



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XXVIII **U.K.**

MISCELLANEOUS

International [^{F1} powers and] obligations

Textual Amendments

- F1** Words in s. 410 cross-heading inserted (29.8.2023) by [Financial Services and Markets Act 2023 \(c. 29\)](#), [ss. 32\(2\)](#), 86(3) (with savings in [The Financial Services and Markets Act 2023 \(Commencement No. 2 and Transitional Provisions\) Regulations 2023 \(S.I. 2023/936\)](#), [reg. 4](#)); [S.I. 2023/779](#), [reg. 4\(w\)](#)

[^{F2}409A Consultation in relation to deference decisions **U.K.**

- (1) This section applies where a regulator is proposing to take a relevant action.
- (2) The regulator—
 - (a) must consider the effect of the relevant action on notified deference decisions, and
 - (b) if having done so it appears to the regulator that there is a material risk that the relevant action would be incompatible with a notified deference decision, must consult the Treasury about the likely effect of the action on the decision.
- (3) Subsection (2) applies only if a duty to consult applies in respect of the taking of the relevant action.
- (4) For the purposes of subsection (1) a regulator proposes to take a “relevant action” if—
 - (a) it proposes to make rules under this Act or any other enactment, or
 - (b) it proposes to make changes to its general policies and practices so far as relating to its supervisory functions under section 1L (FCA supervisory functions) or (as the case may be) section 2K (PRA supervisory functions).

Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: International powers and obligations is up to date with all changes known to be in force on or before 03 July 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) View outstanding changes

- (5) For the purposes of subsection (2)—
- (a) “deference decision” means a decision of the Treasury that the law and practice of another country or territory is, so far as relating to financial services and markets, equivalent to the law and practice of the United Kingdom (either generally or as it relates to a particular matter);
 - (b) a deference decision is a “notified deference decision” if the Treasury have, by notice in writing, informed the regulator that it is relevant for the purposes of this section;
 - (c) a relevant action is “incompatible” with a notified deference decision if the action would result in the law and practice of the United Kingdom ceasing to be equivalent to the law and practice of the other country or territory to which the deference decision relates.
- (6) For the purposes of subsection (3) a duty to consult applies in respect of a relevant action if—
- (a) the duty imposed by section 138I or 138J to publish a draft of proposed rules applies in respect of the action, or
 - (b) any other duty (whether or not imposed by a provision of this Act) to publish the proposal to take the action in question applies.
- (7) Section 138M(1) (consultation: exemptions for temporary product intervention rules) is to be ignored for the purposes of subsection (6) in determining whether a duty to consult applies in respect of a relevant action.
- (8) The requirement imposed by subsection (2)(b) must be carried out before the duty to consult in respect of the relevant action is carried out.
- (9) The requirements imposed by subsection (2) do not apply to the extent that the regulator takes a relevant action—
- (a) by the making of product intervention rules under section 137D if the condition in subsection (10) is met,
 - (b) by the making of rules under Part 9C (see instead section 143G(3)),
 - (c) by the making of rules under Part 9D (see instead section 144C(3)),
 - (d) by the making of rules under Part 12B (see instead section 192XB(2)),
 - (e) in order to comply with a direction given by the Financial Policy Committee of the Bank of England under section 9H of the Bank of England Act 1998 (directions required macro-prudential measures), or
 - (f) in order to act in accordance with a recommendation made by that Committee under section 9Q of that Act (recommendations about the exercise of functions).
- (10) The condition referred to in subsection (9)(a) is that the FCA considers it necessary not to comply with the requirement imposed by subsection (2) for the purpose of advancing—
- (a) the consumer protection objective, or
 - (b) if an order under section 137D(1)(b) is in force, the integrity objective.]

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Textual Amendments

- F2** S. 409A inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), ss. 32(3), 86(3) (with savings in The Financial Services and Markets Act 2023 (Commencement No. 2 and Transitional Provisions) Regulations 2023 (S.I. 2023/936), reg. 4; S.I. 2023/779, reg. 4(w))

[^{F3}409B Notification in relation to international trade obligations **U.K.**

- (1) This section applies where it appears to a regulator that there is a material risk that a relevant action it proposes to take would be incompatible with an international trade obligation.
- (2) The regulator must give written notice to the Treasury of the proposed action before proceeding to take it.
- (3) Subsection (2) applies only if a duty to consult applies in respect of the taking of the relevant action.
- (4) For the purposes of subsection (1) a regulator proposes to take a “relevant action” if—
 - (a) it proposes to make rules under this Act or any other enactment, or
 - (b) it proposes to make changes to its general policies and practices so far as relating to its supervisory functions under section 1L (FCA supervisory functions) or (as the case may be) section 2K (PRA supervisory function).
- (5) For the purposes of subsection (3) a duty to consult applies in respect of a relevant action if—
 - (a) the duty imposed by section 138I or 138J to publish a draft of proposed rules applies in respect of the action, or
 - (b) any other duty (whether or not imposed by a provision of this Act) to publish the proposal to take the action in question applies.
- (6) Section 138M(1) (consultation: exemptions for temporary product intervention rules) is to be ignored for the purposes of subsection (5) in determining whether a duty to consult applies in respect of a relevant action.
- (7) The requirement imposed by subsection (2) must be carried out before the duty to consult in respect of the relevant action is carried out.
- (8) The requirement imposed by subsection (2) does not apply to the extent that the regulator takes a relevant action—
 - (a) by the making of product intervention rules under section 137D if the condition in subsection (9) is met,
 - (b) in order to comply with a direction given by the Financial Policy Committee of the Bank of England under section 9H of the Bank of England Act 1998 (directions requiring macro-prudential measures), or
 - (c) in order to act in accordance with a recommendation made by that Committee under section 9Q of that Act (recommendations about the exercise of functions).
- (9) The condition referred to in subsection (8)(a) is that the FCA considers it necessary not to comply with the requirement imposed by subsection (2) for the purpose of advancing—
 - (a) the consumer protection objective, or

