conferred by a warrant under the preceding section is guilty of a criminal offence and liable on summary conviction to a prison term of up to 3 months, or a fine up to level 5 on the standard scale (£5,000), or both.

347. A person who knowingly or recklessly provides false or misleading information in response to a requirement under this Part also commits an offence. On summary conviction he would be liable to a prison term of up to 6 months, or a fine up to the statutory maximum (£5,000), or both. On indictment he would be liable to a prison term of up to 2 years, or a fine, or both.

348. The same penalties would be available against anyone who knows or suspects that an investigation is likely to be conducted and falsifies, conceals, destroys or disposes of any document he knows or suspects to be relevant, or causes such a document to be falsified, concealed, destroyed or disposed of.

PART XII: CONTROL OVER AUTHORISED PERSONS

349. This Part is concerned with persons who intend to acquire control over UK authorised persons by virtue of their shareholding or voting rights. The Part also deals with increases and decreases in the extent of a person's control. Specifically, a person who proposes either to acquire control or to increase the level of their control must notify the Authority and secure its approval. The Authority may object to a particular acquisition or increase in control or it may attach certain conditions to its approval. A person proposing to decrease their control must merely notify the Authority of their intention. A breach of the obligations imposed by this Part is a criminal offence. The requirements in this Part are necessary to meet certain single market directive obligations. They carry forward similar requirements in the predecessor legislation. For consistency, the requirements have been extended to cover controllers of all authorised persons incorporated in or formed under the law of any part of the United Kingdom and not just those persons which are included in the scope of the single market directives. This Part does not place notification requirements on persons who exercise control over authorised persons by virtue of their position in that firm or in a parent firm, for example as a director or chief executive. Such people may, however, need to be approved by the Authority under Part V of the Act.

Section 178: Obligation to notify the Authority

350. This section imposes a requirement on persons who propose to acquire control (or acquire an additional kind of control) or increase their control over a UK authorised person to give the Authority a “notice of control” informing them of their intentions. What constitutes “control” and a “kind of control” for these purposes is described in section 179. The circumstances in which a person is taken to “increase” their control are set out in section 180.

351. Subsection (2) provides for passive acquirers of control. These are persons who acquire control without themselves taking any action, for example, through inheriting a large number of shares. A passive acquirer may not be able to notify the Authority in advance, but under this subsection, they must do so within fourteen days of first becoming aware that they have acquired the control.

352. A person who is required by subsection (1) to notify the Authority of his proposal to acquire or increase control is also required by subsection (3) to make a further notification when the acquisition or increase has taken place.

353. Subsection (4) defines the range of authorised persons with whose control this Part is concerned. In line with single market directive requirements this is limited to authorised persons incorporated in or formed under the law of any part of the United Kingdom, “UK authorised persons”. This is because under the single market directives, the supervision of those who have control is subject to home State regulation. The requirements do however cover all classes of UK authorised persons and not just those included in the scope of the single market directives.

Section 179: Acquiring control

354. This section defines the circumstances in which a person acquires control and is therefore subject to the obligation to notify the Authority under section 178(1)(a) or (b).

355. A person may acquire control either directly via a shareholding or voting power in the UK authorised person itself, or indirectly via a shareholding or voting power in a parent of the UK authorised person. This is required by the single market directives.

356. Subsection (3) provides that for the purposes of determining whether a person has acquired control, the percentage shareholding or voting power is aggregated with that of their associates as defined in section 422. This means, for example, that where a firm has a holding of 5 per cent of the shares in a UK authorised person and one of its subsidiaries has a holding of 7 per cent of the shares in the same UK authorised person, the firm will be required to notify the Authority.

357. Subsection (4) sets out what constitutes a “kind” of control. A person who has control of one kind would be required under section 178 to notify the Authority again were they to acquire control of a different kind either as well as, or instead of, the control they had before.

Section 180: Increasing control

358. This section sets out the circumstances in which an increase in a person's control causes them to be subject to the obligation to notify the Authority under section 178(1)(c). These are that a person's shareholding or voting power must cross one of the thresholds set out in subsection (2), or they must become a parent of the UK authorised person. These thresholds are determined largely by the single market directives.

Section 181: Reducing control

359. This section sets out the circumstances in which a reduction in a person's control causes them to be subject to the obligation to notify the Authority under section 190. These are that a person's shareholding or voting power must cross one of the thresholds set out in subsection (2), or they

must cease to be a parent of the UK authorised person. The level of these thresholds is as for an increase in control and again they are determined largely by the single market directives.

Section 182: Notification

360. This section concerns the procedure to be followed when notifying the Authority. It specifies that the Authority may indicate the information and documents that must be supplied in support of a notification.

361. Subsection (2) confers a power on the Authority to require persons giving a notice of control to provide the Authority with such additional information as the Authority may reasonably considers necessary to determine the application.

Section 183: Duty of Authority in relation to notice of control

362. This section gives the Authority up to three months from the date it receives a completed notice to determine whether to approve the application or issue a warning notice indicating that it is proposing to object to the acquisition of, or increase in, control.

363. Subsection (2) imposes a requirement on the Authority to consult home State competent authorities when required to do so by regulations made by the Treasury. The nature of this requirement is determined by the single market directives.

Section 184: Approval of acquisition of control

364. The Authority is obliged by this section to notify the applicant without delay if it gives its approval.

365. If the Authority fails to indicate its approval or to issue a warning notice within three months, subsection (2) provides that the applicant is to be treated for the purposes of the Part as having been approved.

366. As a result of subsection (3), the approval is valid for a year, unless the Authority notifies the person intending to acquire control of a another time period. If the person does not acquire the control in that period, a fresh application is required.

Section 185: Conditions attached to approval

367. This section concerns the ability of the Authority to make its approval subject to the imposition of conditions on the applicant. The Authority is able to impose such conditions as it considers desirable, having regard to its duty under section 41 to ensure that, in general, the threshold conditions will continue to be met in relation to the UK authorised person subject to the control concerned.

368. If the Authority imposes conditions, subsections (3) and (4) require it to issue the person with a warning notice and a decision notice. The person has a right to refer the matter to the Tribunal.

369. Under subsection (5), persons on whom conditions are imposed may apply to the Authority to have the conditions varied or cancelled. The Authority may itself cancel a condition.

370. The Authority may serve a notice of objection on persons who breach any conditions imposed by this section. This is provided for in section 187.

Section 186: Objection to acquisition of control

371. This section gives the Authority the power to object to the acquisition of new or additional control, or to an increase in control.

372. The Authority can object to a person acquiring or increasing their control where it is not satisfied that the approval requirements set out in subsection (2) are met.

373. Subsection (4) confers a duty on the Authority to notify the applicant if it considers that the conditions for approval would be met if the applicant took or refrained from taking a particular step.

Section 187: Objection to existing control

374. This section provides the Authority with the power to object to an existing controller if it is satisfied that the approval requirements are not met or that a condition imposed under section 185 has been breached. The Authority may also object to a person who acquired or increased control without notifying the Authority in the required manner.

Section 188: Notices of objection under section 187: procedure

375. This section sets out the process by which the Authority can object under section 187 to an existing controller. If the Authority wishes to object to a controller, it is obliged to give him a warning notice.

376. Subsection (2) has the effect that the Authority must comply with any requirements prescribed by the Treasury with respect to the consultation of other competent authorities outside the UK before it gives a warning notice. The Treasury will exercise this power to ensure that effect is given to requirements imposed by the single market directives to consult home State competent authorities.

Section 189: Improperly acquired shares

377. This section makes provision enabling the Authority to restrict rights deriving from shares in the case of persons who continue to hold shares in breach of a notice of objection. It is a requirement of the single market directives that these powers should be available.

378. The Authority also has the option of applying to the court for an order directing the sale of shares under subsection (3). If shares are sold in this way, subsection (6) provides that the proceeds (net of the costs of the sale) will be paid, via the court, to persons beneficially interested in them.

379. Subsection (7) provides that the powers in this section may only be exercised in relation to shares acquired in breach of a notice of objection or in contravention of a condition imposed by the Authority, and not to any other shares held by the person or his associates.

Section 190: Notification

380. This section concerns notification of reductions in, and cessations of, control, whether or not the reduction or cessation is intentional.

381. Under subsection (1) a person who proposes to reduce the control that they have over a UK authorised person, or to cease to have any control, must notify the Authority that that is their intention. The circumstances in which a reduction in control triggers this notification requirement are set out in section 181. A person required to notify the Authority under this subsection must, under subsection (3), notify the Authority again when the proposed reduction or cessation of control actually occurs.

382. Subsection (2) requires persons whose control is reduced, or ceases, without themselves taking any action, to notify the Authority within 14 days of becoming aware of the reduction or cessation.

383. Subsection (4) sets out various requirements in relation to the notices given pursuant to this section.

384. The Authority has no power to make any objection in these circumstances but it is an offence to fail to give the necessary notification.

Section 191: Offences under this Part

385. This section sets out the offences in relation to this Part.

386. Subsections (1) and (2) provide that it is an offence not to notify the Authority in accordance with the requirements in this Part when acquiring, increasing, reducing or ceasing to have control over a UK authorised person.

387. Subsections (3) and (4) provide that where proper notification has been given, it is an offence to carry out a proposal before the Authority has given its approval or, where it has issued a warning notice, before it has decided whether to follow the warning notice with a notice of objection.

388. A person guilty of any of the above offences is liable on summary conviction to a fine not exceeding level 5 on the standard scale, currently £5,000.

389. It is also an offence, under subsection (5), to acquire control in contravention of a notice of objection. This is a more serious offence and a person guilty of it may be convicted on indictment to imprisonment for a term of up to two years and to a fine. There are lesser fines on summary conviction. The penalties are set out in subsections (7) and (8), and include provision for a daily fine if the offence continues.

390. Subsection (9) provides a defence for those who are prosecuted for failing to notify the Authority of their influence. The defence is available if a person can show that he was unaware of the act or circumstance by virtue of which the duty to notify the Authority arose. In these circumstances, the person must notify the Authority within 14 days subsequently of becoming aware. Failure to do so is a criminal offence, the penalty on summary conviction being a fine not exceeding level 5 on the standard scale, currently £5,000.

Section 192: Power to change definitions of control etc.

391. This section gives the Treasury power to amend by order certain definitions in this Part and others which are relevant to it, and to provide for exemption from the obligation to notify increases or reductions in control under sections 178 and 190.

392. The Treasury may alter the cases in which a person is said to acquire control as set out in section 179, and therefore it also has a power to change the definition of controller in section 422 to ensure the two remain aligned. The Treasury may also alter the thresholds the crossing of which triggers the requirements in this Part to notify an increase or decrease in control. This power is necessary to give effect to any future change in the single market directive requirements for controllers of UK authorised persons who are not currently covered by the single market directives.

PART XIII: INCOMING FIRMS: INTERVENTION BY AUTHORITY

393. This Part confers power on the Authority and, in certain cases, the DGFT to intervene in the business of EEA and Treaty firms who are, or have been, authorised by virtue of Schedules 3 and 4. These firms are referred to in the Part as “incoming firms”. This power, which is referred to as the power of intervention, does not apply in respect of persons who are authorised solely by virtue of having a permission under Part IV. Nor does it apply in respect of the additional Part IV permissions that may be held by incoming firms. The Part sets out the grounds on which the power is exercisable and the procedures for exercising it.

Section 194: General grounds on which power of intervention is exercisable

394. This section sets out the grounds on which the Authority may exercise its power of intervention. The 4 grounds are:

- where it appears to the Authority that there has been, or is likely to be, some contravention of a rule or other requirement imposed by the Authority in accordance with the division of responsibility between home and host State under the appropriate single market directive;
- where it appears to the Authority that the authorised person has knowingly or recklessly misled the Authority;
- where it appears to the Authority that it is desirable to exercise the powers in order to protect customers or potential customers; or
- where the incoming EEA firm is carrying on consumer credit business in the United Kingdom under their passport and the DGFT has informed the Authority that the person has done any of the things listed in section 25(2) of the CCA 1974. These are factors to be taken into account by the DGFT in deciding whether a person is fit and proper to hold a consumer credit licence, and they cover contraventions of that Act, offences involving fraud, dishonesty or violence, practising racial or other forms of discrimination, and engaging in deceitful, oppressive, unfair or improper business practices.

Section 195: Exercise of power in support of overseas regulator

395. This section enables the Authority to exercise its intervention power at the request of, or for the purpose of assisting, an overseas regulatory authority (“ORA”). The Authority may exercise its powers under this section whether or not the grounds set out in the previous section are met. Authorities in other EEA States who are competent authorities under the single market directives are automatically ORAs. Other overseas authorities, from the EEA or elsewhere, which have functions equivalent to those set out in subsection (4) are also ORAs.

396. When the Authority receives a request from an EEA competent authority, it must consider whether it is obliged to exercise the powers under the relevant directive. In other cases, the Authority may exercise its discretion, taking account of the factors listed in subsection (6).

397. Under subsection (7) the Authority may make its use of its powers conditional on the ORA making an appropriate contribution toward the cost of taking the action.

Section 196: The power of intervention

398. This section provides that the nature and extent of the Authority's power of intervention are the same as the power to vary a permission or impose a requirement under Part IV.

Section 197: Procedure on exercise of power of intervention

399. This section sets out the procedure the Authority must follow when it proposes to exercise its power of intervention against incoming firms under this Part. This is the same written notice procedure as described in relation to section 53.

Section 198: Power to apply to the court for injunction in respect of certain overseas insurance companies

400. Under this section the Authority may act on behalf of an insurance authority in another EEA member State by applying to the courts for an injunction, or in Scotland an interdict, to freeze assets held in the United Kingdom by an insurer from that member State.

401. The power implements article 20(5) of the 1st Non-Life Directive, relating to general insurance, and article 24(5) of the 1st Life Directive, relating to long-term insurance. Subsection (1) limits use of the power to where it is in accordance with those provisions, which means that it is exercisable

where the firm's home State authority has asked the Authority to prohibit the free disposal of assets of that firm and has confirmed that:

- the firm has failed to comply with the requirements of article 15 of the 1st Non-Life Directive or article 17 of the 1st Life Directive;
- the solvency margin of the firm has fallen below the minimum required by article 16(3) of the 1st Non-Life Directive or article 19 of the 1st Life Directive; or
- the solvency margin of the firm has fallen below the guarantee fund as defined in article 17 of the 1st Non-Life Directive or article 20 of the 1st Life Directive.

Section 199: Additional procedure for EEA firms in certain cases

402. This section imposes an additional procedure to be followed in some circumstances where the Authority proposes to use its intervention power against an EEA firm. This procedure applies where the EEA firm has contravened a requirement imposed by the Authority pursuant to host State functions under the relevant single market directive.

403. First, the Authority must require the firm to remedy the situation. If the firm fails to do so, the Authority must request the firm's home State regulator to take appropriate measures to ensure the firm remedies the situation and inform the Authority of the measures it proposes to take (or why it does not propose to take any measures). Only if the Authority considers that the measures that the home State regulator has taken are inadequate, or if no action has been taken by that regulator, may it exercise its powers.

404. However, where the Authority decides it needs to act urgently it may do so before it has required the firm to remedy the situation and either before it requests the home State regulator to act or, having already made a request, before it is satisfied that the home State regulator is not going to take adequate action. But if the Authority takes urgent action in this way, it must inform the European Commission and must comply with any direction from the Commission to rescind or vary the requirements imposed.

Section 200: Rescission and variation of requirements

405. Either on its own initiative or at the request of the authorised person who is subject to a requirement under this Part, the Authority may rescind or vary such a requirement. The procedure under section 197 applies to a variation on the Authority's own initiative. The warning notice and decision notice procedure applies where the Authority proposes to refuse to rescind or vary a requirement on request. Agreement to a request for rescission or variation can be granted by written notice as with the grant of other forms of application under the Act.

Section 201: Effect of certain requirements on other persons

406. Where the power of intervention is used to impose a restriction on the type mentioned in section 48 (an assets requirement), the restriction has the same effect as if it had been imposed under Part IV. This means that the provisions of section 48 apply, including the provisions about assets held by a third party such as a bank, and about the transfer of assets to a trustee approved by the Authority.

Section 202: Contravention of a requirement imposed under this Part

407. This section makes clear that a contravention of a requirement imposed under this Part does not constitute an offence or result in any transaction being void or unenforceable. It also confers on the Treasury a power to prescribe in regulations the circumstances in which a person may have

a right of action as a result of a breach of a requirement imposed under this Part. Otherwise no such right of action will result from a contravention.

Section 203: Powers to prohibit the carrying on of Consumer Credit Act business

408. Under the Act, EEA firms may, on the basis of their home State authorisation, be automatically authorised to carry on the types of activity covered by the passport under the various single market directives. Two of these directives include lending in their listed activities, which encompasses consumer credit business regulated in the United Kingdom under the CCA 1974. This means that EEA firms may carry on consumer credit business without having to apply to the DGFT for a consumer credit licence and they are therefore not subject to the DGFT's powers under the CCA 1974.

409. This section, along with section 204, confers on the DGFT separate powers to restrict or prohibit the carrying on, or the purported carrying on, of consumer credit business in the United Kingdom under the relevant directives if the firm or any of its employees has done any of the things listed in section 25(2)(a) to (d) of the CCA 1974. That is, if they have:

- committed any offence involving fraud, dishonesty or violence;
- contravened any provision made by or under the CCA 1974, or by or under any other enactment regulating the provision of credit to individuals or other transactions with individuals;
- practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or
- engaged in business practices appearing to the DGFT to be deceitful or oppressive, or otherwise unfair or improper (whether unlawful or not).

410. Contravention of a restriction or prohibition is a criminal offence and contravention of a restriction is also grounds for imposing a prohibition. Schedule 16 sets out the procedure the DGFT must follow when imposing prohibitions or restrictions. This procedure follows that generally applicable in the CCA 1974 rather than in the other provisions of this Act.

PART XIV: DISCIPLINARY MEASURES

411. This Part gives the Authority powers to issue public statements or impose financial penalties in response to contraventions of rules or other requirements by authorised persons.

Section 205: Public censure

412. This gives the Authority the power to make a public statement concerning a contravention by an authorised person of any requirement imposed directly by the Act or under it, for example through the Authority exercising its rule-making power.

Section 206: Financial penalties

413. This enables the Authority to impose a financial penalty where it establishes that there has been a contravention by an authorised person of any requirement imposed by or under the Act.

Section 207: Proposal to take disciplinary measures

414. This section requires the Authority to issue a warning notice where it proposes to make a public statement about an alleged contravention or impose a penalty. The notice must include the statement the Authority proposes to make or the amount of the proposed penalty.

Section 208: Decision notice

415. If having issued a warning notice, and heard any representations, the Authority decides at the end of the relevant period to proceed with the public statement or penalty, it must issue a decision notice. This should also set out the terms of the proposed statement or the amount of the proposed fine (either of which may change in response to any representations made).

416. The authorised person has a right to have the matter referred to the Tribunal, in accordance with the provisions of Part IX of the Act. No further action can be taken by the Authority during the period in which the person has the right to have the matter referred to the Tribunal or, where the matter has been referred, until the Tribunal hearing and any subsequent appeal have run their course.

Section 209: Publication

417. If, having followed the appropriate procedures, the Authority decides to make a public statement under section 205, this section provides that it must send a copy of the statement to the authorised person concerned and to any third parties to whom it copied the decision notice.

Section 210: Statements of policy

418. This section requires the Authority to prepare and publish guidance on its policy concerning the imposition of penalties under section 206 and the level of those penalties. Under subsection (7), the Authority must have regard to this published guidance when determining the level of penalties.

Section 211: Statements of policy: procedure

419. This section requires the Authority to follow certain procedures when it issues a policy statement under section 210. The procedures include a requirement to consult on its proposals.

PART XV: THE FINANCIAL SERVICES COMPENSATION SCHEME

420. This Part of the Act provides for a single Financial Services Compensation Scheme, established by the Authority and managed by an independent scheme manager. It gives the Authority powers to specify the regulated activities covered by the scheme.

421. The purpose of the compensation scheme is to compensate customers who suffer loss in various circumstances as a consequence of the inability of an authorised person to meet its liabilities. The scheme is not, other than in cases of the insolvency of an authorised person, intended to provide compensation for a regulatory breach (for example the mis-selling of investments), where the liability would remain with the authorised firm.

Section 212: The scheme manager

422. This section requires the Authority to establish a company to manage the scheme and sets requirements as to the company's constitution, including that the chairman should be appointed by the Authority with the approval of the Treasury and that board members should act independently of the Authority.

Section 213: The compensation scheme

423. This section imposes certain requirements about the Authority's rules establishing the scheme. It also makes it clear that customers may be eligible to make a claim against an authorised person even if the claim arises in relation to an activity for which that authorised person did not have permission. A claim relating to an appointed representative who is an exempt person by virtue of

section 39 may also qualify under the scheme. Claims would not, however, be eligible if they related to regulated activities carried on by a person who should be authorised but is not.

424. Subsection (3)(b) provides for the scheme manager to levy authorised persons to cover both the costs of compensation and its administrative costs.

425. Subsection (5) requires the scheme manager when setting the levy to seek, so far as is practicable, to avoid cross-subsidy between sectors.

426. Subsection (10) allows the Treasury to prescribe categories of persons authorised to carry on regulated activities in the United Kingdom under passporting arrangements that will only participate in the scheme if they elect to do so. This allows the Treasury to ensure that, while membership of the scheme is generally compulsory for authorised persons carrying on relevant activities, it remains compatible with UK obligations under EC directives which make rules about the extent to which EEA firms can be required to join compensation schemes other than their home State scheme.

Section 214: General

427. This section clarifies the scope of the Authority's power to make scheme rules.

428. Subsection (1) provides, in particular, that the scheme may consist of a number of different compensation funds, for which levies can be raised from different sectors of the industry and different rules may be made as to the level of and eligibility for compensation.

429. Subsections (2) to (4) enable the scheme to limit the eligibility of claimants according to a number of different factors, including where the event took place or where the claimant resides.

430. Subsection (6) confers on the scheme manager a power to enter into arrangements with schemes established in other countries outside the EEA. Where, for example, a US firm does business in the United Kingdom and the level of compensation under the US scheme is lower than in the United Kingdom, the firm would be able to become a member of the UK scheme for the purposes of topping-up its cover. If the firm was unable to meet its liabilities, claimants might have a claim against both the US and the UK schemes. This power would in turn enable the UK scheme to enter into an arrangement with the US scheme to avoid the need for the claimant to submit a claim to both schemes. It is possible to make reciprocal arrangements under the power in subsection (1)(k).

