



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXVIII

#### MISCELLANEOUS

#### *[<sup>F1</sup>Consumer redress schemes]*

#### Textual Amendments

- F1** Ss. 404-404G and preceding cross-heading substituted (12.10.2010) for s. 404 and preceding cross-heading by [Financial Services Act 2010 \(c. 28\)](#), **ss. 14, 26(3)**; [S.I. 2010/2480](#), **art. 2**

#### **[<sup>F2</sup>404 Consumer redress schemes**

- (1) This section applies if—
- (a) it appears to the [<sup>F3</sup>FCA] that there may have been a widespread or regular failure by relevant firms to comply with requirements applicable to the carrying on by them of any activity;
  - (b) it appears to it that, as a result, consumers have suffered (or may suffer) loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings; and
  - (c) it considers that it is desirable to make rules for the purpose of securing that redress is made to the consumers in respect of the failure (having regard to other ways in which consumers may obtain redress).
- (2) “Relevant firms” means—
- (a) authorised persons; <sup>F4</sup> . . .
  - (b) payment service providers. [<sup>F5</sup> or
  - (c) electronic money issuers.]

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- (3) The [F<sup>3</sup>FCA] 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 [F<sup>3</sup>FCA] must consult the scheme operator of the ombudsman scheme.
- (10) For the meaning of consumers, see section 404E.]

#### Textual Amendments

- F2** Ss. 404-404G and preceding cross-heading substituted (12.10.2010) for s. 404 and preceding cross-heading by [Financial Services Act 2010 \(c. 28\)](#), **ss. 14**, 26(3); S.I. 2010/2480, **art. 2**
- F3** Word in s. 404 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 18** (with [Sch. 20](#)); S.I. 2013/423, **art. 3**, [Sch.](#)
- F4** Word in s. 404(2) omitted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by virtue of [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, **Sch. 4 para. 2(4)(a)** (with [reg. 3](#))
- F5** S. 404(2)(c) and preceding word inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, **Sch. 4 para. 2(4)(a)** (with [reg. 3](#))

#### [F<sup>1</sup>404A Rules under s.404: supplementary

- (1) Rules under section 404 may make provision—
  - (a) specifying the activities and requirements in relation to which relevant firms are to carry out investigations under consumer redress schemes;
  - (b) setting out, in relation to any specified description of case, examples of things done, or omitted to be done, that are to be regarded as constituting a failure to comply with a requirement;
  - (c) setting out, in relation to any specified description of case, matters to be taken into account, or steps to be taken, by relevant firms for the purpose of—
    - (i) assessing evidence as to a failure to comply with a requirement; or

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- (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 [F<sup>6</sup>FCA];
  - (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 [F<sup>6</sup>FCA] of persons authorised under paragraph (i);
  - (k) as to the circumstances in which, instead of a relevant firm, the [F<sup>6</sup>FCA] (or one or more competent persons acting on the [F<sup>6</sup>FCA's] 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 [F<sup>6</sup>FCA] 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 [F<sup>6</sup>FCA] 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 [F<sup>6</sup>FCA] 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

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(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 <sup>F6</sup>FCA].

(9) Nothing in this section is to be taken as limiting the power conferred by section 404.

#### Textual Amendments

**F6** Word in s. 404A substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 19](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

### 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).

[ Subsection (1) does not apply if the consumer and the relevant firm agree that it should <sup>F7</sup>(1A) not apply.]

(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.

[ The way in which a complaint mentioned in subsection (2) is to be determined by the <sup>F8</sup>(2A) ombudsman is to be as mentioned in subsection (4).

(2B) Subsection (2A) does not apply if the consumer and the relevant firm agree that it should not apply.]

<sup>F9</sup>(3) In the following provisions of this section “relevant complaint” means—

- (a) a complaint mentioned in subsection (1) other than one in relation to which subsection (1A) applies, or
- (b) a complaint mentioned in subsection (2) other than one in relation to which subsection (2B) applies.]

(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).

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- (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.

#### Textual Amendments

- F7** S. 404B(1A) inserted (7.4.2015) by [The Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations 2015 \(S.I. 2015/542\)](#), reg. 1(2), **Sch. 7 para. 1(2)(a)** (with reg. 7)
- F8** S. 404B(2A)(2B) inserted (7.4.2015) by [The Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations 2015 \(S.I. 2015/542\)](#), reg. 1(2), **Sch. 7 para. 1(2)(b)** (with reg. 7)
- F9** S. 404B(3) substituted (7.4.2015) by [The Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations 2015 \(S.I. 2015/542\)](#), reg. 1(2), **Sch. 7 para. 1(2)(c)** (with reg. 7)

#### 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.

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#### **404D Applications to Tribunal to quash rules or provision of rules**

