

Status: Point in time view as at 29/08/2023.

Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Power to disallow excessive regulatory provision is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XVIII

[^{F1}RECOGNISED INVESTMENT EXCHANGES,
CLEARING HOUSES [^{F1}, CSDS AND OTHER PARTIES]]

CHAPTER I

EXEMPTION

[^{F1}Power to disallow excessive regulatory provision

Textual Amendments

F1 S. 300A and cross-heading inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006 \(c. 55\), ss. 1, 5\(2\)](#) (with s. 5(3))

300A Power of [^{F2}appropriate regulator] to disallow excessive regulatory provision

- (1) This section applies where a recognised body proposes to make any regulatory provision in connection [^{F3}with—
 - (a) its business as an investment exchange,
 - (b) the provision by it of clearing services, or
 - (c) the provision by it of services falling within section 285(2)(b) or (3)(b).]
- (2) If it appears to the [^{F4}appropriate regulator]—
 - (a) that the proposed provision will impose a requirement on persons affected (directly or indirectly) by it, and
 - (b) that the requirement is excessive,the [^{F4}appropriate regulator] may direct that the proposed provision must not be made.

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- (3) A requirement is excessive if—
- (a) it is not required under ^{F5}... any enactment or rule of law in the United Kingdom, and
 - (b) either—
 - (i) it is not justified as pursuing a reasonable regulatory objective, or
 - (ii) it is disproportionate to the end to be achieved.
- (4) In considering whether a requirement is excessive the [^{F6}appropriate regulator] must have regard to all the relevant circumstances, including—
- (a) the effect of existing legal and other requirements,
 - (b) the global character of financial services and markets and the international mobility of activity,
 - (c) the desirability of facilitating innovation, and
 - (d) the impact of the proposed provision on market confidence.
- (5) In this section “requirement” includes any obligation or burden.
- (6) Any provision made in contravention of a direction under this section is of no effect.]

Textual Amendments

- F2** Words in s. 300A heading 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. 18\(b\)](#) (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. 300A(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. 18\(a\)](#) (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. 300A(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. 18\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\), Sch. Pt. 3](#); [S.I. 2013/423, art. 3, Sch.](#)
- F5** Words in s. 300A(3)(a) omitted (31.12.2020) by virtue of [The Investment Exchanges, Clearing Houses and Central Securities Depositories \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/662\), regs. 1\(3\), 5\(16\)](#) (with savings in [S.I. 2019/680, reg. 11](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)
- F6** Words in s. 300A(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. 18\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\), Sch. Pt. 3](#); [S.I. 2013/423, art. 3, Sch.](#)

[^{F7}300B Duty to notify proposal to make regulatory provision

- (1) A recognised body that proposes to make any regulatory provision must give written notice of the proposal to the [^{F8}appropriate regulator] without delay.
- (2) The [^{F8}appropriate regulator] may by rules under section 293 (notification requirements)—
 - (a) specify descriptions of regulatory provision in relation to which, or circumstances in which, the duty in subsection (1) above does not apply, or
 - (b) provide that the duty applies only to specified descriptions of regulatory provision or in specified circumstances.
- (3) The [^{F8}appropriate regulator] may also by rules under that section—
 - (a) make provision as to the form and contents of the notice required, and

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- (b) require the body to provide such information relating to the proposal as may be specified in the rules or as the [^{F8}appropriate regulator] may reasonably require.

Textual Amendments

- F7** Ss. 300B-300E inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006 \(c. 55\)](#), [ss. 2, 3, 5\(2\)](#) (with [s. 5\(3\)](#))
- F8** Words in s. 300B 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. 19](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

300C Restriction on making provision before [^{F9}appropriate regulator] decides whether to act

- (1) Where notice of a proposal to make regulatory provision is required to be given to the [^{F10}appropriate regulator] under section 300B, the provision must not be made—
- (a) before that notice is given, or
- (b) subject to the following provisions of this section, before the end of the initial period.
- (2) The initial period is—
- (a) the period of 30 days beginning with the day on which the [^{F11}appropriate regulator] receives notice of the proposal, or
- (b) if any consultation period announced by the body in relation to the proposal ends after that 30-day period, the end of the consultation period.
- (3) If before the end of the initial period the [^{F12}appropriate regulator] notifies the body that it is calling in the proposal, the provisions of section 300D (consideration by [^{F12}appropriate regulator] whether to disallow proposed provision) apply as to when the provision may be made.
- (4) If—
- (a) before the end of the initial period the [^{F13}appropriate regulator] notifies the body that it is not calling in the proposal, or
- (b) the initial period ends without the [^{F14}appropriate regulator] having notified the body that it is calling in the proposal,
- the body may then make the proposed provision.
- (5) Any provision made in contravention of this section is of no effect.