Section 215: Rights of the scheme in relevant person's insolvency

431. Subsection (1) enables the Authority to make provision about the effect of a payment of compensation under the scheme on the rights and obligations arising out of the claim against a relevant person in respect of which the payment was made. This allows the Authority to make provision for the rights of the claimant to be transferred to the scheme manager, which would enable the scheme manager to seek to recoup the costs of paying compensation from the firm in question without increasing the firm's liabilities. Subsection (2) provides that any right of recovery conferred on the scheme manager under subsection (1) cannot exceed the claimant's original rights.

Section 216: Continuity of long-term insurance policies

432. The special nature of long-term insurance means that should an insurer go into liquidation, a simple payment of compensation may not necessarily be enough to enable policyholders to find alternative cover. This would be a problem especially where a person had developed health problems since taking out the original policy. The purpose of this section is to enable the Authority to include in the scheme rules a requirement for the scheme manager to seek to transfer the business of a

failing insurer, so far as it relates to contracts of long-term insurance, to another company or to secure the issue of substitute policies by another insurer.

Section 217: Insurers in financial difficulties

433. The special features of long-term (or “life”) business are noted above. But even general insurance business (for example car or product liability insurance) can result in claims arising from events which may have happened several years earlier. This long tail of claims means that it can be difficult to crystallise the liabilities of an insurer in liquidation. The administration of insurance claims is costly and the delays for policyholders can be substantial while a liquidator seeks to work out the level of payments that can be made to creditors.

434. Accordingly, this section allows the Authority to make provision for the scheme manager to give assistance to an authorised person with permission to effect and carry out contracts of insurance in financial difficulties, either by transferring the that person's business, so far as it relates to contracts of insurance, to another insurer, or by enabling the continuance of that business by another insurer. Before using this power, which is potentially of substantial benefit to policyholders, the scheme manager must be satisfied that payments to the firm should not materially benefit other persons such as shareholders or company directors. It must also be satisfied that these measures would not cost more than the costs of compensation if the firm were allowed to go into default.

Section 219: Scheme manager's power to require information

435. The efficient settlement of claims will sometimes require the scheme to obtain information from a variety of sources. This section provides the scheme manager with powers to require the provision of specified information that it considers necessary in order to be able to assess claims. Information may be required from the authorised person, or from a person who was knowingly involved in the events giving rise to the claim.

Section 220: Scheme manager's power to inspect information held by liquidator etc

436. This section allows the scheme manager to inspect information held by the liquidator, administrator or trustee in bankruptcy of an insolvent relevant person. The scheme manager is only allowed to inspect documents rather than require them to be produced, which means that the cost of copying documents will be borne by the scheme and not by the liquidator. This should reduce costs to the liquidator, administrator or trustee in bankruptcy. The section does not apply to the Official Receiver or his Scotland and Northern Ireland counterparts (as to which see section 224).

Section 221: Powers of court where information required

437. This section provides that, where a person fails to comply with a requirement for information under section 219 or to permit documents to be inspected under section 220, this may be certified to the court, which may deal with the person as though he were in contempt.

Section 222: Statutory immunity

438. This section provides immunity for the scheme manager, and its staff from actions for damages, except where they act in bad faith or where damages are sought under section 6(1) of the Human Rights Act 1998.

Section 223: Management expenses

439. This section ensures that the scheme may only recover from levies management expenses up to a certain limit. The limit must be set before the scheme includes management expenses in its calculations of the levies.

PART XVI: THE OMBUDSMAN SCHEME

440. This Part of the Act provides for the creation of a single, compulsory ombudsman scheme for the resolution of disputes between authorised firms and their customers. It provides for the detailed operation of the scheme to be determined largely by rules made by the Authority on which it is required to consult in accordance with the requirements under Part X.

Section 225: The scheme and the scheme operator

441. This section makes clear that the object of the scheme is to resolve disputes involving consumers quickly and with minimum formality. The operator of the scheme must be a body corporate.

Section 226: Compulsory jurisdiction

442. This section requires firms authorised by the Authority to submit to the jurisdiction of the scheme. The scheme's compulsory jurisdiction may only be applied to persons who were authorised at the time the activity to which the complaint relates was carried out, and the rules must have been in force at that time. The Authority is to make rules determining which activities of authorised persons fall within the compulsory jurisdiction. These activities must either be regulated activities as specified by the Treasury under section 22 or other activities which are not regulated, but could be made regulated activities under that section. The Authority is free not to include certain activities, for example kinds of professional business where it is unlikely that retail customers would ever be involved.

443. If an activity is included in the compulsory jurisdiction of the scheme, the ombudsman can consider all disputes arising from the carrying on of that activity by the authorised person. For example, were accepting deposits specified as an activity covered by the compulsory jurisdiction of the scheme, the ombudsman could consider all disputes arising from the operation of a bank account, such as the withdrawal of money from a cash machine, or a stopped cheque.

444. The section also sets the circumstances in which a complaint can be dealt with: namely, that the complainant meets the relevant eligibility criteria (set by the Authority) and has asked the ombudsman to consider the case. The scheme is not able to deal with complaints made by authorised persons, except in circumstances specified in the rules.

Section 227: Voluntary jurisdiction

445. Firms can join the ombudsman scheme, on a voluntary basis, under the voluntary jurisdiction where they are not authorised by the Authority or in respect of activities falling outside the scope of the compulsory jurisdiction. However, the scheme's voluntary jurisdiction rules can only relate to activities which are subject, or could be made subject, to the compulsory jurisdiction rules. The voluntary jurisdiction can be applied to authorised persons where a complaint relates to an activity which could be, but has not been, made subject to compulsory jurisdiction rules.

446. Voluntary jurisdiction rules can be made by the scheme operator with the approval of the Authority. The rules will also define which complainants are eligible.

Section 228: Determination under the compulsory jurisdiction

447. The ombudsman will make a decision about the complaint on the basis of what he considers is fair and reasonable in the circumstances. The scheme operator has the power under paragraph 14 of Schedule 17 to specify the matters that can be taken into account when determining what is fair and reasonable. The ombudsman must make a written statement of his reasons for the decision, and must also require the claimant to accept or reject the decision by a specified date. If the

complainant accepts the ombudsman's decision, then it is binding on both the complainant and the respondent.

Section 229: Awards

448. If a complaint under the compulsory jurisdiction is determined in favour of the complainant, the respondent may be ordered to pay compensation up to a maximum limit which may be set by the Authority. The limit may be different for different kinds of complaint. The Authority may specify a particular limit for compensation in respect of non-financial loss or damage. The ombudsman can only make a binding award up to the limit set by the Authority, but he may recommend a greater amount as fair compensation. The respondent may also be ordered to take steps to rectify the matter complained of, and this can be enforced through the courts by the complainant if necessary.

Section 230: Costs

449. This section allows the scheme operator to make rules concerning the costs which can be awarded by the ombudsman. These rules are subject to certain constraints. Where a complaint is settled in favour of the complainant, the rules can allow the firm concerned to be required to meet the costs of both the complainant and the scheme operator. A complainant could only ever be required to meet the costs of the scheme, and then only if the scheme operator had made rules to allow for such awards and the ombudsman believed that the complainant's conduct has been improper or unreasonable, or they had been responsible for an unreasonable delay. The section also makes provision for recovery of costs by the scheme operator.

Section 231: Ombudsman's power to require information

450. The efficient settlement of complaints under the compulsory jurisdiction will sometimes require the scheme to obtain information from the parties to the dispute. This section provides the scheme operator with powers to require parties to the complaint to provide specified information which it considers necessary for the fair determination of the complaint. It is not expected that these powers will be used on a routine basis. The Authority will also have powers to make rules requiring authorised persons to co-operate with the scheme. It will be in the interests of the complainant to co-operate.

Section 232: Powers of court where information required

451. This section provides that, if a person fails to comply with a requirement to provide information made under section 231, the matter may be certified to the court, which may deal with the person as if they were in contempt.

Section 233: Data protection

452. This section inserts new subsection (4A) into section 31 of the Data Protection Act 1998. This is needed to ensure that the scheme operator does not have to disclose information it has obtained when considering a complaint brought under the ombudsman scheme if disclosure would prejudice the performance of its functions.

Section 234: Industry funding

453. This section provides for the Authority to be able to levy fees on authorised persons to meet both the costs of establishing the scheme and the costs of running the compulsory jurisdiction. The costs of the voluntary jurisdiction will be met by fees set as part of the voluntary jurisdiction rules.

PART XVII: COLLECTIVE INVESTMENT SCHEMES

454. This Part comprises six chapters concerning collective investment schemes, including unit trusts, open-ended investment companies (“oeics”) and overseas schemes. It includes provisions relating to the authorisation of schemes, their trustees, managers and operators and also to the rules applicable to them. The Part also makes provision for overseas collective investment schemes which may be promoted in the United Kingdom:

- Chapter I provides the relevant definitions for this Part. It also gives the Treasury the power to specify by order that certain arrangements will not constitute a collective investment scheme.
- Chapter II prohibits authorised persons from promoting participation in a collective investment scheme unless an exemption applies. Whilst the provisions broadly continue the prohibition on authorised persons promoting collective investment schemes under the FS Act 1986, changes have been made to reflect the new financial promotion regime set out in section 21.
- Chapter III contains the provisions relating to authorised unit trust schemes. These broadly follow the provisions of the FS Act 1986, although the Authority is to be given the power to approve changes to an authorised unit trust's investment and borrowing powers. There are also provisions to allow for rule waivers and modifications, and to grant operators and trustees of authorised unit trust schemes the right to refer matters to the Tribunal in certain circumstances.
- Chapter IV contains provisions which enable the Treasury broadly to continue the regime for oeics, and to make regulations concerning the establishment and regulation of other forms of oeic in the United Kingdom. Under the FS Act 1986, oeics which are incorporated and authorised in the United Kingdom must invest solely in transferable securities. The Act will allow the Treasury to make regulations concerning the creation and operation of a wider range of authorised oeics, so that they can invest in assets other than transferable securities. The Treasury may also, under the relevant provisions, make regulations concerning the incorporation of unauthorised oeics. This might, for example, be done in order to allow the formation of common investment funds for charitable purposes, or in the context of ethical investments.
- Chapter V broadly carries forward provisions of the FS Act 1986 and allows three kinds of overseas scheme to be “recognised” and marketed in the United Kingdom. First, schemes constituted in other member states which meet particular requirements; second, schemes authorised in designated territories; and third, schemes constituted in other territories, but which are individually recognised.
- Chapter VI sets out the powers of investigation which will apply in relation to authorised unit trust and overseas schemes. It is intended that the principal provisions concerning investigations of oeics will be set out in the proposed Treasury regulations under Chapter IV.

Chapter I: Interpretation

Section 236: Open-ended investment companies

455. This section defines an open-ended investment company. This is done by reference to a “property” and an “investment” test (set out in subsections (2) and (3) respectively). Both tests must be satisfied in order for a corporate body to meet the definition of an open-ended investment company. The “property” test is carried over from the definition in section 75(8)(a) of the FS Act 1986.

456. The “investment” test is framed by reference to a hypothetical reasonable investor's expectations, were he to participate in the scheme. A reasonable investor should expect to realise his investment within a reasonable period, and expect that the way in which this would be done would be calculated by reference to the value of the scheme property. In determining whether this condition is satisfied, certain actual or potential redemptions of his holdings are to be ignored, including those under certain provisions of the Companies Act and corresponding provisions in EEA states. Under subsection (4)(d), the Treasury may by order designate provisions in non-EEA states under which redemptions may be made and which may also be left out of the account.

457. Subsection (5) contains a Treasury order-making power to amend the definition of an open-ended investment company for the purposes of Part XVII.

Chapter II: Restrictions on promotion

Section 238: Restrictions on promotion

458. This section contains the basic marketing prohibition and some exemptions from it. The main exemption is for schemes which are marketed other than to the general public. Other exemptions include promotions made in respect of authorised unit trust schemes, authorised oeics and recognised overseas schemes. The marketing prohibition applies to communications which originate outside the United Kingdom if the communication is capable of having an effect in the United Kingdom.

459. Subsection (6) enables the Treasury by order to specify circumstances in which the subsection (1) prohibition does not apply. For incoming promotions, subsection (7) makes it clear that it will be possible to make exemptions dealing with promotions originating outside the United Kingdom even if they are capable of having an effect in the United Kingdom. Thus, subsection (7) makes clear that the order-making power in subsection (6) enables the Treasury to adjust the scope of the restriction on promotion of collective investment schemes by authorised persons to take full account of international and technological developments.

460. The term “promotion otherwise than to the general public” is amplified in subsection (10) and includes promotions which are designed, so far as possible, to reduce the risk of participation by persons for whom it would be unsuitable. The prohibition on marketing to the general public will not therefore necessarily be breached if a promotion is inadvertently received by a member of the general public.

Section 239: Single property schemes

461. A single property scheme is, broadly, a collective investment scheme which relates to a single building or a group of buildings managed as a single enterprise. This section gives the Treasury power to make regulations exempting the promotion of participation in single property schemes to the general public from the prohibition in section 238. If the Treasury make regulations under this section, the Authority may then make rules imposing duties on the operator and trustee or depositary of schemes exempted under the regulations.

Section 240: Restriction on approval of promotion

462. This is a new provision designed to prevent an authorised person from approving a financial promotion under section 21 if the authorised person would not himself be permitted to make the communication under section 238.

Section 241: Actions for damages

463. If an authorised person contravenes a requirement under section 238 or 240, a private person, and other persons falling within such categories as may be prescribed in regulations made by the Treasury, who suffers loss as a result may claim damages.

Chapter III: Authorised unit trust schemes

Section 242: Applications for authorisation of unit trust schemes

464. Applications for an order declaring a unit trust scheme to be authorised must be made to the Authority by the manager and trustee of the scheme. The manager and trustee must be different persons. The section gives the Authority broad scope to determine the form and content of the application, including further information to be contained in it.

Section 243: Authorisation orders

465. If the conditions referred to in the section are met, the Authority may make an authorisation order declaring a unit trust scheme to be authorised. The conditions reflect certain requirements specified in the UCITS Directive which establishes a passporting regime whereby certain types of authorised collective investment scheme established in one EEA State may generally be entitled to equivalent authorisation in others. The section includes requirements that:

- the manager and trustee must be bodies corporate which are independent of each other and incorporated in the United Kingdom or another EEA State;
- they must be authorised persons holding the appropriate permissions;
- the scheme must comply with the requirements of the trust scheme rules (referred to at section 247, below); and
- participants must be able to have their units redeemed at a price related to the net asset value of the scheme property or be able to sell their units on an exchange at a similar price.

Section 244: Determination of applications

466. This section sets out the time limits within which applications should be determined (and specifies that completed applications shall be determined within six months). Applicants may withdraw their application at any time before the Authority makes a determination.

Section 245: Procedure when refusing an application

467. If the Authority wishes to refuse an application, it must issue each of the manager and trustee with a warning notice. Either the manager or the trustee may refer a refusal to the Tribunal.

Section 246: Certificates

468. If an authorised unit trust scheme meets with the requirements of the UCITS Directive, the manager or trustee of the scheme can request that the Authority issue a certificate to that effect. The certificate will be needed if the authorised unit trust scheme is to passport into other European jurisdictions.

Section 247: Trust scheme rules

469. This section permits the Authority to make rules (known as “trust scheme rules”) concerning the constitution, management and operation of authorised unit trust schemes. These cover broadly the same matters as constitution and management regulations under section 81 of the FS Act 1986, but without the arrangements under that legislation whereby the Treasury retained a degree of control over certain constitution and management matters (such as the investment and borrowing

powers of authorised unit trusts). The Authority has direct responsibility for these matters under this section.

470. The trust scheme rules are binding on the manager, trustee and participants independently of any provisions contained in the trust deed. Participants can seek to enforce the trust scheme rules against the manager or trustee as if the rules were provisions contained directly in the trust deed.

471. The Treasury has the power to modify the Authority's rule-making powers if there is a change in the company law relating to the rights of beneficial, but not legal, owners of shares. This would enable the rights of nominee holders in authorised unit trusts to be aligned to those of shareholders in companies should the need arise.

Section 248: Scheme particulars rules

472. These are rules which the Authority may make requiring the manager of an authorised unit trust scheme to give details of the scheme to the Authority and to publish or make available to the public on request certain particulars, including changes, concerning the scheme.

473. The scheme particulars rules can provide for compensation to be paid to certain people (described as “qualifying persons”) if they have suffered loss because of an untrue or misleading statement in the particulars or because of an omission from them. Qualifying persons include people who may have a beneficial, but not legal, interest in the scheme (for example, beneficiaries of a trust where the trustees hold units in the scheme).

Section 249: Disqualification of auditor for breach of trust scheme rules

474. The Authority may disqualify an auditor from auditing authorised unit trust schemes or authorised oeics if the auditor does not comply with the trust scheme rules. Warning and decision notice procedures will apply, as well as rights to refer a decision to the Tribunal.

Section 250: Modification or waiver of rules

475. This allows the Authority to modify or waive the application of any of the trust scheme rules or scheme particulars rules in respect of authorised unit trusts. If there is a modification or waiver of rules under this section, certain of the provisions of section 148 (relating to the modification or waiver of various other of the Authority's rules and providing for the circumstances in which waivers or modifications will be granted) will apply.

Section 251: Alteration of schemes and changes of manager or trustee

476. Alterations to an authorised unit trust scheme or a change in the manager or trustee may not take place without the Authority's approval, or the Authority not notifying its disapproval. New managers or trustees must satisfy the requirements specified in section 243.

Section 252: Procedure when refusing approval of change of manager or trustee

477. If the Authority proposes to refuse to approve the replacement of the trustee or manager, a warning notice must be given. If the Authority proposes to refuse to approve changes to the scheme, warning and decision notice procedures will apply and the matter can be referred to the Tribunal.

Section 253: Avoidance of exclusion clauses

478. As a result of this section, if a trust deed for an authorised unit trust scheme seeks to avoid the manager's or trustee's duty to exercise due care, the deed will be ineffective.

Section 254: Revocation of authorisation order otherwise than by consent

479. The Authority may revoke an order authorising a unit trust in the circumstances specified in the section. These include any of the following situations:

- the manager or trustee has contravened a requirement imposed by the Act or the Authority's rules;
- either of them has given the Authority misleading information;
- the requirements for making an authorisation order (referred to in section 243) are no longer met;
- the scheme has been inactive for 12 months or more; or
- it is desirable in the interests of participants to revoke the scheme's authorisation.

Section 255: Procedure

480. If the Authority wishes to revoke an authorisation order, it must go through the warning and decision notice procedure, giving notice to both the manager and trustee. Either of them may refer the decision to the Tribunal.

Section 256: Requests for revocation of authorisation order

481. The Authority can revoke an authorisation order where the manager or trustee requests it to, but it can also refuse to revoke authorisation where it considers that refusal would be in the interests of participants, or that the public interest requires an investigation before authorisation is revoked. Warning and decision notice procedures will apply and the decision may be referred to the Tribunal.

Section 257: Directions

482. The Authority may give directions requiring the manager of the scheme to cease the issue or redemption of units, or to require the manager and trustee of the scheme to wind it up in the circumstances specified in the section (which are broadly similar to those specified as grounds for revoking a scheme's authorisation under section 254). If a person contravenes a direction under this section, private persons, and others falling within such categories as may be prescribed in regulations made by the Treasury, who suffer loss as a result may be able to bring an action. Once a direction has been given, the Authority may revoke or vary that direction, either of its own accord, or on the application of the manager or trustee.

Section 258: Applications to the court

483. In cases where the Authority is able to give a direction under section 257, it may also apply to the court for an order removing and replacing the manager or the trustee, or simply removing them and appointing an authorised person to wind up the scheme.

Section 259: Procedure in giving directions under section 257 and varying them on Authority's own initiative

484. This section sets out the procedure the Authority must follow when it proposes to give, or on its own initiative vary, a direction in relation to an authorised unit trust scheme under section 257. This is the same written notice procedure as described in relation to section 53, except that in this case separate notices must be given to both the manager and trustee of the scheme. If a notice under this section imposes a requirement for the manager of the scheme to cease issue or redemption of units, it will either give a date when the requirement ends, or else provide for the requirement to continue until a further notice is given. If a notice under this section imposes a requirement to wind up a scheme, the scheme must be wound up either by a date given in the notice or else (if no date is given) as soon as possible.

Section 260: Procedure: refusal to revoke or vary direction

485. If the manager or trustee applies to the Authority for it to revoke or vary a direction given under section 257, but the Authority proposes to refuse to do so, the warning and decision notice procedures will apply. The decision may be referred to the Tribunal.

Section 261: Procedure: revocation of direction and grant of request for variation

486. If the Authority decides to revoke a direction under section 257, or to vary a direction in accordance with a request, it must give written notice of that fact. The Authority may publish information about the revocation or variation of the direction.

Chapter IV: Open-ended investment companies

Section 262: Open-ended investment companies

487. This section creates the broad framework for Treasury regulations relating to the establishment, carrying on, and regulation, of oeics. It provides a wide-ranging and non-exhaustive list of matters which the regulations may provide for. These include imposing criminal liability, conferring functions on the Authority (including rule-making powers and power to waive or modify rules) and power to modify or exclude any statute or rule of law. In particular, the regulations may revoke the existing regulations governing oeics and provide for transitional arrangements for “grandfathering” under those regulations.

Section 263: Amendment of section 716 Companies Act 1985

488. This section amends the Companies Act, so that the prohibition on formation of companies with more than 20 members other than under the Companies Act will not apply to oeics incorporated by virtue of regulations made by Treasury under section 262.

Chapter V: Recognised overseas schemes

Section 264: Schemes constituted in other EEA States

489. This section relates to the ability of collective investment schemes constituted in other EEA States to passport into the United Kingdom. EEA schemes will be recognised if:

- they satisfy requirements prescribed by Treasury regulations;
- the operator of the scheme gives notice to the Authority of the proposal to invite UK persons to participate in the scheme; and
- the Authority does not give notice that the way in which the invitation is to be made does not comply with the relevant UK law.

Section 265: Representations and references to the Tribunal

490. This section sets out the procedure if the Authority gives notice that it does not consider that the proposed invitations will comply with UK law, and representations are made to the Authority in response. The procedures allow for rights of reference to the Tribunal where the Authority issues a decision notice confirming that the way in which the proposed invitations are to be made does not comply with UK law.

Section 266: Disapplication of rules

491. Rules made by the Authority will not generally apply to the operator, trustee or depositary of a recognised scheme under section 264. The exceptions are financial promotion rules, and rules relating to the maintenance of facilities in the United Kingdom (under section 283(1)).

