



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XVIII

#### [<sup>F1</sup>RECOGNISED INVESTMENT EXCHANGES, CLEARING HOUSES AND CSDS]

#### CHAPTER I

#### EXEMPTION

##### *Applications for recognition*

#### **287 Application by an investment exchange.**

- (1) Any body corporate or unincorporated association may apply to [<sup>F1</sup>the FCA] for an order declaring it to be a recognised investment exchange for the purposes of this Act.
- (2) The application must be made in such manner as [<sup>F2</sup>the FCA] may direct and must be accompanied by—
  - (a) a copy of the applicant's rules;
  - (b) a copy of any guidance issued by the applicant;
  - (c) the required particulars; and
  - (d) such other information as [<sup>F2</sup>the FCA] may reasonably require for the purpose of determining the application.
- (3) The required particulars are—
  - (a) particulars of any arrangements which the applicant has made, or proposes to make, for the provision [<sup>F3</sup>by another person] of clearing services in respect of transactions effected on the exchange;
  - (b) if the applicant proposes to provide [<sup>F4</sup>services falling within section 285(2)(b)] in respect of transactions other than those effected on the exchange, particulars of the criteria which the applicant will apply when determining to whom it will provide those services [<sup>F5</sup>;

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- (c) a programme of operations which includes the types of business the applicant proposes to undertake and the applicant's proposed organisational structure;
- (d) such particulars of the persons who effectively direct the business and operations of the exchange as [<sup>F6</sup>the FCA] may reasonably require;
- (e) such particulars of the ownership of the exchange, and in particular of the identity and scale of interests of the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly, as [<sup>F7</sup>the FCA] may reasonably require.]

[<sup>F8</sup>(4) Subsection (3)(c) to (e) does not apply to an application by an overseas applicant.]

#### Textual Amendments

- F1** Words in s. 287(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. 3\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.](#)
- F2** Words in s. 287(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. 3\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.](#)
- F3** Words in s. 287(3)(a) inserted (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. 3\(3\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.](#)
- F4** Words in s. 287(3)(b) 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. 3\(3\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.](#)
- F5** S. 287(3)(c)-(e) 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\(2\), Sch. 2 para. 3\(a\)](#)
- F6** Words in s. 287(3)(d) 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. 3\(3\)\(c\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.](#)
- F7** Words in s. 287(3)(e) 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. 3\(3\)\(c\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.](#)
- F8** S. 287(4) 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\(2\), Sch. 2 para. 3\(b\)](#)

#### Commencement Information

- I1** S. 287 wholly in force at 3.9.2001; s. 287 not in force at Royal Assent see s. 431(2); s. 287(2) in force for specified purposes at 18.6.2001 by [S.I. 2001/1820, art. 2, Sch.](#); s. 287 in so far as not already in force at 3.9.2001 by [S.I. 2001/2632, art. 2, Sch. Pt. 2](#)

#### [<sup>F9</sup>287A. Application by an investment exchange: persons connected with an applicant

(1) Subsection (2) applies where—

- (a) a body corporate or unincorporated association (“A”) makes an application under section 287 for an order declaring it to be a recognised investment exchange; and
- (b) A is—

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- (i) connected with an EEA credit institution or EEA insurance undertaking; or
  - (ii) controlled by a person who also controls an EEA credit institution or EEA insurance undertaking.
- (2) Before making a recognition order declaring A to be a recognised investment exchange under section 290, the FCA must consult the competent authority responsible for the supervision of the EEA credit institution or EEA insurance undertaking.
- (3) A is connected with an EEA credit institution or EEA insurance undertaking if—
- (a) A is a subsidiary undertaking of the EEA credit institution or EEA insurance undertaking; or
  - (b) A is a subsidiary undertaking of a parent undertaking of the EEA credit institution or EEA insurance undertaking.
- (4) In this section—
- “control” has the same meaning as in Article 4.1.35(b) (definitions) of the markets in financial instruments directive;
  - “EEA credit institution” means a credit institution (as defined by Article 4.1.27 of the markets in financial instruments directive) authorised in another EEA State under the capital requirements directive;
  - “EEA insurance undertaking” means an insurance undertaking (as defined by Article 13.1 of the Solvency 2 Directive) authorised in another EEA State.]

#### Textual Amendments

- F9** S. 287A 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. 30](#) (with reg. 7)

## 288 Application by a clearing house.

[<sup>F10</sup>(A1) This section applies only in relation to an application by a clearing house.]