Textual Amendments

- F7** Ss. 300B-300E inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006 \(c. 55\)](#), [ss. 2, 3, 5\(2\)](#) (with [s. 5\(3\)](#))
- F9** Words in s. 300C heading 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. 20](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F10** Words in s. 300C(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. 20](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

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- F11** Words in s. 300C(2)(a) 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. 20** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F12** Words in s. 300C(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. 20** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F13** Words in s. 300C(4)(a) 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. 20** (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. 300C(4)(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. 20** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

300D Consideration by [^{F15}appropriate regulator] whether to disallow proposed provision

- (1) This section applies where the [^{F16}appropriate regulator] notifies a recognised body that it is calling in a proposal to make regulatory provision.
- (2) The [^{F16}appropriate regulator] must publish a notice—
 - (a) giving details of the proposed provision,
 - (b) stating that it has called in the proposal in order to consider whether to disallow it, and
 - (c) specifying a period during which representations with respect to that question may be made to it.
- (3) The [^{F16}appropriate regulator] may extend the period for making representations.
- (4) The [^{F16}appropriate regulator] must notify the body of its decision whether to disallow the provision not later than 30 days after the end of the period for making representations, and must publish the decision and the reasons for it.
- (5) The body must not make the provision unless and until—
 - (a) the [^{F17}appropriate regulator] notifies it of its decision not to disallow it, or
 - (b) the 30-day period specified in subsection (4) ends without the [^{F18}appropriate regulator] having notified any decision.
- (6) If [^{F19}the appropriate regulator] notifies the body of its decision to disallow the provision and that decision is questioned in legal proceedings—
 - (a) the body must not make the provision until those proceedings, and any proceedings on appeal, are finally determined,
 - (b) if [^{F20}the appropriate regulator's] decision is quashed and the matter is remitted to it for reconsideration, the court may give directions as to the period within which [^{F21}the regulator concerned] is to complete its reconsideration, and
 - (c) the body must not make the provision until—
 - (i) [^{F22}the appropriate regulator] notifies it of its decision on reconsideration not to disallow the provision, or
 - (ii) the period specified by the court ends without [^{F23}the appropriate regulator] having notified any decision.
- (7) Any provision made in contravention of subsection (5) or (6) is of no effect.

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Textual Amendments

- F7** Ss. 300B-300E inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006 \(c. 55\)](#), [ss. 2, 3, 5\(2\)](#) (with [s. 5\(3\)](#))
- F15** Words in s. 300D heading 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. 21\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F16** Words in s. 300D(1)-(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. 21\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F17** Words in s. 300D(5)(a) 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. 21\(2\)](#) (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. 300D(5)(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. 21\(2\)](#) (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. 300D(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), [s. 122\(3\)](#), [Sch. 8 para. 21\(3\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F20** Words in s. 300D(6)(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. 21\(3\)\(b\)\(i\)](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F21** Words in s. 300D(6)(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. 21\(3\)\(b\)\(ii\)](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F22** Words in s. 300D(6)(c)(i) 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. 21\(3\)\(c\)](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F23** Words in s. 300D(6)(c)(ii) 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. 21\(3\)\(c\)](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

300E Power to disallow excessive regulatory provision: supplementary

- (1) In sections 300A to 300D—
- “regulatory provision” means any rule, guidance, arrangements, policy or practice, and
 - references to making provision shall be read accordingly as including, as the case may require, issuing guidance, entering into arrangements or adopting a policy or practice.
- (2) For the purposes of those sections a variation of a proposal is treated as a new proposal.
- (3) Those sections do not apply to an overseas investment exchange [F24, overseas clearing house [F25, recognised central counterparty or recognised CSD]].

Textual Amendments

- F7** Ss. 300B-300E inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006 \(c. 55\)](#), [ss. 2, 3, 5\(2\)](#) (with [s. 5\(3\)](#))

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- F24** Words in s. 300E(3) 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(13)** (with regs. 52-58)
- F25** Words in s. 300E(3) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **2(26)** (with regs. 7(4), 9(1))

[^{F26}300HRules relating to investment exchanges and data reporting service providers

- (1) The FCA may make such rules applying to recognised UK investment exchanges or data reporting service providers—
 - (a) with respect to the carrying on by them of relevant activities, or
 - (b) with respect to the carrying on by them of an activity which is not a relevant activity,
 as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives.
- (2) In this section “relevant activity”—
 - (a) in relation to a recognised UK investment exchange, means a regulated activity described in section 285(2);
 - (b) in relation to a data reporting service provider, means providing a data reporting service.
- (3) Rules under this section may include—
 - (a) provision applying to a recognised UK investment exchange or data reporting service provider even though there is no relationship between that person and the persons whose interests will be protected by the rules;
 - (b) requirements which take into account, in the case of a recognised UK investment exchange or data reporting service provider which is a member of a group, any activity of another member of the group.
- (4) Rules under this section may not modify, amend or revoke any retained direct EU legislation (except retained direct EU legislation which takes the form of FCA rules).
- (5) In this section—

“data reporting service” and “data reporting service provider” have the meanings given by regulation 2 of the Data Reporting Services Regulations 2017 ([S.I. 2017/699](#));

“recognised UK investment exchange” means a recognised investment exchange that is not an overseas investment exchange as defined in section 313(1).]

Textual Amendments

- F26** [S. 300H](#) inserted (29.8.2023) by [Financial Services and Markets Act 2023 \(c. 29\)](#), **ss. 11(2)**, 86(3); [S.I. 2023/779](#), reg. 4(g)

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