Section 267: Power of authority to suspend promotion of scheme

492. Although it cannot suspend an EEA scheme's recognition, the Authority can suspend its promotion to the public if it appears that the operator has contravened financial promotion rules. The warning and decision notice procedure will apply and the Authority will be required to notify the scheme's home State authority if it decides to give a direction under this section. The operator will have a right to refer the decision to the Tribunal.

493. Under this section, the Authority may also revoke, as well as vary, a direction suspending the promotion of an EEA scheme, where specified conditions are met.

Section 268: Procedure in giving directions under section 267 and varying them on Authority's own initiative

494. This section establishes the procedure the Authority must follow when it proposes to give, or on its own initiative vary, a direction under section 267 suspending the promotion of a scheme which is recognised under section 264. This is the same written notice procedure as described in relation to section 53 except that the notices in question are to be given to the operator of the scheme concerned. In addition the Authority is required, when giving notice under this section, to inform the competent authorities in the scheme's home State.

Section 269: Procedure on application for variation or revocation of direction

495. This section sets out the procedure the Authority must follow on receipt of an application under section 267(4) or (5) for variation or revocation of a direction suspending the promotion of a scheme which is recognised under section 264. Where an application is granted in full, simple written notice is to be given under subsection (4). The same applies where the Authority decides to revoke a direction on its own initiative under subsection (5). Where the Authority proposes to refuse the application, or proposes to vary the direction in a way other than that requested in the application, the applicant is entitled to receive a warning notice setting out the reasons for the decision, the standard opportunity to make representations, a decision notice and the right to refer the matter to the Tribunal if still aggrieved by the decision. Notices under this section are to be given to the operator of the scheme concerned, but in addition the Authority is required to inform the competent authorities in the scheme's home State.

Section 270: Schemes authorised in designated countries or territories

496. Schemes managed in, and authorised under, the law of non-EEA territories can be recognised under this section. In order to be recognised, the relevant territory needs to be designated by an order made by the Treasury, and the Authority must give its approval to the scheme being recognised. The Treasury may not make an order designating a territory unless it is satisfied that the relevant overseas law under which the scheme is authorised and supervised affords at least equivalent protection to that provided by the UK law on collective investment schemes.

497. In considering whether to make an order designating a country or territory under this section, the Treasury must ask the Authority for a report on the law and practice of the country or territory in question and on any arrangements it has made to co-operate with the authorities there.

Section 271: Procedure

498. If the Authority proposes to refuse to approve a scheme under section 270, it must give the operator a warning notice. The decision notice procedure will apply, and the decision may be referred to the Tribunal.

Section 272: Individually recognised overseas schemes

499. This section allows the Authority to recognise schemes which are not managed in an EEA country or a designated territory.

500. In order to be recognised, the Authority must be satisfied as to various matters, including the adequacy of protection for the participants in the place where the scheme is established, the adequacy of the constitution and management and of the powers and duties of the operator, trustee and depository (if any), and that those persons are either authorised (with appropriate permissions) or, if not authorised, fit and proper persons. In addition, overseas schemes will only be recognised under this section if they are oeics or schemes where the operator is a body corporate.

Section 273: Matters that may be taken into account

501. This section specifies matters which the Authority can take into account when considering whether the operator, trustee or depository of an individually recognised scheme is fit and proper.

Section 274: Applications for recognition of individual schemes

502. The Authority has broad scope to specify the form and content of applications (which must be made by the operator) and to seek additional information before determining an application.

Section 275: Determination of applications

503. This section sets out the time periods which will apply for the determination of an application. Completed applications are to be determined within six months.

Section 276: Procedure when refusing an application

504. The Authority must go through the warning and decision notice procedure if it proposes to refuse an application. The applicant may refer the refusal to the Tribunal.

Section 277: Alteration of schemes and changes of operator, trustee or depository

505. Changes to the scheme itself cannot be made unless the operator has given notice to the Authority, and the Authority has either approved the proposal, or not notified its disapproval. As for the replacement of the operator, trustee or depository, at least one month's notice must be given to the Authority either by the person being replaced, or the person proposing to replace him, but there is no express provision for the Authority to approve or disapprove the replacements.

Section 278: Rules as to scheme particulars

506. The Authority may make rules imposing duties on the operators of recognised schemes which are constituted in designated territories under section 270 or which are individually recognised under section 272. These rules broadly correlate to scheme particulars rules for authorised unit trusts.

Section 279: Revocation of recognition

507. Recognition of schemes constituted in designated territories or individually recognised schemes can be revoked in the circumstances set out in this section. These are broadly similar to the grounds for revocation of an authorisation order under section 254.

Section 280: Procedure

508. If the Authority proposes to revoke recognition under section 279, the warning and decision notice procedure will apply. Notice must be given to the operator, and if any, the trustee and depository. The decision may be referred to the Tribunal.

Section 281: Directions

509. Instead of proposing to revoke recognition under section 279, the Authority can effectively direct that a scheme's recognition will be suspended.

Section 282: Procedure on giving directions under section 281 and varying them otherwise than as requested

510. This section establishes the procedure the Authority must follow when it proposes to give a direction by virtue of its powers of intervention against schemes recognised under sections 270 and 272. This is the same written notice procedure as described in relation to section 53, except that in this case separate notices must be given to both the operator and (if there is one) to the trustee or depository of the scheme.

Section 283: Facilities and information in the UK

511. The Authority may make rules requiring operators of all recognised schemes to maintain facilities in the United Kingdom. It may also require the operator of a recognised scheme to include explanatory information in financial promotions which name the scheme.

Chapter VI: Investigations

Section 284: Power to investigate

512. The Authority or the Secretary of State can appoint a person to carry out investigations into collective investment schemes. The provisions do not generally extend to the investigation of oeics. Provision concerning those investigations can be made in Treasury regulations under section 262.

513. The person carrying out the investigation has powers to investigate other persons or matters where necessary or relevant. The provisions concerning the conduct of investigations set out in section 170 will generally apply and statements made to the investigator may be admissible in proceedings in the circumstances set out in section 174. Persons other than the managers, trustees, operators or depositaries of schemes, or directors of oeics, will not generally be required to disclose information subject to the bankers' duty of confidentiality. The power of entry under section 176 will be available to back up information requirements imposed under this section. The provisions of section 177 will also apply, so that failure to comply with a requirement imposed in connection with an investigation can be certified to a court and falsification or concealment will be an offence.

PART XVIII: RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES

514. This Part provides for the regulatory regime for recognised investment exchanges and clearing houses. These recognised bodies are exempt from the need to be authorised. This regime is similar to that under the FS Act 1986.

515. Chapter I of this Part:

- gives the Treasury the power to set the requirements that such bodies have to meet in order to be recognised;
- sets out the application procedures and supervisory arrangements for recognised bodies, including conferring powers to revoke recognition and to direct recognised bodies to take steps to meet the recognition requirements;
- allows the Treasury, jointly with the Secretary of State, to extend special protection from insolvency law to organisations clearing certain non-investment contracts.

516. Chapter II provides for competition scrutiny of recognised bodies. This places a duty on the DGFT, and gives him powers, to investigate and report to the Competition Commission on any significantly adverse effects on competition of these bodies' rules, guidance and practices, or any

exploitation of a strong market position. It allows the Treasury, on receipt of a further report from the Commission, to direct, through the Authority, that appropriate changes are made to such rules, guidance or practices. Chapter III disapplies the general domestic competition law as it affects the matters covered by the Act regime. Chapter IV contains definitions of key terms.

Chapter I: Exemption

Section 285: Exemption for recognised investment exchanges and clearing houses

517. Subsection (1) defines what is meant by a recognised investment exchange and clearing house.

518. Subsections (2) and (3) set out the scope of the exemption for recognised bodies from the need to be authorised in order to carry on regulated activities which it carries on as an exchange or clearing house. Exchanges are also exempt as respects anything they do for the purposes of, or in connection with, the provision of clearing services.

Section 286: Qualification for recognition

519. Subsection (1) allows the Treasury to set recognition requirements by regulations. Recognition requirements are the requirements which must be satisfied by an exchange or clearing house in order both to become recognised, and to remain recognised.

520. Subsection (2) provides that if the regulations made under subsection (1) contain provisions relating to the default rules of a recognised body, then the Treasury has to have the approval of the Secretary of State before making the regulations. (The Secretary of State is responsible for insolvency matters.)

521. Subsection (3) defines default rules. These are rules which provide for action to be taken to settle market contracts in the event of a default; for example, the rules may specify the means for establishing the price at which a bargain should be made. These are necessary to protect against systemic risk in the financial markets. If contracts could not be closed out in an orderly and speedy manner, a default by one market participant could spread quickly to large numbers of market participants.

522. Subsection (4) defines market contract by reference to Part VII of the Companies Act 1989 (or the corresponding Order in Northern Ireland). Market contracts in this context are those entered into by the exchange or clearing house or by the members of an exchange.

Section 287: Application by an investment exchange

523. This section allows an organisation to apply for recognition as a recognised investment exchange and sets out the information that the applicant must send to the Authority.

Section 288: Application by a clearing house

524. This section allows an organisation to apply for recognition as a clearing house and sets out the information that the applicant must send to the Authority.

Section 289: Applications: supplementary

525 This section allows the Authority to seek additional information, in whatever form it requires, in respect of any application for recognition under sections 287 and 288. It also allows the Authority to require verification of that information.

Section 290: Recognition orders

526. This section allows the Authority to make a recognition order if it is satisfied that the applicant meets the recognition requirements. The Authority is not obliged to make a recognition order in this circumstance and subsection (3) allows the Authority to take any information into account, and not just information concerning the recognition requirements, when deciding whether to grant recognition.

527. Subsection (2) requires the Treasury to give their approval under section 307 before the making of a recognition order. The role of the Treasury under that section concerns cases where there is an issue as to whether the rules and other regulatory provisions of the exchange or clearing house have a significantly adverse, and unjustified, effect on competition.

Section 291: Liability in relation to recognised body's regulatory functions

528. This section gives recognised investment exchanges immunity against legal action for damages in respect of anything done or omitted in the discharge of the recognised body's regulatory functions. This immunity does not apply where the act or omission was in bad faith or where it was unlawful as a result of section 6(1) of the Human Rights Act 1998. Under section 6(1) of that Act, it is unlawful for a public authority to act in a way which is incompatible with a right conferred by the European Convention on Human Rights and Fundamental Freedoms which is included in Schedule 1 to the 1998 Act.

Section 292: Overseas investment exchanges and overseas clearing houses

529. This section modifies the application procedures and requirements where the applicant concerned is an overseas investment exchange or clearing house.

530. In order to be recognised, an overseas applicant need not comply with the recognition requirements made by the Treasury under section 286. Instead, subsection (2) provides that the Authority may make a recognition order in respect of an overseas applicant if the requirements set out in subsection (3) are met. These requirements are that investors are afforded protection equivalent to that which they would have had if the overseas body were required to comply with the recognition requirements; that there are adequate default procedures; that the applicant is able and willing to co-operate with the Authority; and that adequate arrangements are in place enabling the Authority to cooperate, for example through the sharing of information, with the overseas body's home State supervisor.

531. Subsection (5) makes some changes as to how other provisions of this Part work in respect of overseas bodies given that the relevant requirements which they have to meet are those set out in subsection (3) rather than the recognition requirements made by the Treasury.

Section 293: Notification requirements

532. Subsections (1) to (4) allow the Authority to make rules requiring a recognised body to give it notice of, and information about, specified events or information about the recognised body which the Authority reasonably requires to carry out its functions. The Authority can also specify when, and in what form, the information should be provided.

533. Subsections (5) to (7) place a duty on the recognised body to give the Authority immediate notice of new rules and guidance, or of changes to existing rules and guidance. Recognised bodies are also required to notify the Authority of changes to their clearing arrangements. Subsection (8) provides that these duties do not apply to recognised overseas bodies. They are placed under different obligations under section 295.

Section 294: Modification or waiver of rules

534. This section gives the Authority power to waive or modify the notification rules it can make under sections 293 and 295, at the request of the recognised body or with their consent. Subsection (4) sets out the circumstances in which the Authority may do this.

Section 295: Notification: overseas investment exchanges and overseas clearing houses

535. This section requires overseas investment exchanges and clearing houses to produce a report at least once a year giving details of any events which have occurred over the year which may have an effect on competition, or which might affect the Authority's assessment of whether the requirements set out in section 292 are satisfied. The Authority can also make rules requiring that additional information should be included in the report.

Section 296: Authority's power to give directions

536. This section allows the Authority to direct a recognised body which has failed to satisfy the recognition criteria, or has failed to comply with other obligations under the Act (for example those in this Part) to take steps to remedy that failure. This power enables the Authority to deal with problems which are not sufficiently serious to merit withdrawal of recognition from the body concerned.

Section 297: Revoking recognition

537. This section allows the Authority to revoke the recognition of a body which no longer wishes to remain recognised, or which no longer meets the recognition criteria or which has failed to comply with other obligations under the Act.

Section 298: Directions and revocation: procedure

538. This section sets out the procedure the Authority must follow when it proposes to give a direction or make a revocation order. This includes giving the recognised body, its members and third parties who might be affected the right to make written representations. Subsection (7) allows the Authority to give a direction without following these procedures if it considers that it is essential to do so.

Section 299: Complaints about recognised bodies

539. This section provides that the Authority must establish a procedure for the investigation of complaints against recognised bodies where the complaint is relevant to the question of whether the body should remain recognised or not.

Section 300: Extension of functions of Tribunal

540. This section gives the Treasury a power to extend, by order, the jurisdiction of the Financial Services and Markets Tribunal to certain disciplinary proceedings brought by a recognised UK exchange or clearing house. An order may be made in respect of one or more specified recognised exchanges or clearing houses or in respect of recognised exchanges or clearing houses generally.

541. Subsections (1) and (4) make clear that jurisdiction may only be extended to cases involving internal disciplinary proceedings taken against members of recognised investment exchanges or recognised clearing houses for breaches of the rules of the exchange or clearing house in cases of behaviour which amounts to market abuse. Since it may be necessary to modify the provisions of the Act relating to proceedings before the Tribunal to accommodate the particular circumstances

of a recognised exchange or clearing house, subsection (3) enables the Treasury to make any modifications that are necessary.

542. Subsection (2) deals with the circumstances in which jurisdiction may be extended. Subsection (2)(a) enables jurisdiction to be extended where the Treasury are satisfied that it is necessary to do so in order to ensure consistency between decisions taken in exchange or clearing house disciplinary proceedings involving market abuse and Tribunal decisions in such cases (including Tribunal decisions relating to the relevant disciplinary proceedings of other recognised exchanges or clearing houses). Subsection (2)(b) would enable the Treasury to extend the role of the Tribunal to recognised exchange or clearing house disciplinary proceedings in cases of market abuse if it should prove necessary to do so in the future in the light of the developing jurisprudence of the European Court of Human Rights.

Section 301: Supervision of certain contracts

543. This section allows the Treasury, acting jointly with the Secretary of State, to make regulations which extend the provisions of Part VII of the Companies Act 1989 (or the equivalent provision of the Northern Ireland Order), with any appropriate modifications, to certain non-investment contracts. Part VII of the Companies Act 1989 disappplies various provisions of insolvency law for market contracts in order to protect against systemic risk in the financial markets.

544. Subsection (2) and (3) set out what kind of contracts can be covered by these regulations. There are two criteria:

- first, the contracts must be settled by someone who is on a list maintained by the Authority for the purposes of this section. The Treasury, under subsection (4), has to approve the conditions set by the Authority for admission to this list and the arrangements for admission to and removal from the list;
- second, the Treasury and the Secretary of State have to be satisfied that it is appropriate for the Authority to supervise the settlement arrangements for these non-investment contracts. In coming to a view, the Treasury and Secretary of State must have regard to the extent to which the contracts are dealt in by persons supervised by the Authority.

545. Subsection (10) allows the Treasury and the Secretary of State, in making regulations under this section, to apply any of the provisions of this Act to the person settling these contracts. Without this power it would not be possible for the Authority to regulate such persons on a statutory basis, since they would be clearing non-investment contracts and so would not require authorisation or exemption.

Chapter II: Competition Scrutiny

Section 302: Interpretation

546. This section describes the “regulatory provisions” (that is the rules, guidance, arrangements and particulars) and “practices” which are to be scrutinised under this Part to assess whether they have, or are intended or likely to have, a significantly adverse effect on competition as defined in this section.

Section 303: Initial report by Director

547. This section requires the Authority to send to the DGFT and to the Treasury all the regulatory provisions and any other relevant information received in support of an application for recognition. The DGFT must then issue a report as to whether any of these provisions has a significantly adverse effect on competition.

Section 304: Further reports by Director

548. This section requires the DGFT to keep all recognised investment exchanges and clearing houses under continuing competition scrutiny. If, at any time, the DGFT forms the view that any regulatory provision or practice has a significantly adverse effect on competition then he must make a report.

549. Subsection (3) provides that if the DGFT concludes that regulatory provisions or practices do not have such an effect then he has discretion as to whether to make a report.

Section 305: Investigations by Director

550. This section confers powers on the DGFT to enable him to carry out his functions under sections 303 and 304. The DGFT will be able to request relevant documents from any person, and to request relevant information from any business.

551. Subsections (5) and (6) provide that if a person fails to produce the information or documents required, then the DGFT may report the matter to the court. If the court is satisfied that there was no reasonable excuse for this failure, the person may be dealt with as if he were in contempt of court.

Section 306: Consideration by Competition Commission

552. This section concerns the role and duties of the Commission following receipt of a report from the Director General. Its functions and duties are in line with those set out in the analogous provisions in section 162 in Part X. This section is supplemented by the provisions of Schedule 14. (This Schedule also applies to section 162, which relates to the Commission's role in competition scrutiny of the regulating provisions and practices of the Authority.)

Section 307: Recognition orders: role of the Treasury

553. This section sets out the Treasury's powers to take action following an adverse report from the Commission on an application for a recognition order.

554. If the Commission's report concludes that no significantly adverse effect on competition exists, or such an effect does exist, but is justified, subsection (2) requires that the Treasury must approve the making of the recognition order unless exceptional circumstances exist to justify their refusal. If, however, the Commission's report is that a significantly adverse effect on competition exists, and is not justified, then subsection (4) requires that the Treasury, unless exceptional circumstances exist, should refuse to approve the making of the recognition order.

Section 308: Directions by the Treasury

555. This section concerns the Treasury's powers to take action following an adverse report from the Commission, other than a report on an application for a recognition order.

556. If the Commission's report is that the anti-competitive effect is not justified, subsection (2) requires that the Treasury give a "remedial direction". (A remedial direction is defined in subsection (8) as a direction to the Authority to either revoke the recognition of the body concerned, or to direct the body to take specified steps as set out in the direction.) However, subsection (3) provides that the Treasury need not give a direction either where the Treasury consider that it is not necessary as a result of action which has already been taken by the body concerned or by the Authority, or because exceptional circumstances exist which makes it inappropriate or unnecessary to give a direction. Conversely, if the Commission's conclusion is that the anti-competitive effect is justified, under subsections (5) and (6) the Treasury may nonetheless give a direction to the Authority to

take action which the Treasury consider necessary because of exceptional circumstances of the case.

Section 309: Statements by the Treasury

557. This section makes provision for statements to be made by the Treasury when they decline to give a remedial direction under the preceding section.

558. Subsection (1) provides that if the Treasury decide not to give a remedial direction action following a Commission report that they should, they must produce a statement giving their reasons. Subsection (2) provides that if they do give such direction they must give details of this. In addition, if they have made a direction in a case where the Commission has concluded that the adverse effect on competition is justified, they must publish a statement giving their reasons for doing so.

Chapter III: Exclusion from the Competition Act 1998

Section 311: The Chapter I prohibition

559. This section makes clear that the prohibition of agreements preventing, restricting or distorting competition within the United Kingdom in Chapter I of the Competition Act 1998 does not apply to the constitution of a recognised investment exchange or clearing house or to a body which has applied for recognition; nor to the regulatory provisions of a recognised body; nor to a decision or practice of a recognised body, in respect of its regulatory functions; nor to an agreement the parties to which include a recognised body or person subject to its rules to the extent that the agreement is required or encouraged by the recognised body's regulatory provisions or practices.

Section 312: The Chapter II prohibition

560. This section makes clear that the prohibition of abuse of a dominant position in a market which may affect trade in the United Kingdom in Chapter II of the Competition Act 1998, does not apply to the regulatory provisions or practices of a recognised investment exchange or clearing house, nor to agreements entered into by its members, to the extent that these are required by the body's regulatory provisions.

PART XIX: LLOYD'S

561. This Part of the Act makes a number of provisions which supplement other parts of the Act to bring the Society of Lloyd's ("the Society") within the general regulatory framework. These provisions are needed to reflect the unique legal status of the Society and its members, and the functions of the Council of Lloyd's ("the Council"), the governing body of the Society, under the Lloyd's Acts 1871–1982, in relation to the Lloyd's community.

562. Lloyd's is regulated for solvency purposes by the Authority in accordance with the arrangements under Part IV of the ICA 1982. The FS Act 1986 provides an exemption for Lloyd's and underwriting agents as respects investment business carried on by them in connection with or for the purposes of insurance business at Lloyd's. For most purposes, regulation of the Society has been undertaken by the Council. The Act gives the Authority considerable discretion as to how it discharges its obligations for the regulation of Lloyd's.

563. The external regulation of the Lloyd's community by the Authority is achieved by a number of different provisions in the Act. By virtue of this Part, the Society — a body corporate — is to be authorised to carry on certain regulated activities. The permission will be defined by the Authority, as if it had been granted under Part IV. Primarily, the permission will cover making arrangements which enable members to carry out contracts of insurance. The activities of managing and members'

agents (or “underwriting agents”) will become regulated activities for the purposes of the Act, and so underwriting agents will need have relevant permission under Part IV. As authorised persons, the Society and agents will be subject to the full range of the Authority's powers under the Act, including its rules and its powers of investigation and discipline and, ultimately, the power to withdraw authorisation, as is the case with other authorised persons under the general provisions of the Act.

564. Members of Lloyd's will benefit from an exemption from the need to be authorised in relation to contracts of insurance effected or carried out at Lloyd's. They will, nonetheless, be subject to regulatory arrangements as directed by the Authority under powers contained in this Part, and subject to the powers of the Council. As a minimum, the Authority will need to require the members to meet the solvency requirements laid down under the relevant EC directives. A member of Lloyd's would, however, need permission to carry on any other regulated activity, for example advising on investments.

