

Status: Point in time view as at 01/06/2002. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Power to disallow excessive regulatory provision is up to date with all changes known to be in force on or before 21 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XVIII

RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES

CHAPTER I

EXEMPTION

VALID FROM 20/12/2006

f¹Power to disallow excessive regulatory provision

Textual Amendments

F1 S. 300A and cross-heading inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006 \(c. 55\), ss. 1, 5\(2\)](#) (with s. 5(3))

300A Power of Authority to disallow excessive regulatory provision

- (1) This section applies where a recognised body proposes to make any regulatory provision in connection with its business as an investment exchange or the provision by it of clearing services.
- (2) If it appears to the Authority—
 - (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 Authority may direct that the proposed provision must not be made.
- (3) A requirement is excessive if—

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- (a) it is not required under Community 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 Authority 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.

Duty to notify proposal to make regulatory provision

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F2]

- 300B** (1) A recognised body that proposes to make any regulatory provision must give written notice of the proposal to the Authority without delay.
- (2) The Authority 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 Authority may also by rules under that section—
- (a) make provision as to the form and contents of the notice required, and
 - (b) require the body to provide such information relating to the proposal as may be specified in the rules or as the Authority may reasonably require.]

Textual Amendments

F2 Ss. 300B-300E inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006](#) (c. 55), [ss. 2, 3, 5\(2\)](#) (with [s. 5\(3\)](#))

300C Restriction on making provision before Authority decides whether to act

- (1) Where notice of a proposal to make regulatory provision is required to be given to the Authority 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 Authority receives notice of the proposal, or

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- (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 Authority notifies the body that it is calling in the proposal, the provisions of section 300D (consideration by Authority 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 Authority notifies the body that it is not calling in the proposal, or
 - (b) the initial period ends without the Authority having notified the body that it is calling in the proposal,
- the body may then make the proposed provision.
- (5) Any provision made in contravention of this section is of no effect.

Textual Amendments

- F2** Ss. 300B-300E inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006](#) (c. 55), [ss. 2, 3, 5\(2\)](#) (with [s. 5\(3\)](#))

300D Consideration by Authority whether to disallow proposed provision

- (1) This section applies where the Authority notifies a recognised body that it is calling in a proposal to make regulatory provision.
- (2) The Authority 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 Authority may extend the period for making representations.
- (4) The Authority 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 Authority notifies it of its decision not to disallow it, or
 - (b) the 30-day period specified in subsection (4) ends without the Authority having notified any decision.
- (6) If the Authority 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 Authority's decision is quashed and the matter is remitted to it for reconsideration, the court may give directions as to the period within which the Authority is to complete its reconsideration, and
 - (c) the body must not make the provision until—

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- (i) the Authority notifies it of its decision on reconsideration not to disallow the provision, or
 - (ii) the period specified by the court ends without the Authority having notified any decision.
- (7) Any provision made in contravention of subsection (5) or (6) is of no effect.

Textual Amendments

F2 Ss. 300B-300E inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006](#) (c. 55), **ss. 2, 3, 5(2)** (with s. 5(3))

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 or overseas clearing house.]]

Textual Amendments

F2 Ss. 300B-300E inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006](#) (c. 55), **ss. 2, 3, 5(2)** (with s. 5(3))

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