



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XII

CONTROL OVER AUTHORISED PERSONS

[^{F1}Assessment procedure

Textual Amendments

- F1** Ss. 178-191G and cross-headings substituted (21.3.2009) for ss. 178-191 and cross-headings by [The Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009 \(S.I. 2009/534\)](#), reg. 3, [Sch. 1](#) (with reg. 8)

^{x1}185 **Assessment: general**

- (1) Where the [^{F2}appropriate regulator] receives a section 178 notice, it must—
 - (a) determine whether to approve the acquisition to which it relates unconditionally; or
 - (b) propose to—
 - (i) approve the acquisition subject to conditions (see section 187); or
 - (ii) object to the acquisition.
- (2) The [^{F2}appropriate regulator] must—
 - (a) consider the suitability of the section 178 notice-giver and the financial soundness of the acquisition in order to ensure the sound and prudent management of the UK authorised person;
 - (b) have regard to the likely influence that the section 178 notice-giver will have on the UK authorised person; and
 - (c) disregard the economic needs of the market.
- (3) The [^{F2}appropriate regulator] may only object to an acquisition—

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- (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.

Editorial Information

X1 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F2 Words in Pt. 12 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 26\(2\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

^{x2}186 Assessment criteria

The matters specified in section 185(3)(a) are—

- (a) the reputation of the section 178 notice-giver;
- (b) the reputation [^{F3}, knowledge, skills] 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.

Editorial Information

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Textual Amendments

- F3** Words in s. 186(b) inserted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(2), [Sch. 2 para. 11](#)

^{x3}187 Approval with conditions

- (1) The [^{F2}appropriate regulator] may impose conditions on its approval of an acquisition.
- [^{F4}(2) The appropriate regulator may only impose conditions where—
 - (a) if it did not impose those conditions, it would propose to object to the acquisition, or
 - (b) it is required to do so by a direction under section 187A(3)(b) or section 187B(3).]
- (3) The [^{F2}appropriate regulator] may not impose conditions requiring a particular level of holding to be acquired.
- (4) The [^{F2}appropriate regulator] may vary or cancel the conditions.

Editorial Information

- X3** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

- F2** Words in Pt. 12 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 26\(2\)](#), 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F4** S. 187(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 26\(5\)](#), 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

^{f5}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

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- (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.

[Where the PRA notifies the FCA that it [^{F7}is required by section 189(1ZB)] to act ^{F6}(5A) in a timely manner, the FCA may take action under subsection (2), (3) or (4) after the time it receives that notification only if that action is taken as soon as reasonably practicable after that time.]

- (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.

Textual Amendments

- F5** Ss. 187A-187C inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 26\(6\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F6** S. 187A(5A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [117](#)
- F7** Words in s. 187A(5A) substituted (1.3.2017) by [Bank of England and Financial Services Act 2016 \(c. 14\), s. 41\(3\), Sch. 2 para. 38](#) (with [Sch. 3](#)); [S.I. 2017/43](#), reg. 2(g)

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

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- (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.

Textual Amendments

F5 Ss. 187A-187C inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 26\(6\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

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).]

Textual Amendments

F5 Ss. 187A-187C inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 26\(6\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

^{x4}188 Assessment: consultation with EC competent authorities

- (1) The [^{F2}appropriate regulator] must consult any appropriate home state regulator before making a determination under section 185 and, in doing so, must comply with such requirements as to consultation as may be prescribed.
- (2) Where the [^{F2}appropriate regulator] makes a determination under section 185, it must indicate any views or reservations received from any home state regulator it consults in accordance with subsection (1).
- (3) The [^{F2}appropriate regulator] must cooperate with any equivalent consultation [^{F8}in relation to a UK authorised person by the home state regulator of an EEA firm].
- (4) In order to comply with an obligation under subsection (1) or (3), the [^{F2}appropriate regulator] must provide the regulator with—
 - (a) any relevant information that it requests; and

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- (b) any information that the ^{F2}appropriate regulator] considers that it needs.

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Textual Amendments

- F2** Words in Pt. 12 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 26\(2\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F8** Words in s. 188(3) substituted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\), reg. 1\(2\), Sch. 2 para. 12](#)

^{x5}189 **Assessment: Procedure**

- (1) The ^{F2}appropriate regulator] must act under section 185 within a period of 60 working days beginning with the day on which the ^{F2}appropriate regulator] acknowledges receipt of the section 178 notice (“the assessment period”).

