



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XIII

INCOMING FIRMS: INTERVENTION BY ^[F1]FCA OR PRA]

Interpretation

193 Interpretation of this Part.

(1) In this Part—

“additional procedure” means the procedure described in section 199;

“incoming firm” means—

- (a) an EEA firm which is exercising, or has exercised, its right to carry on a regulated activity in the United Kingdom in accordance with Schedule 3; or
- (aa) ^[F1]an EEAUCITS which is a recognised scheme under section 264; ^[F2]...
- (ab) ^[F3]an EEAIFM which is exercising, or has exercised, its right to market an AIF in the United Kingdom in accordance with Schedule 3; or]
- (b) a Treaty firm which is exercising, or has exercised, its right to carry on a regulated activity in the United Kingdom in accordance with Schedule 4; and

“power of intervention” means the power conferred on ^[F4]the FCA or the PRA] by section 196.

^[F5](1A) In the definition of “incoming firm” references to an EEAUCITS include, in a case where the UCITS is not a body corporate, references to its management company.]

(2) In relation to an incoming firm which is an EEA firm ^[F6]or an EEAUCITS], expressions used in this Part and in Schedule 3 have the same meaning in this Part as they have in that Schedule.

Status: Point in time view as at 28/06/2018.

Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Interpretation is up to date with all changes known to be in force on or before 20 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)

Textual Amendments

- F1** S. 193(1): in definition of "incoming firm" para (aa) inserted after para. (a) (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(7\)\(a\)](#)
- F2** Word in s. 193(1) omitted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), [reg. 1, Sch. 1 para. 11](#)
- F3** Words in s. 193(1) inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), [reg. 1, Sch. 1 para. 11](#)
- F4** Words in s. 193(1) substituted (27.2.2013 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. 4 para. 31](#) (with [Sch. 20](#)); [S.I. 2013/423](#), arts. 2, 3, [Sch.](#)
- F5** S. 193(1A) inserted (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(7\)\(b\)](#)
- F6** Words in s. 193(2) inserted (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(7\)\(c\)](#)

194 General grounds on which power of intervention is exercisable.

- (1) The [^{F7}appropriate regulator] may exercise its power of intervention in respect of an incoming firm if it appears to it that—
- (a) the firm has contravened, or is likely to contravene, a requirement which is imposed on it by or under this Act (in a case where the [^{F7}appropriate regulator] is responsible for enforcing compliance in the United Kingdom);
 - (b) the firm has, in purported compliance with any requirement imposed by or under this Act, knowingly or recklessly given the [^{F7}appropriate regulator] information which is false or misleading in a material particular; or
 - [^{F8}(c) it is desirable to exercise the power in order to [^{F9}advance—
 - (i) in the case of the FCA, one or more of its operational objectives, and
 - (ii) in the case of the PRA, any of its objectives.]]
- [^{F10}(1A) For the purposes of subsection (1)(c) it does not matter whether there is a relationship between the incoming firm and the persons whose interests will be protected by the exercise of the power of intervention.]
- [^{F11}(1AA) Where an incoming firm is an EEA firm falling within paragraph 5(d) or (da) of Schedule 3, the appropriate regulator must not exercise its power of intervention under subsection (1)(c) in respect of that firm if doing so would, for the purposes of the Solvency 2 Directive, constitute financial supervision of that firm.]
- [^{F12}(1B) The “appropriate regulator” means—
- (a) where the incoming firm is a PRA-authorized person, the FCA or the PRA;
 - (b) in any other case, the FCA.]
- [^{F13}(2)
- [^{F13}(3)
- [^{F13}(4)
- [^{F14}(5) The FCA may exercise its power of intervention in respect of an EEAAIFM if it appears to the FCA that the EEAAIFM has contravened, or is likely to contravene, a requirement imposed by—

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- (a) the Alternative Investment Fund Managers Regulations 2013; ^{F15}...
 - (b) any directly applicable EU regulation made under the alternative investment fund managers directive.][^{F16}, ^{F17} ...]
 - ^{F18}(c) Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds or any directly applicable regulation made under that Regulation.][^{F19}; or]
 - ^{F20}(d) the MMF Regulation or any directly applicable regulation or decision made under that Regulation.]
- ^{F21}(6) The FCA may exercise its powers of intervention in respect of an EEAUCITS if it appears to the FCA that the EEAUCITS has contravened, or is likely to contravene, a requirement imposed by the MMF Regulation or any directly applicable regulation or decision made under that Regulation.
- (7) A reference in subsection (6) to an EEAUCITS includes, in a case where the UCITS is not a body corporate, a reference to its management company.]