Section 314: Authority's general duty

565. It is not proposed that Lloyd's should be subject to full regulation by the Authority at the outset. Certain regulatory functions will be left with the Council. However, the Authority will at any time be able to take a greater degree of direct responsibility for regulation if it considers it appropriate and this section, therefore, places a duty on the Authority to keep matters under review.

Section 315: The Society: authorisation and permission

566. This section makes the Society an authorised person, without it needing to submit an application. This is needed because, unlike most other current businesses, Lloyd's does not have an authorisation from an existing regulator that can be grandfathered.

567. Subsection (3) limits the activities for which the Society will have permission, at the time it becomes authorised, in broad terms to arranging deals in insurance contracts and syndicate participation, and for connected activities. The precise terms of the permission will depend on the activities specified for the purposes of section 22(1). Subsection (4) gives the Authority a power, where it considers it appropriate, to limit the scope of the permission, at the time the authorisation comes into force, or at any time thereafter. Lloyd's would apply for an extension of that permission in accordance with Part IV.

Section 316: Direction by Authority

568. This section confers on the Authority power to give directions applying the general prohibition to members of Lloyd's or applying core provisions to members. This power can be used in relation to a member of Lloyd's, or members taken together, though they will not, at least at the outset, be authorised persons. Directions under this section may specify the extent to which the “core provisions” of the Act, as set out in section 317, will apply to them and would impose requirements directly on the members which the Authority will be able monitor and enforce. The Authority could, for example, apply to members general rules requiring persons carrying out contracts of insurance to appoint an actuary to assess the extent of their liabilities. It could also require members to be authorised if it considers that appropriate.

Section 317: The core provisions

569. The core provisions which the Authority may decide to apply to members of Lloyd's under section 316 relate to:

- the performance of regulated activities;

- rules and guidance;
- information gathering and investigations;
- control over authorised persons;
- compensation scheme;
- ombudsman scheme;
- auditors and actuaries;
- insolvency
- restitution and injunctions
- notices.

570. Subsection (3) enables the Authority to apply a core provision with modifications. This will enable the practical role played by the Society and underwriting agents in the day to day business affairs of members to be reflected in the regulatory arrangements.

Section 318: Exercise of powers through the Council

571. This section gives the Authority an alternative mechanism to its power of direction under section 316. Instead of, or in addition to, giving a direction to the members of Lloyd's, the Authority can direct the Society or the Council to use their powers — such as the byelaw making powers of the Council under Lloyd's Act 1982 — to impose obligations on members. It would, therefore, be open to the Authority to set solvency requirements for Lloyd's members, perhaps specifying in a direction only the high level requirements required by the EC directives; the Council would then make byelaws specifying the detailed arrangements in accordance with the requirements of the direction. The Council would be responsible for enforcing its byelaws and for demonstrating to the Authority that the relevant requirements had been met. When exercising this power, the Authority may additionally impose requirements on the Council or the Society.

572. Subsection (5) also allows the Authority to use this power to direct the Council in respect of managing and members' agents, rather than exercising powers against them directly as authorised persons.

573. Subsection (6)(a) makes it clear that if the Authority chooses to give directions in this way, it is not precluded from using its other regulatory powers under the Act.

Section 319: Consultation

574. This section sets out the procedure for giving a direction under sections 316 or 318. The procedures are similar to those that apply to other rule making functions.

Section 320: Former underwriting members

575. This section disapplies the general prohibition from former members of Lloyd's in relation to contracts of insurance effected by them while they were members of the society. It gives the Authority powers to impose requirements on former members of Lloyd's, including members who decide to leave in the future, in relation to the insurance business carried on by them while they were members of Lloyd's until all their insurance liabilities have been discharged. A former member of Lloyd's would need to obtain permission from, and be authorised by, the Authority in order to carry on any other regulated activities under the Act.

Section 321: Requirements imposed under 320

576. This section requires the Authority to follow the specified procedures when exercising the powers set out in section 320. The arrangements are consistent with other notice arrangements under the Act and they give former names on whom requirements are imposed the opportunity to

make representations. Subsection (11) confers a right on former names to refer a matter to the Tribunal in certain circumstances.

Section 322: Rules applicable to former underwriting members

577. This section, like section 320, confers on the Authority powers to impose requirements on former member of Lloyd's. Whereas section 320 would enable the Authority to impose specific requirements on former members, in much the same way as it would impose restrictions on a Part IV permission in relation to an authorised person, this section allows the Authority to make rules that will apply more generally to former members or classes of former member. The grounds for exercising the power are that the Authority considers it appropriate for the purpose of protecting policyholders. The procedures under section 319, including for example the consultation arrangements, apply to the exercise of this power.

Section 323: Transfer schemes

578. This section confers on the Treasury a power to apply Part VII to transfers of business consisting of contracts of insurance from members of Lloyd's. This will ensure that appropriate regulatory scrutiny can be given to any proposed business transfers, and that any persons affected by the proposed transfer have the opportunity to make representations to the court.

PART XX: PROVISION OF FINANCIAL SERVICES BY MEMBERS OF THE PROFESSIONS

579. This Part makes arrangements whereby professionals (such as solicitors, actuaries and accountants) who:

- are not carrying on mainstream regulated activities but
- are members of designated professional bodies,

will be exempt from the requirement to obtain permission from the Authority in order to carry out certain regulated activities. Additional tests are set out in section 327 which must be met in order for the professional to qualify for the exemption.

580. The arrangements under this Part include the safeguard of arms-length oversight by the Authority of the way in which the professional bodies supervise and regulate exempt professionals, and the way in which such professionals carry on regulated activities. This will involve, amongst other things, the Authority monitoring the effectiveness of the complaints and redress arrangements of designated professional bodies.

581. In addition, the Authority will be able to ban members of the professions who benefit from the exemption from carrying on regulated activities, where the circumstances justify this. The Authority can also direct that the exemption be cut back on a more general class basis (so that, for example, certain categories of professional, carrying on certain types of activities, will no longer benefit from the exemption).

582. The Authority is also empowered to make rules requiring exempt professionals to disclose to their clients the fact that they are not regulated by the Authority.

Section 325: Authority's general duty

583. This section obliges the Authority to keep itself informed about the way in which designated professional bodies supervise and regulate the carrying on of regulated activities by their members. It also requires the professional bodies to cooperate with the Authority so as to enable the Authority to fulfil its duty of arms-length oversight.

Section 326: Designation of professional bodies

584. This section gives the Treasury the power to designate bodies for the purpose of section 325. Bodies will only be designated where they actively regulate the provision of financial services by their members.

Section 327: Exemption from the general prohibition

585. This section sets out the tests which need to be met in order for a professional to qualify for the exemption, including:

- the professional must be a member of a professional body which is designated by the Treasury;
- the professional must not receive a commission from a third party in respect of the regulated activities unless he accounts to his client for it;
- the regulated activities must be provided in a way that is incidental and complementary to the provision of professional (for example, legal, actuarial or accountancy) services;
- the regulated activities must not relate to sensitive products (for example, life insurance). What amounts to a “sensitive product” is to be specified by the Treasury in regulations.

Section 328: Directions in relation to the general prohibition

586. This section allows the Authority to direct that the exemption from the general prohibition is not to apply to certain classes of professional. The Authority may exercise this power, however, only where it is satisfied that it is desirable to do so in the interests of clients. A non-exhaustive list of factors to which the Authority must have regard in reaching that judgement is set out in the section.

Section 329: Orders in relation to the general prohibition

587. This section enables the Authority to make an order which would have the effect of banning specified persons who are not fit and proper to carry on regulated activities. This is consistent with the arrangements for prohibition orders in relation to individuals under section 56.

Section 330: Consultation

588. This section sets out the procedure for consulting on a direction. The procedure is consistent with that applying to similar arrangements in other parts of the Act.

Section 331: Procedure on making or varying orders under section 329

589. This section sets out the procedure which will apply when the Authority makes an order under section 329. The warning and decision notice procedure applied throughout the Act must be followed, and the person who is subject to an order can refer matters to the Tribunal.

Section 332: Rules in relation to persons to whom the general prohibition does not apply

590. This section allows the Authority to make rules requiring professionals carrying on exempt regulated activities to disclose to their clients that they are not authorised. It also requires the professional bodies to make rules designed to ensure that those members who benefit from the exemption will not carry on regulated activities which are not complementary to the provision of particular professional services to a particular client, although this does not extend to regulated activities conducted by professional firms as exempt persons under the Act. In order to be effective, those rules must be approved by the Authority.

Section 333: False claims to be a person to whom the general prohibition does not apply

591. This section makes it an offence for a person to describe himself (in whatever terms) as a person who has the benefit of the Part XX exemption in relation to a particular regulated activity, or 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, when he is not.

592. Subsection (2) provides that 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.

593. Under subsection (3), a person found guilty of this offence is liable on conviction to a maximum of 6 months imprisonment and a fine not exceeding level 5 on the standard scale (currently £5,000). If the offence results from the public display of material, subsection (4) a fine of level 5 is to be multiplied by the number of days for which any material giving rise to the offence was on public display.

PART XXI: MUTUAL SOCIETIES

594. This Part gives the Treasury powers by order to transfer the functions of the Building Societies Commission, the Friendly Societies Commission and the Chief Registrar of Friendly Societies and functions under the Industrial and Provident Societies Acts and the Credit Unions Act 1979. These transfers will be achieved by orders made under sections 334 to 339.

595. It is envisaged that the powers will be exercised to ensure that the functions which relate to the registration and regulation of societies under the existing legislation will be transferred to the Authority. For example, the functions to be transferred to the Authority are likely to include the power to require, or approve, a transfer of the business of a mutual society to another society or to a company.

596. The relevant legislation also confers power on the Building Societies Commission, Friendly Societies Commission and the Chief Registrar, often subject to the consent of the Treasury, to set requirements as to the registration and constitution of such societies. Such powers are exercised by statutory instrument. Those powers are different in character from the financial regulatory powers of the Authority under the Act. It is proposed that such functions will transfer to the Treasury.

597. These transfer provisions also include power for the Treasury to dissolve the existing bodies, it being envisaged that all their functions will have been transferred. The Treasury will be able to make supplemental provision, for example, to transfer the property, rights and liabilities of bodies which are being dissolved or to amend the existing legislation in the light of the transfer of functions. For example, where the existing legislation divides functions as between the different parts of the United Kingdom, some consolidation may be required to reflect the fact that the Authority is a single corporate entity.

598. Schedule 18 makes certain amendments to the legislation governing mutuals. Further amendments to that legislation which are consequential on the provisions of this Act will be made by order under section 426.

PART XXII: AUDITORS AND ACTUARIES

599. This Part concerns the appointment, on a continuing, periodic or ad hoc basis, of auditors and actuaries by authorised persons. It imposes certain requirements, including a duty to disclose to the Authority information relevant to its functions under the Act. These provisions carry forward a number of similar provisions in existing legislation.

600. There are some similarities between the roles of auditors and actuaries, and they are therefore dealt with together in this part of the Act. However, there are also important differences, and these sections will give the Authority the power to act in ways which will recognise the difference in the detailed roles and responsibilities of the two professions.

601. Part XI of the Act gives the Authority various powers to gather information and investigate authorised persons, with section 166 in particular providing a power to require an authorised person to provide the Authority with a report by an accountant or other expert on a particular aspect of his business. Part XXII deals primarily with the duties and responsibilities of auditors and actuaries in respect of their work for authorised persons.

Section 340: Appointment

602. Subsection (1) gives the Authority the power to make rules to require authorised persons to appoint an auditor or actuary, where they are not already under a statutory obligation to do so (for example under Companies Act requirements). Subsection (4) allows the Authority to make rules concerning the terms, conditions, qualifications for, and notification of such appointments. The Authority will also be able to make an appointment itself if one is not made or if it has not received any notification.

603. Subsection (2) allows the Authority to make rules requiring any authorised person to produce periodic financial reports on its business, and to submit these for analysis and comment by an auditor or actuary.

604. Subsection (5) provides that an auditor or actuary appointed to act on a continuing basis or to produce a periodic report must comply with the relevant rules made by the Authority. These rules may also give the auditor or actuary such powers as the Authority judges necessary for them to carry out their duties.

Section 342: Information given by auditor or actuary to the Authority

605. This section concerns the duties and powers of auditors and actuaries of authorised persons to pass on information of regulatory importance to the Authority.

606. Auditors and actuaries of authorised persons will be members of professional bodies and will therefore be subject to rules made by their respective bodies as to how they treat confidential information. Subsections (3) and (4) ensure that auditors or actuaries who, in good faith, pass on information or express their opinion to the Authority will not be in breach of any duty of confidentiality to which they might otherwise be subject. This protection applies whether or not the auditor or actuary acts in response to a request from the Authority.

607. Subsections (5), (6) and (7) give the Treasury a power to set out the circumstances in which auditors and actuaries must pass on information to the Authority. This information may relate to the affairs of either the authorised person concerned, or other persons. So far as auditors are concerned, the Treasury are required by EC directives to set out the circumstances in which such reports must be made, and it is intended to use this power to re-enact the rules necessary to comply with this requirement.

Section 343: Information given by auditor or actuary to the Authority: persons with close links

608. This section concerns the duties and powers of auditors and actuaries to pass on information of regulatory significance to the Authority about persons having “close links” with authorised persons, including parent and subsidiary companies of an authorised person.

609. Subsections (3) and (4) ensure that auditors or actuaries of persons with close links to an authorised person, who, in good faith, pass on information or express their opinion to the Authority will not be in breach of any duty of confidentiality to which they might otherwise be subject. This protection applies whether or not the auditor or actuary acts in response to a request from the Authority.

610. Subsections (5), (6) and (7) give the Treasury a power under which they can make rules setting out the circumstances in which auditors and actuaries must pass on information to the Authority. This information may relate to the affairs of either the authorised person concerned, or other persons.

Section 344: Duty of auditor or actuary resigning etc. to give notice

611. This section places a duty upon all auditors and actuaries of authorised persons appointed as a result of statute to notify the Authority of certain events, for example where they resign before the end of the period for which they were appointed. Subsection (3) also requires an auditor or actuary to pass on any facts connected with his ceasing to act for the authorised person which he thinks ought to be brought to the Authority's attention, or to make a positive statement to the Authority that he is not aware of any such facts.

Section 345: Disqualification

612. Where the Authority believes that an auditor or actuary has failed to comply with any obligations under this Act, it may disqualify that auditor or actuary from acting for any particular authorised person, or class of authorised person. Any such disqualification may be lifted if the Authority is satisfied that the person concerned will in future comply with the obligations.

613. Subsections (2) and (3) require the Authority to serve a warning notice and decision notice, whilst subsection (5) confers a right to refer to the Tribunal any decision to disqualify.

Section 346: Provision of false or misleading information to auditor or actuary

614. This section makes it a criminal offence for an authorised person, or an officer, controller or manager of an authorised person knowingly or recklessly to mislead an auditor or actuary appointed under the Act or as a result of provision contained in rules.

PART XXIII: PUBLIC RECORD, DISCLOSURE OF INFORMATION AND CO-OPERATION

615. This Part requires the Authority to compile and maintain a public record of authorised persons. It also imposes safeguards for the protection of confidential information.

616. The Authority, together with the competent authority for listing and the Secretary of State, will necessarily require access to confidential information. The Act provides them with powers to obtain this. It also contains safeguards to ensure that this information remains confidential, subject to allowing information to pass between them and other regulatory authorities where this is necessary for the performance of specific public functions (for example, to assist in the investigation and prosecution of crime). The passage of information between authorities is subject to conditions relating to the purpose of disclosure and, in some cases, the identity of the person to whom the information is disclosed. These conditions are often referred to as "gateways". This area is already subject to detailed constraints under EC law. The Act, together with the regulations to be made under the powers conferred by these provisions, will create a confidentiality regime very similar to those under the predecessor legislation. The creation of a single regulator will however allow some rationalisation of the existing structure.

Section 347: The record of authorised persons etc.

617. This section places an obligation on the Authority to maintain a record of certain details about authorised persons and other categories of persons set out in subsection (1). The record must include details of the services provided by authorised persons, the addresses of authorised persons and other categories of specified persons, and any other information the Authority thinks is appropriate. The record must be available for inspection by members of the public, at a place and at times determined by the Authority. The Authority must allow members of the public to obtain a copy of the record, or a part of it. The Authority may charge for providing such copies.

Section 348: Restrictions on disclosure of confidential information by Authority etc.

618. Subsections (2), (3) and (4) define what is, and what is not, to be regarded as confidential information. Subsection (1) makes clear that this information is not to be disclosed by a “primary recipient”, or a person who has received the information from a primary recipient, without the consent of the person from whom it was obtained and, if different, the person to whom it relates. Subsection (5) lists primary recipients.

Section 349: Exceptions from section 348

619. This section makes clear that, notwithstanding the restrictions in section 348, confidential information may be disclosed if this is in accordance with regulations made by the Treasury. It also gives the Treasury the power to make such regulations where disclosure would facilitate the carrying out of a public function. This power will be used to create various “gateways” between the primary recipients and other organisations for various specified purposes.

Section 350: Disclosure of information by the Inland Revenue

620. This section creates a mechanism, or gateway, through which information held by the Inland Revenue, which would otherwise be subject to a legal obligation of confidentiality, may, in certain circumstances be passed to the Authority or to the Secretary of State. Subsection (2) makes clear that this disclosure may be made only by, or under the authority of, the Commissioners of Inland Revenue.

621. Subsection (1) provides that Revenue information may be disclosed under this section only for the purpose of assisting an investigator appointed by the Authority or the Secretary of State under section 168 in his task, or to assist the Authority or the Secretary of State in taking a decision whether or not to appoint such an investigator. Once information has been disclosed, subsection (4) provides that it may only be used for the purposes of taking a decision whether or not to appoint an investigator, or to further an investigation, if an investigator has been appointed, or in any criminal proceedings or regulatory action, including proceedings before the Financial Services and Markets Tribunal, that may arise out of an investigation.

622. Subsection (5) provides that onward disclosure of information received under this section is prohibited, except in the case of proceedings before a court or the Tribunal arising out of an investigation, or if this is done with a view to the institution of such proceedings, or if it takes place with the consent or the authority of the Commissioners of Inland Revenue. Subsection (6) makes clear, however, that this does not prevent disclosure of information to a person to whom it could have been disclosed under subsection (1).

Section 350: Competition information

623. This section makes provision, together with Schedule 19, for the protection of information obtained by the DGFT and the Commission under their powers of competition scrutiny under the

Act. It applies to information obtained under all of the various competition scrutiny provisions in the Act, that is to say the provisions covering the competent authority for listing in Part VI, the Authority in Part X, and the recognised investment exchanges and clearing houses in Part XVIII.

624. Subsection (1) provides that it is an offence improperly to disclose “competition information”. “Competition information” is defined in subsection (5) as information about the affairs of a particular individual or body, which is not in the public domain, and which was obtained under powers in a competition provision of the Act.

625. Subsection (2) sets out the circumstances in which disclosure will not be regarded as improper, and which is therefore permissible. These circumstances basically fall into two classes. First, where the person to whom the information relates, and if different the person from whom it is obtained, have given their consent to disclosure. Second, when this would serve one of a number of defined public purposes. These purposes include the fulfilment of the UK's obligations under EC law, the investigation and prosecution of crime, civil proceedings under the competition provisions of the Act, and finally the disclosure of information to a number of bodies having various statutory functions, to assist them in carrying out these functions. The bodies and the statutes concerned are listed in Schedule 19.

Section 352: Offences

626. This section makes clear that unauthorised disclosure or use of confidential information is a criminal offence, subject to the defences provided for in subsection (6), and sets out the penalties for these offences. These provisions reproduce the existing offences in this area.

Section 353: Removal of other restrictions on disclosure

627. This section enables the Treasury to make regulations permitting disclosure of information held by third parties to the Authority to assist it in carrying out its functions. It also enables regulations to be made to allow the disclosure of information by various other entities carrying out functions under this Act, for example the compensation scheme manager, in order to assist with these functions. The purpose of this section is to enable the Treasury to create gateways, for example overriding confidentiality obligations to which the prescribed persons are subject, if it is appropriate that such persons should be able to disclose information either to the Authority or to third parties for the purposes of functions connected to the Act.

Section 354: Authority's duty to cooperate with others

628. This section places a duty on the Authority to take such steps as it considers appropriate to co-operate and share information, which it is not otherwise prevented from disclosing by virtue of the provisions of this Part, with other bodies or persons, whether in the United Kingdom or elsewhere, who have functions broadly equating to those of the Authority, or who have a role in relation to the prevention and detection of financial crime. It carries forward the provision in paragraph 5 of Schedule 7 of the FS Act 1986, which places a similar duty on the Authority.

PART XXIV: INSOLVENCY

629. Insolvency and winding up are relevant to regulation for two reasons. First, there are implications for existing customers if a financial service business becomes insolvent. Second, winding up may itself be part of the appropriate regulatory response to events. Thus it may be desirable to wind up a company to protect not just the interests of customers who have entered into contracts with it, but also those who might do business with it in future, if it continued to trade. Subject to the particular provisions of Part VII of the Companies Act 1989 for transactions carried

out on regulated markets, the general law of insolvency applies, and will continue to apply, to most financial services businesses, as it does to other businesses. However, it is supplemented by provisions which allow the regulators, alongside creditors, to petition the court for the winding up of an authorised business on the grounds of insolvency, and, alongside the Secretary of State, to petition the court to wind up an authorised business on the grounds that this would be just and equitable.

630. Different arrangements apply to certain mutual societies. The arrangements under the relevant legislation, for example the Building Societies Act 1986, will continue to apply to relevant societies, with functions transferred in that case from the Building Societies Commission to the Authority in accordance with the provisions of Part XXI.

631. The insolvency provisions of the Act are intended to build upon these existing arrangements, establishing, so far as is practicable, a common approach across all sectors. Sections 356, 357, 367 and 375 provide the Authority with the power to ask the court to initiate various insolvency procedures. Sections 356, 362, 363, 365, 371 and 374 make clear that the Authority has the right to be heard by the court in insolvency proceedings instigated by third parties. Sections 369, 376, 377, 378 and 379 carry forward provisions of the ICA 1982 dealing with the insolvency of insurance companies (which because of the particular nature of insurance business, must in some respects be dealt with in a different way to other authorised persons).

632. At the same time, the Part will fill a number of gaps in the coverage of the predecessor regimes. Section 359 will allow the Authority to ask the court to make an administration order in respect of authorised businesses, as an alternative to winding up. Section 372 will give the Authority powers to petition the court to declare bankrupt an insolvent sole trader providing financial services. Sections 360 and 366 make changes to the insolvency regime for insurers.