[^{F10}Where the appropriate regulator is the FCA and] the section 178 notice relates to an ^{F9}(1A) acquisition or increase of control over a credit institution, investment firm or banking group company, the Bank of England, acting in the exercise of its functions under sections 6A to 6C of the Banking Act 2009 or under the special resolution regime under Part 1 of that Act, may direct the appropriate regulator to act under this Part in a timely manner, and to shorten the assessment period so far as reasonably practicable.

[Where the appropriate regulator is the PRA and—
^{F11}(1ZB) (a) the section 178 notice relates to an acquisition or increase of control over a credit institution, investment firm or banking group company, and
(b) the credit institution, investment firm or banking group company is one in relation to which the Bank of England is exercising its functions under sections 6A to 6C of the Banking Act 2009 or the special resolution regime under Part 1 of that Act,

the PRA must act under this Part in a timely manner, and shorten the assessment period so far as reasonably practicable.]

(1B) In ^{F12}subsections (1A) and (1ZB)] —

^{F13}
...

“banking group company” has the meaning given in section 81D of ^{F14}the Banking Act 2009].]

- (2) The assessment period may be interrupted, no more than once, in accordance with section 190.
- (3) The ^{F2}appropriate regulator] must inform the section 178 notice-giver in writing of—
(a) the duration of the assessment period;
(b) its expiry date; and
(c) any change to the expiry date by virtue of section 190.

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- (4) The [F²appropriate regulator] must, within two working days of acting under section 185 (and in any event no later than the expiry date of the assessment period)—
- (a) notify the section 178 notice-giver that it has determined to approve the acquisition unconditionally; or
 - (b) give a warning notice stating that it proposes to—
 - (i) approve the acquisition subject to conditions; or
 - (ii) object to the acquisition.
- (5) Where the [F²appropriate regulator] gives a warning notice stating that it proposes to approve the acquisition subject to conditions—
- (a) it must, in the warning notice, specify those conditions; and
 - (b) the conditions take effect as interim conditions.
- (6) [F¹⁵Unless section 190A applies] the [F²appropriate regulator] is treated as having approved the acquisition if, at the expiry of the assessment period, it has neither—
- (a) given notice under subsection (4); nor
 - (b) informed the section 178 notice-giver that the section 178 notice is incomplete.
- (7) If the [F²appropriate regulator] decides to approve an acquisition subject to conditions or to object to an acquisition it must give the section 178 notice-giver a decision notice.
- (8) Following receipt of a decision notice under this section, the section 178 notice-giver may refer the [F²appropriate regulator's] decision to the Tribunal.

Editorial Information

- X5** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

- F2** Words in Pt. 12 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 26\(2\), 122\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F9** S. 189(1A)(1B) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **118**
- F10** Words in s. 189(1A) substituted (1.3.2017) by [Bank of England and Financial Services Act 2016 \(c. 14\), s. 41\(3\), Sch. 2 para. 39\(2\)](#) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- F11** S. 189(1ZB) inserted (1.3.2017) by [Bank of England and Financial Services Act 2016 \(c. 14\), s. 41\(3\), Sch. 2 para. 39\(3\)](#) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- F12** Words in s. 189(1B) substituted (1.3.2017) by [Bank of England and Financial Services Act 2016 \(c. 14\), s. 41\(3\), Sch. 2 para. 39\(4\)\(a\)](#) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- F13** Words in s. 189(1B) omitted (1.3.2017) by virtue of [Bank of England and Financial Services Act 2016 \(c. 14\), s. 41\(3\), Sch. 2 para. 39\(4\)\(b\)](#) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- F14** Words in s. 189(1B) substituted (1.3.2017) by [Bank of England and Financial Services Act 2016 \(c. 14\), s. 41\(3\), Sch. 2 para. 39\(4\)\(c\)](#) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- F15** Words in s. 189(6) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **33(1)**

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^{X6}190 Requests for further information

(1) The [^{F2}appropriate regulator] may, no later than the 50th working day of the assessment period, in writing ask the section 178 notice-giver to provide any further information necessary to complete its assessment.

