

DECISION PROCEDURE AND PENALTIES MANUAL (CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers in or under the Financial Services and Markets Act 2000:
- (1) section 69(1) (Statement of policy);
 - (2) section 93(1) (Statement of policy);
 - (3) section 124(1) (Statement of policy);
 - (4) section 157(1) (Guidance);
 - (5) section 169(9) (Investigations etc. in support of overseas regulator);
 - (6) section 210(1) (Statements of policy); and
 - (7) section 395(5) (The Authority's procedures).

Commencement

- B. Annexes B, C, D, E, F, G, H, I, J, K, M, N, O, Q, R, S, U, V and W and Part 1 of Annexes A, L and P come into force on 28 August 2007.
- C. Annex T and Part 2 of Annexes A and L come into force on 1 November 2007.
- D. Part 2 of Annex P comes into force 1 January 2008.

Revocation of manuals

- E. The provisions of the Enforcement manual (ENF) are revoked by Annex M to this instrument.
- F. The provisions of the Decision making manual (DEC) are revoked by Annex N to this instrument.

Amendments to the Handbook

- G. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls (SYSC)	Annex B
Threshold Conditions (COND)	Annex C
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex D
General Provisions (GEN)	Annex E
Fees manual (FEES)	Annex F
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex G
Conduct of Business sourcebook (COB)	Annex H
Insurance: Conduct of Business sourcebook (ICOB)	Annex I

Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex J
Market Conduct sourcebook (MAR)	Annex K
Supervision manual (SUP)	Annex L
Enforcement manual (ENF)	Annex M
Decision making manual (DEC)	Annex N
Collective Investment Schemes sourcebook (COLL)	Annex O
Credit Unions sourcebook (CRED)	Annex P
Electronic Commerce Directive sourcebook (ECO)	Annex Q
Electronic Money sourcebook (ELM)	Annex R
Professional Firms sourcebook (PROF)	Annex S
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex T
Listing Rules (LR)	Annex U
Prospectus Rules (PR)	Annex V
Disclosure Rules and Transparency Rules (DTR)	Annex W

Citation

- H. This instrument may be cited as the Decision Procedure and Penalties Manual (Consequential Amendments) Instrument 2007.

By order of the Board
26 July 2007

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

Part 1 (comes into force on 28 August 2007)

Amend the following as they appear in the Glossary of definitions:

<u>breach</u>	<u>in DEPP:</u> <ol style="list-style-type: none">(1) <u>misconduct in respect of which the FSA is empowered to take action pursuant to section 66 (Disciplinary powers) of the Act;</u> <u>or</u>(2) <u>a contravention in respect of which the FSA is empowered to impose a penalty pursuant to section 91 (Penalties for breach of listing rules) of the Act; or</u>(3) <u>a contravention for the purposes of Part XIV (Disciplinary Measures); or</u>(4) <u>behaviour amounting to market abuse, or to requiring or encouraging market abuse, in respect of which the FSA takes action pursuant to section 123 (Power to impose penalties in cases of market abuse) of the Act.</u>
<i>connected person</i>	<ol style="list-style-type: none">(1) ...(5) (in <i>DTR</i>; <u>and LR</u> and ENF 21 in relation to a <i>person discharging managerial responsibilities</i> within an <i>issuer</i>) (as defined in section 96B(2) of the <i>Act</i>):<ol style="list-style-type: none">(a) ...
<i>consumer</i>	<ol style="list-style-type: none">(1) ...(4) (in <i>ECO</i> and ENF 19 <u>EG 17</u>) an individual who is acting for purposes other than those of his trade, business or profession.(5) (in ENF-UNFCOG and <u>EG 10.12 to 10.19</u>) any natural person who, in contracts covered by the <i>Unfair Terms Regulations</i>, is acting for purposes which are outside his trade, business or profession.
DEC	the Decision Making manual
<u>DEPP</u>	<u>the Decision Procedure and Penalties manual.</u>

- director*
- (1) (except in *COLL*, *DTR*, *LR*, *PR*, ~~*ENF 21*~~ and *CIS*) (in relation to any of the following (whether constituted in the *United Kingdom* or under the law of a country or territory outside it)):
 - ...
 - (2) ...
 - (3) (in *DTR*, *LR*, and *PR* ~~and *ENF 21*~~) (in accordance with section 417(1)(a) of the Act) a *person* occupying in relation to it the position of a director (by whatever name called) and, in relation to an *issuer* which is not a *body corporate*, a *person* with corresponding powers and duties.

EG the Enforcement Guide.

executive procedures the procedures relating to the giving of warning notices, decision notices and *supervisory notices* that ~~the FSA proposes to follow in the circumstances specified in DEC 4.1.6 G (Decisions to be taken by executive procedures), and that are described in DEC 4.3 (Executive procedures for statutory notice decisions and statutory notice associated decisions)~~ DEPP 4 (Decisions by FSA staff under executive procedures).

- issue* (in relation to *units*):
- (1) (except in ~~*ENFEG 14*~~) the issue of new *units* by the *trustee* of an *AUT* or by an *ICVC*;
 - (2) (in ~~*ENFEG 14*~~):
 - (a) an issue in accordance with (1); and
 - (b) the sale of *units*.

- listed*
- (1) (except in *LR*, ~~*ENF 21*~~ and *INSPRU*) included in an *official list*.
 - (2) (in *INSPRU*):
 - (a) included in an *official list*; or
 - (b) in respect of which facilities for *dealing* on a *regulated market* have been granted.
 - (3) (in ~~*LR*~~ ~~and *ENF 21*~~) admitted to the *official list* maintained by the *FSA* in accordance with section 74 of the *Act*.

<i>listed company</i>	(in <i>LR</i> and <i>DEPP</i>) a <i>company</i> that has any <i>class</i> of its securities listed.
<i>member</i>	<p>(1) (except in <i>PROF</i>, <i>LR</i>, <i>ENF 18</i><i>EG 16</i> and <i>REC</i>) a <i>person</i> admitted to membership of the <i>Society</i> or any <i>person</i> by law entitled or bound to administer his affairs.</p> <p>(2) (in <i>PROF</i>, <i>LR</i> and <i>ENF 18</i><i>EG 16</i>) (as defined in section 325(2) of the <i>Act</i> (Authority's general duty)) (in relation to a profession) a <i>person</i> who is entitled to practise that profession and, in practising it, is subject to the rules of the relevant <i>designated professional body</i>, whether or not he is a member of that body.</p> <p>(3) (in <i>REC</i>) (in relation to a <i>recognised body</i>) a <i>person</i> who is entitled, under an arrangement or agreement between him and that body, to use that body's <i>facilities</i>.</p>
<i>offer</i>	<p>(1) (in <i>MAR 1</i> (Code of market conduct)) an offer as defined in the <i>Takeover Code</i>.</p> <p>(2) (in <i>MAR 2</i> (Buy-backs and Stabilisation)) an offer or invitation to make an offer.</p> <p>(3) (in <i>LR</i>, <i>PR</i> and <i>ENF 21</i>) an <i>offer of transferable securities to the public</i>.</p>
<i>offeror</i>	<p>(1) (in <i>MAR 1</i> (The Code of Market Conduct) and <i>LR 5.2.10R</i>) an offeror as defined in the <i>Takeover Code</i></p> <p>(2) (in <i>MAR 2</i> (Buy-backs and Stabilisation)) (as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i>) the prior holders of, or the entity issuing, the <i>relevant securities</i>).</p> <p>(3) (in <i>LR</i>, <i>PR</i>, <i>FEES</i> provisions in relation to <i>PR</i>, and <i>ENF 21</i>) a <i>person</i> who makes an <i>offer of transferable securities to the public</i>.</p>
<i>official list</i>	<p>(1) (in <i>LR</i> and <i>ENF 21</i>) the list maintained by the <i>FSA</i> in accordance with section 74(1) of the <i>Act</i> for the purposes of Part VI of the <i>Act</i>.</p> <p>(2) (except in <i>LR</i> and <i>ENF 21</i>):</p> <p>(a) the list maintained by the <i>FSA</i> in accordance with section 74(1) of the <i>Act</i> (The official list) for the purposes of Part VI of the <i>Act</i> (Official Listing);</p>