633. Part XV (Financial Services Compensation Scheme) is also relevant to customers of authorised firms in financial difficulties.

Voluntary arrangements

Section 356: Authority's powers to participate in proceedings: company voluntary arrangements

634. Insolvency legislation allows companies in financial difficulties to propose a voluntary arrangement with creditors; that is, for creditors to agree to take a proportion of what they were owed as a final settlement of their debts. If agreed, such an arrangement is binding on all creditors who were aware of the proposal, subject to their right to ask the court to intervene if the arrangement seems improper or unfair. This section gives the Authority the right to apply to the court in the same way as a creditor, and also makes clear that the Authority may be represented in any such proceedings initiated by a creditor.

Section 357: Authority's powers to participate in proceedings: individual voluntary arrangements

635. In England and Wales and in Northern Ireland insolvency law provides that an individual who is in financial difficulties may apply to the court for a moratorium during which he may prepare a proposal to his creditors for settlement of his debts. Whilst this moratorium is in force the individual is protected against the presentation of a bankruptcy petition.

636. Subsection (1) of this section provides that the Authority is entitled to be heard by the court on an application for such a moratorium, if this is made by an individual who is an authorised

person. Subsections (3) and (4) provide that the Authority is entitled to send a representative to attend and speak at any meeting of creditors summoned to consider a proposal which a debtor brings forward, and that it shall be informed of the results of any such meeting. Subsection (5) goes on to provide the Authority with the same rights as creditors to challenge in court a decision by the meeting to agree a creditor's proposal, or to challenge the implementation of an agreed proposal, if it believes that this is in some way unfair or irregular, whilst subsection (6) provides that the Authority is entitled to be heard by the court if any other person makes such a challenge.

Section 358: Authority's powers to participate in proceedings: trust deeds for creditors in Scotland

637. Section 357 provides the Authority with powers to be involved in individual voluntary arrangements proposed for authorised persons. Such arrangements are only possible in England, Wales and Northern Ireland. This section makes provision for the Authority to have certain rights in the equivalent arrangement in Scots law (a voluntary trust deed for creditors within the meaning of section 5(4A) of the Bankruptcy (Scotland) Act 1985).

638. The purpose of a trust deed under Scots law is to allow a person who cannot pay his debts to hand over his assets to a trustee, who may then arrange a settlement with his creditors as an alternative to proceedings for sequestration under the 1985 Act. Subsections (1) and (2) provide that where a trust deed is granted in respect of an authorised person, the trustee must, as soon as he becomes aware that the person concerned is an authorised person, inform the Authority, and send it copies of the deed and any other documents which he has sent to the creditors.

639. Under subsection (3) the Authority is given the same rights as certain creditors who have not received notice of the trust deed, or who have objected to it, to petition for the sequestration of a debtor who is an authorised person.

640. If the trustee proposes at any stage to hold a meeting of creditors, subsections (4) and (5) require him to inform the Authority, which will have the right to send a representative to attend and speak at the meeting. However, the Authority will not have the right to vote at the meeting, except on those occasions where it is itself a creditor of the person concerned.

Administration orders

Section 359: Petitions

641. General insolvency law provides for the court to place a company or partnership into administration, that is to allow it to continue in business, under the supervision of an administrator, as an alternative to winding it up. This section allows the Authority to ask the court to do this in respect of present or former financial services businesses and appointed representatives or persons who are or have carried on financial services business without authorisation, where it would be in consumers' interests for the business to remain in being, rather than be wound up. It also provides that for such persons failure to pay money due to consumers on time shall count as sufficient evidence to allow the initiation of administration proceedings.

Section 360: Insurers

642. At present, the law prohibits insurance companies from being put into administration. When insolvency law first made provisions for administration in 1985, it was not clear whether this procedure would be appropriate for such companies, given the special nature of insurance business. Experience has shown that it may be helpful to make this option available, so this section gives the

Treasury the power to make an order removing the prohibition in relation to insurers. “Insurers” for these purposes will be defined in regulations made by the Treasury.

Section 362: Authority's powers to participate in proceedings

643. This section makes clear that when a creditor or other third party asks the court to place in administration a person who is doing or has done financial services business, or who is or has been an appointed representative, or persons who are or have carried on financial services business without authorisation, then the Authority shall have the right to be represented at the hearing. It also gives the Authority the right to receive any information or proposals sent by the administrator to creditors, to attend and speak at any meeting of creditors called to discuss the administration, and to have the same rights as creditors to ask the court to intervene, if it considers that the administration is being carried out improperly or unfairly. It also gives the Authority the same power that creditors have under section 425 of the Companies Act (and the equivalent Northern Ireland provision), where a scheme is proposed to settle some or all of the debts of a company in administration, to ask the court that this be put to a vote of creditors.

Receivership

Section 363: Authority's powers to participate in proceedings

644. This section provides that when a receiver is appointed in respect of a company which is or was an authorised person, or an appointed representative, or which is or has been carrying on regulated activities without authorisation, the Authority is entitled to be represented at any hearing at which the receiver applies to the court for directions. It also provides that the Authority has the right to receive any information or proposals sent by the receiver to creditors and to attend and speak at any meeting of creditors called to discuss the winding up.

Voluntary winding up

Section 365: Authority's powers to participate in proceedings

645. This section gives the Authority the right to be represented at any court proceedings to wind up voluntarily a financial services company, other than an long term insurer. It also provides the Authority with the same powers that creditors have to ask the court to decide any questions arising out of the winding up, or to order that a scheme, under section 425 of the Companies Act (or the equivalent Northern Ireland provision), to settle some or all of the debts of the company, should be put to a vote of creditors. In addition, it gives the Authority the right to receive any notice or document required to be sent to creditors and to attend and speak at any creditors' meeting.

Section 366: Insurers carrying on long-term business

646. Under the predecessor legislation, there is a prohibition on the voluntary winding up of insurance companies carrying on long term, or life assurance, business. The reason is that if such companies went into voluntary liquidation the rights of endowment policyholders would accrue, so that they would be entitled only to the current value of their policy, and not to the terminal bonuses they would expect if their policies ran on to the end of their term. This section removes this absolute prohibition, but provides that voluntary winding up can only take place with the Authority's prior permission. This will allow the Authority to ensure that winding up will only proceed subject to arrangements being made to meet the legitimate expectations of policyholders.

Winding up by the court

Section 367: Winding-up petitions

647. This section provides that the Authority may ask the court compulsorily to wind up any company or partnership which is doing or has done financial services business or which is or has carried on financial services business without authorisation. The powers also apply to an appointed representative. As with the other provisions in this part which empower the Authority to initiate proceedings, this enables the Authority to act on behalf of consumers, who could in theory take action themselves, but may in practice lack the resources and expertise to do so. The court may agree to this in cases where the business cannot pay its debts, or where it decides that it would be “just and equitable” to wind up the business. The Authority might make an application under the latter ground if, for example, a business had been guilty of such serious rule breaches that the Authority had found it necessary to cancel its permission in order to protect the public. This section also provides that for such businesses failure to pay money due to consumers on time can count as sufficient evidence to allow the initiation of insolvency proceedings.

Section 368: Winding-up petitions: EEA and Treaty firms

648. This section makes clear that the Authority can only petition under section 367 for the winding up of a business which is authorised in another EEA State, and is entitled to provide financial services in the United Kingdom because of that authorisation, when it has been asked to do so by the home State regulator concerned. This is because the issues that generally arise in relation to the winding up of a business are issues which are primarily the concern of the home State regulator, rather than of the host State where the business is being carried on.

Section 371: Authority's powers to participate in proceedings

649. This section makes clear that when a creditor, or other third party, asks the court to wind up a person who is doing or has done financial services business, or who is or has been an appointed representative, the Authority has the right to be represented at the hearing, and at any subsequent hearing. It also provides that the Authority has the right to receive any information or proposals sent by the liquidator to creditors and to attend and speak at any meeting of creditors called to discuss the winding up, and to have the same rights as creditors to ask the court to intervene. It also gives the Authority the same power that creditors have under section 425 of the Companies Act (or the equivalent Northern Ireland provision), where a scheme is proposed to settle some or all of the debts of a company being wound up, to ask the court that this be put to a vote of creditors.

Bankruptcy

Section 372: Petitions

650. Section 367 gives the Authority power to ask the courts to wind up companies or partnerships doing financial services business. The section also confers a power in respect of sole traders doing financial services business. The Authority will be able to petition for the bankruptcy of such persons, or in Scotland, for the sequestration of their estate, if they are or appear unable to pay their debts to consumers. It should be noted, however, that here, as in insolvency law generally, inability to pay debts is the only ground on which a sole trader can be made bankrupt — there is no equivalent to the provision covering companies and partnerships that these may be wound up because the court feels it is “just and equitable” to do so. This is because sole traders' business affairs are not legally distinct from their personal finances.

Section 374: Authority's powers to participate in proceedings

651. This section makes clear that when a creditor, or other third party, asks the court to make a bankruptcy order for, or in Scotland to sequester the estate of, an individual who is doing or has

done financial services business, then the Authority shall have the right to be represented at the hearing, and at any subsequent hearing. It also provides that the Authority has the right to receive any report sent by an insolvency practitioner to creditors and to attend and speak at any meeting of creditors called to discuss the bankruptcy.

Provisions against debt avoidance

Section 375: Authority's right to apply for an order

652. The Insolvency Act 1986 provides creditors, liquidators and administrators of insolvent persons with the right to ask the court to set aside transactions which appear to have been entered into to defraud creditors (that is, where assets are transferred as a gift, or sold at less than their full value, with the intention of putting them beyond the reach of creditors). This section provides the Authority with an equivalent right to make an application to the court in relation to transactions entered into in the course of financial services business.

Supplemental provisions concerning insurers

Section 376: Continuation of contracts of long-term insurance where insurer in liquidation

653. This section provides for the business of an insolvent insurer so far as it relates to contracts of long-term insurance to be transferred to another company, rather than for the policyholders to receive a share of the assets available on winding up. Policyholders of long term insurers face different problems to most consumers if the company fails. They enter into agreements, for example for pensions, which are designed to last many years, and the benefits they expect to receive build up over time. Also, the terms of the contract (and importantly the premium) are set at the outset. If, for example, during the course of the contract they were to develop an illness they might not then be able to obtain alternative cover. For these reasons, it is desirable, where possible, to maintain the insurer's business as a going concern, or to find an alternative insurer to take over its policies, rather than allowing it to be wound up.

Section 377: Reducing the value of contracts instead of winding up

654. This section is intended to facilitate timely payments on, or the transfer of, insurance contracts of a company which has become insolvent, rather than leaving these to be matters to be resolved at the end of an insolvency process, which may take a considerable period of time.

Section 378: Treatment of assets on winding up

655. This section empowers the Treasury to make regulations to allow for the separate treatment in insolvency situations of an insurer's contracts of long-term and general insurance, given the special characteristics of long term business (referred to in the note on section 376 above).

Section 379: Winding-up rules

656. This section enables the making of rules to deal with the winding up of insurers, under the powers of the Insolvency Act 1986.

PART XXV: INJUNCTIONS AND RESTITUTION

657. This Part is concerned with the Authority's (and in certain cases the Secretary of State's) power to seek injunctions and restitution orders from the High Court, or in Scotland the Court of Session, against both authorised and unauthorised persons where it appears that certain requirements have been, or might be, contravened. Section 384 also gives the Authority the power to require restitution

to be paid without having to apply to the courts for a restitution order, but this direct power can only be used against authorised persons.

658. The powers contained in this Part may be exercised by the Authority in relation to breaches which constitute an offence under the Act, or which the Authority has power to prosecute under section 402, or any breach of any other requirement imposed by or under the Act, such as a rule made under Part X. The Secretary of State may exercise the powers in relation to any breach which constitutes an offence which the Act gives him the power to prosecute under section 401.

Section 380: Injunctions

659. This section sets out the powers of the court to make injunctive orders on the application of the Authority or Secretary of State and the grounds on which they may exercise those powers. The court may make three types of order: an order restraining the contravention of certain requirements (subsection (1)), an order directing remedial action to be taken when there has been such a contravention (subsection (2)) and an order freezing the assets of someone who has contravened certain requirements or been knowingly involved in a contravention (subsection (3)).

660. The first of these is a preventative measure. Under subsection (1)(a) an order can be made restraining a person from contravening a requirement where the court believes they are reasonably likely to do so. Where a contravention has already occurred, under subsection (1)(b) the courts can restrain a person from doing so again.

661. Where there are clear steps that can be taken either by the person who has contravened a requirement or by a person knowingly concerned in the contravention, under subsection (2) the court may order a person to take those steps. This is a corrective power. For example, an order may simply require a person to meet commitments they have entered into but so far failed to discharge. Subsection (5) provides that the remedial action that the court may order under subsection (2) may include orders to mitigate the impact of a contravention even if it is not, strictly speaking, possible to remedy it. For example where a person has published a misleading advertisement, the Authority could apply to the court for an order requiring the person to publish a correction. This would not be of use to anyone who had taken action on the basis of the original advertisement but would prevent others doing so in the future.

662. An order made under subsection (3) to freeze a person's assets is similar to a Mareva injunction¹ apart from its timing: a Mareva injunction may only be applied for where court proceedings have been commenced or are imminent whereas this section gives the Authority or Secretary of State an independent power to apply to the court for an asset-freezing order on the grounds that they believe a breach may have occurred. The power does not prevent separate applications for Mareva injunctions.

663. Subsection (6) sets out the range of requirements the contravention or likely contravention of which may be grounds for an order under this section. These are requirements imposed by or under the Act, including the Authority's rules made under Part X, plus the various requirements a breach of which constitutes an offence under the Act, such as the general prohibition under Part II. In addition, the powers may be exercised for breaches of requirements imposed by other Acts which constitute offences which the Authority has power to prosecute. The Authority's power in that respect is set out in section 402.

Section 381: Injunctions in cases of market abuse

664. This section provides the Authority with the power to apply to the court for injunctive orders in cases of market abuse. The Secretary of State has no powers under this section in relation to market abuse. The types of orders which the court may make are the same for cases of market abuse under this section as for contraventions of requirements under the previous section.

Section 382: Restitution orders

665. This section gives the court the power, on the application of the Authority or the Secretary of State, to order restitution to be paid by a person who has contravened a requirement or been knowingly involved in a contravention. The court must be satisfied that the contravention has led either to the person ordered to pay restitution accruing profits or to others suffering loss or being adversely affected in other ways. It is possible for an application for a restitution order to be combined with an application for an injunction.

666. Under subsection (2), the court has discretion to decide what is an appropriate sum for a person to have to pay taking into account the size of any profits which have accrued and the extent to which persons have suffered loss or been adversely affected. The restitution is initially paid to the Authority, but the Authority is then required to distribute the money among people chosen by the court. These must be those people who appear to the court to have been directly affected by the contravention, or to whom the profits may be attributed, for example because it was their funds that were used to make a particular investment which gave rise to the profits.

667. Subsections (4) and (5) give the court powers to require further information from potential recipients of restitution orders to assist the court in determining what profits have accrued to them, to what extent others have been affected by a contravention or how to distribute the money. The court may also require this information to be verified.

668. Subsection (7) provides that the fact that the Authority or the Secretary of State has made an application under this section for a restitution order does not prevent someone taking a private action for restitution in respect of the same matter. The court is likely to have regard to the question of whether any payments have already been made by a person in determining whether to order restitution in any particular case.

669. The range of requirements the contravention of which can give rise to an application to the courts under this section for a restitution order is the same as for injunctions under section 380. These are set out in subsection (9).

Section 383: Restitution orders in cases of market abuse

670. This section provides the Authority with the power to apply to the court for restitution orders against persons who it is satisfied have engaged in market abuse. The Secretary of State has no powers under this section. The provisions of this section are equivalent to those in the section above for restitution orders following the contravention of a requirement. Again, the court has discretion to determine the amount of restitution paid and the eventual recipients of that restitution who must be persons directly affected by the market abuse. The court also has similar powers as under section 382 to require further information from the person who has engaged in market abuse. However under this section the court may not make an order if it is satisfied that the person concerned believed, on reasonable grounds, that market abuse was not involved, or took all reasonable precautions and exercised all due diligence to avoid market abuse. This restriction is analogous to the provisions of section 123(2) which apply where the Authority wishes to impose a penalty in relation to market abuse.

Section 384: Power of Authority to require restitution

671. This section gives the Authority the direct power to require an authorised person to pay restitution, without having to go through the court, although the authorised person does have the right to refer the matter to the Tribunal under section 386. The Authority can order restitution to be paid by:

- authorised persons who have contravened a requirement under the Act or who have committed an offence mentioned in section 402;
- authorised persons who have been knowingly involved in such a contravention;
- any person, whether authorised or not, who has engaged in market abuse.

672. The Secretary of State has no direct powers under this Part to require restitution.

673. The grounds for the Authority using this power are set out in subsections (1) and (2). These are that the Authority is satisfied that the person has done the misdeed and that, because of it, either profits have accrued to that person or one or more people have suffered loss or been adversely affected.

674. The Authority may require someone to pay restitution of an amount which it considers to be just, taking into account the profits that have accrued and/or the extent of the loss or adverse effect suffered. The money is to be paid to people who have been directly affected by the contravention or offence, or to whom profits are attributable, as under sections 382 and 383. Where restitution is sought via a court order, the money is paid initially to the Authority, but when the Authority uses its power under this section to require restitution directly, subsection (5) provides for the money to be paid straight to the final recipients. The Authority may determine the arrangements for payment.

Section 385: Warning notices

675. This section requires the Authority to issue a warning notice informing someone of any proposal to require them to pay restitution under section 384. A warning notice must comply with the provisions of section 387. The warning notice must specify the amount of restitution proposed.

Section 386: Decision notices

676. This section provides that if the Authority decides to require restitution to be paid, it must send a decision notice to the person in relation to whom this power is being exercised. The section also provides a right to refer the Authority's decision to the Tribunal.

PART XXVI: NOTICES

677. Various provisions of the Act relate to the Authority taking decisions, for example as to whether to grant, or to withdraw, authorisations and approvals, or whether to take other regulatory action, such as imposing financial penalties or making public statements. The relevant provisions of the Act require the Authority in some cases to give warning and decision notices, and in others to give other kinds of notice. This Part is concerned with the Authority's procedures during, before and after the process of serving these notices as well as the information which they are to include. In particular, the Part requires the Authority to act in accordance with a published set of procedures.

Section 387: Warning notices

678. This section provides that a warning notice must be in writing and must set out the reasons for the proposed course of action. It must also state whether section 394 (Access to Authority material) applies.

679. Subsection (2) gives any person who receives a warning notice an opportunity to make representations to the Authority. The Authority may specify the period available for representations, provided it allows a minimum of 28 days from the date of the notice. The Authority must then decide whether to give the person a decision notice within a reasonable period.

Section 388: Decision notices

680. A decision notice must be in writing and must set out the reasons for the course of action. It also requires the Authority to explain a right of access to Authority material under section 394 and rights to refer the case to the Tribunal (including the procedure for doing so).

681. If a decision notice follows a warning notice, the action proposed in it must be action the Authority has powers to take under the same Part of the Act. The Authority can issue a further decision notice altering the action proposed in an earlier notice, but only with the consent of the person concerned.

Section 389: Notices of discontinuance

682. This section requires a “notice of discontinuance” to be issued when the Authority decides not to proceed with action proposed in a warning notice (section 387) or in relation to which a decision notice (section 388) was given.

683. However a notice of discontinuance does not have to be given if the effect is purely to grant an application made by the person in question. In such cases the Act generally contains express provision requiring written notice to be given of the grant of the application.

Section 390: Final notices

684. This section requires a “final notice” to be issued to confirm and give effect to an action proposed in a decision notice (and to require payment in the case of a penalty) whenever the period for referring a matter to the Tribunal has expired, or if it has been referred, whenever the matter has been finally determined by the Tribunal or the higher courts. If the matter was referred to the Tribunal then the final notice will give effect to the directions of the Tribunal (or the higher courts if there has been an appeal).

685. Subsection (7) requires the final notice to set out details of the action which is being taken and the date when it is to be taken. Particular requirements for certain categories of case are given in subsections (3) to (6). For example the notice must include the terms of any public statement which is to be made and details of the manner and date of publication, or the amount of any financial penalty and details of how and when it is to be paid. The period for making payments must not be less than 14 days beginning with the date on which the final notice is given, after which the Authority may recover any outstanding amount as a debt owed to it.

686. A similar 14 day minimum period must be allowed for making restitution as required under section 384, after which any outstanding obligations are enforceable through an application by the Authority to the courts (for an injunction in England and Wales and Northern Ireland or, in Scotland, for an order under section 45 of the Court of Session Act 1988).

Section 391: Publication

687. This section establishes common rules on publication of decisions which:

- prevent the Authority from publishing details about warning and decision notices;
- enable the Authority to publish appropriate details of a discontinued decision, but only if the person to whom the notice is given consents; and

- require the Authority to publish appropriate information about a final notice, but omitting information which would be unfair to the person to whom the notice relates or prejudicial to the interests of consumers.

688. The provision for publishing details of a final notice applies equally to a supervisory notice (as defined in section 395) but only when such a notice takes effect. The procedure on giving a supervisory notice is set out under the description of section 53 above. If the notice so states, it may take effect immediately, or on a particular date. Otherwise it will take effect only once it is no longer “open to review”. Subsection (8) of this section provides that a supervisory notice is “open to review” until after the period for referring the matter to the Tribunal has expired and until any reference or further appeal has been finally determined.

Section 392: Application of sections 393 and 394

689. Sections 393 and 394, described below, confer additional procedural rights relating to third parties and to disclosure of Authority material. However those rights apply only in cases, other than those involving the Authority responding to an application, which are governed by the warning notice and decision notice procedure. This section lists the particular sections of the Act where sections 393 and 394 apply.

Section 393: Third party rights

690. Where this section applies (see section 392 above) it confers rights on any person (a “third party”) who is identified in prejudicial terms in the reasons contained in a warning notice or decision notice. Third parties are given the right to receive a copy of the notice, and to make representations or refer the matter to the Tribunal in the same way as the person who is the subject of the Authority's proposed action. However subsections (2) and (6) provide that a third party does not need to be given a copy of a notice which identifies him if a separate warning or decision notice has been given to him in relation to the same matter, and subsection (7) provides a further exception where it is impracticable to contact the third party.

691. Subsection (13) provides that third party notices must describe the rights which third parties also have under section 394 below. Subsections (5) and (14) provide a third party with rights to receive copies of subsequent notices in relation to the same matter.