Textual Amendments

- F7** Words in s. 194(1) substituted (27.2.2013 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. 4 para. 32(2)(a)** (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.
- F8** S. 194(1)(c) substituted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 3(5)(a)**, 26(2)
- F9** Words in s. 194(1)(c) substituted (27.2.2013 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. 4 para. 32(2)(b)** (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.
- F10** S. 194(1A) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 3(5)(b)**, 26(2)
- F11** S. 194(1AA) inserted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\)](#), reg. 1(2), **Sch. 1 para. 10**
- F12** S. 194(1B) inserted (27.2.2013 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. 4 para. 32(3)** (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.
- F13** S. 194(2)-(4) 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(3)** (with art. 11(3))
- F14** S. 194(5) inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 12**
- F15** Word in s. 194(5)(a) omitted (3.12.2015) by virtue of [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), regs. 1, **3(3)(a)**
- F16** Word in s. 194(5)(b) inserted (3.12.2015) by [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), regs. 1, **3(3)(b)**
- F17** Word in s. 194(5)(b) omitted (28.6.2018 for specified purposes) by virtue of [The Money Market Funds Regulations 2018 \(S.I. 2018/698\)](#), regs. 1(2), **2(3)(a)(i)**
- F18** S. 194(5)(c) inserted (3.12.2015) by [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), regs. 1, **3(3)(c)**
- F19** Word in s. 194(5)(c) inserted (28.6.2018 for specified purposes) by [The Money Market Funds Regulations 2018 \(S.I. 2018/698\)](#), regs. 1(2), **2(3)(a)(ii)**
- F20** S. 194(5)(d) inserted (28.6.2018 for specified purposes) by [The Money Market Funds Regulations 2018 \(S.I. 2018/698\)](#), regs. 1(2), **2(3)(a)(iii)**
- F21** S. 194(6)(7) inserted (28.6.2018 for specified purposes) by [The Money Market Funds Regulations 2018 \(S.I. 2018/698\)](#), regs. 1(2), **2(3)(b)**

Status: Point in time view as at 28/06/2018.

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Modifications etc. (not altering text)

- C1** Pt. 13 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services Act 2012 \(Consumer Credit\) Order 2013 \(S.I. 2013/1882\)](#), arts. 1(1), 3(6)
- C2** S. 194 applied (1.12.2001) by [S.I. 2001/3592](#), arts. 1(2), 12(3)(b), 18(4)(b), 21(3) (with art. 23(2))
S. 194 amended (*temp.* from 3.9.2001 to 1.12.2001) by [S.I. 2001/2659](#), arts. 1(2), 3(5); [S.I. 2001/3538](#), art. 2(1)

Commencement Information

- II** S. 194 wholly in force at 1.12.2001; s. 194 not in force at Royal Assent see s. 431(2); s. 194 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), art. 2(2), [Sch. Pt. 2](#); s. 194 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), art. 2(1)

[^{F22}194A] **Contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive: [^{F23}appropriate regulator] primarily responsible for securing compliance**

- (1) This section applies if—
- a relevant EEA firm has a branch in the United Kingdom; and
 - [^{F24}the appropriate regulator] ascertains that the firm has contravened, or is contravening, a requirement falling within subsection (3) (in a case to which Article [^{F25}86.2] of the markets in financial instruments directive applies).
- (2) “Relevant EEA firm” means an EEA firm falling within paragraph 5(a) or (b) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the markets in financial instruments directive.
- (3) A requirement falls within this subsection if it is imposed on the firm—
- by any provision of or made under this Act which implements the markets in financial instruments directive; ^{F26}...
 - [^{F27}(aa) by or under any provision of the markets in financial instruments regulation; or]
 - by any directly applicable [^{F28}EU] regulation made under that directive [^{F29}or the markets in financial instruments regulation].
- (4) [^{F24}The appropriate regulator] must give the firm written notice which—
- requires the firm to put an end to the contravention;
 - states that [^{F24}the appropriate regulator's] power of intervention will become exercisable in relation to the firm if the firm continues the contravention; and
 - indicates any requirements that [^{F24}the appropriate regulator] proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.
- (5) [^{F24}The appropriate regulator] may exercise its power of intervention in respect of the firm if—
- a reasonable time has expired since the giving of the notice under subsection (4);
 - the firm has failed to put an end to the contravention within that time; and
 - [^{F24}the appropriate regulator] has informed the firm's home state regulator of its intention to exercise its power of intervention in respect of the firm.

