

Recognised Investment Exchanges

Chapter 4

Supervision

4.8 The section 298 procedure

- 4.8.1** **G** A decision to:
- (1) revoke a *recognition order* under section 297 of the *Act* (Revoking recognition) or (for *RAPs*) regulation 4 of the *RAP regulations*; or
 - (2) make a direction under section 296 (*FCA's* powers to give directions) or (for *RAPs*) regulation 3 of the *RAP regulations*; or
 - (3) refuse to make a *recognition order* under section 290 (Recognition orders) or 290A (Refusal of recognition on ground of excessive regulatory provision) or (for *RAPs*) regulation 2 of the *RAP regulations*;
- is a serious one and section 298 of the *Act* (Directions and revocation: procedure) sets out procedures (see ■ REC 4.8.9 G) which the *FCA* will follow unless:
- in the case of a revocation of a *recognition order*, the *recognised body* concerned has given its consent (see section 297(1) or regulation 4(1) of the *RAP regulations*) or:
- (a) in the case where the *FCA* proposes to make a direction under section 296, it considers it is reasonably necessary not to follow, or to cut short, the procedure (see ■ REC 4.8.7G); or
 - (b) (for *RAPs*) in a case where the *FCA* proposes to make a direction under regulation 3 of the *RAP regulations*, it considers it is essential not to follow, or to cut, short, the procedure.
- 4.8.2** **G** The *FCA's* internal arrangements provide for any of these decisions to be taken at an appropriately senior level.
- 4.8.3** **G** In considering whether it would be appropriate to exercise the powers under section 296 or section 297 of the *Act* or (for *RAPs*) regulation 3 or 4 of the *RAP regulations*, the *FCA* will have regard to all relevant information and factors including:
- (1) its *guidance to recognised bodies*;
 - (2) the results of its routine supervision of the body concerned;

(3) the extent to which the failure or likely failure to satisfy one or more of the *recognised body requirements* may affect the *statutory objectives*.

4.8.4 **G** In considering whether or not to make a *recognition order*, the *FCA* will have regard to all relevant information and factors, including its *guidance* to *recognised bodies* and applicants and the information provided by applicants. Details of the application processes and other *guidance* for applicants are set out in ■ REC 5 and (for overseas applications) ■ REC 6.

4.8.5 **G** The procedures laid down in section 298 of the *Act* and (for *RAPs*) regulation 5 of the *RAP regulations* are summarised, with the *FCA's* *guidance* about the actions it proposes to take in following these procedures, in the tables at ■ REC 4.8.9 G and ■ REC 4.8.10G.

4.8.6 **G** Before exercising its powers under section 296 or section 297 of the *Act* or (for *RAPs*) regulation 3 or 4 of the *RAP regulations*, the *FCA* will usually discuss its intention, and the basis for this, with the *members of the management body* or other appropriate representatives of the *recognised body*. It will usually discuss its intention not to make a *recognition order* with appropriate representatives of the applicant.

4.8.7 **G** [deleted]

4.8.8 **G** [deleted]

4.8.9 **G** **Key steps in the section 298 procedure**

	The <i>FCA</i> will:	<i>Guidance</i>
(1)	give written notice to the <i>RIE</i> (or applicant);	The notice will state why the <i>FCA</i> intends to take the action it proposes to take, and include an invitation to make representations, and the period within which representations should be made (unless subsequently extended by the <i>FCA</i>).
(2)	receive representations from the <i>RIE</i> or applicant concerned;	The <i>FCA</i> will not usually consider oral representations without first receiving written representations from the <i>RIE</i> (or applicant). It will normally only hear oral representations from the <i>RIE</i> on request.

	The <i>FCA</i> will:	<i>Guidance</i>
(3)	write promptly to <i>RIE</i> (or applicant) who requests the opportunity to make oral representations if it decides not to hear that <i>person's</i> representations;	The <i>FCA</i> will indicate why it will not hear oral representations and the <i>FCA</i> will allow the <i>RIE</i> (or applicant) further time to respond.
(4)	have regard to representations made;	
(5)	(when it has reached its decision) notify the <i>RIE</i> (or applicant) concerned in writing.	

4.8.10

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For *RAPs*, key steps in the regulation 5 procedure

	The <i>FCA</i> will:	<i>Guidance</i>
(1)	give written notice to the <i>RAP</i> (or applicant);	The notice will state why the <i>FCA</i> intends to take the action it proposes to take, and include an invitation to make representations, and the date by which representations should be made.
(2)	take such steps as it considers reasonably practicable to bring the notice to the attention of the <i>members</i> of the <i>RAP</i> or of the applicant, as the case may be;	The <i>FCA</i> will also notify <i>persons</i> individually (as far as it considers it reasonably practicable to do so) if it considers that the action it proposes to take would affect them adversely in a way which would be different from its effect on other <i>persons</i> of the same class.
(3)	publish the notice so as to bring it to the attention of other <i>persons</i> likely to be affected;	
(4)	receive representations from the <i>RAP</i> or applicant concerned, any <i>member</i> of the <i>RAP</i> or applicant, and any other <i>person</i> who is likely to be affected by the action the <i>FCA</i> proposes to take;	The <i>FCA</i> will not usually consider oral representations without first receiving written representations from the <i>person</i> concerned. It will normally only hear oral representations from the <i>RAP</i> (or applicant) itself or of a <i>person</i> whom it has notified individually, on request.
(5)	write promptly to any <i>person</i> who requests the opportunity to make oral representations if it decides not to hear that <i>person's</i> representations;	The <i>FCA</i> will indicate why it will not hear oral representations and the <i>FCA</i> will allow the <i>person</i> concerned further time to respond.
(6)	have regard to representations made;	
(7)	(when it has reached its decision) notify the <i>RAP</i> (or applicant) concerned in writing;	
(8)	(if it has decided to give a direction, or revoke or refuse to make a recognition order)	The <i>FCA</i> will usually give notice of its decision to the same <i>persons</i> and in the same manner as

take such steps as it considers reasonably practicable to bring its decision to the attention of *members* of the *RAP* or applicant and to other *persons* likely to be affected. it gave notice of its intention to act.