	(b) any corresponding list maintained by a <i>competent authority</i> for listing in another <i>EEA State</i> .
<i>operator</i>	<p>(1) (except in ENFEG):</p> <p>(a) ...</p> <p>(2) (in ENFEG) (in accordance with section 237(2) of the <i>Act</i> (Other definitions)):</p> <p>(a) ...</p>
<i>public censure</i>	<p>(1) <u>a statement published under section 205 (Public censure) of the <i>Act</i>;</u></p> <p>(2) <u>a statement of misconduct published under section 66 (Disciplinary powers) of the <i>Act</i>;</u></p> <p>(3) <u>a statement published under section 123 (Power to impose penalties in cases of market abuse) of the <i>Act</i>;</u></p> <p>(4) <u>a statement published under section 87M (Public censure of issuer) of the <i>Act</i>, under section 89 (Public censure of sponsor) of the <i>Act</i> or under section 91 (Penalties for breach of listing rules) of the <i>Act</i>.</u></p>
<i>redemption</i>	<p>(1) (except in ENF 17EG 14 (Collective investment schemes)) (in relation to <i>units</i> in an <i>authorised fund</i>) the purchase of them from their <i>holder</i> by the <i>authorised fund</i> manager acting as a <i>principal</i>.</p> <p>(2) (in ENF 17EG 14 (Collective investment schemes)) redemption as in (1) but including their cancellation by the <i>trustee</i> of an <i>AUT</i> or by an <i>ICVC</i>.</p>
<i>Regulatory Decisions Committee</i>	a committee of the Board of the <i>FSA</i> , described in DEC 4.2 (The Regulatory Decisions Committee) <u>DEPP 3.1 (The nature and procedure of the RDC).</u>
<i>security</i>	<p>(1) (except in LR and ENF 21 (in accordance with article 3(1) of the <i>Regulated Activities Order</i> (Interpretation)) any of the following <i>investments</i> specified in that Order:</p> <p>(a) ...</p> <p>...</p> <p>(2) (in LR and ENF 21) (in accordance with section 102A of the <i>Act</i>) anything which has been, or may be admitted to the</p>

official list.

<i>senior staff committee</i>	(in DEC DEPP and EG) a committee consisting of senior FSA staff members that is empowered to make <i>statutory notice decisions</i> and <i>statutory notice associated decisions</i> by <i>executive procedures</i> .
<i>settlement decision makers</i>	(in DEC DEPP and EG) two members of the FSA's executive of at least director of division level with responsibility for deciding whether to give <i>statutory notices</i> in the circumstances described in DEC Appendix 1.2.2A GDEPP 5.
<i>settlement decision procedure</i>	(in DEC DEPP) the procedure for the making of <i>statutory notice decisions</i> in the circumstances described in DEC App 1.2.2A GDEPP 5.
<i>settlement discount scheme</i>	(in ENF DEPP and EG) the scheme described in ENF 13.7 DEPP 6.7 by which the financial penalty that might otherwise be payable in respect of a <i>person's</i> misconduct or contravention may be reduced to reflect the timing of any settlement agreement.
<u>UNFCOG</u>	<u>the Unfair Contract Terms Regulatory Guide.</u>

Part 2 (comes into force on 1 November 2007)

<i>breach</i>	in DEPP
	(1) ...
	(2) ...
	(3) ...
	(4) behaviour amounting to <i>market abuse</i> , or to <i>requiring</i> or <i>encouraging market abuse</i> , in respect of which the FSA takes action pursuant to section 123 (Power to impose penalties in cases of market abuse) of the <i>Act</i> ; <u>or</u>
	(5) <u>a contravention of any directly applicable Community regulation made under MiFID.</u>

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

SYSC App 1.1.1G

- 1.1.1 G The application of SYSC 2.1.3R, SYSC 2.2.3G and SYSC 3 to an *incoming EEA firm* or *incoming Treaty firm* depends on whether responsibility for the matter in question is reserved to the *firm's Home State regulator*. This appendix contains *guidance* designed to assist such *firms* in understanding the application of those provisions. This appendix is not concerned with the *FSA's* rights to take enforcement action against an *incoming EEA firm* or an *incoming Treaty firm*, which are covered in the ~~Enforcement manual~~ (ENF) Enforcement Guide (EG), or with the position of a *firm* with a *top-up permission*.

Annex C

Amendments to the Threshold Conditions (COND)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Exercise of the FSA's own-initiative power

- 1.2.3 G (1) If, among other things, a *firm* is failing to satisfy any of the *threshold conditions*, or is likely to fail to do so, section 45 of the *Act* (Variation etc. on the FSA's own initiative) states that the *FSA* may exercise its *own-initiative power*. Use of the *FSA's own-initiative power* is explained in *SUP 7* (Individual requirements), ~~*ENF 3* (Variation of Part IV permission on the FSA's own initiative) and *ENF 5* (Cancellation of Part IV permission on the FSA's own initiative and withdrawal of authorisation)~~ and *EG 8* (Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms).

...

Annex D

Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 3.1.4 G (1) An *approved person* will only be in breach of a *Statement of Principle* where he is personally culpable. Personal culpability arises where an *approved person's* conduct was deliberate or where the *approved person's* standard of conduct was below that which would be reasonable in all the circumstances (see ~~ENF 11.5.3 G (Action against approved persons)~~ DEPP 6.2.4G (Action against approved persons under section 66 of the Act)).

Annex E

Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 1.3.5 G *GEN* 1.3.2R operates on the *FSA's rules*. It does not affect the *FSA's* powers to take action against a *firm* in an emergency, based on contravention of other requirements and standards under the *regulatory system*. For example, the *FSA* may exercise its *own-initiative power* in appropriate cases to vary a *firm's Part IV permission* based on a failure or potential failure to satisfy the *threshold conditions* (see *SUP* 7 (Applying the *FSA's* requirements to individual firms) and ~~*ENF* 4 (Variation of Part IV permission on the *FSA's* own initiative))~~*EG* 8 (Variation and cancellation of permission on the *FSA's* own initiative and intervention against incoming firms)).