[But where a direction has been given by the Bank of England under section 189(1A) ^{F16}(1A) [^{F17} or section 189(1ZB) applies], the appropriate regulator must, as soon as reasonably practicable, ask the section 178 notice-giver to provide any further information necessary to complete its assessment.]

(2) On the first occasion that the [^{F2}appropriate regulator] asks for further information, the assessment period is interrupted from the date of the request until the date the [^{F2}appropriate regulator] receives the requested information (“the interruption period”).

(3) But the interruption period may not exceed 20 working days, unless subsection (4) applies.

(4) The interruption period may not exceed 30 working days if the notice-giver—

(a) is situated or regulated outside the [^{F18}European Union]; or

[^{F19}(b) is not subject to supervision under—

(i) the UCITS directive;

(ii) the Solvency 2 Directive;

(iii) the markets in financial instruments directive; or

(iv) the capital requirements directive.]

(5) The [^{F2}appropriate regulator] may make further requests for information (but a further request does not result in a further interruption of the assessment period).

(6) The [^{F2}appropriate regulator] must acknowledge in writing receipt of further information before the end of the second working day following receipt.

Editorial Information

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F16 S. 190(1A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [119](#)

F17 Words in s. 190(1A) inserted (1.3.2017) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), s. 41(3), [Sch. 2 para. 40](#) (with [Sch. 3](#)); [S.I. 2017/43](#), reg. 2(g)

F18 Words in s. 190(4)(a) substituted (22.4.2011 with application in accordance with art. 3 of the amending S.I.) by virtue of [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), [art. 4](#)

F19 S. 190(4)(b) substituted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\)](#), reg. 1(2), [Sch. 1 para. 9](#)

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[^{F20}190A Assessment and resolution

- (1) This section applies if—
 - (a) the appropriate regulator receives a section 178 notice in relation to a credit institution, investment firm or banking group company,
 - (b) as a result of a direction under section 189(1A) or the application of section 189(1ZB), the appropriate regulator is required to act under this Part in a timely manner in relation to that notice, and
 - (c) the appropriate regulator does not complete the assessment required by section 185 before a relevant transfer instrument has been made by the Bank of England which transfers shares issued by, or voting power in, that credit institution, investment firm or banking group company.
- (2) The transfer of shares or voting takes effect in accordance with the terms of the relevant transfer instrument, but the right of the person who acquires shares under that instrument (“the acquirer”) to exercise the voting power represented by those shares is suspended.
- (3) During the suspension, the voting power represented by the shares in question may be exercised by the Bank (and only by the Bank).
- (4) If the appropriate regulator issues a decision notice under section 189(7) objecting to the acquisition, the Bank may direct the acquirer to sell the shares within a period specified by the Bank in the direction (“the sale period”).
- (5) In determining the sale period, the Bank must take account of prevailing market conditions.
- (6) The suspension provided for in subsection (2) ends—
 - (a) if the appropriate regulator gives notice under section 189(4)(a) or (b)(i) that it approves the acquisition, on the date of that notice, or
 - (b) if the Bank gives a direction under subsection (4), on the earlier of the day on which the sale period ends and the day on which the shares are sold.
- (7) In this section a “relevant transfer instrument” means an instrument made by the Bank acting in the exercise of its functions under sections 6A to 6C of the Banking Act 2009 or under the special resolution regime under Part 1 of that Act, which transfers, or has the effect of transferring, shares issued by, or voting power in, the credit institution, investment firm or banking group company.]

Textual Amendments

F20 S. 190A inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **33(2)**

^{x7}191 Duration of approval

- (1) Approval of an acquisition (whether granted unconditionally or subject to conditions) is effective for such period as the [^{F2}appropriate regulator] may specify in writing.
- (2) Where the [^{F2}appropriate regulator] has specified a period under subsection (1), it may extend the period.

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- (3) Where the [^{F2}appropriate regulator] has not specified a period, the approval is effective for one year beginning with the date—
- (a) of the notice given under section 189(4)(a) or (b)(i);
 - (b) on which the [^{F2}appropriate regulator] is treated as having given approval under section 189(6); or
 - (c) of a decision on a reference to the Tribunal which results in the person receiving approval.]

Editorial Information

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