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- (6) Subsection (5) applies whether or not [^{F24}the appropriate regulator's] power of intervention is also exercisable as a result of section 194.
- (7) If [^{F24}the appropriate regulator] exercises its power of intervention in respect of a relevant EEA firm by virtue of subsection (5), it must at the earliest opportunity inform the firm's home state regulator [^{F30}, ESMA] and the Commission of—
- (a) the fact that [^{F24}the appropriate regulator] has exercised that power in respect of the firm; and
 - (b) any requirements it has imposed on the firm in exercise of the power.
- [If the firm has failed to put an end to the contravention as described in subsection (5)
- ^{F31}(8) (b), [^{F24}the appropriate regulator] may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)).]
- [Subsection (4) is not to be regarded as requiring the PRA to take action in relation to
- ^{F32}(9) the contravention of a requirement falling within subsection (3) in a case where it is satisfied that the FCA is required to act, and is acting or has acted, under subsection (4)
- (a) in relation to that requirement, or
 - (b) where that requirement is imposed by rules made by the PRA, in relation to an identical requirement imposed by rules made by the FCA.
- (10) “The appropriate regulator” means—
- (a) where the relevant EEA firm is a PRA-authorized person, the FCA or, subject to subsection (9), the PRA;
 - (b) in any other case, the FCA.]]

Textual Amendments

- F22** S. 194A 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(1), [Sch. 1 para. 2](#)
- F23** Words in s. 194A heading substituted (27.2.2013 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. 4 para. 33\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), arts. 2, 3, [Sch.](#)
- F24** Words in s. 194A substituted (27.2.2013 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. 4 para. 33\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), arts. 2, 3, [Sch.](#)
- F25** Word in s. 194A(1)(b) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), [Sch. 2 para. 20\(2\)](#) (with [reg. 7](#))
- F26** Word in s. 194A(3)(a) omitted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), [Sch. 2 para. 20\(3\)\(a\)](#) (with [reg. 7](#))
- F27** S. 194A(3)(aa) inserted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and](#)

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Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701), reg. 1(2)(3)(4)(6), **Sch. 2 para. 20(3)(b)** (with reg. 7)

F28 Word in s. 194A(3)(b) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), **Sch. 2 para. 20(3)(c)(i)** (with reg. 7)

F29 Words in s. 194A(3)(b) inserted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), **Sch. 2 para. 20(3)(c)(ii)** (with reg. 7)

F30 Words in s. 194A(7) inserted (16.4.2012) by [The Financial Services \(Omnibus 1 Directive\) Regulations 2012 \(S.I. 2012/916\)](#), regs. 1, **2(7)(a)**

F31 S. 194A(8) inserted (16.4.2012) by [The Financial Services \(Omnibus 1 Directive\) Regulations 2012 \(S.I. 2012/916\)](#), regs. 1, **2(7)(b)**

F32 S. 194A(9)(10) inserted (27.2.2013 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. 4 para. 33(3)** (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

Modifications etc. (not altering text)

C3 S. 194A(7) modified by S.I. 2001/3084, art. 2(8)(a) (as inserted (24.8.2012) by [The Financial Services and Markets Act 2000 \(Gibraltar\) \(Amendment\) Order 2012 \(S.I. 2012/2017\)](#), arts. 1, **2(2)(e)**)

C4 S. 194A(7) modified by SI 2001/3084 art. 2(8)(a) (as substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 58(b)**)

[^{F33}194B] Contravention by relevant EEA firm of requirement in capital requirements directive or capital requirements regulation

(1) In this section—

- (a) “relevant EEA firm” means an EEA firm falling within paragraph 5(a) or 5(b) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from capital requirements directive; and
- (b) “Article 3” means Article 3 of Directive [2001/24/EC](#) of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions.

(2) This section applies where—

- (a) a relevant EEA firm has a branch, or is providing services, in the United Kingdom; and
- (b) the appropriate regulator ascertains on the basis of information received from the home state regulator that the firm is contravening, or is at a material risk of contravening, a requirement of the capital requirements directive or capital requirements regulation.