Annex F

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Time of payment

- 4.3.6 R ...
- (4) If the *FSA* has exercised its *own-initiative powers* to cancel a *firm's Part IV permission* in the way set out in ~~*ENF 5 (Cancellation of Part IV permission on the FSA's own initiative)*~~*EG 8 (Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms)*, then (1) and (2) do not apply but the *firm* must pay the total amount due immediately before the cancellation becomes effective.
- 5.4.2 G Failure to submit a statement in accordance with the *rules* in this chapter may also lead to the imposition of a financial penalty and other disciplinary sanctions (see ~~*ENF 13.5 DEPP 6.6 .1 to DEPP 6.6.5G*~~).

Annex G

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

In this Annex, underlining indicates new text and striking through indicates deleted text.

Appendix 1 (Interpretation) Glossary of terms for Chapter 5 (former IMRO firms)

investigation means an investigation authorised pursuant to the Enforcement ~~Manual~~
Guide.

Annex H

Amendments to the Conduct of Business sourcebook (COB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

6.12.12 G Other parts of the *Handbook* are also relevant to the fair treatment of *with-profits policy holders*, including:

...

(5) *COB* 6.5 (Content of key features and important information: life policies, schemes, ISA and CTF cash deposit components and stakeholder pension schemes) and *COB* 8 (Reporting to customers); and

(6) *DISP* 1 (Complaint handling procedures for firms) and *DISP* 3.8 (Determination by the Ombudsman); and

(7) ~~ENF 20 (Unfair terms in consumer contracts)~~-~~[deleted]~~

The following Regulatory Guides are also relevant:

(8) *UNFCOG* (Unfair Contract Terms Regulatory Guide).

(9) [intentionally blank]

Annex I

Amendments to the Insurance: Conduct of Business sourcebook (ICOB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

ICOB 1 Annex 2 G

	Module	Application
...		
Regulatory Processes
	Enforcement manual, ENF	Applies to an insurance intermediary when doing (1) or (2).
	Decision making manual, DEC <u>Decision, Procedure and Penalties Manual, DEPP</u>	Applies to an <i>insurance intermediary</i> when doing (1) or (2).

...

- 5.3.28 G *Insurers and insurance intermediaries* will need to consider whether mid-term changes are compatible with the original *non-investment insurance contract*, in particular whether that *non-investment insurance contract* included terms reserving the right to vary *premiums*, charges or contract terms and conditions. *Insurers and insurance intermediaries* also need to ensure that any contract terms which reserve the right to make variations are not themselves unfair under the *Unfair Terms Regulations*. The *FSA* may, as a qualifying body under the *Unfair Terms Regulations*, issue from time to time case summaries or *guidance* of potential relevance to such variation terms (see UNFCOG ENF 20).

Annex J

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.6.5 G ...

- (3) *MCOB* 1.6.3 R and *MCOB* 1.6.4 R do not override the application of *MCOB* to any *regulated mortgage contract*. *MCOB* applies notwithstanding a *firm's* genuine belief that a mortgage is unregulated. In deciding whether to take disciplinary action as a result of a breach of *MCOB*, the *FSA* will take into account whether the action by the *firm* was reckless or deliberate (see ~~*ENF* 11.4.1 G(1)(a)~~*DEPP* 6.2.1(1)(a)).

Annex K

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.1.3 G The FSA's statement of policy about the imposition and amount of penalties in cases of *market abuse* (required by section 124 of the Act) is in ~~ENF 14~~DEPP 6.

5.5.3 G Handbook provisions applicable to ATSS

	Part of Handbook	Applicability to ATSS
Regulatory process
	Supervision manual (<i>SUP</i>)	This applies.
	Enforcement manual (<i>ENF</i>)	This applies.
	Decision making manual (<i>DEC</i>) <u>Decision, Procedure and Penalties Manual (<i>DEPP</i>)</u>	This applies.
...		
<u>Special Handbook guides</u>	Service companies (<i>SERV</i>)	This applies to a <i>service company</i> that operates an <i>ATS</i> .
	Energy market participants (<i>EMPS</i>)	This applies to an <i>energy market participant</i> that operates an <i>ATS</i> .
	Oil market participants (<i>OMPS</i>)	This applies to an <i>oil market participant</i> that operates an <i>ATS</i> .

...

In addition to Handbook modules the following Regulatory Guides are also relevant:

- (1) The Enforcement Guide (*EG*)
- (2) [intentionally blank]

Annex L

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire provision is deleted this is not struck through.

Part 1 (comes into force on 28 August 2007)

- 1.2.1 G (1) The Authorisation manual (*AUTH*), the Supervision manual (*SUP*), ~~the Enforcement manual (*ENF*) and the Decision making manual (*DEC*)~~Decision, Procedure and Penalties manual (*DEPP*) form the regulatory processes part of the *Handbook*.
- (2) ...
- (3) *SUP* sets out the relationship between the *FSA* and *authorised persons* (referred to in the *Handbook* as *firms*). As a general rule, material that is of continuing relevance after *authorisation* is in *SUP*.
- (4) ~~*ENF* describes the *FSA*'s enforcement powers under the *Act* and sets out its policies for using those powers. [deleted]~~
- (5) ~~*DEC* is principally concerned with, and sets out, the *FSA*'s decision making procedures for decisions that involve the giving of *statutory notices*. *DEPP* is principally concerned with and sets out the *FSA*'s decision making procedures that~~involve the giving of *statutory notices*, the *FSA*'s policy in respect to the imposition and amount of penalties, and the conduct of interviews to which a direction under section 169(7) of the *Act* has been given or the *FSA* is considering giving.

2.1 Application and purpose

- 2.1.4 G The *FSA* receives the information in *SUP* 2.1.3G through a variety of means, including notifications by *firms* (see *SUP* 15) and regular reporting by *firms* (see *SUP* 16). This chapter is concerned with the methods of information gathering that the *FSA* may use on its own initiative in the discharge of its functions under the *Act*. This chapter does not deal with the information gathering powers that the *FSA* has under the *Unfair Terms Regulations*. These are dealt with in ~~*ENF* 20.3.5~~*GUNFCOG*.
- 2.1.5 G Part XI of the *Act* (Information Gathering and Investigations) gives the *FSA* statutory powers, including:
- (1) to require the provision of information (see section 165 and

~~ENF 2EG 3~~);

- (2) to require reports from *skilled persons* (see section 166 and *SUP 5*);
- (3) to appoint investigators (see sections 167, 168 and 169 of the *Act* and ~~ENF 2EG 3~~); and
- (4) to apply for a warrant to enter premises (see section 176 of the *Act* and ~~ENF 2EG 4~~).