- (1) Any person may apply to the Tribunal for a review of any rules made under section 404.
- (2) The Tribunal may—
  - (a) dismiss the application; or
  - (b) make an order (a “quashing order”) quashing any rules made under section 404 or any provision of those rules.
- (3) An application may be made only if permission to make it has first been obtained from the Tribunal.
- (4) The Tribunal may grant permission to make an application only if it considers that the applicant has a sufficient interest in the matter to which the application relates.
- (5) The general rule is that, in determining an application, the Tribunal is to apply the principles applicable on an application for judicial review.
- (6) If (or so far as) an application relates to an example set out in the rules as a result of section 404A(1)(b), the Tribunal may determine whether the example constitutes a failure to comply with the requirement in question.
- (7) If (or so far as) an application relates to a matter set out in the rules as a result of section 404A(1)(c), the Tribunal may determine whether the matter should be taken into account as mentioned in that provision.
- (8) In the case of an application within subsection (6) or (7), the Tribunal's jurisdiction under that subsection is in addition to its jurisdiction under subsection (5).
- (9) A quashing order may be enforced as if it were an order made, on an application for judicial review, by the High Court or, in Scotland, the Court of Session.
- (10) The Tribunal may award damages to the applicant if—
  - (a) the application includes a claim for damages arising from any matter to which the application relates; and
  - (b) the Tribunal is satisfied that an award would have been made by the High Court or, in Scotland, the Court of Session if the claim had been made in an action begun in that court by the applicant when making the application.
- (11) An award of damages under subsection (10) may be enforced as if it were an award made by the High Court or, in Scotland, the Court of Session.
- (12) In the case of any proceedings under this section, the judge presiding at the proceedings must be—
  - (a) a judge of the High Court or the Court of Appeal or a judge of the Court of Session; or
  - (b) such other person as may be agreed from time to time by—
    - (i) the Lord Chief Justice, the Lord President or the Lord Chief Justice of Northern Ireland (as the case may be); and
    - (ii) the Senior President of Tribunals.
- (13) Section 133 does not apply in the case of an application under this section, but—
  - (a) Tribunal Procedure Rules may make provision for the suspension of rules made under section 404 or of any provision of those rules, pending determination of the application; and

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- (b) in the case of an application within subsection (6) or (7), the Tribunal may consider any evidence relating to the application's subject-matter, whether or not it was available at the time the rules were made.
- (14) If—
- (a) the Tribunal refuses to grant permission to make an application under this section, and
  - (b) on an appeal by the applicant, the Court of Appeal grants the permission, the Court of Appeal may go on to decide the application under this section.

#### **404E Meaning of “consumers”**

- (1) For the purposes of sections 404 to 404B “consumers” means persons who—
- (a) have used, or may have contemplated using, any of the services within subsection (2); or
  - (b) have relevant rights or interests in relation to any of the services within that subsection.
- (2) The services within this subsection are services provided by—
- (a) authorised persons in carrying on regulated activities;
  - <sup>F10</sup>(b) . . . . .
  - (c) authorised persons in communicating, or approving the communication by others of, invitations or inducements to engage in investment activity;
  - (d) authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services;
  - (e) persons acting as appointed representatives; <sup>F11</sup> . . .
  - (f) payment service providers in providing payment services. [<sup>F12</sup> or
  - (g) electronic money issuers in issuing electronic money.]
- (3) A person (“P”) has a “relevant right or interest” in relation to any services within subsection (2) if P has a right or interest—
- (a) which is derived from, or is otherwise attributable to, the use of the services by others; or
  - (b) which may be adversely affected by the use of the services by persons acting on P's behalf or in a fiduciary capacity in relation to P.
- (4) If a person is providing a service within subsection (2) as a trustee, the persons who have been, or may have been, beneficiaries of the trust are to be treated as persons who have used, or may have contemplated using, the service.
- (5) A person who deals with another person (“B”) in the course of B providing a service within subsection (2) is to be treated as using the service.
- (6) In this section—
- <sup>F13</sup> . . .
  - <sup>F13</sup> . . .
  - “credit institution” has the meaning given by section 138(1B);
  - “engage in investment activity” has the meaning given by section 21;
  - [<sup>F14</sup>“electronic money” has the same meaning as in the Electronic Money Regulations 2011 and any reference to issuing electronic money must be read accordingly;]

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“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).