(3) The appropriate regulator must, without delay, notify the firm’s home state regulator of the need for it to take all appropriate measures to ensure that the firm remedies the contravention or averts the risk of contravention.

(4) If notice has been given under subsection (3) and the appropriate regulator considers that the home state regulator is failing to comply with its obligations in respect of the contravention or the risk of contravention, the appropriate regulator may refer the matter to EBA (and EBA may act in accordance with the powers conferred on it

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under Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority)).

- (5) The appropriate regulator may exercise its power of intervention in respect of the relevant EEA firm if—
- (a) the requirement to be imposed under section 196 is necessary and appropriate to protect against financial instability that would seriously threaten the collective interests of consumers in the United Kingdom;
 - (b) the situation is an emergency;
 - (c) the home state regulator has not yet taken measures to ensure the contravention or risk of contravention is remedied; and
 - (d) reorganisation measures of the kind referred to in Article 3 have not been commenced.
- (6) Any requirement imposed by virtue of paragraph (5)—
- (a) must not favour creditors in the United Kingdom over creditors in another EEA State;
 - (b) must be rescinded if the administrative or judicial authorities of the home EEA State take reorganisation measures under Article 3;
 - (c) must be rescinded if the appropriate regulator considers that the home state regulator has taken appropriate measures to ensure the firm remedies the contravention or averts the risk of contravention
- (7) The appropriate regulator must give the firm written notice of its reasons for imposing a requirement under subsection (5).
- (8) The appropriate regulator shall inform the Commission, EBA and regulators in affected Member States of the imposition of a requirement by virtue of subsection (5).
- (9) This section is without prejudice to the powers available to the appropriate regulator under section 199.
- (10) For the purposes of this section “appropriate regulator” means the PRA in relation to a PRA-authorized person and the FCA in relation to any other person.]

Textual Amendments

F33 S. 194B inserted (coming into force in accordance with Sch. 1 of the amending S.I.) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(3), **Sch. 2 para. 15**

[^{F34}194C **Contravention by relevant EEA firm with UK branch of requirement in mortgages directive: appropriate regulator primarily responsible for securing compliance**

- (1) In this section “relevant EEA firm” means an EEA firm falling within paragraph 5(i) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the mortgages directive.
- (2) This section applies if—
- (a) a relevant EEA firm has a branch in the United Kingdom; and

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- (b) the appropriate regulator ascertains that the firm has contravened, or is contravening, a requirement to which Article 34(2) of the mortgages directive applies.
- (3) The appropriate regulator must give the firm written notice which—
 - (a) requires the relevant EEA firm to put an end to the contravention;
 - (b) states that the appropriate regulator’s power of intervention will become exercisable in relation to the firm if the firm continues the contravention; and
 - (c) indicates any requirements that the appropriate regulator proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.
- (4) The appropriate regulator may exercise its power of intervention in respect of the relevant EEA firm if—
 - (a) a reasonable time has expired since the giving of the notice under subsection (3);
 - (b) the firm has failed to put an end to the contravention within that time; and
 - (c) the appropriate regulator has informed the firm’s home state regulator of its intention to exercise its power of intervention in respect of the firm.
- (5) Subsection (4) applies whether or not the appropriate regulator’s power of intervention is also exercisable as a result of section 194.
- (6) If the appropriate regulator exercises its power of intervention in respect of a relevant EEA firm by virtue of subsection (4), it must at the earliest opportunity inform the firm’s home state regulator and the Commission of—
 - (a) the fact that the appropriate regulator has exercised that power in respect of the firm; and
 - (b) any requirements it has imposed on the firm in exercise of the power.
- (7) Subsection (3) is not to be regarded as requiring the PRA to take action in relation to the contravention of a requirement falling within subsection (2)(b) in a case where it is satisfied that the FCA is required to act, and is acting or has acted, under subsection (3) in relation to that requirement.
- (8) In this section “appropriate regulator” means—
 - (a) where the relevant EEA firm is a PRA-authorised person, the FCA or, subject to subsection (7), the PRA;
 - (b) in any other case, the FCA.]

Textual Amendments

F34 S. 194C inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), [Sch. 1 para. 1\(5\)](#) (with Pt. 4)

195 Exercise of power in support of overseas regulator.

- (1) The [^{F35}appropriate regulator] may exercise its power of intervention in respect of an incoming firm at the request of, or for the purpose of assisting, an overseas regulator.