- 2.3.12 G In complying with *Principle 11*, the *FSA* considers that a *firm* should cooperate with it in providing information for other regulators. Section 169 of the *Act* (Investigations etc. in support of overseas regulator) gives the *FSA* certain statutory powers to obtain information and appoint investigators for *overseas regulators* if required (see ~~ENF 2DEPP 7~~ and *EG 3*).
- 3.4.6 G If it appears to the *FSA* that an auditor of a *firm* has failed to comply with a duty imposed on him under the *Act*, it may disqualify him under section 345 of the *Act*. For more detail about what happens when the disqualification of an auditor is being considered or put into effect, see ~~ENF 17EG 15~~. A list of *persons* who are disqualified by the *FSA* under section 345 of the *Act* may be found on the *FSA* website (www.fsa.gov.uk).
- 4.3.12 G If it appears to the *FSA* that an *actuary* has failed to comply with a duty imposed on him under the *Act*, it may disqualify him under section 345 of the *Act*. For more detail about what happens when the disqualification of an *actuary* is being considered or put into effect, see ~~ENF 17EG 15~~ (Disqualification of auditors and actuaries). A list of *actuaries* who are disqualified by the *FSA* may be found on the *FSA* website (www.fsa.gov.uk).
- 4.4.5 G If it appears to the *FSA* that an *appropriate actuary* has failed to comply with a duty imposed on him under the *Act*, it may disqualify him under section 345 of the *Act*. For more detail about what happens when the disqualification of an *actuary* is being considered or put into effect, see ~~ENF 17EG 15~~ (Disqualification of auditors and actuaries). A list of *actuaries* who have been disqualified by the *FSA* may be found on the *FSA* website (www.fsa.gov.uk).
- 4.6.6 G If it appears to the *FSA* that an *actuary* has failed to comply with a duty imposed on him under the *Act*, it may disqualify him under section 345 of the *Act*. For more detail about what happens when the disqualification of an *actuary* is being considered or put into effect, see ~~ENF 17EG 15~~. A list of *actuaries* who are disqualified by the *FSA* may be found on the *FSA* website.

- 4.6.14 G If it appears to the *FSA* that an *actuary* has failed to comply with a duty imposed on him under the *Act*, it may disqualify him under section 345 of the *Act*. For more detail about what happens when the disqualification of an *actuary* is being considered or put into effect, see ~~ENF 17~~EG 15. A list of *actuaries* who are disqualified by the *FSA* may be found on the *FSA* website.

Alternative tools available, including other statutory powers

- 5.3.5 G The *FSA* will have regard to alternative tools that may be available, including for example:
- (1) ...
 - (2) ...
 - (3) appointing investigators to carry out general investigations under section 167 of the *Act* (Appointment of persons to carry out general investigations) (see ~~ENF 2.5~~EG 3 for the *FSA*'s policy on the use of this power); and
 - (4) appointing investigators to carry out investigations in particular cases under section 168 of the *Act* (Appointment of persons to carry out investigations in particular cases) (see ~~ENF 2.5~~EG 3 for the *FSA*'s policy on the use of this power).
- 6.1.5 G This chapter also outlines the *FSA*'s powers to withdraw *authorisation* from a *firm* whose *Part IV permission* has been cancelled at the *firm*'s request. It does not, however, cover the *FSA*'s use of its *own-initiative powers* to vary or cancel a *firm*'s *Part IV permission* (see *SUP 7* (Individual requirements) and ~~ENF 5 (Cancellation of Part IV permission on the FSA's own initiative and withdrawal of authorisation)~~EG 8 (Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms)).
- 6.2.10 G A *firm* which is winding down (running off) its activities should contact its usual supervisory contact at the *FSA* to discuss its circumstances. The *FSA* will discuss the *firm*'s winding down plans and the need for the *firm* to vary or cancel its *Part IV permission*. Following these discussions, an application for variation or cancellation of *Part IV permission*, as appropriate, should usually be made by the *firm*, although, in certain circumstances, the *FSA* may use its *own-initiative powers* under section 45 of the *Act* (Variation etc. on the *FSA*'s own initiative) (see *SUP 7* and ~~ENF 3 (Variation of Part IV permission on the FSA's own initiative)~~EG 8 (Variation and cancellation of permission on the FSA's own

initiative and intervention against incoming firms)).

- 6.3.40 G *DECDEPP* gives guidance on the FSA's decision making procedures including the procedures it will follow if it proposes to refuse an application for variation of *Part IV permission* either in whole or in part (for example, an application granted by the FSA but subject to *limitations* or *requirements* not applied for).
- 6.3.42 G (1) *Firms* should be aware that the FSA may exercise its *own-initiative power* to vary or cancel their *Part IV permission* if they do not (see *EG 8 (Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms)*):
- (a) ...
- 6.4.23 G If the FSA has granted an application for cancellation of *Part IV permission* and withdrawn a *firm's* status as an *authorised person* (see *SUP 6.5*) it will retain certain investigative and enforcement powers in relation to the *firm* as a former *authorised person*.
- These include:
- (1) information gathering and investigation powers in Part XI of the *Act* (Investigation gathering and investigations) (see ~~*ENF 2 (Information gathering and investigation powers)*~~*EG 3 (Use of information gathering and investigation powers)*);
- (2) powers to apply to court for injunctions and restitution orders in Part XXV of the *Act* (Injunctions and restitution) (see ~~*ENF 6-EG 10 (Injunctions)*~~ and ~~*ENF 9-EG 11 (Restitution and redress)*~~);
- (3) powers in Part XXIV of the *Act* (Insolvency) to petition for administration orders or winding up orders against companies or insolvent partnerships, or bankruptcy orders (or in Scotland sequestration awards) against individuals (see ~~*ENF 10 (Insolvency proceedings and orders against debt avoidance)*~~*EG 13 (Insolvency)*);
- (4) powers in Part XXVII of the *Act* (Offences) to prosecute offences under the *Act* and other specified provisions (see ~~*ENF 15-EG 12 (Prosecution of criminal offences)*~~).
- 6.4.26 G The FSA's use of those powers is outlined in ~~*ENF 11 (Discipline of authorised firms and approved persons: The FSA's general approach)*~~*DEPP 6 (Penalties)*.
- 6.4.29 G See *DECDEPP* for *guidance* on the FSA's decision making procedures, including the procedures it will follow if it proposes to refuse an application for cancellation of *Part IV permission*.

6 Annex 4 G ...

5. If, for example, the *FSA* has *consumer* protection concerns, it may, however, use its *own-initiative power* under section 45 of the *Act* (Variation etc. on the Authority's own initiative) (see SUP 7 (Individual requirements) and ~~ENF 3 (Variation of Part IV permission on the FSA's own initiative)~~ EG 8 (Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms)), to vary the *Part IV permission* of a *firm* which is winding down or transferring its *regulated activities*.

Processing an application

10.12.5 G The *Act* allows the *FSA* three *months* from the time it receives a properly completed application to consider it and come to a decision. The *FSA* must either grant the application or, if it proposes not to grant an application, issue a *warning notice* (see ~~DEC 2-DEPP 2~~). ...

10.12.12 G If the *FSA* proposes to refuse an application in relation to one or more *controlled functions*, it must follow the procedures for issuing *warning* and *decision notices* to all *interested parties*. The *requirements* relating to *warning* and *decision notices* ~~and the process for referrals to the *Financial Services and Markets Tribunal*~~ are in ~~DEPP 2-DEC 2 and DEC 5~~ respectively.