[<sup>F11</sup>(1) A body corporate or unincorporated association which is established in the United Kingdom may, where it intends to provide clearing services as a central counterparty, apply to the Bank of England in accordance with Article 17 of the EMIR regulation for an order granting authorisation for the purposes of that Article and declaring it to be a recognised central counterparty for the purposes of this Act.

(1A) A body corporate or unincorporated association may, where it intends to provide clearing services in the United Kingdom without doing so as a central counterparty, apply to the Bank of England for an order declaring it to be for the purposes of this Act a recognised clearing house which is not a recognised central counterparty.]

- (2) [<sup>F12</sup>An application under subsection (1A)] must be made in such manner as [<sup>F13</sup>the Bank of England] may direct and must be accompanied by—
- (a) a copy of the applicant’s rules;
  - (b) a copy of any guidance issued by the applicant;
  - (c) the required particulars; and

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- (d) such other information as <sup>F14</sup>the Bank] may reasonably require for the purpose of determining the application.
- (3) The required particulars are—
- (a) if the applicant makes, or proposes to make, clearing arrangements with a recognised investment exchange, particulars of those arrangements;
  - (b) if the applicant proposes to provide clearing services <sup>F15</sup>or services falling within section 285(3)(b)] for persons other than recognised investment exchanges, particulars of the criteria which it will apply when determining to whom it will provide those services.

#### Textual Amendments

- F10** S. 288(A1) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **2(12)** (with regs. 7(4), 9(1))
- F11** S. 288(1)(1A) substituted for s. 288(1) (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **3(5)(a)** (with regs. 52-58)
- F12** Words in s. 288(2) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **3(5)(b)** (with regs. 52-58)
- F13** Words in s. 288(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. 4(3)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F14** Words in s. 288(2)(d) 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. 4(3)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F15** Words in s. 288(3)(b) inserted (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. 4(4)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

#### Commencement Information

- I2** S. 288 wholly in force at 3.9.2001; s. 288 not in force at Royal Assent see s. 431(2); s. 288(2) in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), art. 2, **Sch.**; s. 288 in force in so far as not already in force at 3.9.2001 by [S.I. 2001/2632](#), art. 2 **Sch. Pt. 2**

#### <sup>F16</sup>288A Application by a central securities depository

Where a legal person which is established in the United Kingdom intends—

- (a) to operate a securities settlement system referred to in point (3) of Section A of the Annex to the CSD regulation, and
  - (b) to provide at least one other core service listed in Section A of that Annex,
- it may apply to the Bank of England in accordance with Article 17 of the CSD regulation and any directly applicable EU regulation made under that Article for an order granting authorisation for the purposes of Article 16 of that regulation and declaring it to be a recognised CSD for the purposes of this Act.]

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#### Textual Amendments

- F16** S. 288A inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **2(13)** (with regs. 7(4), 9(1))

### 289 Applications: supplementary.

- (1) At any time after receiving an application and before determining it, [<sup>F17</sup>the appropriate regulator] may require the applicant to provide such further information as it reasonably considers necessary to enable it to determine the application.
  - (2) Information which [<sup>F18</sup>the appropriate regulator] requires in connection with an application must be provided in such form, or verified in such manner, as [<sup>F18</sup>the appropriate regulator] may direct.
  - (3) Different directions may be given, or requirements imposed, by [<sup>F19</sup>the appropriate regulator] with respect to different applications.
- [<sup>F20</sup>(4) In relation to an application under section 288(1), this section does not apply to information which can be required under Article 17 of the EMIR regulation.]
- [<sup>F21</sup>(5) In relation to an application under section 288A, this section applies only in relation to information which the Bank of England may require in connection with recognition requirements which do not derive from the CSD regulation or any directly applicable EU regulation made under the CSD regulation.]

#### Textual Amendments

- F17** Words in s. 289(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. 5** (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F18** Words in s. 289(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. 5** (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F19** Words in s. 289(3) 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. 5** (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F20** S. 289(4) inserted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **3(6)** (with regs. 52-58)
- F21** S. 289(5) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **2(14)** (with regs. 7(4), 9(1))

### 290 Recognition orders.

- [<sup>F22</sup>(1) If it appears to the appropriate regulator that the applicant satisfies the recognition requirements applicable in its case, the regulator may—
- (a) where the application is made under section 287, make a recognition order declaring the applicant to be a recognised investment exchange;
  - (b) where the application is made under section 288(1) and Article 17 of the EMIR regulation allows authorisation to be granted, make a recognition order

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(“a central counterparty recognition order”) granting authorisation for the purposes of that Article and declaring the applicant to be a recognised central counterparty; <sup>F23</sup> ...