#### Textual Amendments

- F10** S. 404E(2)(b) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **10(15)(a)** (with art. 11(2))
- F11** Word in s. 404E(2) omitted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by virtue of [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, **Sch. 4 para. 2(4)(b)(i)** (with reg. 3)
- F12** S. 404E(2)(g) and preceding word inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, **Sch. 4 para. 2(4)(b)(i)** (with reg. 3)
- F13** Words in s. 404E(6) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **10(15)(b)** (with art. 11(2))
- F14** S. 404E(6): definition of "electronic money" inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, **Sch. 4 para. 2(4)(b)(ii)** (with reg. 3)

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

- C1** S. 404E modified by S.I. 2001/544, art. 60S(1)(3) (as inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), **2(37)**)
- C2** S. 404E modified by S.I. 2001/544, art. 60LA(1)(3) (as inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), **2(33)**)

#### 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



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- (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.
- [References in sections 404 and 404E to an “electronic money issuer” are references <sup>F15</sup>(6A) to a person mentioned in paragraph (a), (b), (c), (d), (h) or (i) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011.]
- (7) If the [<sup>F16</sup>FCA] 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 [<sup>F16</sup>FCA] is a reference to—
- <sup>F17</sup>(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]
    - (b) the variation under regulation 8 or 11 of the Payment Services Regulations 2009 of an authorisation under those regulations. [<sup>F18</sup> or
    - (c) the variation under regulation 8 or 11 of the Electronic Money Regulations 2011 of an authorisation under those regulations.]

#### Textual Amendments

- F15** S. 404F(6A) inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, **Sch. 4 para. 2(5)(i)** (with reg. 3)
- F16** Word in s. 404F substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 20(2)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F17** S. 404F(8)(a)(aa) substituted for s. 404F(8)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 20(3)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F18** S. 404F(8)(c) and preceding word inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, **Sch. 4 para. 2(5)(ii)** (with reg. 3)

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#### 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.]

#### *Third countries*

#### 405 Directions.

- (1) For the purpose of implementing a third country decision, the Treasury may direct the [<sup>F19</sup>appropriate regulator] to—
  - (a) refuse an application for permission under [<sup>F20</sup>Part 4A] 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 [<sup>F21</sup>section 178 notice] 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 [<sup>F22</sup>section 178 notice].
- (2) A direction may also be given in relation to—
  - (a) any person falling within a class specified in the direction;
  - (b) future applications, [<sup>F23</sup>section 178 notices] 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.

[<sup>F24</sup>(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) “Third country decision” means a decision of the Council or the Commission under—

- [<sup>F25</sup>(a) Article 15(3) of the markets in financial instruments directive;]
- (b) <sup>F26</sup> .....
- <sup>F27</sup>(c) .....
- <sup>F27</sup>(d) .....

#### Textual Amendments

**F19** Words in s. 405(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 21\(2\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

**F20** Words in s. 405(1)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 21\(2\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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- F21** Words in s. 405(1)(c) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 21\(2\)\(c\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F22** Words in s. 405(1)(d) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 21\(2\)\(c\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F23** Words in s. 405(2)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 21\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F24** S. 405(4A)(4B) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 21\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F25** S. 405(5)(a) substituted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\), regs. 1\(2\), 3\(5\), Sch. 5 para. 17](#)
- F26** S. 405(5)(b) repealed (1.1.2007) by [The Capital Requirements Regulations 2006 \(S.I. 2006/3221\), reg. 29\(1\), Sch. 3 para. 1](#)
- F27** S. 405(5)(c)(d) omitted (1.1.2016) by virtue of [The Solvency 2 Regulations 2015 \(S.I. 2015/575\), reg. 1\(2\), Sch. 1 para. 14](#)

#### Commencement Information

- II** S. 405 wholly in force at 1.12.2001; s. 405 not in force at Royal Assent see s. 431(2); s. 405 (except (1)(c)(d)) in force at 3.9.2001 by [S.I. 2001/2632, art. 2\(2\), Sch. Pt. 2](#); s. 405 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538, art. 2\(1\)](#)

#### 406 Interpretation of section 405.

- (1) For the purposes of section 405, a person (“the acquirer”) acquires a 50% stake in a UK authorised person (“A”) on first falling within any of the cases set out in subsection (2).
- (2) The cases are where the acquirer—
- (a) holds 50% or more of the shares in A;
  - (b) holds 50% or more of the shares in a parent undertaking (“P”) of A;
  - (c) is entitled to exercise, or control the exercise of, 50% or more of the voting power in A; or
  - (d) is entitled to exercise, or control the exercise of, 50% or more of the voting power in P.
- (3) In subsection (2) “the acquirer” means—
- (a) the acquirer;
  - (b) any of the acquirer’s associates; or
  - (c) the acquirer and any of his associates.
- (4) “Associate”, “shares” and “voting power” have the same meaning as in section 422.

#### 407 Consequences of a direction under section 405.

- (1) If [<sup>F28</sup>a regulator] refuses an application for permission as a result of a direction under section 405(1)(a)—
- (a) [<sup>F29</sup>section 55X does] not apply in relation to the refusal; but
  - (b) the [<sup>F30</sup>regulator] must notify the applicant of the refusal and the reasons for it.
- (2) If [<sup>F31</sup>a regulator] 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 [<sup>F32</sup>subsections (1) to (3) of section 55V] stops running on the day of the deferral and starts

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- 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 [<sup>F33</sup>regulator] must notify the applicant of the deferral and the reasons for it.
- (3) If [<sup>F34</sup>a regulator] 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 [<sup>F35</sup>regulator] must state in the notice the reasons for it.