10 Ann 1G

	Question	Answer
11	...	The <i>FSA</i> expects <i>firms</i> to perform due and diligent enquiries into their <i>candidates</i> . Note also the requirements of ENF 8.12.2G <u>EG 6</u> and <i>TC 2.2.1R</i>
11a	...	It is for senior management to decide what checks should be made. By virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the Order), the <i>FSA</i> and the industry also have a right to ask about spent, as well as unspent, criminal convictions for employment purposes about <i>candidates</i> for <i>approved person</i> status (see Question 5.01a of Form A (Application to perform controlled functions under the approved persons

		regime)). Note also the provisions of ENF 8.12.2 G (Publication) <u>EG 6 (Publicity)</u> and <u>TC 2.2.1R (Recruitment)</u> .
23	How are non-routine cases handled?	Refer to DEC 2 Annex 2 <u>DEPP 2</u>

SUP 10 Annex 3 – deleted in its entirety

Warning notices and decision notices

- 11.7.9 G The procedure followed by the *FSA* in relation to the giving of *warning notices* and *decision notices* ~~and the process for referrals to the *Financial Services and Markets Tribunal* are~~ is set out in DEC 2. DEPP 2.
- 12.4.10 G ...
- (2) If the *FSA* proposes to use the power in (1), it must give the appointed representative a *warning notice*. If the *FSA* decides to proceed with its proposal, it must give the appointed representative a *decision notice*. The procedures followed by the *FSA* in relation to the giving of *warning notices* and *decision notices* are set out in ~~DEC 2.~~ DEPP 2.
- 13.3.7 G ...
- (3) For details of the *FSA*'s procedures for the giving of *warning notices* or *decision notices* ~~and references to the *Tribunal* see DEC 2 (Statutory notice procedure: Warning notice and decision notice procedure) and DEC 5 (References to the *Tribunal*, publication and service of notices).~~ see DEPP 2 (Statutory notices and the allocation of decision making).

Issuing a consent notice or notifying the Host State regulator

- 13.4.4 G ...
- (2) (a) ...
- (b) The issue or refusal of a *consent notice* under paragraph 20 (3A) of Part III of Schedule 3 to the *Act* is the consequence of a regulatory decision, and this *consent notice* (unlike the *consent notice* for the establishment of a *branch*) is not a *statutory notice* as set out in section 395 of the *Act*. ~~As such, the *FSA* will follow the decision making procedures set out in DEC 1 (Application, Purpose and Introduction).~~ A *UK firm*

that receives notice that the *FSA* refuses to give a *consent notice* may refer the matter to the *Tribunal* under paragraph 20 (4A) of Part III of Schedule 3 to the *Act*. ~~For procedures relating to references to the *Tribunal* see DEC 5 (References to the *Tribunal*, publication and service of notices).~~

- 13.6.15 G If the *FSA* refuses to consent to a change, then under Regulations 11(6) and 13 (6):
- (1) ...;
- (2) the *UK firm* may refer the matter to the *Tribunal*; ~~for details of procedures for a reference to the *Tribunal* see DEC 5 (References to the *Tribunal*, publication and service of notices).~~
- 13.7.9 G If the *FSA* refuses to consent to a change it ~~will follow the decision making process set out in DEC 1 (Application, Purpose and Introduction).~~ The *FSA* is required by regulation 16(7) to give notice of the refusal to the *UK firm*, stating its reasons and giving an indication of the *UK firm's* right to refer the matter to the *Tribunal* and the procedures that apply to such a reference. ~~For details of procedures relating to references to the *Tribunal* see DEC 5 (References to the *Tribunal*, publication and service of notices).~~
- 13A.3.2 G ...
- (2) ...
- (c) For details of the *FSA's* procedures for the giving of *warning notices* and ~~references to the *Tribunal*, see DEC 2.2 (Statutory notice procedure: Warning notice and decision notice procedure) and DEC 5 (References to the *Tribunal*, publication and service of notices).~~ see DEPP 2 (Statutory notices and allocation of decision making).

Application of the Handbook to Incoming EEA firms

13A Annex 1 G

<i>ENF</i>	<i>ENF</i> applies and contains guidance on the use of the <i>FSA's</i> enforcement powers (<i>ENF1</i>)	<i>ENF</i> applies and contains <i>guidance</i> on the use of the <i>FSA's</i> enforcement powers (<i>ENF1</i>)
<i>DEC</i>	<i>DEC</i> applies and contains	<i>DEC</i> applies and

<u>DEPP</u>	<i>guidance on the FSA's decision making procedures (DEC1). DEPP applies and contains a description of the FSA's procedures for taking statutory notice decisions, the FSA's policy on the imposition and amount of penalties and the conduct of interviews to which a direction under section 169(7) of the Act has been given or the FSA is considering giving.</i>	contains <i>guidance on the FSA's decision making procedures (DEC1). DEPP applies and contains a description of the FSA's procedures for taking statutory notice decisions, the FSA's policy on the imposition and amount of penalties and the conduct of interviews to which a direction under section 169(7) of the Act has been given or the FSA is considering giving.</i>
...		
<i>DTR</i>	<i>DTR (Disclosure Rules and Transparency Rules) May apply if the <i>firm</i> is an <i>issuer</i>, any class of whose <i>financial instruments</i> have been <i>admitted to trading</i> on a <i>regulated market</i>, or are the subject of an application for <i>admission to trading</i> on a <i>regulated market</i>, other than <i>issuers</i> who have not requested or approved admission of their <i>financial instruments</i> to trading on a <i>regulated market</i>.</i>	<i>DTR (Disclosure Rules and Transparency Rules) As column (2).</i>

EG describes the FSA's approach to exercising the main enforcement powers given to it by FSMA and by regulation 12 of the *Unfair Terms Regulations*. EG is a Regulatory Guide and as such does not form part of the Handbook.

15.3.22

D ...

(3) ...

(b) withdraw approval from an *approved person* acting for or on behalf of an *underwriting agent*, under section 63 of the Act (Withdrawal of approval) (see EG 9-ENF-7);

(c) prohibit an individual acting for or on behalf of an *underwriting agent* from involvement in *regulated*

activities, under section 56 of the *Act* (Prohibition orders) (see EG 9-ENF 8);

- (d) require an *underwriting agent* to make restitution, under section 384 of the *Act* (Power of Authority to require restitution) (see EG 11-ENF 9);
- (e) discipline an *underwriting agent*, or an *approved person* acting for it or on its behalf, for a breach of a requirement made under the *Act*, including the *Principles, Statements of Principle* and *rules* (see DEPP 6 and EG 7-ENF 11, ENF 12 and ENF 13);
- (f) apply to court for an *injunction*, restitution order or *insolvency order* (see EG 10, EG 11 and EG 13-ENF 6, ENF 9 and ENF 10); and
- (g) prosecute any criminal offence that the *FSA* has power to prosecute under the *Act* (see EG 12-ENF 15).

16.3.14A G Failure to submit a report in accordance with the rules in, or referred to in, this chapter or the provisions of relevant legislation may also lead to the imposition of a financial penalty and other disciplinary sanctions (see DEPP 6.6.1-6.6.5-ENF 13.5) ...

Part 2 (comes into force on 1 November 2007)

SUP 6.3.42 G ...

- (1A) The *FSA* may exercise its *own-initiative power* to cancel an *investment firm's Part IV permission* if the *investment firm* has provided or performed no *investment services and activities* at any time during the period of six months ending with the day on which the *warning notice* under section 54(1) of the *Act* is given (see ENF 5.3.2G-EG 8).

Annex M

Amendments to the Enforcement manual (ENF)

ENF is deleted in its entirety.

Annex N

Amendments to the Decision making manual (DEC)

DEC is deleted in its entirety.