- (c) where the application is made under section 288(1A), make a recognition order declaring the applicant to be a recognised clearing house which is not a recognised central counterparty <sup>F24</sup>; or
- (d) where the application is made under section 288A, make a recognition order (a “CSD recognition order”) granting authorisation for the purposes of Article 16 of the CSD regulation and declaring the applicant to be a recognised CSD.]

<sup>F25</sup>(1A) In the case of an application for an order declaring the applicant to be a recognised investment exchange, the reference in subsection (1) to the recognition requirements applicable in its case includes a reference to requirements contained in any directly applicable <sup>F26</sup>EU] regulation made under the markets in financial instruments directive <sup>F27</sup> or the markets in financial instruments regulation].

(1B) In the case mentioned in subsection (1A), the application must be determined by <sup>F28</sup>the FCA] before the end of the period of six months beginning with the date on which it receives the completed application.

(1C) Subsection (1B) does not apply in the case of an application by an overseas applicant.]

<sup>F29</sup>(1D) A central counterparty recognition order must specify the services or activities linked to clearing which the applicant may provide or perform and the classes of financial instruments covered by the order.]

<sup>F30</sup>(1E) A CSD recognition order must specify—

- (a) the core services listed in Section A of the Annex to the CSD regulation which the applicant is authorised to provide pursuant to Article 16 or 19(1)(a) or (c) of that regulation, and
- (b) any non-banking-type ancillary services listed in or permitted under Section B of that Annex which the applicant is authorised to provide, including services notified under Article 19 of the CSD regulation.

(1F) A CSD recognition order must also record the terms of any of the following authorisations granted to the CSD under the CSD regulation or notifications made by the CSD under that regulation—

- (a) an authorisation under Article 19(1) of the CSD regulation to outsource a core service under Article 30 of that regulation,
- (b) an authorisation under Article 19(1)(d) of the CSD regulation (settlement of cash leg of securities settlement system in the books of another settlement agent),
- (c) an authorisation under Article 19(1)(e) of the CSD regulation (setting up interoperable link),
- (d) a notification under Article 19(5) of the CSD regulation (other CSD links),
- (e) an authorisation under Article 54 or 56 of the CSD regulation to provide (in accordance with Article 54(2)(a) or (b)) any banking-type ancillary service listed in or permitted under Section C of the Annex to that regulation, and
- (f) an authorisation to provide investment services and activities in addition to the services explicitly listed in Sections A and B of the Annex to the CSD regulation.]

<sup>F31</sup>(2) .....

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- (3) In considering an application [<sup>F32</sup>made under section 287 or 288(1A)], [<sup>F33</sup>the appropriate regulator] may have regard to any information which it considers is relevant to the application.
- (4) A recognition order must specify a date on which it is to take effect.
- [<sup>F34</sup>(4A) If the Bank of England has not made a decision in relation to an application under section 288A within six months of that application being complete, the applicant may refer the matter to the Tribunal.
- (4B) For the purposes of subsection (4A), an application is “complete” when the Bank of England informs the applicant that it is complete pursuant to Article 17(3) of the CSD regulation.]
- (5) Section 298 has effect in relation to a decision to refuse to make a recognition order [<sup>F35</sup>in respect of an investment exchange or a clearing house which is not a central counterparty]—
- (a) as it has effect in relation to a decision to revoke such an order; and
  - (b) as if references to a recognised body were references to the applicant.
- [<sup>F36</sup>(5A) Section 298 has effect in relation to a decision to refuse an application under section 288A—
- (a) as it has effect in relation to a decision to make a revocation order under section 297(1B); and
  - (b) as if references to a recognised body were references to the applicant.]

[<sup>F37</sup>(6) . . . . .

[<sup>F38</sup>(7) Where—

    - (a) a body corporate or unincorporated association has made an application under section 288(1), and
    - (b) the Bank of England has determined that application in accordance with Article 17 of the EMIR regulation,

any previous recognition order under section 290(1)(c) or 292(2)(b) shall cease to be valid.]