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- (b) if an order under section 137D(1)(b) is in force, the integrity objective.
- (10) Subsection (11) applies in a case where a notice under subsection (2) is not given because of subsection (3) or (8)(a).
- (11) The regulator must give written notice to the Treasury of the relevant action it has taken as soon as reasonably practicable after taking it if it appears to the regulator that there is a material risk that the action is incompatible with an international trade obligation.
- (12) In this section “international trade obligation” means an obligation of the United Kingdom that relates to financial services or markets under—
 - (a) a free trade agreement, as defined by section 5(1) of the Trade Act 2021, or
 - (b) the agreement establishing the World Trade Organisation signed at Marrakesh on 15 April 1994.]

Textual Amendments

- F3** S. 409B inserted (1.1.2024) by Financial Services and Markets Act 2023 (c. 29), ss. 33, 86(3) (with savings in The Financial Services and Markets Act 2023 (Commencement No. 2 and Transitional Provisions) Regulations 2023 (S.I. 2023/936), reg. 4 (as amended (13.12.2023) by The Financial Services and Markets Act 2023 (Commencement No. 4 and Transitional and Saving Provisions) (Amendment) Regulations 2023 (S.I. 2023/1382), reg. 18(a)); S.I. 2023/1382, reg. 9(1)(b) (with reg. 15)

410 International obligations. **U.K.**

- (1) If it appears to the Treasury that any action proposed to be taken by a relevant person would be incompatible with [^{F4}any] 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 ^{M1}Court of Session Act 1988.
- (4) “Relevant person” means—
 - [^{F5}(a) the FCA;
 - (aa) the PRA;
 - (ab) the Bank of England when exercising functions conferred on it by Part 18;]
 - ^{F6}(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);
 - [^{F7}(da) any recognised CSD;]
 - (e) a person included in the list maintained under section 301; or

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(f) the scheme operator of the ombudsman scheme.

Textual Amendments

- F4** Word in s. 410(1) substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **83**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** 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.](#)
- F6** 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.](#)
- F7** S. 410(4)(da) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **2(36)** (with regs. 7(4), 9(1))

Modifications etc. (not altering text)

- C1** 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.

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

- Act power to apply conferred (temp. until 15.5.2039) by [2014 c. 21 s. 79\(4\)](#)
- Act power to apply conferred (temp. until 15.5.2039) by [2014 c. 21 s. 81\(10\)](#)

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

- Pt. 17 Ch. 3B inserted by [2023 c. 29 s. 64\(3\)](#)
- Pt. 20C inserted by [2016 c. 14 s. 30\(3\)](#)
- s. 31(1)(aa) inserted by [2021 c. 22 s. 22\(2\)](#)
- s. 32A inserted by [2021 c. 22 s. 22\(3\)](#)
- s. 32A power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- s. 36A and cross-heading inserted by [2021 c. 22 s. 22\(4\)](#)
- s. 71J and cross-heading inserted by [2021 c. 22 Sch. 8 para. 4](#)
- s. 86(9A) inserted by [S.I. 2019/707 reg. 8\(9\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8(6)-(10) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 13(c))
- s. 87A(11) inserted by [S.I. 2019/707 reg. 10\(5\)](#) (This amendment not applied to legislation.gov.uk. Reg. 10(4)(5) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 15(b))
- s. 124(10)(c)(i) word omitted by [S.I. 2019/310 reg. 5\(11\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(11)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(e))
- s. 129(7)(a) word inserted by [S.I. 2019/310 reg. 5\(12\)\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(12)(a)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(f))
- s. 129(7)(c) omitted and word by [S.I. 2019/310 reg. 5\(12\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(12)(a)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(f))
- s. 204A(3)(fa) inserted by [S.I. 2024/705 Sch. 2 para. 1](#)
- s. 214(5A) inserted by [2021 c. 22 Sch. 8 para. 8](#)
- s. 261E(A1) inserted by [2023 c. 29 s. 64\(2\)\(a\)](#)
- s. 367A inserted by [2021 c. 22 Sch. 8 para. 10](#)
- s. 395(13)(h)(i) inserted by [2021 c. 22 Sch. 8 para. 12\(2\)\(c\)](#)
- s. 395(13)(bc)-(be) word inserted by [2021 c. 22 Sch. 8 para. 12\(2\)\(b\)](#)
- s. 395(14) inserted by [2021 c. 22 Sch. 8 para. 12\(3\)](#)
- s. 427A(3) words substituted by [2002 c. 40 Sch. 17 para. 59](#) (This amendment not applied to legislation.gov.uk. The Financial Services and Markets Act 2000 does not contain a section 427A.)
- Sch. 1ZA para. 32(c) and word inserted by [2021 c. 22 Sch. 8 para. 18](#)
- Sch. 2A para. 19(2)(b)(iia) inserted by [2023 c. 29 Sch. 10 para. 19\(a\)](#)
- Sch. 2A2B power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 2A power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 2B inserted by [2021 c. 22 Sch. 7](#)
- Sch. 2B power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 11A para. 5(3) inserted by [S.I. 2019/707 reg. 38\(5\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 38(2)-(5)(7)(8) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 20)

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