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(2) Subsection (1) applies whether or not the [^{F36}appropriate regulator's] power of intervention is also exercisable as a result of section 194.

[^{F37}(2A) “The appropriate regulator” means—

- (a) where the incoming firm is a PRA-authorized person, the FCA or the PRA;
- (b) in any other case, the FCA.]

(3) “An overseas regulator” means an authority in a country or territory outside the United Kingdom—

- (a) which is a home state regulator; or
- (b) which exercises any function of a kind mentioned in subsection (4).

(4) The functions are—

- (a) a function corresponding to any function of [^{F38}either regulator] under this Act;
- ^{F39}(b)
- (c) a function corresponding to any function exercised by the Secretary of State under [^{F40}the Companies Acts (as defined in section 2 of the Companies Act 2006)];
- (d) a function in connection with —
 - (i) the investigation of conduct of the kind prohibited by Part V of the ^{M1}Criminal Justice Act 1993 (insider dealing); or
 - (ii) the enforcement of rules (whether or not having the force of law) relating to such conduct;
- (e) a function prescribed by regulations made for the purposes of this subsection which, in the opinion of the Treasury, relates to companies or financial services.

(5) If—

- (a) a request to the [^{F41}appropriate regulator] for the exercise of its power of intervention has been made by a home state regulator in pursuance of [^{F42}an EU] obligation, or
- (b) a home state regulator has notified the [^{F41}appropriate regulator] that an EEA firm’s EEA authorisation has been withdrawn,

the [^{F41}appropriate regulator] must, in deciding whether or not to exercise its power of intervention, consider whether exercising it is necessary in order to comply with [^{F42}an EU] obligation.

(6) In deciding in any case in which the [^{F41}appropriate regulator] does not consider that the exercise of its power of intervention is necessary in order to comply with [^{F42}an EU] obligation, it may take into account in particular—

- (a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;
- (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
- (c) the seriousness of the case and its importance to persons in the United Kingdom;
- (d) whether it is otherwise appropriate in the public interest to give the assistance sought.

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- (7) The [^{F41}appropriate regulator] may decide not to exercise its power of intervention, in response to a request, unless the regulator concerned undertakes to make such contribution to the cost of its exercise as the [^{F41}appropriate regulator] considers appropriate.
- (8) Subsection (7) does not apply if the [^{F41}appropriate regulator] decides that it is necessary for it to exercise its power of intervention in order to comply with [^{F42}an EU] obligation.

Textual Amendments

- F35** Words in s. 195(1) substituted (27.2.2013 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. 4 para. 34\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, arts. 2, 3, [Sch.](#)
- F36** Words in s. 195(2) substituted (27.2.2013 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. 4 para. 34\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, arts. 2, 3, [Sch.](#)
- F37** S. 195(2A) inserted (27.2.2013 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. 4 para. 34\(4\)](#) (with [Sch. 20](#)); S.I. 2013/423, arts. 2, 3, [Sch.](#)
- F38** Words in s. 195(4)(a) substituted (27.2.2013 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. 4 para. 34\(5\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, arts. 2, 3, [Sch.](#)
- F39** S. 195(4)(b) omitted (24.1.2013 for specified purposes, 27.2.2013 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\(14\)\(h\)](#), 122(3), [Sch. 4 para. 34\(5\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, arts. 2, 3, [Sch.](#)
- F40** Words in s. 195(4)(c) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), [Sch. 4 para. 92](#)
- F41** Words in s. 195(5)-(8) substituted (27.2.2013 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. 4 para. 34\(6\)](#) (with [Sch. 20](#)); S.I. 2013/423, arts. 2, 3, [Sch.](#)
- F42** Words in s. 195(5)(6)(8) 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\(1\)\(3\)\(4\)](#)

Modifications etc. (not altering text)

- C5** S. 195 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, [arts. 1\(2\)](#), 3(5); S.I. 2001/3538, [art. 2\(1\)](#)

Commencement Information

- I2** S. 195 wholly in force at 1.12.2001; s. 195 not in force at Royal Assent see s. 431(2); s. 195 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, [art. 2\(2\)](#), [Sch. Pt. 2](#); s. 195 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, [art. 2\(1\)](#)

Marginal Citations

- M1** 1993 c. 36.