#### Textual Amendments

- F22** S. 290(1) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **3(7)(a)** (with regs. 52-58)
- F23** Word in s. 290(1)(b) omitted (28.11.2017) by virtue of [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **2(15)(a)(i)** (with regs. 7(4), 9(1))
- F24** S. 290(1)(d) and word inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **2(15)(a)(ii)** (with regs. 7(4), 9(1))
- F25** S. 290(1A)-(1C) 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(2), **Sch. 2 para. 4**
- F26** Word in s. 290(1A) 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. 31(a)** (with reg. 7)

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- F27** Words in s. 290(1A) 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. 31(b)** (with reg. 7)
- F28** Words in s. 290(1B) 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. 6(3)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F29** S. 290(1D) inserted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **3(7)(b)** (with regs. 52-58)
- F30** S. 290(1E)(1F) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **2(15)(b)** (with regs. 7(4), 9(1))
- F31** S. 290(2) 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 \(c. 21\)](#), s. 122(3), **Sch. 8 para. 6(4)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F32** Words in s. 290(3) inserted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **3(7)(c)** (with regs. 52-58)
- F33** Words in s. 290(3) 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. 6(5)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F34** S. 290(4A)(4B) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **2(15)(c)** (with regs. 7(4), 9(1))
- F35** Words in s. 290(5) inserted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **3(7)(d)** (with regs. 52-58)
- F36** S. 290(5A) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **2(15)(d)** (with regs. 7(4), 9(1))
- F37** S. 290(6) 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 \(c. 21\)](#), s. 122(3), **Sch. 8 para. 6(6)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F38** S. 290(7) inserted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **3(7)(e)** (with regs. 52-58)

#### Commencement Information

- I3** S. 290 wholly in force at 1.12.2001; s. 290 not in force at Royal Assent see s. 431(2); s. 290 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), art. 2(2), **Sch. Pt. 2**; s. 290 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), art. 2(1)

#### [<sup>F39</sup>290ZA] Variation of central counterparty recognition order

- (1) On an application made to it in accordance with Article 15 of the EMIR regulation, the Bank of England may in accordance with Article 17 of that regulation vary a central counterparty recognition order by specifying an additional service or activity or class of financial instruments.
- (2) Where Article 20(5) of the EMIR regulation applies, the Bank of England may vary a central counterparty recognition order by removing a service or activity or class of financial instruments from those specified in the order.
- (3) The Bank of England may at any time vary a central counterparty recognition order for the purpose of correcting an error in, or omission from, the order.]



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#### Textual Amendments

- F39** S. 290ZA inserted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **3(8)** (with regs. 52-58)

### [<sup>F40</sup>290Z] **Variation of CSD recognition order**

- (1) Where the Bank of England—
  - (a) grants an authorisation in accordance with Article 19(1), 54 or 56 of the CSD regulation,
  - (b) receives a notification under Article 19 of that regulation, or
  - (c) decides to withdraw authorisation for a service, activity or financial instrument in accordance with Article 20(4) or 57(4) of that regulation,the Bank of England must vary the CSD recognition order accordingly.
- (2) Where an authorisation to provide investment services and activities in addition to the services explicitly listed in Sections A and B of the Annex to the CSD regulation is granted, varied or withdrawn, the Bank of England must vary the CSD recognition order accordingly.
- (3) The Bank of England may at any time vary a CSD recognition order for the purpose of correcting an error in, or omission from, the order.]

#### Textual Amendments

- F40** S. 290ZB inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **2(16)** (with regs. 7(4), 9(1))

### [<sup>F41</sup>290A] **Refusal of recognition on ground of excessive regulatory provision**

- (1) [<sup>F42</sup>The appropriate regulator must] not make a recognition order if it appears to [<sup>F43</sup>it that] an existing or proposed regulatory provision of the applicant in connection with—
  - (a) the applicant's business as an investment exchange, <sup>F44</sup>...
  - (b) the provision by the applicant of clearing services, [<sup>F45</sup>or
  - (c) the provision by the applicant of services falling within section 285(2)(b) or (3)(b),]imposes or will impose an excessive requirement on the persons affected (directly or indirectly) by it.
- (2) The reference in section 290(1) (making of recognition order) to satisfying the applicable recognition requirements shall be read accordingly.
- (3) Expressions used in subsection (1) above that are defined for the purposes of section 300A (power of [<sup>F46</sup>appropriate regulator] to disallow excessive regulatory provision) have the same meaning as in that section.
- (4) The provisions of section 300A(3) and (4) (determination whether regulatory provision excessive) apply for the purposes of this section as for the purposes of section 300A.

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- (5) Section 298 has effect in relation to a decision under this section to refuse a recognition order—
- (a) as it has effect in relation to a decision to revoke such an order, and
  - (b) as if references to a recognised body were references to the applicant.
- [<sup>F47</sup>(6) This section does not apply to an application for recognition as an overseas investment exchange, an overseas clearing house [<sup>F48</sup>, a recognised central counterparty or a recognised CSD].]