Annex O

Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text and striking through indicates deleted text.

7.1.3 G ...

- (2) This chapter also helps with the *regulatory objective* of protecting *consumers*, by providing a cost effective and fair means of winding up *authorised funds* and terminating *sub-funds* of *ICVCs* and *AUTs*. ~~ENF 16~~EG 14 (Collective investment schemes) deals with the *FSA's* powers to revoke the authorisation of *authorised funds* otherwise than by consent.

Annex P

Amendments to the Credit Unions sourcebook (CRED)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Where an entire chapter, rule or sub-paragraph is deleted, it is not shown struck-through.

Part 1 (comes into force on 28 August 2007)

Rules: R

- 2.4.2 G If a *firm* contravenes such a *rule*, it may be subject to enforcement action(see ~~ENF~~).
- ...
- 2.4.10 G G is also used for the *FSA's* statement of the procedure for giving statutory notices under section 395 of the *Act*, the *FSA's* policy with respect to the imposition and amount of penalties under the *Act* (see *DEPP*)(see *DEC*), ~~for the various statements of policy regarding use of the *FSA's* enforcement powers (see *ENF*)~~, and to indicate the arrangements made by the *FSA* under paragraph 7 of Schedule 1 to the *Act* for the investigation of complaints arising in connection with its exercise of its non-legislative functions (see *COAF*).
- 3.3.2 G ... The full provisions of how the *FSA* will use its powers in support of its enforcement functions under the *Act* are set out in ~~ENF 2~~EG. The *FSA* will be proportionate in the use of its powers.
- 5.1.5 G The *threshold conditions* must be met on a continuing basis by *credit unions*. Failure to meet one of the conditions is sufficient grounds for the exercise by the *FSA* of its powers (see *EG*). ~~ENF 1 provides an overview of the range and purpose of these powers, the *FSA's* approach to enforcement and the structure of the Enforcement manual.~~
- 5.2.3 G Where a *credit union* may no longer meet the *threshold conditions* (see ~~ENF~~ EG) the *FSA* will make further enquiries. ...
- 5.2.4 G The *FSA* has the power to vary a *credit union's Part IV permission* on its own initiative(see ~~ENF 3.2~~), if it appears to the *FSA* that the *credit union* is failing, or is likely to fail, to satisfy the *threshold conditions* (see ~~ENF 3.2~~ EG).
- 6.1.3 G The full provisions are to be found in the following sourcebooks or manuals of the *Handbook*:
- ...

(5) Enforcement manual (ENF) [deleted]

Enforcement procedures

- 6.2.9 G Details of the disciplinary measures which may be taken against *approved persons* are located in ~~ENF 11~~ ~~ENF 13~~ DEPP. ...
- 13.6.8 G ... If the *FSA* consider it appropriate to vary or cancel a *credit union's Part IV permission* (see ~~ENF 3~~ and ~~ENF 5~~ EG), it will discuss the proposed action with the *credit union* and ascertain its reasons for not commencing or carrying out the *regulated activity*, or activities, concerned as described in its application.

Common bond

CRED 13
Annex 1A.2 G ...

Handbook material 4 ~~DEC 1.2.8~~ ~~DEC 1.2.10~~ G provide guidance on who within the *FSA* makes decisions under section 1 of the Credit Unions Act 1979. It is possible for such decisions to be taken to judicial review. ~~CRED 13~~ (Registration and authorisation) is concerned with provides guidance on the registration and authorisation of credit unions.

...

- 14.10.4 G General provisions on reporting
- 14.10.4D G ... Failure to submit a report in accordance with the *rules* in *SUP* 16.7 may also lead to the imposition of a financial penalty and other disciplinary sanctions (see ~~ENF 13.5~~ and ~~CRED 15.5~~ DEPP).

15 Decision procedure, penalties and Enforcement

...

- 15.1.1 G This chapter contains ~~guidance on the investigation and enforcement powers available to the *FSA*, and its approach to the use of those powers, in respect of~~ applies to *credit unions* and is intended to draw their attention to:
- (1) ~~{Deleted}~~ the investigation and enforcement powers available to the *FSA* under Industrial and Provident Societies legislation;
 - (2) ~~*credit unions*, with respect to their activities of accepting deposits~~ the

Decision Procedure and Penalties manual (DEPP); and

- (3) ~~approved persons of credit unions, as set out in CRED 6 the Enforcement Guide (EG).~~

CRED 15.2 Investigation and enforcement powers Industrial and Provident Societies legislation

...

15.2.2 G For ease of reference:

- (1) Annex 1 to this chapter (CRED 15 Annex 1) contains a table of the FSA's investigation and enforcement powers under the Industrial and Provident Societies Act 1965, the Friendly and Industrial and Provident Societies Act 1968 and the Credit Unions Act 1979; and

(2) [deleted]

15.2.3 G [deleted]

15.2.4 G [deleted]

15.2.5 G [deleted]

15.3 ~~The FSA's approach to the use of its investigation and enforcement powers~~Decision Procedure and Penalties manual

15.3.1 G ~~There are a number of principles underlying the FSA's approach to the exercise of its investigation and enforcement powers in relation to credit unions~~The Decision Procedure and Penalties manual (DEPP) is relevant to credit unions because it sets out:

- (1) ~~the effectiveness of the regulatory regime depends to a significant extent on the maintenance of an open and cooperative relationship between the FSA and the management of credit unions; the FSA's decision making procedure for giving statutory notices (warning notices, decision notices and supervisory notices); and~~
the FSA's decision making procedure for giving statutory notices (warning notices, decision notices and supervisory notices); and
- (2) ~~the FSA will seek to exercise its investigation and enforcement powers in a manner that is transparent, proportionate and consistent with its publicly stated policies; and the FSA's policy with respect to the imposition and amount of penalties under the Act.~~
the FSA will seek to exercise its investigation and enforcement powers in a manner that is transparent, proportionate and consistent with its publicly stated policies; and the FSA's policy with respect to the imposition and amount of penalties under the Act.
- (3) [deleted]

- 15.3.2 G [deleted]
- 15.3.3 G [deleted]
- 15.3.4 G [deleted]

- 15.4 ~~The FSA's policies and procedures for taking enforcement action~~ Enforcement Guide

- 15.4.1 G ~~[Deleted]~~ The Enforcement Guide (EG) describes the FSA's approach to exercising the main enforcement powers given to it by the Act and by regulation 12 of the *Unfair Terms Regulations*. EG is a Regulatory Guide and does not form part of the *FSA Handbook*.
- 15.4.2 G [deleted]
- 15.4.3 G [deleted]
- 15.4.4 G [deleted]
- 15.4.5 G [deleted]
- 15.5 [deleted]

CRED 15 Annex 2G [is deleted in its entirety]

CRED 15 Annex 3G [is deleted in its entirety]

CRED 16 [is deleted in its entirety]

CRED Appendix 1

Table

	Sourcebook or manual	Reference code
...		
Regulatory Processes
	Supervision	<i>SUP</i>
	Enforcement <u>Decision Procedure and Penalties</u>	<i>ENFDEPP</i>
	Decision making	<i>DEC</i>