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[^{F43}195A] Contravention by relevant EEA firm [^{F44}, EEAUCITS or EEAAIFM] of directive requirements: home state regulator primarily responsible for securing compliance

- (1) This section applies if [^{F45}the appropriate regulator] has clear and demonstrable grounds for believing—
 - (a) that a relevant EEA firm has contravened, or is contravening, a requirement falling within subsection (2) (in a case to which Article [^{F46}86.1 or 86.3] of the markets in financial instruments directive applies);
 - (b) that a relevant EEAUCITS has contravened, or is contravening, a requirement falling within subsection (3) (in a case to which Article 108.4 of the UCITS directive applies) [^{F47}; or
 - (c) that an EEAAIFM has contravened, or is contravening, a requirement falling within subsection (3A) (in a case to which Article 45.7 or 45.8 of the alternative investment fund managers directive applies)].
- (2) A requirement falls within this subsection if it is imposed on the firm—
 - (a) by or under any provision adopted in the firm's home state for the purpose of implementing the markets in financial instruments directive; ^{F48}...
 - [^{F49}(aa) by or under any provision of the markets in financial instruments regulation; or]
 - (b) by any directly applicable [^{F50}EU] regulation made under that directive [^{F51}or the markets in financial instruments regulation].
- (3) A requirement falls within this subsection if it is imposed on the EEAUCITS—
 - (a) by or under any provision adopted in the home state of the EEAUCITS for the purpose of implementing the UCITS directive; or
 - (b) by any directly applicable Community regulation or decision made under that directive.
- [^{F52}(3A) A requirement falls within this subsection if it is imposed on the EEAAIFM—
 - (a) by or under any provision adopted in the AIFM's home state for the purpose of implementing the alternative investment fund managers directive; or
 - (b) by any directly applicable EU regulation made under that directive.]
- (4) [^{F45}The appropriate regulator] must notify the home state regulator of the firm or EEAUCITS in writing of the situation mentioned in subsection (1).
- (5) The notice under subsection (4) must—
 - (a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the firm or EEAUCITS puts an end to the contravention;
 - (b) state that [^{F45}the appropriate regulator's] powers of intervention are likely to become exercisable in relation to the firm or EEAUCITS if it continues the contravention; and
 - (c) indicate any requirements that [^{F45}the appropriate regulator] proposes to impose on the firm or EEAUCITS in exercise of its power of intervention in the event of the power becoming exercisable.
- (6) [^{F45}The appropriate regulator] may exercise its power of intervention in respect of the firm or EEAUCITS if—
 - (a) a reasonable time has expired since the giving of the notice under subsection (4); and

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- (b) conditions A to C are satisfied.
- (7) Condition A is that—
- (a) the home state regulator of the firm or EEAUCITS has failed or refused to take measures for the purpose mentioned in subsection (5)(a); or
 - (b) any measures taken by the home state regulator have proved inadequate for that purpose.
- [^{F53}(8) Condition B is—
- (a) in the case of a relevant EEA firm, that the firm is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the orderly functioning of the markets;
 - (b) in the case of an EEAUCITS, that the EEAUCITS is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom; or
 - (c) in the case of an EEAIFM, that the AIFM is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the financial stability or integrity of the markets in the United Kingdom.]
- (9) Condition C is that [^{F45}the appropriate regulator] has informed the home state regulator of the firm or EEAUCITS of its intention to exercise its power of intervention in respect of the firm or EEA UCITS.
- (10) Subsection (6) applies whether or not [^{F45}the appropriate regulator's] power of intervention is also exercisable as a result of section 194 or 195.
- (11) If [^{F45}the appropriate regulator] exercises its power of intervention in respect of a relevant EEA firm or EEAUCITS by virtue of subsection (6), it must at the earliest opportunity inform [^{F54}ESMA and] the Commission of—
- (a) the fact that [^{F45}the appropriate regulator] has exercised that power in respect of that firm or EEAUCITS; and
 - (b) any requirements it has imposed on the firm or EEAUCITS in exercise of the power.
- [^{F55}(11A) If circumstances exist which enable [^{F45}the appropriate regulator] to exercise its power of intervention under subsection (6), [^{F45}the appropriate regulator] may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)).]
- [^{F56}(11B) Subsection (4) is not to be regarded as requiring the PRA to notify the home state regulator in relation to the contravention of a requirement falling within subsection (2) [^{F57}, (3) or (3A)] in a case where the PRA is satisfied that the FCA is required to act, and is acting or has acted, under subsection (4) in relation to that requirement.]
- (12) In this section—
- [^{F58}“the appropriate regulator” means—
 - (a) [^{F59}in the case of a relevant EEA firm which is] a PRA-authorized person, the FCA or, subject to subsection (11B), the PRA;
 - (b) in any other case, the FCA;]
 - “home state” means—
 - (a) in relation to a relevant EEA firm—