Section 394: Access to Authority material

692. Where this section applies (see section 392 above), the Authority is required to give any person who is the subject of a warning or decision notice, or who has received a copy of such a notice as a third party, access to certain categories of material. Subsection (1)(a) requires access to be given to any material on which the Authority relied in taking the decision in question. Subsection (1)(b) requires access to be given to material which the Authority considers might undermine that decision.

693. The latter category does not apply to all material in the Authority's possession but only to material which the Authority considered in reaching its decision, or which it obtained in connection with, that is in investigation of, the matter in question (see the definition of “secondary material” in subsection (6)).

694. The right of access to Authority material is subject to the following exceptions. First, the Authority may refuse access to material relating to a different case which was taken into account only for the purposes of comparison with the case in question. Secondly, it may refuse access to “excluded material”, defined as covering “protected items” as defined in section 413, and material intercepted under (or indicating the existence of) a warrant for the interception of communications.

If access to material is refused on the grounds that it is subject to legal professional privilege, the Authority must give written notice to the person concerned.

695. Finally the Authority can refuse access to material which it would not be in the public interest to disclose (that is, material subject to public interest immunity) or to commercially sensitive material which it would not be fair to disclose. In these cases the Authority must notify the person and give its reasons for refusing.

Notes

- ¹ A Mareva injunction (now known as a 'freezing order') is a remedy a court may use to prevent assets being removed, charged or otherwise dealt with in a way that could prejudice a legal action that is otherwise being, or about to be, pursued.
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Section 395: **The Authority's procedures**

696. This section concerns the Authority's decision-making procedures. It is for the Authority to decide on its procedures but subsection (2) requires that, to avoid prejudice, they should be designed to ensure that the task of deciding whether to issue a warning, decision or supervisory notice and the task of collecting relevant information should be carried out by different people. However, subsections (3) and (4) provide that the procedures can provide for this requirement to be waived for supervisory notices (as defined in subsection (13)) if necessary to protect the interests of consumers, so long as the decision is taken by a person at an appropriate level of seniority given the importance of the decision.

697. The Authority is required by subsections (5) and (6) to issue and publish a statement describing its procedures. It must be published in a way appearing to the Authority best calculated to bring it to the attention of the public and a reasonable fee may be charged for providing a copy. A copy of the statement must also be given without delay to the Treasury. The Authority must also publish a revised statement if it decides to change the procedures. Under subsection (9) the Authority must act in accordance with its published procedures. Subsection (11) ensures that the validity of any notices given in such a case is not affected by any failure to do so. However, subsection (12) makes clear that the Tribunal can take into account any failure to follow the procedures.

Section 396: **Statements under** section 395

698. This section makes provision about consultation arrangements. These are similar to those in other equivalent provisions of the Act, such as under section 70 to the issuing of a statement under section 395.

PART XXVII: **OFFENCES**

699. This Part contains provisions which make it an offence to make misleading statements or engage in a misleading practice in order to induce someone to enter into an investment contract. It also creates offences of misleading the Authority and the DGFT. The first of these offences is carried over from sections 47 and 133 of the FS Act 1986 and section 35 of the Banking Act. It also provides that where a corporate body (or partnership) has committed an offence then, in certain circumstances, its officers may also be guilty of that offence. In addition, this Part contains general provisions on the institution of proceedings for offences under this Act. It gives the Authority powers to prosecute insider dealing under the Criminal Justice Act 1993, to prosecute under the Money Laundering Regulations 1993, and to prosecute the offences of misleading statements and practices.

Section 397: Misleading statements and practices

700. This section provides for two criminal offences concerning misleading statements and practices. Persons found guilty of either of these offences may be subject to a maximum of up to 7 years imprisonment or to a fine, or to both.

701. The first, set out in subsections (1) and (2), applies where a person deliberately makes a misleading statement, promise or forecast, or dishonestly conceals facts from someone with the intention of inducing any other person to do or refrain from doing something in relation to an investment. A possible example of this offence would be someone lying about a company's financial position at a time when he was seeking to dispose of shares in that company. It is also an offence to make the misleading statement, promise or forecast recklessly and to be reckless as to whether another person was so induced.

702. The second offence, set out in subsection (3), is the creation of a misleading impression about an investment with the intention of inducing another person to do or not do something in relation to that investment. This covers such things as market manipulation, for example engaging in artificial trades in a particular investment in order to create the impression that there is more interest in the investment than really exists.

703. Subsection (4) provides a defence against the offence in subsection (2) for a person if he can show that a statement, promise or forecast was made in compliance with price stabilising or control of information rules. Subsection (5) provides three defences against the offence in subsection (3). The first is that the person concerned reasonably believed that his conduct would not create a misleading impression. The second defence is where the person is engaged in price stabilisation in circumstances where this is permitted. The third defence is where the person acted in conformity with the control of information rules under section 147.

704. Subsection (7) provides the offence in subsection (3) is not committed unless the action done takes place in the United Kingdom, or the misleading impression this creates arises in the United Kingdom.

705. Subsections (9) to (12) give the Treasury the power to prescribe those agreements and investments to which this section applies.

Section 398: Misleading the Authority: residual cases

706. This section makes it an offence to give false or misleading information to the Authority in purported compliance with requirements under the Act in cases where this is not already an offence under other provisions (for example under section 177(4) regarding the provision of information to investigators). The penalty for this offence is an unlimited fine on indictment or a fine of up to the statutory maximum (£5,000) on summary conviction.

Section 399: Misleading the Director General of Fair Trading

707. This section applies the provisions of section 44 of the Competition Act 1998. The effect of this is that it is an offence to mislead or give false information to the DGFT when he is exercising his functions under the Act.

Section 400: Offences by bodies corporate etc.

708. This section makes provision as to the circumstances in which partners in a partnership and directors and officers of bodies corporate and unincorporated associations may be found guilty of

an offence in a case in which an offence has been committed by the relevant partnership, body or association.

709. Subsection (7) gives the Treasury the power to make regulations applying the provisions of this section, with any appropriate modifications, to equivalent undertakings established under the laws of other countries.

Section 401: Proceedings for offences

710. This section confers powers to prosecute offences under this Act. The Secretary of State and the Authority can prosecute any offence in England, Wales or Northern Ireland. Others can only prosecute with the consent of the Director of Public Prosecutions in England and Wales or, in Northern Ireland, with the consent of the Director of Public Prosecutions for Northern Ireland. The DGFT can prosecute in England, Wales or Northern Ireland for breaches of any prohibition on carrying on any CCA 1974 business he has imposed under section 203.

711. Subsections (5) and (6) give the Treasury the power to set conditions relating to the way in which the Authority can bring proceedings for offences under this Act. For example, the Treasury could require the Authority to comply with the Code for Crown Prosecutors. In Scotland, prosecution will be the responsibility of the Lord Advocate.

Section 402: Power of the Authority to institute proceedings for certain other offences

712. This section allows the Authority to prosecute in England, Wales or Northern Ireland two criminal offences which are not in this Act. These are the offences of insider dealing (Part V of the Criminal Justice Act 1993) and breach of the Money Laundering Regulations 1993 (regulation 5).

713. Subsections (2) and (3) give the Treasury the power to set conditions relating to the way in which the Authority can bring proceedings for these offences. For example, the Treasury could require the Authority to comply with the Code for Crown Prosecutors.

Section 403: Jurisdiction and procedure in respect of certain offences

714. This section makes provision for the procedures under which offences under the Act may be prosecuted and punished. It carries forward and has similar effect to the provisions of section 203 of the Financial Services Act 1986.

715. Subsection (1) makes clear that a fine imposed upon a unincorporated association must be paid out of the funds of the association, whilst subsection (2) provides that any proceedings for an offence brought against an unincorporated association must be brought in the name of the association. Subsections (3) and (4) provide that for the purposes of the service of documents, and of prosecutions, unincorporated associations should be treated in the same way as bodies corporate. Subsection (5) provides that summary proceedings may be taken against a body corporate or unincorporated association at their place of business, whilst proceedings may be brought against an individual at any place where he is present for the time being.

PART XXVIII: MISCELLANEOUS

Section 404: Schemes for reviewing past business

716. This section enables the Treasury, by order under subsection (2), to set out the framework for a scheme to be established and operated by the Authority to require authorised persons to review their past business and, where appropriate, to determine the amounts payable by those persons by way of compensation for liabilities that they have incurred to private investors and certain others.

This power will facilitate the handling of issues such as those which arose in cases of mis-selling — most notably of personal pensions. Reciprocity powers

717. Sections 405 to 408 concern reciprocity powers. Under certain EC directives a decision can be taken by the Council of the European Union or the Commission to require individual member States' regulators to take reciprocal action to deprive subsidiaries of firms from a country outside the European Economic Area (EEA) of access to their markets. This is referred to in the Act as a “third country decision”. Such a decision may be taken where it appears to the Commission that EEA firms wishing to establish themselves or provide financial services in third countries are not being treated on the same basis and offered the same competitive opportunities as domestic firms.

718. The potential for reciprocity action has diminished following World Trade Organisation (“WTO”) negotiations on financial services which resulted in the EU, along with many other WTO member countries, making a commitment to offer Most Favoured Nation treatment to other WTO members on a permanent basis. This commitment came into force on 1 March 1999 and means that EC reciprocity powers can now only be used against countries outside the WTO.

Section 405: Directions

719. This section defines the nature of reciprocity action that may be taken in order to comply with a third country decision. The section provides the Treasury with the power to direct the Authority to do the following:

- refuse, or put on hold, an application for authorisation from a person which is formed under the law of the United Kingdom but which is the direct or indirect subsidiary (the powers do not apply to branches) of a firm from a country which is the subject of a third country decision (subsections (1)(a) and (b));
- object to a person from a country which is the subject of a third country decision acquiring a 50 per cent share in an authorised person incorporated in the United Kingdom or formed under UK law whether or not they have served the Authority with a notice of control as required under Part XII (subsections (1)(c) and (d))

720. The circumstances in which a person is taken to acquire a 50 per cent share is defined in section 406.

Section 407: Consequences of a direction under section 405

721. This section sets out the procedure the Authority must follow if the Treasury directs them to implement a third country decision.

Section 408: EFTA firms

722. If a subsidiary of a firm from a country subject to a third country decision is already authorised in an EU member State then its entitlement to exercise passport rights (see explanatory notes to Schedule 3) to establish a branch or provide services in another member State is not affected if by the third country decision. This is not the case for subsidiaries of third country firms authorised in EEA States which are not also EU member States (Norway, Iceland or Liechtenstein), referred to in the Act as “EFTA firms” (subsection (8)). EFTA firms may not exercise their passport rights following a third country decision relating to the country of their parent. This section therefore gives the Treasury the power to make a determination that a particular firm does, or class of firms do, not qualify for authorisation under Schedule 3. Subsections (6) and (7) set out the procedure the Treasury must follow if it makes such a determination.

Section 409: Gibraltar

723. This section provides for matters arising from Gibraltar's status within the EEA.

724. Subsection (1)(a) gives the Treasury the power to extend Schedule 3 so that Gibraltar firms which are covered by one of the single market directives to which effect has been given in Gibraltar would be able to qualify for status as an authorised person and establish a branch or provide services within the United Kingdom. It also enables the Treasury to make the necessary provision to ensure that firms from other EEA States which exercise passport rights in relation to Gibraltar before they exercise them in relation to the United Kingdom proper are not required unnecessarily to duplicate notification requirements.

725. Subsection (1)(d) does the equivalent for Gibraltar based collective investment schemes. The Treasury also has the power under subsection (1)(c) to extend the application of Schedule 4 so that a financial services firm with its head office in Gibraltar or being otherwise connected with Gibraltar would acquire Treaty rights if it is authorised by the Gibraltar competent authority and the relevant conditions in Schedule 4 are met.

726. Subsection (1)(e) will enable the Treasury to modify the provisions of section 264 so that the Authority can refuse to admit a collective investment scheme from another member State if the way in which it proposes to market its units is incompatible with requirements imposed in Gibraltar in the general good.

727. Subsection (1)(b) gives the Treasury the power, by order, to extend the application of Schedule 3 to the Act so as to make provision as to the exercise by UK firms of rights which are afforded to them under the law of Gibraltar which corresponds to an EEA right.

Section 410: International obligations

728. This section provides the Treasury with the general power to direct a number of bodies with powers under the Act to take, or refrain from taking, any action which is either required by, or is incompatible with, the United Kingdom's international obligations. For example, if the Authority's rules on capital requirements were such that the UK's obligations under EC law were not being met, this section would allow the Treasury to direct the Authority to change their rules so as to ensure compliance.

Section 411: Tax treatment of levies and repayments

729. This section relates to levies and payments relating to the legal assistance scheme under Part IX, the compensation scheme under Part XV and the ombudsman scheme under Part XVI. This section amends the Income and Corporation Taxes Act 1988 so that it provides for such levies to be treated as a tax deductible expense and for levy rebates made to authorised persons to be treated as trading receipts.

Section 412: Gaming contracts

730. Legislation governing gaming contracts includes provisions for such contracts not to be legally enforceable. Some regulated activities involve entering into or performing contracts which could potentially be covered by this legislation, for example derivative contracts such as "put options", and the effect of this section is to make certain that such contracts are legally enforceable.

Section 413: Protected items

731. This section provides that no power under the Act can be used to require any person to produce, disclose or permit the inspection of "protected items". These are defined in terms which are

materially identical to the definition of items subject to legal professional privilege in section 10 of the Police and Criminal Evidence Act 1984.

Section 414: Service of notices

732. This section enables the Treasury to make regulations prescribing the procedure for giving notices and other documents under the Act. The power covers any such provision in the Act, regardless of its precise wording, and includes provisions about giving directions or imposing requirements.

733. In particular, the regulations may specify how a document may be given, the address to which it should be sent, and whether the document or notice may be sent electronically. They may also specify the date and time a document is to be regarded as having been served (this may be important, for example, where a time limit begins to run from that date). The regulations may also make particular provision for cases where the person to whom the document is being sent is not an individual (for example, in the case of a limited company or partnership) or is outside the United Kingdom. The precise arrangements required under the regulations may vary depending on the nature of the document in question.

Section 415: Jurisdiction in civil proceedings

734. This section enables civil proceedings, such as judicial review, to be brought against any of the bodies corporate on which functions are conferred by this Act in the courts of any part of the United Kingdom. This is necessary because these bodies are companies incorporated under the Companies Acts and, as such, the effect of the Civil Jurisdiction and Judgments Act 1982 would otherwise be that civil proceedings could be brought against them only in the courts in England and Wales because that is the part of the United Kingdom in which they are treated as being domiciled for the purposes of that Act. That Act is amended by paragraph 3 of Schedule 20.

Section 416: Provisions relating to industrial assurance and certain other enactments

735. This section provides for the Industrial Assurance Acts 1923–48 (and the equivalent Northern Ireland Order) to cease to have effect and for the repeal of the Insurance Brokers (Registration) Act 1977. It also provides for the dissolution of certain statutory bodies mentioned in subsection (3). The section also confers on the Treasury a power by order to make such provisions as it considers necessary in consequence of the provisions of this section. Such consequential provisions would allow, for example, for the protection of existing policyholders under the Industrial Assurance Acts, and to make provision for the orderly dissolution of the bodies mentioned.

736. The repeals and dissolutions set out in this section are dealt with on the face of the Act because they may not be entirely consequential on the other provisions of the Act and therefore maybe outside the scope of section 426, which allows for consequential repeals to be made by order.

PART XXIX: INTERPRETATION

737. This Part defines a number of the terms used in the Act. The majority of such definitions are contained in section 417.

Section 418: Carrying on regulated activities in the United Kingdom

738. This section deals with the territorial scope of the authorisation requirement, and establishes its so-called “outward” application, whereby persons based in the United Kingdom who carry on regulated activities overseas need to be regulated in the United Kingdom. The section reflects the

provisions of the EC directives in determining when a person is to be considered to be carrying on regulated activities in the United Kingdom, and sets out four broad cases:

- first, all persons who have their head or registered office in the United Kingdom, but who only carry on regulated activities in another EEA State, but are entitled to exercise rights under a single market directive as UK firms, and are carrying on in another EEA state regulated activities to which that directive applies, will need to be authorised in the United Kingdom;
- second, all persons who have their registered offices (or head offices, where they do not have registered offices) in the United Kingdom, and operate as managers of schemes which are entitled to enjoy the rights conferred by a relevant Community Instrument will require authorisation where persons in another EEA state are invited to become participants in the schemes;
- third, all persons who have their head or registered office in the United Kingdom, but who only carry on regulated activities in non-EEA states, will need to be authorised if they direct the day-to-day management of the activities from an establishment in the United Kingdom; or
- fourth, even if a person does not have a head or registered office in the United Kingdom and is not dealing with UK customers, he will still need to be authorised if the activity is carried on from an establishment maintained by him in the United Kingdom.

739. These provisions complement the so-called “inward” territorial scope of the Act, whereby overseas persons who carry on regulated activities in the United Kingdom need to be regulated unless an exemption or exclusion applies. The “inward” scope of the Act is implicit in the terms of section 19, but it may also be further amplified or restricted by the order to be made under section 22.

Section 419: Carrying on regulated activities by way of business

740. This section allows the Treasury to make orders to define “carrying on a regulated activity by way of business” for the purposes of section 22. This would, for example, allow special provision to be made in the case of occupational pension schemes, as under the FS Act 1986. The section would also enable different provision to be made in the case of different activities, if that was thought to be desirable in the light of the slightly different tests which apply under the existing legislation.

Section 420: Parent and subsidiary undertaking

741. The definitions of parent and subsidiary undertaking for the purposes of the Act are consistent with the definitions used in the single market directives.

742. Although individuals are not themselves “undertakings”, it is possible for an individual to have a relationship with an undertaking which would be classified as a parent/subsidiary relationship if they were an undertaking. Subsection (2) clarifies that for the purposes of the Act such an individual is to be included as a parent undertaking. The undertaking with whom the individual has a parent/subsidiary relationship is to be included as a subsidiary undertaking.

743. Subsection (2) also extends the definitions in relation to EEA bodies to cover any undertaking which would be treated as a parent or subsidiary undertaking under the law of the EEA state where the body is established.

PART XXX: SUPPLEMENTAL

744. This Part contains various supplemental provisions. For example, provisions as to Parliamentary control over statutory instruments and provisions enabling the Treasury to make transitional provisions and consequential amendments. It also determines the name by which the Act may be cited.

Section 426: Consequential and supplementary provision

745. This section confers on Ministers of the Crown a power, exercisable by order, to make incidental, consequential, transitional or supplemental provisions. The provisions which may be made include ones which appear to the Ministers to be necessary or expedient in order to give full effect to the Act. This power will be used in particular to make consequential amendments and repeals to other legislation when the Act is brought into force.

Section 427: Transitional provisions

746. This section amplifies the power conferred on Ministers of the Crown by section 426, permitting an order under that section may make particular provision in respect of transitional matters or savings. The complexity of the transition to the regulatory regime to be established under this Act is such that it may be necessary to make provisions of the kinds described in this section which might not otherwise fall within the scope of section 426.

747. For example, subsection (2)(a) makes clear that an order under section 426 could provide for a person authorised under predecessor arrangements to have permission from the day the relevant provisions of this Act come into force to continue to carry on the activities permitted by the authorisation from the predecessor regulator. An order under section 426 may also make provision for the continuation of rules and regulations. It is expected that most rules made by the Authority will be new rules made for the purposes of the Act. However, there may be a need for the continuation of rules under previous legislation, at least for a transitional period. This section will enable the Authority to be given power to carry forward such rules and regulations which it could make under this Act. This section also provides that an order under section 426 may deal with disciplinary cases in train on the day of commencement, and for transitional provisions to be made in respect of ombudsman and compensation schemes.

Section 429: Parliamentary control of statutory instruments

748. This section sets out the procedure for making statutory instruments under the powers in the Act. Most of the powers to make orders and regulations under the Act are subject to the negative resolution procedure. The power to appoint a day for the commencement of particular provisions of the Act under section 431(2) is not subject to Parliamentary control. However, the affirmative procedure applies to the following powers:

- the power initially to set the definition, or to extend the scope of, regulated activities under section 22(1) (the type of affirmative procedure applicable to this power is set out in paragraph 26 of Schedule 2);
- the power initially to specify the matters set out in section 21(4), (5), (9) and (10) (the meaning of certain elements of the basic restriction on financial promotion and the exceptions from that restriction);
- any subsequent exercise of the power to specify the matters dealt with in section 21(4) and (5) (the meaning of certain elements of the basic restriction on financial promotion) which has the effect of extending that restriction so as to apply in circumstances in which it did not previously apply;

- the power to add to the activities and investments that are “controlled” for the purposes of section 21;
- the power under section 38, when it is first used, and any subsequent exercise of the power that has the effect of restricting or removing an exemption previously conferred by an order under section 38;
- the power to set the scope of price stabilising rules under section 144(4);
- the power under section 192(b) to vary, remove from or add to the cases in which a person has control for the purposes of Part XII and the equivalent power in section 192(e) in relation to the meaning of “controller” in section 422;
- the power under section 236(5) to amend the definition of open-ended investment company;
- the power for the establishment and regulation of collective investment schemes in Great Britain taking the form of oeics under section 262;
- the power initially to determine the circumstances in which the carrying on of regulated activities by members of the professions is subject to the arrangements set out under section 326(1) and restriction of exemption from the general prohibition under section 327(6)) and any subsequent exercise of those powers so as to restrict those circumstances;
- the power under section 404 authorising a scheme for reviewing past business;
- an order under section 419 defining the business test; and
- the power under paragraph 1 of Schedule 8 to allow any exercisable function conferred on the competent authority to be transferred in order for another person to exercise that function.

SCHEDULE 1: THE FINANCIAL SERVICES AUTHORITY

749. Part I of this Schedule sets out requirements for the Authority's constitution and imposes certain obligations on it. Part II deals with the status of the Authority. Parts III and IV concern the Authority's powers to raise fees and impose penalties and certain other matters. Part IV gives the Authority and those who work for it limited immunity from suit.

Part I: General

Paragraph 2: Constitution

750. This paragraph requires the Authority to have a chairman and a governing body which includes the chairman. Both the chairman and the members of the governing body must be appointed and be liable to removal from office by the Treasury.

751. Sub-paragraph (4) provides for the acts of the Authority still to be valid irrespective of a vacancy in the office of chairman or any defect in an appointment to the governing body. This is to prevent the Authority's rules, and any action it takes in pursuit of its functions, being rendered invalid purely as a result of such a vacancy or defect.