CRED Appendix 2

CRED App 2.1.1

Table

...		
15	Decision procedure, penalties and Enforcement	
	15.1	Application and purpose
	15.2	Investigation and enforcement powers <u>Industrial and Provident Societies legislation</u>
	15.3	The FSA's approach to the use of its investigation and enforcement powers <u>Decision Procedure and Penalties manual</u>
	15.4	The FSA's policies and procedures for taking enforcement action <u>Enforcement Guide</u>
	15.5	[deleted]
	Ann 1	Enforcement Powers [table - powers available under Industrial and Provident Societies legislation and the Credit Unions Act 1979]
	Ann 2	[deleted]
	Ann 3	[deleted]
16	[deleted]	

Part 2 (comes into force on 1 January 2008)

14.10.4D	G	If a <i>credit union</i> fails to submit a complete annual report by the date on which it is due in accordance with the <i>rules</i> under SUP 16.12 and any prescribed submission procedures, the <i>credit union</i> must pay an administrative fee of £250 (see SUP 16.3.14R). Failure to submit the report in accordance with the <i>rules</i> in SUP 16.12 may also lead to the imposition of a financial penalty and other disciplinary sanctions (see ENF 13.5 and CRED 15.5 <u>DEPP</u>).
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Annex Q

Amendments to the Electronic Commerce Directive sourcebook (ECO)

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 1.1.5 G The *E-Commerce Directive* also allows the *EEA State* where the recipient is based to restrict the freedom to provide an *electronic commerce activity* from another *EEA State* on a case by case basis, where certain conditions are met. This derogation is implemented in the *United Kingdom* through provisions of the *ECD Regulations*. ~~ENF 19~~EG 19 outlines the derogation power and the *FSA's* policy on its use in relation to *incoming ECA providers*.
- ...
- 1.1.8 G The *FSA* has a range of investigation and enforcement powers available to it where an *incoming ECA provider* appears to be in breach of rules to which it is subject under ECO 1. These include powers to seek *injunctions* ~~(see ENF 6)~~, to apply to a court for restitution ~~(see ENF 9)~~ and, in the case of *authorised persons*, to order restitution ~~(see ENF 9)~~ and take disciplinary action ~~(see ENF 11 to ENF 13)~~ (see EG and DEPP).
- 1.1.9 G The *market abuse regime* and *misleading statements and practices offences* are not affected by the *E-Commerce Directive*. The *FSA's* enforcement powers in this regard are described in EG ~~ENF 14 and ENF 15~~. The *FSA's Code of Market Conduct* (MAR 1) contains *guidance* on whether or not *behaviour* amounts to *market abuse*.
- 1.1.10 R Handbook provisions applicable to, or relevant for, incoming ECA providers. This Table belongs to ECO 1.1.6 R

Provision	Description
<i>ECO 1</i>	E-Commerce Directive sourcebook
<i>MAR 1</i>	The Code of Market Conduct
DEC DEPP (if the <i>incoming ECA provider</i> is authorised)	Decision making by the FSA <u>Decision making, procedures and penalties</u>
...	...
ENF	Enforcement guidance
<i>GEN 2</i>	Interpreting the Handbook
<i>COAF</i>	Complaints against the FSA
<i>SUP 8</i>	Waivers and modification of rules
<i>SUP 9</i>	Individual guidance
<i>SUP 13A.1.1G - SUP 13A.1.2G, SUP 13A.6.5G, SUP 13A Annex 1G</i>	Authorisation guidance
<i>SUP 14</i> (if the	EEA firms change of details

<i>incoming ECA provider is authorised)</i>	
Any reference in <i>SUP 8</i> to a <i>firm</i> should be taken to include a reference to an unauthorised <i>incoming ECA provider</i> .	

In addition to the Handbook modules listed above these Regulatory Guides may also be relevant:

1. The Enforcement Guide (EG)
2. [intentionally blank]

Annex R

Amendments to the Electronic Money sourcebook (ELM)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.5.2 G

Block	Module	Application
Regulatory processes
	Supervision manual (<i>SUP</i>)	The following chapters of <i>SUP</i> apply to every <i>ELMI</i> : 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 15, 16 and 20. The following chapters of <i>SUP</i> do not apply to an <i>ELMI</i> : 4, 12, 14, 17, 18 and 19.
	Enforcement manual (<i>ENF</i>)	Applies to every <i>ELMI</i>.
	Decision making manual (<i>DEC</i>) <u>Decision, Procedure and Penalties Manual (<i>DEPP</i>)</u>	Applies to every <i>ELMI</i> .

- 8.3.9 G The application for a *small e-money issuer certificate* must be determined by the *FSA* within six *months* from when it receives the completed application or, if the application is incomplete, within 12 *months*. The applicant may withdraw his application by written notice. The *FSA* must give the applicant written notice of the grant of the application or a *warning notice* if it proposes to refuse the application. ~~*Guidance on the decision making procedures is given in DEC 2 (Statutory notice procedure: warning notice and decision notice procedure).*~~
- 8.3.10 G An applicant who is aggrieved by the determination of the application may refer the matter to the *Tribunal* (see *EG 2.39 DEC 5.1 (The Tribunal)*).
- 8.3.12 G ~~*ENF 15 EG 12 (Prosecution of criminal offences) and DEC 4.6 (Decisions to apply to the civil courts and to prosecute criminal offences)*~~ contain sets out guidance on the *FSA*'s policy and procedures relating to the exercise of its powers to prosecute criminal offences, including offences under section 24 of the *Act*.

Procedure

- 8.6.5 G If the *FSA* proposes to revoke a *small e-money issuer certificate* otherwise than at the request of the *small e-money issuer*, it must give him a *warning notice* ~~(see DEC 2.2 (Warning notice procedure))~~. Similarly, if it decides to revoke the certificate, it must give him a *decision notice* ~~(see DEC 2.3 (Decision notice procedure))~~. (See *DEPP 2*)
- 8.6.6 G A *small e-money issuer* who is aggrieved at the decision to revoke the *small e-money issuer certificate* may refer the matter to the *Tribunal* (see *EG 2.39* ~~DEC 5.1 (The Tribunal)~~).
- 8.7.11 G The *FSA* may appoint one or more competent *persons* to carry out an investigation if it appears to it that there are circumstances suggesting that a *small e-money issuer* may not meet any of the conditions referred to in *ELM 8.4*. The *FSA* may also use this power if the *small e-money issuer* may not have met any of these conditions at any time since the *small e-money issuer certificate* was given. ~~ENF 2 (Use of Information gathering and investigation powers) contains~~ See *EG 3* for *guidance* on the *FSA's* policies relating to the use of its investigation powers.

...

Administrative and civil enforcement powers

- 8.7.17 G Where a *small e-money issuer* contravenes a *rule* in *ELM 8.7* (Provision of information), or a requirement imposed under the powers referred to in *ELM 8.7.6 G* to *ELM 8.7.11 G*, the *FSA* may, among its other enforcement powers:
- (1) apply to the courts for an *injunction* (see ~~ENF 6~~ *EG 10* (Injunctions));
 - (2) apply to the courts for a restitution order (see ~~ENF 9~~ *EG 11* (Restitution and redress)); and
 - (3) revoke the *small e-money issuer certificate* (see *ELM 8.6*).

...