#### Textual Amendments

- F28** Words in s. 407(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 22(2)(a)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F29** Words in s. 407(1)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 22(2)(b)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F30** Word in s. 407(1)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 22(2)(c)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F31** Words in s. 407(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 22(3)(a)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F32** Words in s. 407(2)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 22(3)(b)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F33** Word in s. 407(2)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 22(3)(c)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F34** Words in s. 407(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 22(4)(a)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F35** Word in s. 407(3)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 22(4)(b)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

#### Commencement Information

- I2** S. 407 wholly in force at 1.12.2001; s. 407 not in force at Royal Assent see s. 431(2); s. 407(1)(2) in force at 3.9.2001 by [S.I. 2001/2632](#), art. 2(2), **Sch. Pt. 2**; s. 407 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), art. 2(1)

#### 408 EFTA firms.

- (1) If a third country decision has been taken, the Treasury may make a determination in relation to an EFTA firm which is a subsidiary undertaking of a parent undertaking which is governed by the law of the country to which the decision relates.
- (2) “Determination” means a determination that the firm concerned does not qualify for authorisation under Schedule 3 even if it satisfies the conditions in paragraph 13 or 14 of that Schedule.
- (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.

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- (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 Information**

**I3** S. 408 wholly in force at 1.12.2001; s. 408 not in force at Royal Assent see s. 431(2); s. 408 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#); s. 408 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

**409 Gibraltar.**

- (1) The Treasury may by order—
  - (a) modify Schedule 3 so as to provide for Gibraltar firms of a specified description to qualify for authorisation under that Schedule in specified circumstances;
  - (b) modify Schedule 3 so as to make provision in relation to the exercise by UK firms of rights under the law of Gibraltar which correspond to EEA rights;
  - (c) modify Schedule 4 so as to provide for Gibraltar firms of a specified description to qualify for authorisation under that Schedule in specified circumstances;
  - (d) modify section 264 so as to make provision in relation to collective investment schemes constituted under the law of Gibraltar;
  - <sup>F36</sup>(e) .....
  - (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 [<sup>F37</sup>Part 4A permission].
- (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 [<sup>F38</sup>EU] instrument.

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(5) “Specified” means specified in the order.

(6) “UK firm” and “EEA right” have the same meaning as in Schedule 3.

#### Textual Amendments

- F36** S. 409(1)(e) omitted (1.7.2011) by virtue of The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(30)**
- F37** Words in s. 409(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 23** (with **Sch. 20**); S.I. 2013/423, art. 3, **Sch.**
- F38** Word in s. 409(4) substituted (22.4.2011 with application in accordance with art. 3 of the amending S.I.) by virtue of The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), **art. 6(1)(3)(4)**

### *International obligations*

#### **410 International obligations.**

- (1) If it appears to the Treasury that any action proposed to be taken by a relevant person would be incompatible with [<sup>F39</sup>EU] obligations or any other international obligations of the United Kingdom, they may direct that person not to take that action.
- (2) If it appears to the Treasury that any action which a relevant person has power to take is required for the purpose of implementing any such obligations, they may direct that person to take that action.
- (3) A direction under this section—
- may include such supplemental or incidental requirements as the Treasury consider necessary or expedient; and
  - is enforceable, on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the <sup>M1</sup>Court of Session Act 1988.
- (4) “Relevant person” means—
- <sup>F40</sup>(a) the FCA;
  - (aa) the PRA;
  - (ab) the Bank of England when exercising functions conferred on it by Part 18;]
  - <sup>F41</sup>(b) . . . . .
  - (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.

#### Textual Amendments

- F39** Word in s. 410(1) substituted (22.4.2011 with application in accordance with art. 3 of the amending S.I.) by virtue of The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), **art. 6(1)(3)(4)**

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**F40** S. 410(4)(a)(aa)(ab) substituted for s. 410(4)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 47, 122(3)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)

**F41** S. 410(4)(b) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Financial Services Act 2012 \(c. 21\)](#), **ss. 16(14)(i), 122(3)** (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)

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

**C3** S. 410 applied (1.12.2001) by [S.I. 1995/1537](#), **reg. 23(3)** (as amended (1.12.2001) by [S.I. 2001/3649](#), **arts. 1, 509(d)**)

#### Marginal Citations

**M1** 1988 c. 36.

### *<sup>F42</sup>Fees to meet Treasury expenses*

#### Textual Amendments

**F42** Ss. 410A, 410B and cross-heading inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 135(1), 148(5)**; S.I. 2014/377, art. 2(1)(a), [Sch. Pt. 1](#)