#### Textual Amendments

- F41** S. 290A inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006 \(c. 55\)](#), **ss. 4, 5(2)**
- F42** Words in s. 290A(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. 7(2)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F43** Words in s. 290A(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. 7(2)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F44** Word in s. 290A(1)(a) 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 \(c. 21\)](#), s. 122(3), **Sch. 8 para. 7(2)(c)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F45** S. 290A(1)(c) and word inserted (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. 7(2)(d)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F46** Words in s. 290A(3) 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. 7(3)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F47** S. 290A(6) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **3(9)** (with regs. 52-58)
- F48** Words in s. 290A(6) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **2(17)** (with regs. 7(4), 9(1))

## 291 Liability in relation to recognised body’s regulatory functions.

- (1) A recognised body and its officers and staff are not to be liable in damages for anything done or omitted in the discharge of the recognised body’s regulatory functions unless it is shown that the act or omission was in bad faith.
- (2) But subsection (1) does not prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the <sup>M1</sup>Human Rights Act 1998.
- (3) “Regulatory functions” means the functions of the recognised body so far as relating to, or to matters arising out of, the obligations to which the body is subject under or by virtue of this Act.

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

- C1** S. 291 modified (22.2.2008) by [The Northern Rock plc Transfer Order 2008 \(S.I. 2008/432\)](#), **art. 20**

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**C2** S. 291 modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), [art. 39](#)

#### Marginal Citations

**M1** 1998 c. 42.

## 292 Overseas investment exchanges and overseas clearing houses.

- (1) An application under section 287 or [F49288(1A)] by an overseas applicant must contain the address of a place in the United Kingdom for the service on the applicant of notices or other documents required or authorised to be served on it under this Act.
- (2) If it appears to [F50the appropriate regulator] that an overseas applicant satisfies the requirements of subsection (3) it may make a recognition order declaring the applicant to be—
  - (a) a recognised investment exchange;
  - (b) a recognised clearing house [F51which is not a central counterparty].
- (3) The requirements are that—
  - [F52(a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with—
    - (i) recognition requirements, other than any such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph, and
    - (ii) requirements contained in any directly applicable EU regulation made under the markets in financial instruments directive or the markets in financial instruments regulation;]
  - (b) there are adequate procedures for dealing with a person who is unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the investment exchange or clearing house;
  - (c) the applicant is able and willing to co-operate with [F53the appropriate regulator] by the sharing of information and in other ways;
  - (d) adequate arrangements exist for co-operation between [F54the appropriate regulator] and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.
- (4) In considering whether it is satisfied as to the requirements mentioned in subsection (3) (a) and (b), [F55the appropriate regulator] is to have regard to—
  - (a) the relevant law and practice of the country or territory in which the applicant's head office is situated;
  - (b) the rules and practices of the applicant.
- (5) In relation to an overseas applicant and a body or association declared to be a recognised investment exchange or recognised clearing house by a recognition order made by virtue of subsection (2)—
  - (a) the reference in section 313(2) to recognition requirements is to be read as a reference to matters corresponding to the matters in respect of which provision is made in the recognition requirements;
  - (b) sections 296(1) and 297(2) have effect as if the requirements mentioned in section 296(1)(a) and section 297(2)(a) were those of subsection (3)(a), (b), and (c) of this section;

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- (c) section 297(2) has effect as if the grounds on which a recognition order may be revoked under that provision included the ground that in the opinion of [<sup>F56</sup>the appropriate regulator] arrangements of the kind mentioned in subsection (3) (d) no longer exist.

[<sup>F57</sup>(6) Where a recognised clearing house is authorised as an EEA central counterparty or recognised as a third country central counterparty, any previous recognition order under section 290(1)(c) or 292(2)(b) shall cease to be valid.]

#### Textual Amendments

- F49** Word in s. 292(1) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **3(10)(a)** (with regs. 52-58)
- F50** Words in s. 292(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. 8** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F51** Words in s. 292(2)(b) inserted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **3(10)(b)** (with regs. 52-58)
- F52** S. 292(3)(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. 32** (with reg. 7)
- F53** Words in s. 292(3)(c) 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. 8** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F54** Words in s. 292(3)(d) 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. 8** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F55** Words in s. 292(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. 8** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F56** Words in s. 292(5)(c) 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. 8** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F57** S. 292(6) inserted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **3(10)(c)** (with regs. 52-58)

#### Commencement Information

- I4** S. 292 wholly in force at 1.12.2001; s. 292 not in force at Royal Assent see s. 431(2); s. 292(1) in force and s. 292(2)-(5) in force specified purposes at 3.9.2001 by [S.I. 2001/2632](#), art. 2(2), **Sch. Pt. 2**; s. 292 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

**Status:**

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