Paragraph 3: Non-executive members of the governing body

752. This paragraph provides that the Authority's governing body must include a majority of non-executive members and requires there to be a committee of the non-executive members of the governing body, the chairman of which is to be appointed by the Treasury.

Paragraph 4: Functions of the non-executive committee

753. The functions of the non-executive members are not restricted by the non-executive committee. The non-executive committee has three specified functions. These are:

- keeping under review the efficiency and economy with which the Authority uses its resources;
- keeping under review its internal financial controls; and
- determining the remuneration of the chairman and the executive members of the governing body.

754. The committee's function of keeping the Authority's economic and efficient use of its resources under review must be undertaken by the whole committee. However, the function of reviewing internal financial controls and determining the remuneration of the chairman and executive members of the governing body may be performed by a sub-committee.

Paragraph 5: Arrangements for discharging functions

755. This paragraph allows the Authority's functions, with the exception of its legislative functions, to be delegated below the level of the governing body. The legislative functions are rule-making, giving general guidance, issuing statements, issuing codes, and giving directions.

Paragraph 6: Monitoring and enforcement

756. This paragraph requires the Authority to maintain arrangements for monitoring compliance with, and enforcing requirements imposed by or under, the Act. The Authority may arrange for monitoring, but not enforcement, to be delegated to another body or person which it believes is competent, which might include, for example, a professional body. If it does so, the Authority remains responsible for ensuring that proper monitoring arrangements are in place.

Paragraph 7: Arrangements for the investigation of complaints

757. The Authority is required to put in place a scheme, the "complaints scheme", for the prompt, independent investigation of complaints made against it. These might typically be complaints about maladministration by the Authority.

758. Sub-paragraphs (1), (2) and (3) require the Authority to establish a complaints scheme and appoint an independent investigator, whose appointment and removal will be subject to the approval of the Treasury.

759. Sub-paragraph (4) requires the investigator be appointed on terms and conditions reasonably designed to ensure his independence from the Authority and to ensure that complaints will be investigated under the scheme without favouring the Authority.

760. Sub-paragraphs (5) to (9) and (14) provide for the Authority to consult on its proposals for the complaints scheme.

761. Sub-paragraph (10) to (13) provide that the Authority is required to publish details of the complaints scheme and the powers of the independent investigator. The Authority may charge a reasonable fee for providing a person with a copy of details published under this paragraph.

Paragraph 8: Investigation of complaints

762. This paragraph is concerned with the operation of the complaints scheme. The Authority may decide not to investigate a complaint in accordance with the scheme where it considers that the complaint would more appropriately be dealt with in another way, for example by reference to the Tribunal.

763. Under sub-paragraph (2), the Authority is required to ensure that the independent investigator has the means at his disposal to conduct a full investigation of complaints referred to him, and the

investigator can publish his report if he considers that the matter ought to be brought to the attention of the public. The investigator may, under sub-paragraphs (3) and (4), choose to investigate complaints in accordance with the scheme which the Authority has, itself, declined to pursue. If a report is critical of the Authority, sub-paragraphs (6) and (7) require the Authority to inform the investigator and the complainant of the steps it proposes to take in response, and the investigator may require the Authority to publish all or part of that response. Sub-paragraph (5) requires that the scheme allows the investigator to recommend that the Authority makes a compensatory payment to the complainant or remedies the matter, or both. Sub-paragraph (9) prevents an officer or employee of the Authority from investigating a complaint on the investigator's behalf.

Paragraph 9: Records

764. The Authority must have satisfactory arrangements for recording its decisions and for the safe-keeping of those records which it considers should be preserved.

Paragraph 10: Annual report

765. This requires the Authority to report at least once a year to the Treasury on the discharge of its functions and, in particular, the extent to which the statutory objectives have been met and its regulatory principles under section 2(3) have been taken into account and such other matters as directed by the Treasury. It also requires the Treasury to lay the report before Parliament.

766. Sub-paragraph (2) requires that the report of the Authority must be accompanied by a report by the non-executive members of the governing body and allows the Treasury to direct that any other reports or information, including material prepared by third parties such as an auditor's report, also accompany it.

767. Sub-paragraphs (4) to (6) allow the Treasury to direct the Authority to comply with provisions of the Companies Act which would otherwise not apply to it dealing with accounts and their audit. The direction may modify provisions under that Act in their application to the Authority. This is to ensure that the Authority is required to prepare audited accounts which are open to inspection irrespective of any exemptions which are made under that Act which would otherwise apply to the Authority.

Paragraph 11: Annual public meeting

768. The Authority must hold an annual public meeting to consider the most recent report of the Authority, within three months of its publication. The meeting should allow for a general discussion of the contents of the annual report and give those attending an opportunity to put questions to the Authority on the discharge of its functions. Paragraph 12 requires the Authority to publish a report of the proceedings of the meeting.

Part II: Status

Paragraphs 14 and 15: Exemption from requirement of “limited” in Authority's name

769. The Authority is a company limited by guarantee. These paragraphs exempt the Authority from having to include “limited” in its name, as would normally be required under the Companies Act. They also provide for the Secretary of State to remove that exemption if it is inappropriate for it to continue.

Part III: Fees

Paragraph 16: Penalties

770. This paragraph provides that in determining its policy with regard to the level of penalties to impose under powers in the Act, the Authority may take no account of its expenses or anticipated expenses. It clarifies that there is to be no link or incentive to fund the Authority by levying penalties on the regulated community.

771. Sub-paragraph (2) requires the Authority to operate a scheme to ensure that penalties paid to the Authority are to be applied for the benefit of authorised persons. The Authority is required to consult on these arrangements.

Paragraph 17: Fees

772. This provides for a rule-making power for the Authority to raise fees for what it does in the discharge of its functions under the Act. It may use the fees to meet its expenses, to repay borrowing incurred in preparing for the assumption of functions under the Act and by virtue of the Bank of England Act 1998 and to maintain adequate reserves.

773. The Authority may not take into account any penalties which it has received, or expects to receive, in setting the fees under the Act.

Paragraph 18: Services for which fees may not be charged

774. Fees may not be charged when a person gives notice of their intention to exercise passporting rights under Schedule 3 or to persons approved under the employed persons regime in Part V.

Part IV: Miscellaneous

Paragraph 19: Exemption from liability in damages

775. This paragraph provides immunity for the Authority and its staff from actions for damages except where they act in bad faith or where damages are sought under the Human Rights Act 1998. Similar immunity is granted to the independent investigator appointed under paragraph 7.

Paragraph 20: Disqualification for membership of House of Commons

776. Serving members of the Authority's board are disqualified from membership of the House of Commons. Paragraph 19 makes similar provision in respect of the Northern Ireland Assembly. Provision in respect of the Scottish Parliament and the Welsh Assembly are made respectively in the Scotland Act 1998 and the Government of Wales Act 1998.

SCHEDULE 2: REGULATED ACTIVITIES

777. This Schedule does not define what activities are regulated under the Act. The regulated activities will be those activities which are prescribed using the power conferred by section 22. The Schedule sets out a list of “activities” and “investments” which, together, indicate the broad scope of activities which are potentially regulated under the Act. The scope of the Act is not strictly limited by the Schedule, but rather by the overall object and purpose of the Act. However, the general nature of the activities set out in the Schedule serves to inform and therefore indirectly limit the extent of the Treasury's power to bring further activities within the scope of the Act.

778. It is within this overall object and purpose that the power under section 22 to prescribe the regulated activities operates. Orders made under that section will be an exhaustive statement of the regulated activities.

779. The Schedule is in three parts. The first Part describes certain activities which when carried on in relation to “investments” may be regulated. The second describes the “investments”. The third makes further provisions as to the scope of the order-making power under section 22.

780. The activities, which in each case include offering or agreeing to carry on the activity as well as actually carrying it out, are:

- dealing in investments, which includes buying, selling, subscribing for or underwriting investments. It covers a person acting as either principal or agent. In relation to insurance, dealing also includes carrying out a contract of insurance;
- arranging deals in investments on behalf of others, or making arrangements which enable other persons to deal;
- accepting deposits;
- safeguarding or administering assets for another person, or arranging for their assets to be safeguarded or administered;
- managing assets on behalf of another person, where those assets are or may include investments;
- giving advice on the buying, selling, subscribing for or underwriting of an investment or about the exercise of any right conferred by an investment to buy or sell, subscribe or otherwise convert an investment (examples of conversions on which advice might be given would include a corporate bond which, in certain circumstances, could be converted into, or redeemed in return for, a share of the equity in the company concerned);
- establishing, operating or winding up a collective investment scheme, including acting as trustee, or depositary or sole director of certain types of scheme;
- sending, or causing to be sent, instructions by means of a computer based system as to the transfer of investments. This element would cover computer-based clearing systems such as that operated by CREST.

781. Part II of the Schedule is an indicative list of the investments relevant to the question whether an activity could be brought within regulation under section 22. These are:

- stocks and shares in companies incorporated in the United Kingdom or elsewhere, or in unincorporated bodies constituted under the law of any territory;
- instruments creating or acknowledging indebtedness, such as loan stock, certificates of deposit, debentures and bonds, including debt issued by Governments, local authorities or international organizations of which the United Kingdom or any other EU member State is a member, such as the United Nations or the OECD;
- instruments, such as warrants, conferring a right to subscribe in other types of investment (including investments which are not yet in existence or which, like ordinary shares in a company, are not individually identifiable);
- instruments which confer contractual or property rights to underlying investments and which can be traded or transferred without reference to the party holding the underlying investments. Explicit inclusion of this element reflects the established practice whereby a public issue of securities might be made by issuing the securities themselves to a third party, which would issue certificates (which may confer only a proportionate property right to a security) to the subscribing public, which are then tradable as if they were the underlying securities themselves;
- units in, or securities issued by, collective investment schemes and open-ended investment companies;
- options to buy or sell property;
- futures, which are contractual rights to buy or sell a commodity or property at a future date and at a price agreed at the time that the contract is made (though the price might still be contingent on other factors). This includes both bilateral “forward” contracts as well as

standardized futures contracts traded on a futures exchange such as London International Financial Futures Exchange (“LIFFE”);

- contracts for differences and other contracts whose value depends on fluctuations in the value of some factor such as property or index, for example interest rate swaps;
- contracts of insurance;
- membership and potential membership of a Lloyd's syndicate and the underwriting capacity of such a syndicate;
- deposits, that is contracts under which money is paid other than in return for goods or services and on the basis that it will be repaid, with or without interest, on demand or at some specified times or circumstances;
- loans secured on land, such as mortgages; and
- any other right or interest in any other investment.

782. Part III makes provision as to the scope of the order-making power under section 22. The first order to be made under that section must be subject to an affirmative resolution procedure — that is, it must be laid before Parliament after being made, and it will cease to have effect if it is not approved by a resolution of each House within 28 days of being made. The same procedure will apply where an order under section 22 has the effect of extending the scope of activities to be regulated under the Act.

SCHEDULE 3: EEA PASSPORT RIGHTS

783. This Schedule gives effect in UK law to the single markets in banking, investment services and insurance as provided for by the relevant directives: the 2nd Banking Co-ordination Directive, the Investment Services Directive and the Life and Non-Life Directives.

784. Under the directives, credit institutions (a term embracing both banks and building societies), investment firms and insurance companies (which includes friendly societies) with head offices in any member State of EEA (that is the 15 States of the EU plus Norway, Iceland and Liechtenstein) have rights to carry on certain activities in other member States by virtue of their home State authorisation. These rights are often referred to as their “passport” and cover a range of financial services (some of which may only be conducted by firms which are authorised under these categories), which include deposit-taking, effecting and carrying out life or general insurance.

785. Under the 2nd Banking Co-ordination Directive, subsidiaries of credit institutions which meet certain criteria set out in article 18(2) of that directive may also have passport rights, and are therefore included in the definitions of “EEA firms” (persons from other member States who qualify for the passport into the United Kingdom) and “UK firms” (persons established in the United Kingdom who exercise their passport rights in other member States) in this Schedule.

786. The authorities in the member States, other than the home State, where these passporters are carrying on business under their passports (referred to as the host State authorities) may only impose limited regulations on the conduct of business under the passport, in accordance with the established principle of the “general good”. This requires those rules to be proportionate, non-discriminatory and non-duplicative of home State rules with equivalent effect. Conduct of business rules generally come within the host State remit. The home State retains full responsibility for authorising the passporting firms and conducting their overall prudential supervision (that is, supervising their financial soundness and ensuring that they and their controllers are fit and proper to conduct such business).

787. The passport may be exercised in order to establish a permanent place of business, referred to in the directives as a “branch” irrespective of the number of sites involved, or in order to provide cross-border services without a permanent place of business. Indeed the passport may be exercised in order to provide services, perhaps different services, by these two means in parallel.

788. The business activities covered by the passport do not necessarily correspond exactly to the activities which are regulated under the law of any member State, although certain activities, such as deposit-taking, insurance business or the core investment services defined under the Investment Services Directive, must be regulated, and will all be regulated activities under the order made under section 22. There are therefore activities for which firms may have rights to conduct in other member States by virtue of the passport, but which are not necessarily central to the definition of those firms which qualify for the passport. There may equally be activities which are covered by the passport, but which are not regulated activities in every member State.

789. An example of an activity not regulated in every member State is lending. Lending, in conjunction with deposit-taking, is a defining characteristic of what is a credit institution and therefore of those who may qualify for passport rights under the 2nd Banking Co-ordination Directive. However, the directives do not require that lending should be regulated, though they do require the regulation of deposit-taking. The passport under that directive therefore not only covers lending, but qualification for that passport depends on it being part of the business of the firm. However, lending is not covered by the other directives (indeed, insurance companies are prohibited from carrying on the business of lending unless it is ancillary to their insurance business) and it does not need to be regulated by member States. It is not currently a regulated activity in the United Kingdom, except to the extent that it falls within the scope of the CCA 1974.

790. This Schedule, in conjunction with section 31, therefore defines the firms from other EEA member States, which may qualify for authorisation via this route, and the procedures which, in accordance with the various directives, must be followed (see paragraphs 12 to 14 in Part II). An EEA firm which fails to follow the correct notification procedure does not, however, commit an offence and their contracts are not rendered unenforceable in consequence (see paragraph 16).

791. Part III of the Schedule gives effect to the outward passport entitlements of UK credit institutions, investment firms and insurance companies. For the reasons referred to above, those qualifying for the passport form a narrower class than all persons who have their head office in the United Kingdom and who are authorised by virtue of having a Part IV permission. For example, not all banks and building societies are necessarily credit institutions, though the vast majority are. Equally the definition of an investment firm for the purposes of the Investment Services Directive is restricted to a firm which is authorised to carry on the business of providing for third parties the core services defined under that directive.

792. Paragraphs 19 and 20 set out the procedure and conditions on which the Authority may grant the passport to those UK firms who qualify. A UK firm which fails to follow the required notification procedures before establishing a branch or providing services in another member State commits an offence under paragraph 21.

793. The Schedule also gives the Treasury powers to make regulations governing the continuing regulation of both EEA firms and UK firms.

794. Paragraph 23 enables the Authority to intervene in respect of a UK firm's consumer credit business in another member State. Paragraph 24 similarly enables the Authority to intervene in the business carried on in other member States of subsidiaries qualifying for the outward passport under

Article 18(2) of the 2nd Banking Co-ordination Directive. Such subsidiaries need not be authorised persons in their own right.

SCHEDULE 4: TREATY RIGHTS

795. This Schedule gives effect in UK law to the rights of establishment and to provide services of persons established in the other EEA States. These relate to rights which go beyond those which are covered by the single market directives in banking, investment services and insurance (see Schedule 3).

796. These rights allow persons who are authorised under the law of one member State to carry on an activity in the other member States so long as the relevant law of the home State provides equivalent protection to that of the host State and meets any EU minimum requirements applicable in that area of law. These rights are given precise effect for many financial services firms through the single market directives, and the member State laws giving national effect to them. However, as explained in relation to Schedule 3, the directives do not cover the full range of financial services or financial service providers. It is necessary, therefore, to provide an equivalent mechanism to permit persons from other EU member States to exercise their Treaty rights in the absence of formal directive passporting arrangements. The provisions in this Schedule, in conjunction with section 31, provide for that mechanism.

797. The Schedule does not seek to define the extent of Treaty rights, which are in any event the subject of extensive and developing case law in the EU, but sets the conditions that must be met for authorisation by this route in terms of the general principles described above. It requires home State confirmation of a firm's home State authorisation and provides for the Treasury to take the decision as to whether the particular laws of a particular member State provide the equivalent protection required.

798. The firm is also required to give notice of their intention to exercise their Treaty rights and to provide such information as the Authority may require. Failure to give proper notice is a criminal offence, unless all reasonable precautions have been taken to avoid the commission of the offence. It is also an offence knowingly or recklessly to provide false or misleading information.

SCHEDULE 5: PERSONS CONCERNED IN COLLECTIVE INVESTMENT SCHEMES

799. This schedule effectively deals with authorisation of collective investment schemes in two circumstances:

- first, it affords authorisation to incoming passporters under the relevant directives, and
- second, it deals with authorisation for certain types of oeic. The Treasury may prescribe additional conditions for qualification for automatic authorisation. A person who is authorised under this Schedule has permission to carry on regulated activities in connection with the scheme of which he is the operator or depositary.

SCHEDULE 6: THRESHOLD CONDITIONS

Part I: Part IV Permission

800. This Part sets out the minimum conditions against which an applicant for permission under section 40 must be measured. Failure to meet one of the conditions is sufficient grounds for refusal to grant permission or for granting permission for a narrower range or definition of regulated activities than sought by the applicant. However, the fact that an applicant satisfies all the applicable conditions in this Schedule does not confer any automatic right to permission. The Authority retains some discretion to refuse an application even where all these conditions are satisfied.

801. The conditions must also be met on an on-going basis by authorised persons and failure to meet one of the conditions is sufficient grounds for the exercise by the Authority of its power to vary an authorised person's permission under section 45, and through that power, its power to withdraw an authorised person's authorisation under section 33. However, the Authority may, from time to time, temporarily subordinate the need to ensure that the threshold conditions are met on a continuous basis in line with its statutory objective of protecting consumers.

Paragraph 1: Legal Status

802. This paragraph sets out certain conditions for legal form. Section 40 allows for authorised persons to be natural persons as well as companies, partnerships or other unincorporated associations. However, not all these forms are acceptable under EC law for authorised persons carrying on certain types of business.

803. Thus the effecting and carrying out of contracts of insurance is limited to bodies corporate, registered friendly societies or members of Lloyd's insurance market, and only bodies corporate or partnerships may accept deposits.

Paragraph 2: Location of offices

804. This paragraph implements the requirement under the Post-BCCI Directive (Council Directive 95/26/EEC of 29 June 1995) that persons covered by the single market directive should have their head office in the country in which they have their registered office. It requires authorised persons who are bodies corporate constituted under the law of any part of the United Kingdom, to have their head office (that is, the main centre from which the firm is run) in the United Kingdom. If they have a registered office, as most bodies corporate do, it must also be in the United Kingdom. If the person does not have a registered office (for instance if he is an individual or an unincorporated association) but his head office is in the United Kingdom, he must carry on authorisable business in the United Kingdom. This requirement is aimed at ensuring that authorised persons organise their business in a way that can be effectively supervised. A problem in the case of the failure of BCCI was that it was incorporated in one State, Luxembourg, but had its head office in another, the United Kingdom.

Paragraph 3: Close links

805. This paragraph requires the Authority to be satisfied that it can supervise an applicant or authorised person effectively, taking into account the structure of the group to which they belong, or the other firms to which they have relevant links, and the laws, regulations or administrative provisions of any non-EEA country to which they may be subject.

806. "Close links" is defined in sub-paragraph (2) and this sets out the structures that are relevant for these purposes. These cover the authorised person (or applicant), any parent undertaking or subsidiary undertaking of theirs and certain undertakings connected to such parent or subsidiary. In addition, the holding or control of 20 per cent of voting power by the authorised person (or applicant) in another body, or such a holding or control of voting power in the authorised person (or applicant), will constitute a close link for these purposes. These structures cover natural persons, and other forms of associations; and in such cases the relevant links are to be understood as referring to degrees of control that are equivalent.

Paragraph 4: Adequate resources

807. This paragraph requires the Authority to be satisfied that the applicant has adequate resources, which has a wide meaning. The term adequate is intended to mean sufficient in terms of quantity,

quality and availability, and resources is intended to include all material or financial resources, for instance capital, provisions against liabilities, holdings of or access to cash and other liquid assets. A person must also have effective means by which to manage risks. The Authority may take account of a person's membership of a group in deciding whether it is satisfied that this condition is met.

Paragraph 5: Suitability

808. This paragraph requires the Authority to be satisfied that the person is “fit and proper” to be permitted to carry on the relevant activities, taking account of connections with other persons, the range and nature of regulated activities he carries on (or proposes to carry on), and the overall need to be satisfied that his affairs are and will be soundly and prudently managed.

Part II: Authorisation

809. This Part provides that the threshold conditions set out in paragraphs 1 to 5 are relevant to any additional Part IV permissions held, or applied for, by EEA or Treaty firms. However, the conditions are not relevant to an EEA or Treaty firm's qualification for authorisation under Schedules 3 or 4.

Part III: Additional conditions

810. This Part enables the Authority to specify additional conditions for an applicant for authorisation with a head office outside the EEA and who seeks to carry on regulated activities in relation to insurance business. Paragraph 9 confers a power on the Treasury to amend the threshold conditions by order.

SCHEDULE 7: THE AUTHORITY AS COMPETENT AUTHORITY FOR PART VI

Paragraph 1: General

811. This paragraph applies the provisions of the rest of the Act to the Authority, with certain modifications, when it is exercising the competent authority function. The remaining provisions of the Schedule set out what these modifications are.

Paragraph 2: The Authority's general functions

812. This paragraph disapplies the Authority's general duties under section 2 by ensuring that the definition of its general functions in section 2(4) does not include functions of the competent authority under Part VI. (Section 2(4)(b) is not mentioned since the competent authority does not have a statutory function of making codes.) However the competent authority is placed under a separate obligation, by section 73, to follow analogous principles.

Paragraph 3: Duty to consult

813. This paragraph disapplies section 8 which places a duty on the Authority to make arrangements for consulting practitioners and consumers. The competent authority already has a listing committee which it consults and which the Authority has said will continue in operation following the transfer of functions from the Stock Exchange to the Authority.

Paragraph 4: Rules

814. Under this paragraph, section 155, which relates to consultation on rules, is applied with appropriate modifications to the listing rules made by the competent authority.