## 410A Fees to meet certain expenses of the Treasury

- (1) The Treasury may by regulations—
  - (a) enable the Treasury from time to time by direction to require the FCA, the PRA or the Bank of England (each a “regulator”) to require the payment of fees by relevant persons, or such class of relevant person as may be specified in, or determined by the regulator in accordance with, the direction, for the purpose of meeting relevant expenses incurred by the Treasury;
  - (b) make provision about how the regulator to which a direction is given is to comply with the direction;
  - (c) require the regulator to pay to the Treasury, by such time or times as may be specified in the direction, the amount of any fees received by the regulator.
- (2) “Relevant expenses” are expenses (including any expenses of a capital nature) which are attributable to United Kingdom membership of, or Treasury participation in, a prescribed international organisation so far as those expenses—
  - (a) represent a contribution (by way of subscription or otherwise) to the resources of the international organisation, and
  - (b) are in the opinion of the Treasury attributable to functions of the organisation which relate to financial stability or financial services.
- (3) The regulations must provide for the charging of fees in pursuance of a direction given under the regulations to the FCA or the PRA to be by rules made by that regulator.
- (4) The provisions of Chapter 2 of Part 9A apply to rules of the FCA or the PRA providing for the charging of fees in pursuance of a direction given under the regulations—
  - (a) in the case of the FCA, as they apply to rules relating to the payment of fees under paragraph 23 of Schedule 1ZA;
  - (b) in the case of the PRA, as they apply to rules relating to the payment of fees under paragraph 31 of Schedule 1ZB.

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- (5) Paragraph 36(1) of Schedule 17A applies to the charging of fees by the Bank of England in pursuance of a direction given to the Bank under the regulations.
- (6) The regulations may in particular—
- (a) make provision about what is, or is not, to be regarded as an expense;
  - (b) specify requirements that the Treasury must comply with before giving a direction;
  - (c) enable a direction to be varied or revoked by a subsequent direction;
  - (d) confer functions on a regulator.
- (7) An amount payable to a regulator as a result of—
- (a) any provision of rules made by the FCA or the PRA as a result of the regulations, or
  - (b) the imposition of fees by the Bank of England as a result of a direction given under the regulations to the Bank,
- may be recovered as a debt due to the regulator.
- (8) “Relevant persons” means—
- (a) in the case of a direction given to the PRA, PRA-authorized persons;
  - (b) in the case of a direction given to the FCA, authorised persons and recognised investment exchanges who (in either case) are not PRA-authorized persons;
  - (c) in the case of a direction given to the Bank of England, recognised clearing houses, other than those falling within paragraph (a) or (b).
- (9) This section is subject to section 410B.

#### **410B Directions in pursuance of section 410A**

- (1) In this section “a fees direction” means a direction given by the Treasury as a result of regulations under section 410A.
- (2) Before giving a fees direction to the FCA, the PRA or the Bank of England (each a “regulator”), the Treasury must consult the regulator concerned.
- (3) A fees direction must—
- (a) be in writing;
  - (b) except in the case of a direction that revokes a previous direction or a direction that varies a previous direction without affecting the total amount intended to be raised by the fees, specify the total amount intended to be raised by the fees to be charged by the regulator and explain how that amount is calculated;
  - (c) contain such other information as may be prescribed.
- (4) As soon as practicable after giving a fees direction, the Treasury must lay before Parliament a copy of the direction.]

#### *Tax treatment of levies and repayments*

#### **411 Tax treatment of levies and repayments.**

- <sup>F43</sup>(1) .....
- (2) <sup>F44</sup> .....



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#### Textual Amendments

- F43** S. 411(1) repealed (1.12.2001) by [S.I. 2001/3629](#), arts. 1(2)(a), 109, [Sch.](#)
- F44** S. 411(2) repealed (1.4.2009 with effect in accordance with [s. 1329\(1\)](#) of the amending Act) by [Corporation Tax Act 2009](#) (c. 4), ss. 1326, 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

### *Gaming contracts*

#### **412 Gaming contracts.**

- (1) No contract to which this section applies is void or unenforceable because of—
- (a) <sup>F45</sup> . . . Article 170 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985; or
  - (b) <sup>F46</sup> .....
- (2) This section applies to a contract if—
- (a) it is entered into by either or each party by way of business;
  - (b) the entering into or performance of it by either party constitutes an activity of a specified kind or one which falls within a specified class of activity; and
  - (c) it relates to an investment of a specified kind or one which falls within a specified class of investment.
- (3) Part II of Schedule 2 applies for the purposes of subsection (2)(c), with the references to section 22 being read as references to that subsection.
- (4) Nothing in Part II of Schedule 2, as applied by subsection (3), limits the power conferred by subsection (2)(c).
- (5) “Investment” includes any asset, right or interest.
- (6) “Specified” means specified in an order made by the Treasury.