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- (i) in the case of a firm which is a body corporate, the EEA State in which the firm has its registered office or, if it has no registered office, its head office; and
 - (ii) in any other case, the EEA State in which the firm has its head office;
- (b) in relation to a relevant EEAUCITS, the EEA State in which the UCITS is authorised pursuant to Article 5 of the UCITS directive;
- (c) [^{F60}in relation to an EEAIFM, the EEA State in which the AIFM^{F61} has its registered office][^{F61}is authorised in accordance with the alternative investment fund managers directive];
- “relevant EEA firm” means an EEA firm falling within paragraph 5(a) or (b) of Schedule 3 which is exercising in the United Kingdom a right deriving from the markets in financial instruments directive;
- “relevant EEAUCITS” means a UCITS which is authorised pursuant to Article 5 of the UCITS directive in an EEA State other than the United Kingdom, and references to an EEAUCITS include, in a case where the UCITS is not a body corporate, references to its management company.]

Textual Amendments

- F43** S. 195A substituted (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(8\)](#)
- F44** Words in s. 195A heading substituted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), [reg. 1](#), [Sch. 1 para. 13\(a\)](#)
- F45** Words in s. 195A substituted (27.2.2013 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. 4 para. 35\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), arts. 2, 3, [Sch.](#)
- F46** Words in s. 195A(1)(a) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), [reg. 1\(2\)\(3\)\(4\)\(6\)](#), [Sch. 2 para. 21\(2\)](#) (with [reg. 7](#))
- F47** S. 195A(1)(c) and word inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), [reg. 1](#), [Sch. 1 para. 13\(b\)](#)
- F48** Word in s. 195A(2)(a) omitted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), [reg. 1\(2\)\(3\)\(4\)\(6\)](#), [Sch. 2 para. 21\(3\)\(a\)](#) (with [reg. 7](#))
- F49** S. 195A(2)(aa) inserted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), [reg. 1\(2\)\(3\)\(4\)\(6\)](#), [Sch. 2 para. 21\(3\)\(b\)](#) (with [reg. 7](#))
- F50** Word in s. 195A(2)(b) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), [reg. 1\(2\)\(3\)\(4\)\(6\)](#), [Sch. 2 para. 21\(3\)\(c\)\(i\)](#) (with [reg. 7](#))
- F51** Words in s. 195A(2)(b) inserted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), [reg. 1\(2\)\(3\)\(4\)\(6\)](#), [Sch. 2 para. 21\(3\)\(c\)\(ii\)](#) (with [reg. 7](#))
- F52** S. 195A(3A) inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), [reg. 1](#), [Sch. 1 para. 13\(c\)](#)

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- F53** S. 195A(8) substituted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 13(d)**
- F54** Words in s. 195A(11) inserted (16.4.2012) by [The Financial Services \(Omnibus 1 Directive\) Regulations 2012 \(S.I. 2012/916\)](#), regs. 1, **2(8)(a)**
- F55** S. 195A(11A) inserted (16.4.2012) by [The Financial Services \(Omnibus 1 Directive\) Regulations 2012 \(S.I. 2012/916\)](#), regs. 1, **2(8)(b)**
- F56** S. 195A(11B) inserted (27.2.2013 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. 4 para. 35(3)** (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.
- F57** Words in s. 195A(11B) substituted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 13(e)**
- F58** Words in s. 195A(12) inserted (27.2.2013 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. 4 para. 35(4)** (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.
- F59** Words in s. 195A(12) substituted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 13(f)(i)**
- F60** Words in s. 195A(12) inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 13(f)(ii)**
- F61** Words in s. 195A(12) substituted (coming into force in accordance with reg. 1(3) of the amending S.I.) by [The Alternative Investment Fund Managers \(Amendment\) Regulations 2013 \(S.I. 2013/1797\)](#), reg. 1(3), Sch. 1 para. 1(3)