Paragraph 5: Statements of policy

815. This paragraph deals with statements of policy made by the competent authority under section 93. It has the effect of requiring that when the Authority publishes such statements, it must not

delegate this function, but must act through its governing body, as provided for in paragraph 5 of Schedule 1.

Paragraphs 6 and 7: Penalties and fees

816. This paragraph disapplies provisions of Schedule 1 which would otherwise apply to the imposition of penalties by the competent authority, because these matters are provided for separately in section 100. Similar provision is also made, in paragraph 17 of Schedule 1, in relation to the charging of fees for which separate provision for the competent authority is made in section 99.

Paragraph 8: Exemption from liability in damages

817. The competent authority has exemption from liability in damages under section 102 and accordingly this paragraph modifies paragraph 19 of Schedule 1 which deals with similar issues for the Authority in its general regulatory role.

SCHEDULE 8: TRANSFER OF FUNCTIONS UNDERPART VI

818. The provisions of this Schedule allow the Treasury to transfer some or all of the competent authority functions to another body if it is in the public interest. Three specific grounds covering the performance of the functions and competition issues are set out in paragraph 1(2). These are particular situations in which the Treasury consider that they might exercise the power to transfer functions. The purpose of setting out these particular examples of public interest grounds in the legislation is to provide more certainty in this area. Any order the Treasury makes under this Schedule would be subject to debate in both Houses of Parliament. This is provided for in section 429(1)(b).

SCHEDULE 9: NON-LISTING PROSPECTUSES

819. This Schedule applies the provisions of Part VI so that they apply in relation to a non-listing prospectus as they apply to listing particulars. It makes a number of changes to those provisions to deal with the fact that securities which are the subject of non-listing prospectuses are not admitted to listing.

SCHEDULE 10: COMPENSATION: EXEMPTIONS

820. This Schedule sets exemptions from the liability to pay compensation for false or misleading particulars in certain circumstances under section 90. Paragraph 5 provides that a person is not liable to pay compensation for loss resulting from a statement in the listing particulars which reproduces a statement made, for example, in a public official document. Paragraph 6 provides that there is also no liability if the person against whom action is taken satisfies the court that the person who acquired securities did so in the knowledge that a statement in the listing particulars was false or misleading. In such a case the person suffering the loss would not have been misled.

SCHEDULE 11: OFFERS OF SECURITIES

821. In accordance with EC law requirements, section 84 requires a prospectus to be approved and published where any person offers securities to the public in the United Kingdom for the first time and when an application for listing has been made. Section 103 provides that whether securities are offered to the public in the United Kingdom is to be determined in accordance with the requirements of this Schedule. This Schedule therefore defines an offer to the public, subject to certain exemptions which are set out in accordance with derogations in EC law.

SCHEDULE 12: TRANSFER SCHEMES: CERTIFICATES

822. The Schedule sets out the details of the certificates which the court must be satisfied, under section 111(2)(a), have been obtained.

823. Part I deals with insurance business transfers. The certificate requirements are all necessary to implement the insurance directives. For all insurance business transfers, a solvency margin certificate is required under paragraph 2. This certifies that the transferee has the necessary margin of solvency (defined in sub-paragraph 2(4)). It must be issued by the home State regulator in the case of an EEA firm under Schedule 3, the Swiss supervisory authorities in the case of a Swiss insurance company, and the Authority in all other cases.

824. If the transfer concerns a UK authorised person authorised under the insurance directives and the business to be transferred is conducted from a branch in another member State, a certificate is needed under paragraph 3 to the effect that the host State regulator has been duly notified and has responded (or the 3 month period allowed for response under the directives has elapsed).

825. If the transfer is of business which relates to the effecting and carrying out of long-term insurance (other than reinsurance policies) involving policyholders from other member States, and it involves a UK authorised person authorised under the First Life Directive, then a certificate is needed under paragraph 4 to the effect that the relevant authorities for those other member States have been duly notified and have consented (or the 3 month period allowed for response under the directives has elapsed).

826. If the transfer concerns a UK authorised person authorised under the First Non-Life Directive, and the business to be transferred is business which relates to the effecting and carrying out of contracts of general insurance which includes policies (other than reinsurance policies) concerning risks arising in other member States, a certificate is needed under paragraph 5 to the effect that the relevant authorities for those other member States have been duly notified and have consented (or the 3 month period allowed for response under the directives has elapsed).

827. Part II deals with banking business transfers. All such transfers require a financial resources certificate under paragraph 8. This certifies that the transferee has or will have adequate financial resources. It must be issued by the “relevant authority”. In a case where the transferee is a person authorised under Part IV or Schedule 4, this is the Authority. Where the transferee is an EEA firm under Schedule 3 it is the home State regulator. Where the transferee is neither, it is the relevant authority in the place in which the transferee has its head office.

828. If either the transferor or transferee is an EEA firm under Schedule 3, a certificate is also required under paragraph 9 to the effect that the home State regulator has been duly notified and has responded (or the 3 month period allowed for response under that paragraph has elapsed).

SCHEDULE 13: THE FINANCIAL SERVICES AND MARKETS TRIBUNAL

829. This Schedule makes provision further to that contained in Part IX as to the constitution and operation of the Tribunal.

Paragraph 2: President

830. This paragraph requires the Lord Chancellor to select one of the members of the panel of chairmen, with qualifications as specified in paragraph 2(5), to be the President of the Tribunal. Apart from his general responsibility for the Tribunal's functions under paragraph 2, it is the President's responsibility under paragraph 7 to establish standing arrangements for the selection of panel members to sit on the Tribunal to hear particular cases. The standing arrangements must provide for the selection of at least one member of the panel of chairmen in each reference to the

Tribunal, but may in addition provide for the selection other members of either panel. The Tribunal is empowered to appoint experts to assist it where necessary under paragraph 7(4). Paragraph 2 gives the Lord Chancellor the power to appoint a Deputy President, in addition to a President. If appointed, the Deputy President is to have such functions in relation to the Tribunal as the President may assign to him, and he is able to exercise any function of the President where the President is absent or otherwise unable to act.

Paragraph 3: **Panels**

831. This paragraph requires the Lord Chancellor to appoint the members of two panels, defined in paragraph 1 as the “panel of chairmen” and the “lay panel”, from which members of the Tribunal for a particular case will be drawn. Members of the former must have appropriate legal qualifications as specified in paragraph 3(2), at least one being suitably qualified in Scotland.

Paragraph 4: **Terms of office**

832. This paragraph provides that the terms of office of the panel members (including the President and any Deputy President) are to be determined by the terms on which they are appointed by the Lord Chancellor. The Lord Chancellor is also to have the power to remove them on grounds of incapacity or misbehaviour. The President and panel members may resign at any time, and they may be reappointed at the end of their terms. Paragraph 5 gives the Lord Chancellor similar powers to determine the remuneration of such persons and gives the Lord Chancellor the power to retain and pay administrative staff to support the Tribunal and to meet other expenses.

Paragraphs 8 to 10: **Sittings and procedure**

833. This paragraph indicates some of the matters concerning the conduct of cases referred which may be determined by rules made by the Lord Chancellor under section 132. As section 132(4) provides, this list does not limit the Lord Chancellor's powers. Under paragraph 8, the Tribunal must sit at such times and in such places as the Lord Chancellor may direct. Paragraph 10 enables the President of the Tribunal to give directions as to the practices and procedures to be followed by the Tribunal.

Paragraph 11: **Evidence**

834. This paragraph sets out the powers of the Tribunal to require people to attend and give evidence, or produce documents, and makes it a criminal offence not to comply without reasonable excuse. The statutory maximum fine for which a person can be liable on summary conviction is currently £5,000.

Paragraph 12: **Decisions of Tribunal**

835. Under this paragraph the Tribunal may reach a decision unanimously or by majority, but must indicate which was the case in the document which it is obliged to issue setting out its decision. This document must include a statement of its reasons, and a copy must be sent to each party to the reference.

Paragraph 13: **Costs**

836. The Tribunal will have discretion under paragraph 13 to award costs against any party to its proceedings where the Tribunal considered that the party concerned had acted vexatiously, frivolously or unreasonably. It will also have specific power to award costs against the Authority where it considers the Authority's decision was unreasonable.

SCHEDULE 14: **ROLE OF THE COMPETITION COMMISSION**

837. This schedule is concerned with the role of the Commission. It is introduced by section 162.

Paragraph 1: Provision of information by Treasury

838. This paragraph provides that the Treasury may give information and assistance to the Commission on matters falling within the investigation. For example, the Treasury may wish to tell the Commission about its view of the UK's international obligations in a particular area, or gives its view of the systemic risk implications of changing regulating provisions or practices.

Paragraph 2: Consideration of matters arising on a report

839. This paragraph provides that the Commission has to have regard to any cost-benefit analysis produced by the Authority on the regulating provisions or practices in question and to any representations made by other persons with a substantial interest.

Paragraph 3: Applied provisions

840. This paragraph applies provisions of the Fair Trading Act 1973 and other competition legislation which give the Commission powers to investigate and which make it an offence to provide false or misleading information to the Commission.

Paragraph 4: Publication of reports

841. This paragraph concerns the publication of reports by the Commission. When it publishes a report the Commission, like the DGFT under section 160, must so far as is practicable exclude any matter which relates to the affairs of a person which might seriously prejudice that person's interests. Sub-paragraph (4) provides that such information does not need to be excluded from the version of the report which is required to be sent to the Director, the Treasury and the Authority under section 162(10).

SCHEDULE 15: INFORMATION AND INVESTIGATIONS: CONNECTED PERSONS

842. Under section 165(7) the Authority may require information or documents from a person who is connected with an authorised person, including, in addition to those listed in the section itself, the persons related to an authorised person in any of the ways set out in this Schedule. These are:

- employees and agents of the authorised person;
- officers and managers if the authorised person is a body corporate, unincorporated association, building society or friendly society;
- officers, managers and agents of the authorised person's parent undertakings, if the authorised person is a body corporate; and
- managers and members, if the authorised person is a partnership.

843. In a similar way, section 171(4) enables investigators appointed to undertake investigations under section 167 to require persons connected to the person under investigation to attend and answer questions or provide information or documents. Again, this includes persons related to the person under investigation in any of the ways set out above, plus persons who, at the time the investigation is concerned with, were partners, managers, employees, agents, appointed representatives, bankers, solicitors, accountants or actuaries of:

- the person being investigated;
- that person's parent undertaking or subsidiary;
- a fellow parent of a subsidiary of the person under investigation; or
- a fellow subsidiary of a parent undertaking of that person.

844. The terms “subsidiary undertaking” and “parent undertaking” are defined in section 420.

SCHEDULE 16: PROHIBITIONS AND RESTRICTIONS IMPOSED BY THE DIRECTOR GENERAL OF FAIR TRADING

845. This Schedule sets out the procedures the DGFT must follow when he exercises his powers under sections 203 and 204 to impose a prohibition or a restriction, or vary an existing restriction without the consent of the firm, on the conduct of consumer credit business by an EEA firm. This procedure follows that which applies to the exercise of comparable powers in relation to persons licensed under the CCA 1974. If the EEA firm is carrying on consumer credit business here without a licence on the basis of its passport under the single market directives then the DGFT will need to rely on the powers in sections 203 and 204 to control that business when necessary.

846. The first step is for the DGFT to inform the firm that he proposes to impose the prohibition or restriction, or vary the existing restriction, and give the reasons for this. He has to allow the firm at least 21 days to make representations, which may be made either in writing or orally.

847. The second step is for the DGFT, having taken account of any representations received, to notify the firm of his decision and send a copy of the notification to the Authority and the firm's home State regulator. If the DGFT decides to proceed with a prohibition, a new restriction or variation of an existing one, he may also direct that the firm carries into effect credit agreements made before such action came into force.

848. The firm may appeal against the DGFT's decision to the Secretary of State, under section 41 of the CCA 1974. This gives the Secretary of State discretion to dispose of such an appeal as he thinks just (including making directions about payments of costs).

SCHEDULE 17: THE OMBUDSMAN SCHEME

849. This Schedule contains further details concerning the constitution and powers of the Financial Services Ombudsman Scheme.

Paragraph 3: Constitution

850. This sets requirements as to the scheme operator's constitution. These include that the chairman of the scheme operator must be appointed by the Authority with the approval of the Treasury. The scheme operator must be independent of the Authority.

Paragraph 6: Status

851. This confirms that the scheme operator, its staff and the ombudsmen do not exercise their functions on behalf of the Crown.

Paragraph 7: Annual Report

852. The scheme operator has to publish an annual report of its activities and also a report from the Chief Ombudsman.

Paragraph 8: Guidance

853. The scheme operator can disseminate appropriate information free of charge. This could include guidance on the scheme's procedures or advice on how to deal with disputes before coming to the scheme.

Paragraph 9: Budget

854. In order for there to be external scrutiny of the scheme's finances, the scheme operator's budget has to be approved by the Authority.

Paragraph 10: Exemption from liability in damages

855. The efficient operation of the scheme could be significantly disrupted if its actions were subject to frequent legal challenge. This paragraph provides immunity for the scheme operator and its staff from actions for damages, similar to the immunity enjoyed by the Authority.

Paragraph 11: Privilege

856. This ensures that evidence produced during proceedings under the compulsory jurisdiction is protected against actions for libel or slander.

Paragraph 13: Authority's procedural rules

857. This requires the Authority to make procedural rules for the operation of the compulsory jurisdiction of the scheme. In respect of rules governing how authorised persons deal with complaints, it extends the Authority's rule-making powers under Part X of the Act.

Paragraph 14: The scheme operator's rules

858. This requires the scheme operator to make other procedural rules for the compulsory jurisdiction. It provides, in particular, for rules to be made which allow an ombudsman to dismiss a complaint without consideration of its merits, for example where he deems the complaint to be frivolous or vexatious, and for the early stages of the handling of a complaint, for example a conciliation stage, to be handled by a member of the scheme operator's staff other than an ombudsman.

Paragraph 18: Terms of reference to the scheme

859. This provides that the scheme operator has power to set terms of reference for its voluntary jurisdiction dealing with matters for which rules may be made under the compulsory jurisdiction. The terms of reference must be approved by the Authority.

Paragraph 19: Delegation by and to other schemes

860. Although the scheme is intended to cover most complaints relating to the financial services industry, there is likely to be some continued overlap with other arrangements, for example in the areas of pensions and consumer credit. The scheme would be able to agree with other schemes which body should consider complaints within the voluntary jurisdiction. The arrangements must be approved by the Authority.

SCHEDULE 20: TRANSITIONAL PROVISIONS AND SAVINGS

861. This schedule affects the provisions of the FS Act 1986 as they relate to recognition, supervision and de-recognition of SROs under that Act. The Schedule allows the Treasury by order to designate a date from which the amendments have effect for particular SROs which are recognised under the FS Act 1986.

862. The independence of the Authority and the SROs from each other is an intrinsic feature of the system established by the FS Act 1986. Under the new regime, however, the regulatory functions performed by the SROs under the previous (FS Act 1986) regime pass to the Authority and it is therefore necessary for the Authority to be able to take appropriate steps in preparation for that transition. Were there any question whether transitional arrangements, by materially affecting the independence of the SROs, called into doubt the validity of their recognition, that could in turn cast doubt on the validity of the authorisation of firms authorised by virtue of their membership of an SRO. This Schedule makes clear that these questions do not arise and removes any potential for

doubt as to whether the SROs could continue to be recognised when they cease to be truly independent of their regulator.

COMMENCEMENT

863. Certain provisions of the Act commence at Royal Assent. They are set out in section 431(1). Other provisions will be brought into force by commencement order in due course.

HANSARD REFERENCES

864. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard reference
House of Commons		
Introduction	17 June 1999	
Second reading	28 June 1999	Vol 334 Col2 34–111
Committee	6 July to 9 December 1999	Standing Committee A
Suspension motion	25 October 1999	Vol 336 Col 706–737
Reintroduction	18 November 1999	
Report and third reading	27 January and 1 February 2000	Vol 343 cols 594–677 and 924–1016
House of Lords		
Introduction	10 February 2000	
Second reading	21 February 2000	Vol 610 Col 13–94
Committee	16, 20, 21, 27 and 30 March 2000	Vol 610 Cols 1684–1751 and 1769 to 1804. Vol 611 Cols 9–81, 88–134, 146–233, 249–264, 503–512, 526–576, 593–632, 912–981 and 997–1059
Report	13 and 18 April and 9 May 2000	Vol 612 291–354, 561–639, 656–696, 1373–1387, 1396–1443 and 1457–1562
Third reading	18 May 2000	Vol 613 Col 363–448
Commons' consideration of Lords' amendments	5 June 2000	Vol 351 Col 38–133
Lords' consideration of Commons' amendments	12 June 2000	Vol 613 Cols 1373–1393
Royal assent	14 June 2000	

Modifications

Whole Document	European Communities (Lawyer's Practice) Regulations 2000/1119, Pt II reg. 14 Financial Services Act 2012 (Consumer Credit) Order 2013/1882, art. 3(12)(a) Financial Services and Markets Act 2000 (Official Listing of Securities) (Transitional Provisions) Order 2001/2957, art. 13(8)(b)
Pt I s. 2(3)	Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012/3122, reg. 14(2)(a)
Pt I s. 5(3)	Financial Services and Markets Act 2000 (Consequential and Transitional Provisions) (Miscellaneous) Order 2001/1821, art. 3(4)
Pt I s. 10(7)	Financial Services and Markets Act 2000 (Consequential and Transitional Provisions) (Miscellaneous) Order 2001/1821, art. 3(4)
Pt I s. 12(3)	Financial Services and Markets Act 2000 (Mutual Societies) Order 2001/2617, Sch. 2 para. 6
Pt I s. 14(5)	Financial Services and Markets Act 2000 (Consequential and Transitional Provisions) (Miscellaneous) Order 2001/1821, art. 3(4)
Pt I s. 17(2)-(3)	Payment Services Regulations 2009/209, Pt 7 reg. 92(1)(c)
Pt IA c. 1 s. 1B(5)(a)	Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012/3122, reg. 14
Pt IA c. 1 s. 1L	Financial Services Act 2012 (Consumer Credit) Order 2013/1882, art. 3(2)
Pt IA c. 2 s. 2B(2)-(3)	Financial Services and Markets Act 2000 c. 8, Pt XIX s. 314A(3)
Pt IA c. 2 s. 2C(1)	Financial Services and Markets Act 2000 c. 8, Pt XIX s. 314A(4)
Pt IA c. 3 s. 3I	Financial Services Act 2012 (Mutual Societies) Order 2013/496, Sch. 1 para. 4
Pt IA c. 3 s. 3I(4)(b)	Financial Services and Markets Act 2000 c. 8, Pt XIX s. 314A(5)
Pt IA c. 3 s. 3M(3)(d)	Financial Services Act 2012 (Transitional Provisions) (Miscellaneous Provisions) Order 2013/442, Pt 13 art. 69(2)
Pt II s. 26	Financial Services and Markets Act 2000 c. 8, Pt II s. 28(8)
Pt II s. 27	Financial Services and Markets Act 2000 c. 8, Pt II s. 28(8)
Pt II s. 28	Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc.) (No. 2) Order 2001/3083, Pt 2 art. 5(6) Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc.) Order 2001/2657, Pt 2 art. 5(6)
Pt IV	Financial Services and Markets Act 2000 c. 8, Pt X c. I s. 143(3)
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Pt IV s. 44	Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002/704, art. 7(2) Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011/2832, Pt 1 art. 8(1)
Pt IV s. 45-48	Financial Services and Markets Act 2000 (Interim Permissions) Order 2001/3374, art. 11(2)
Pt IV s. 45(1)	Credit Institutions (Protection of Depositors) Regulations 1995/1442, Pt V reg. 49

	Credit Institutions (Protection of Depositors) Regulations 1995/1442, Pt V reg. 49
Pt IV s. 45(1)-(1)(a)	Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011/2832, Pt 1 art. 8(1)
Pt IV s. 45(1)(a)	Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002/704, art. 7(2)
Pt IV s. 45(1)(c)-(d)	Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002/704, art. 7(2)
Pt IV s. 45(1)(c)-(2)	Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011/2832, Pt 1 art. 8(1)
Pt IV s. 45(1)(d)	Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011/2832, Pt 1 art. 5(4)
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Pt IV s. 49(1)	Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011/2832, Pt 1 art. 8(1)
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Pt IV s. 50(2)	Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011/2832, Pt 1 art. 8(1)
Pt IV s. 51(2)	Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002/704, art. 7(2)
Pt IV s. 52-V s. 56	Financial Services and Markets Act 2000 (Consequential and Transitional Provisions) (Miscellaneous) (No. 2) Order 2001/2659, art. 3(3)
Pt IV s. 52-55	Financial Services and Markets Act 2000 (Interim Permissions) Order 2001/3374, art. 11(2)
Pt IV s. 52-V s. 56	Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002/704, art. 7(2)
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Pt IVA s. 55M(2)(d)	Credit Institutions (Protection of Depositors) Regulations 1995/1442, Pt V reg. 49
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Pt V s. 61(3)	Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001/3592, Pt V(I) art. 49(3)
Pt V s. 63(1)	Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011/2832, Pt 1 art. 6(3)
Pt V s. 63A-63C	Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013/441, Pt 2 art. 2(2)
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Pt V s. 63A(5)	Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013/441, Pt 2 art. 2(4)
Pt V s. 66	Cross-Border Payments in Euro Regulations 2010/89, Sch. 1(1) para. 1(a) Electronic Money Regulations 2011/99, Sch. 3(1) para. 1
Pt V s. 66-68	Financial Services Act 2012 (Consumer Credit) Order 2013/1882, art. 3(3)
Pt V s. 66	Financial Services and Markets Act 2000 c. 8, Pt X c. I s. 143(3) Payment Services Regulations 2009/209, Sch. 5(1) para. 1 Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012/3122, Sch. 1(1) para. 1(a)
Pt V s. 66(2)-(2A)	Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013/441, Pt 2 art. 3(3)(a)
Pt V s. 66(3)	Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc.) (No. 2) Order 2001/3083, Pt 3 art. 9(3)
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Pt IX s. 133	Northern Rock plc Compensation Scheme Order 2008/718, Sch. 1 para. 1 Payment Services Regulations 2009/209, Sch. 5(1) para. 2 Transfer of Funds (Information on the Payer) Regulations 2007/3298, Sch. 2 para. 1
Pt IX s. 133(2) definition of "the decision maker"	Financial Services Act 2012 (Transitional Provisions) (Miscellaneous Provisions) Order 2013/442, Pt 4 art. 13(2)
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