#### Textual Amendments

- F45** Words in s. 412(1)(a) repealed (1.9.2007) by [Gambling Act 2005](#) (c. 19), ss. 334(1)(e)(i), 356(4)(5), 358(1), [Sch. 17](#) (with ss. 334(2), 352, 354); [S.I. 2006/3272](#), art. 2(4), [Sch. 3B](#) (with [Sch. 4](#)) (as amended by [S.I. 2007/1157](#), arts. 3(5), 7-12; [S.I. 2007/1527](#), art. 2(2); [S.I. 2007/2169](#), arts. 3, 6-11, [Sch.](#))
- F46** S. 412(1)(b) repealed (1.9.2007) by [Gambling Act 2005](#) (c. 19), ss. 334(1)(e)(ii), 356(4)(5), 358(1), [Sch. 17](#) (with ss. 334(2), 352, 354); (as amended by [S.I. 2007/1157](#), arts. 3(5), 7-12; [S.I. 2007/1527](#), art. 2(2); [S.I. 2007/2169](#), arts. 3, 6-11, [Sch.](#))

#### Commencement Information

- I4** S. 412 wholly in force at 1.12.2001; s. 412 not in force at Royal Assent see s. 431(2); s. 412 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), art. 2(b), [Sch. Pt. 2](#); s. 412 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

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## *[<sup>F47</sup>Trade-matching and reporting systems*

### **Textual Amendments**

**F47** Ss. 412A, 412B and preceding cross-heading inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), **Sch. 5 para. 18**

### **412A Approval and monitoring of trade-matching and reporting systems**

- (1) A relevant system is an approved relevant system if it is approved by the [<sup>F48</sup>FCA] under subsection (2) for the purposes of Article 25.5 of the markets in financial instruments directive; and references in this section and section 412B to an “approved relevant system” are to be read accordingly.
- (2) The [<sup>F49</sup>FCA] must approve a relevant system if, on an application by the operator of the system, it is satisfied that the arrangements established by the system for reporting transactions comply with Article 12(1) of Commission Regulation 1287/2006 of 10 August 2006 <sup>F50</sup> (“the Regulation”).
- (3) Section 51(3) and (4) applies to an application under this section as it applies to an application under Part 4.
- (4) If, at any time after approving a relevant system under subsection (2), the [<sup>F51</sup>FCA] is not satisfied as mentioned in that subsection, it may suspend or withdraw the approval.
- (5) The [<sup>F52</sup>FCA] must keep under review the arrangements established by an approved relevant system for reporting transactions for the purpose of ensuring that the arrangements comply with Article 12(1) of the Regulation; and for the purposes of this subsection the [<sup>F52</sup>FCA] must have regard to information provided to it under subsections (6) and (7).
- (6) The operator of an approved relevant system must make reports to the [<sup>F53</sup>FCA] at specified intervals containing specified information relating to—
  - (a) the system,
  - (b) the reports made by the system in accordance with Article 25 of the markets in financial instruments directive and the Regulation, and
  - (c) the transactions to which those reports relate.

“Specified” means specified by the [<sup>F53</sup>FCA].
- (7) The [<sup>F54</sup>FCA] may by written notice require the operator of an approved relevant system to provide such additional information as may be specified in the notice, by such reasonable time as may be so specified, about any of the matters mentioned in subsection (6).
- (8) The recipient of a notice under subsection (7) must provide the information by the time specified in the notice.
- (9) In this section and section 412B, “relevant system” means a trade-matching or reporting system of a kind described in Article 12 of the Regulation.

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### Textual Amendments

- F48** Word in s. 412A(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 8 para. 38](#) (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F49** Word in s. 412A(2) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 8 para. 38](#) (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F50** OJ No L 241, 2.9.2006, p. 1.
- F51** Word in s. 412A(4) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 8 para. 38](#) (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F52** Word in s. 412A(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 8 para. 38](#) (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F53** Word in s. 412A(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 8 para. 38](#) (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F54** Word in s. 412A(7) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 8 para. 38](#) (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)

### 412B Procedure for approval and suspension or withdrawal of approval

- (1) If the [<sup>F55</sup>FCA] approves a relevant system, it must give the operator of the system written notice specifying the date from which the approval has effect.
- (2) If the [<sup>F55</sup>FCA] proposes to refuse to approve a relevant system, it must give the operator of the system a warning notice.
- (3) If the [<sup>F55</sup>FCA] decides to refuse to approve a relevant system, it must give the operator of the system a decision notice.
- (4) If the [<sup>F55</sup>FCA] proposes to suspend or withdraw its approval in relation to an approved relevant system, it must give the operator of the system a warning notice.
- (5) If the [<sup>F55</sup>FCA] decides to suspend or withdraw its approval in relation to an approved relevant system, it must give the operator of the system a decision notice specifying the date from which the suspension or withdrawal is to take effect.
- (6) Subsections (7) to (9) apply if—
  - (a) the [<sup>F55</sup>FCA] has suspended its approval in relation to an approved relevant system, and
  - (b) the operator of the system has applied for the suspension to be cancelled.
- (7) The [<sup>F56</sup>FCA] must grant the application if it is satisfied as mentioned in section 412A(2); and in such a case the [<sup>F56</sup>FCA] must give written notice to the operator that the suspension is to be cancelled from the date specified in the notice.
- (8) If the [<sup>F57</sup>FCA] proposes to refuse the application, it must give the operator a warning notice.
- (9) If the [<sup>F58</sup>FCA] decides to refuse the application, it must give the operator a decision notice.