Modifications etc. (not altering text)

- C6** S. 195A(11) excluded by S.I. 2001/3084, art. 2(8)(b) (as inserted (24.8.2012) by [The Financial Services and Markets Act 2000 \(Gibraltar\) \(Amendment\) Order 2012 \(S.I. 2012/2017\)](#), arts. 1, **2(2)(e)**)
- C7** S. 195A(11) modified by SI 2001/3084 art. 2(8)(b) (as substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 58(b)**)

[^{F62}195B] Contravention by relevant EEA firm of requirement in mortgages directive: home state regulator primarily responsible for securing compliance

- (1) In this section “relevant EEA firm” means an EEA firm falling within paragraph 5(i) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the mortgages directive.
- (2) This section applies if—
 - (a) a relevant EEA firm has a branch, or is providing services, in the United Kingdom; and
 - (b) the appropriate regulator has clear and demonstrable grounds for concluding that the firm has contravened, or is contravening, a requirement to which Article 34(4) of the mortgages directive applies.
- (3) The appropriate regulator must notify the relevant EEA firm’s home state regulator of the situation mentioned in subsection (2).
- (4) The notice under subsection (3) must—
 - (a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the relevant EEA firm puts an end to the contravention;

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- (b) state that the appropriate regulator’s powers of intervention are likely to become exercisable in relation to the relevant EEA firm if it continues the contravention; and
 - (c) indicate any requirements that the appropriate regulator proposes to impose on the relevant EEA firm in exercise of its power of intervention in the event of the power becoming exercisable.
- (5) The appropriate regulator may exercise its power of intervention in respect of the relevant EEA firm if—
 - (a) a period of one month beginning with the date on which it gave the notification referred to in subsection (3) has expired, and
 - (b) conditions A to C are satisfied.
- (6) Condition A is that—
 - (a) the home state regulator of the relevant EEA firm has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or
 - (b) any measures taken by the home state regulator have proved inadequate for that purpose.
- (7) Condition B is that the relevant EEA firm is acting in a manner which is clearly prejudicial to the interests of consumers in the United Kingdom or to the orderly functioning of the markets.
- (8) Condition C is that the appropriate regulator has informed the home state regulator of the relevant EEA firm of its intention to exercise its powers of intervention in respect of the firm.
- (9) Subsection (5) applies whether or not the appropriate regulator’s power of intervention is also exercisable as a result of section 194 or 195.
- (10) If the appropriate regulator exercises its power of intervention in respect of the relevant EEA firm by virtue of subsection (5), it must inform the Commission and EBA, without undue delay, of—
 - (a) the fact that the appropriate regulator has exercised that power in respect of that firm; and
 - (b) any requirements it has imposed on the firm in exercise of the power.
- (11) If circumstances exist which enable the appropriate regulator to exercise its power of intervention under subsection (5), the appropriate regulator may refer the matter to EBA (and EBA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24th November 2010 establishing a European Supervisory Authority (European Banking Authority)).
- (12) Subsection (3) is not to be regarded as requiring the PRA to notify the home state regulator in relation to the situation mentioned in subsection (2) in a case where the PRA is satisfied that the FCA is required to act, and is acting, or has acted, under subsection (3) in relation to that situation.
- (13) In this section “appropriate regulator” means—
 - (a) where the relevant EEA firm is a PRA-authorized person, the FCA or, subject to subsection (12), the PRA;
 - (b) in any other case, the FCA.]

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Textual Amendments

F62 S. 195B inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), [Sch. 1 para. 1\(6\)](#) (with Pt. 4)

[^{F63}196 The power of intervention.

- (1) If a regulator is entitled to exercise its power of intervention in respect of an incoming firm under this Part, it may impose any requirement in relation to the firm which that regulator could impose if—
 - (a) the firm's permission was a Part 4A permission; and
 - (b) the regulator was entitled to exercise its power under section 55L(3) or 55M(3).
- (2) The FCA must consult the PRA before exercising its powers by virtue of this section in relation to—
 - (a) a PRA-authorised person, or
 - (b) a member of a group which includes a PRA-authorised person.
- (3) The PRA must consult the FCA before exercising its powers by virtue of this section.]

Textual Amendments

F63 S. 196 substituted (27.2.2013 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. 4 para. 36](#) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

Status:

Point in time view as at 28/06/2018.

Changes to legislation:

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