*Status: Point in time view as at 01/01/2016.*

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- (10) A person who receives a decision notice under subsection (3), (5) or (9) may refer the matter to the Tribunal.]

#### Textual Amendments

- F55** Word in s. 412B(1)-(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 8 para. 39** (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F56** Word in s. 412B(7) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 8 para. 39** (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F57** Word in s. 412B(8) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 8 para. 39** (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F58** Word in s. 412B(9) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 8 para. 39** (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

#### *Limitation on powers to require documents*

### 413 Protected items.

- (1) A person may not be required under this Act to produce, disclose or permit the inspection of protected items.
- (2) “Protected items” means—
- (a) communications between a professional legal adviser and his client or any person representing his client which fall within subsection (3);
  - (b) communications between a professional legal adviser, his client or any person representing his client and any other person which fall within subsection (3) (as a result of paragraph (b) of that subsection);
  - (c) items which—
    - (i) are enclosed with, or referred to in, such communications;
    - (ii) fall within subsection (3); and
    - (iii) are in the possession of a person entitled to possession of them.
- (3) A communication or item falls within this subsection if it is made—
- (a) in connection with the giving of legal advice to the client; or
  - (b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.
- (4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

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

- C4** S. 413 applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(b)(xiii)(c), 95, **Sch. 5 para. 8** (with [reg. 3](#))
- C5** S. 413 applied (11.2.2010) by [The Cross-Border Payments in Euro Regulations 2010 \(S.I. 2010/89\)](#), reg. 19, **Sch. para. 6**

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- C6** S. 413 applied (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xiv)(b), 62, **Sch. 3 para. 9** (with reg. 3)
- C7** S. 413 applied (15.1.2013) by [The Payments in Euro \(Credit Transfers and Direct Debits\) Regulations 2012 \(S.I. 2012/3122\)](#), reg. 1, **Sch. para. 6**
- C8** S. 413 applied (1.1.2016) by [The Small and Medium Sized Business \(Finance Platforms\) Regulations 2015 \(S.I. 2015/1946\)](#), regs. 1(2), **24**
- C9** S. 413 applied (1.1.2016) by [The Small and Medium Sized Business \(Credit Information\) Regulations 2015 \(S.I. 2015/1945\)](#), regs. 1(2), **27**

### *Service of notices*

#### **414 Service of notices.**

- (1) The Treasury may by regulations make provision with respect to the procedure to be followed, or rules to be applied, when a provision of or made under this Act requires a notice, direction or document of any kind to be given or authorises the imposition of a requirement.
- (2) The regulations may, in particular, make provision—
  - (a) as to the manner in which a document must be given;
  - (b) as to the address to which a document must be sent;
  - (c) requiring, or allowing, a document to be sent electronically;
  - (d) for treating a document as having been given, or as having been received, on a date or at a time determined in accordance with the regulations;
  - (e) as to what must, or may, be done if the person to whom a document is required to be given is not an individual;
  - (f) as to what must, or may, be done if the intended recipient of a document is outside the United Kingdom.
- (3) Subsection (1) applies however the obligation to give a document is expressed (and so, in particular, includes a provision which requires a document to be served or sent).
- (4) Section 7 of the <sup>M2</sup>Interpretation Act 1978 (service of notice by post) has effect in relation to provisions made by or under this Act subject to any provision made by regulations under this section.

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

- C10** S. 414 amended (1.12.2001) by [S.I. 2001/2657](#), **arts. 1(1), 10(7), 11(7)** (which was revoked (8.10.2001) by [S.I. 2001/3083](#), **arts. 1(2), 23**); [S.I. 2001/3538](#), **art. 2(1)**  
S. 414 amended (1.12.2001) by [S.I. 2001/3083](#), **arts. 1(2), 10(7), 11(7)**; [S.I. 2001/3538](#), **art. 2(1)**
- C11** S. 414 applied (with modifications) (1.1.2016) by [The Small and Medium Sized Business \(Finance Platforms\) Regulations 2015 \(S.I. 2015/1946\)](#), regs. 1(2), **39(1)**
- C12** S. 414 applied (with modifications) (1.1.2016) by [The Small and Medium Sized Business \(Credit Information\) Regulations 2015 \(S.I. 2015/1945\)](#), regs. 1(2), **42(1)**

#### **Commencement Information**

- I5** S. 414 wholly in force at 18.6.2001; s. 414 not in force at Royal Assent see s. 431(2); s. 414(1)–(3) in force at 25.2.2001 by [S.I. 2001/516](#), **art. 2(a), Sch. Pt. 1**; s. 414 in force in so far as not already in force at 18.6.2001 by [S.I. 2001/1820](#), **art. 2, Sch.**

*Status: Point in time view as at 01/01/2016.*

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### Marginal Citations

M2 1978 c. 30.

## Jurisdiction

### 415 Jurisdiction in civil proceedings.

(1) Proceedings arising out of any act or omission (or proposed act or omission) of—

- [<sup>F59</sup>(a) the FCA,
- (aa) the PRA,
- (ab) the Bank of England,]
- <sup>F60</sup>(b) .....
- (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.

### Textual Amendments

- F59** S. 415(1)(a)-(ab) substituted for s. 415(1)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 24](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F60** S. 415(1)(b) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Financial Services Act 2012 \(c. 21\)](#), [ss. 16\(14\)\(j\)](#), 122(3) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

### Modifications etc. (not altering text)

- C13** S. 415 applied (1.12.2001) by S.I. 1995/1537, [reg. 23\(2\)](#) (as amended (1.12.2001) by S.I. 2001/3649, [arts. 1, 509\(c\)](#))
- C14** S. 415 modified (17.8.2001) by S.I. 2001/2617, [arts. 2\(a\), 4\(3\), 8](#), [Sch. 2 para. 8](#)

## [<sup>F61</sup>Powers [<sup>F62</sup>under the Act]

### Textual Amendments

- F61** S. 415A and preceding cross-heading inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 24\(1\), 26\(1\)\(l\)](#), [Sch. 2 para. 30](#)
- F62** Words in s. 415A cross-heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 25\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

### 415A Powers [<sup>F63</sup>under the Act]

Any power which the [<sup>F64</sup>FCA, the PRA or the Bank of England] 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.]

*Status: Point in time view as at 01/01/2016.*

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#### Textual Amendments

- F63** Words in s. 415A heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 25\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F64** Words in s. 415A substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 25\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

#### *f*<sup>F65</sup> Consultation

#### Textual Amendments

- F65** S. 415B and cross-heading inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 41](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

### **415B Consultation in relation to taking certain enforcement action**

- (1) The FCA must consult the PRA before taking a qualifying step in relation to a person who—
  - (a) is a PRA-authorised person, or
  - (b) has a qualifying relationship with a PRA-authorised person.
- (2) The PRA must consult the FCA before taking a qualifying step.
- (3) In this section any reference to the taking of a qualifying step is a reference to—
  - (a) the giving of a warning notice or decision notice under section 63B (performance of controlled functions without approval),
  - (b) the giving of a warning notice or decision notice under section 67 (disciplinary powers in relation to approved person),
  - (c) the giving of a warning notice under section 126 or a decision notice under section 127 (market abuse),
  - (d) the giving of a warning notice or decision notice under section 131H (short selling),
  - (e) the giving of a warning notice under section 207 or a decision notice under section 208 (breaches of requirements imposed by or under Act etc.),
  - (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.

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“Significant-influence function” and “arrangement” have the same meanings as in section 59.]

*Removal of certain unnecessary provisions*

**416 Provisions relating to industrial assurance and certain other enactments.**

- (1) The following enactments are to cease to have effect—
  - (a) the <sup>M3</sup>Industrial Assurance Act 1923;
  - (b) the <sup>M4</sup>Industrial Assurance and Friendly Societies Act 1948;
  - (c) the <sup>M5</sup>Insurance Brokers (Registration) Act 1977.
- (2) The <sup>M6</sup>Industrial Assurance (Northern Ireland) Order 1979 is revoked.
- (3) The following bodies are to cease to exist—
  - (a) the Insurance Brokers Registration Council;
  - (b) the Policyholders Protection Board;
  - (c) the Deposit Protection Board;
  - (d) the Board of Banking Supervision.
- (4) If the Treasury consider that, as a consequence of any provision of this section, it is appropriate to do so, they may by order make any provision of a kind that they could make under this Act (and in particular any provision of a kind mentioned in section 339) with respect to anything done by or under any provision of Part XXI.
- (5) Subsection (4) is not to be read as affecting in any way any other power conferred on the Treasury by this Act.

**Commencement Information**

- I6** S. 416 wholly in force at 1.12.2001; s. 416 not in force at Royal Assent see s. 431(2); s. 416(4)(5) in force at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(a\)](#), [Sch. Pt. 1](#); s. 416(1)(c)(3)(a) in force at 30.4.2001 by [S.I. 2001/1282](#), [art. 2\(a\)](#); s. 416 in force at 1.12.2001 so far as not already in force (except sub-section (3)(b)(c) which are in force at 2.3.2002) by [S.I. 2001/3538](#), [art. 2\(1\)\(4\)](#)

**Marginal Citations**

- M3** 1923 c. 8.  
**M4** 1948 c. 39.  
**M5** 1977 c. 46.  
**M6** [S.I. 1979/1574](#) (N.I. 13).



**Status:**

Point in time view as at 01/01/2016.

**Changes to legislation:**

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