- 8.7.20 G ~~ENF 15 (Prosecution of criminal offences) and DEC 4.6 (Decisions to apply to the civil courts and to prosecute criminal offences) contain~~ For *guidance* on the *FSA's* policy and procedures relating to the exercise of its powers to prosecute criminal offences), including offences under section 398 and 400 of the *Act*, see *EG 12*.

Annex S

Amendments to the Professional Firms sourcebook (PROF)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Exempt regulated activities

- 2.1.3 G Section 327 of the *Act* (Exemption from the general prohibition) sets out the conditions which must be met for a *person* to be treated as an *exempt professional firm*, and for the *person's regulated activities* to be treated as *exempt regulated activities*. If the exemption in section 327 does not apply to a *person* and the *person* carries on a *regulated activity*, the *person* may contravene the *general prohibition* and be committing a criminal offence. The *FSA's* approach to the use of its powers in respect of alleged contraventions of the *general prohibition* is explained in ~~ENF 15~~EG 12.
- 2.1.4 G If the *FSA* has made a direction under section 328 of the *Act* (Directions in relation to the general prohibition) (see *PROF* 3.2) in relation to classes of *person* (or *regulated activity*), then a *person* within the class (or carrying on the *regulated activity*) specified will not be an *exempt professional firm*. In addition, section 329 of the *Act* (Orders in relation to the general prohibition) gives the *FSA* power to make an order disapplying the Part XX exemption from a *person* named in the Order. The *FSA's* general approach to the use of this power is explained in ~~ENF 18~~EG 16.

Annex T

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

4.2C Control over a UK RIE

...

4.2C.7 G If the *FSA* refuses to approve a change of control or objects to an existing control, the *person* concerned may refer the matter to the *Tribunal* (see *EG 2.39*). ~~More information on the process for referrals to the *Tribunal* is set out in *DEC 5.1*.~~

...

4.2D.2 G The procedure the *FSA* will follow if it exercises its power to require a *UK RIE* to suspend or remove a financial instrument from trading is set out in section 313B of the *Act*. The *FSA*'s internal arrangements provide for decisions to exercise this power to be taken at an appropriately senior level. If the *FSA* exercises this power, the *UK RIE* concerned and the issuer (if any) of the relevant *financial instrument* may refer the matter to the *Tribunal* (see *EG 2.39*). ~~More information on the process for referrals to the *Tribunal* is set out in *DEC 5.1*.~~

Annex U

Amendments to the Listing Rules (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Application

- 1.1.1 R LR applies as follows:
- (1) all of LR (other than LR 8.3, LR 8.4, LR 8.6 and LR 8.7) applies to an *issuer*; and
 - (2) LR 1, LR 8.1, LR 8.3, LR 8.4, LR 8.6 and LR 8.7 apply to a *sponsor* and a *person* applying for approval as a *sponsor*.

FSA performing functions as competent authority

Note: In relation to the *listing rules*, the *FSA* is performing functions as the competent authority under Part VI of the *Act* (see section 72(1) of the *Act*).

Note: when exercising functions as the competent authority under Part VI of the *Act*, the *FSA* may use the name: the UK Listing Authority.

Other relevant parts of Handbook

Note: Other parts of the *Handbook* that may also be relevant to *issuers* or *sponsors* include *DTR* (the Disclosure Rules and Transparency Rules sourcebook), *PR* (the Prospectus Rules sourcebook), *COB* (the Conduct of Business sourcebook), ~~*DEC* (the Decision Making manual)~~ *DEPP* (Decision Procedure and Penalties Manual), Chapter 9 of *SUP* (the Supervision manual) and ~~Chapter 21 of *ENF* (the Enforcement manual)~~ and *GEN* (General Provisions).

The following Regulatory Guides may also be relevant to *issuers* or *sponsors*:

1. The Enforcement Guide (*EG*)
2. [intentionally blank]

Decision-making procedures for suspension, cancellation etc

- 5.5.1 G The decision-making procedures that the *FSA* will follow when it cancels, suspends or ~~to~~ refuses a request to restore *listing* are set out in *DEPP* (Decision Procedure and Penalties) ~~*DEC* (the Decision Making manual)~~.
- 7.1.4 G ~~*ENF* 21 (Official listing—investigation powers and discipline)~~ *DEPP* 6 (Penalties) and *EG* 7 sets out *guidance* on the

consequences of breaching the Listing Principles.

- 8.6.4 G When considering an application for approval as a *sponsor* the *FSA* may:
- (1) carry out any enquiries and request any further information which it considers appropriate, including consulting other regulators;
 - (2) request that the applicant or its specified representative answer questions and explain any matter the *FSA* considers relevant to the application;
 - (3) take into account any information which it considers appropriate in relation to the application.

Note: The decision-making procedures that the *FSA* will follow when it considers whether to refuse an application for approval as a *sponsor* are set out in DEPPDEC.

8.7.20 G ~~*ENF 21 (Official listing—investigation powers and discipline)*~~EG sets out the *FSA*'s policy on when and how it will use its disciplinary powers, including in relation to a *sponsor*.

- 8.7.24 G
- (1) The decision-making procedures that the *FSA* will follow when it cancels a *sponsor*'s approval at the *sponsor*'s request are set out in DEPPDEC.
 - (2) Under the statutory notice procedure set out in DEPPDEC a request for cancellation of approval will take a minimum of 8 weeks to take effect.

LR Appendix 1.1 Relevant definitions

...	
<i>DEC-DEPP</i>	the Decision-making manual <u>the Decision Procedure and Penalties manual</u>
...	
<i>ENF EG</i>	the Enforcement manual <u>the Enforcement Guide</u>
...	

...

Annex V

Amendments to the Prospectus Rules (PR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

PR 3.1 Approval of prospectus

Decision-making procedures

PR 3.1.9 R The *FSA* will follow the *executive procedures* for *statutory notice decisions* and *statutory notice associated decisions* if it:

- (1) proposes to refuse to approve a *prospectus*; or
- (2) decides to refuse to approve a *prospectus* after having given the *applicant* a written notice.

Note: ~~DEC 4.3~~DEPP 4 sets out the *executive procedures* for *statutory notice decisions* and *statutory notice associated decisions*.

PR Appendix 1 R Relevant definitions

App 1.1 R **Note:** The following definitions relevant to the *prospectus rules* are extracted from the *Glossary*.

...	
<i>executive procedures</i>	the procedures relating to the giving of <i>warning notices</i> , <i>decision notices</i> and <i>supervisory notices</i> that the <i>FSA</i> proposes to follow in the circumstances specified in DEC 4.1.6 G (Decisions to be taken by executive procedures), and that are described in DEC 4.3 (Executive procedures for statutory notice decisions and statutory notice associated decisions) <u>DEPP 4 (Decision by FSA staff under executive procedures)</u> .
...	

Annex W

Amendments to the Disclosure Rules and Transparency Rules (DTR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

FSA performing functions as competent authority

- 1.1.3 G In relation to the *disclosure rules*, the *FSA* is exercising its functions as the competent authority under Part VI of the *Act* (see section 72(1) of the *Act*).

Other relevant parts of Handbook

Note: Other parts of the *Handbook* that may also be relevant to persons to whom the *disclosure rules* apply include *DEPP* (Decision Procedure and Penalties Manual) ~~*DEC* (the Decision making manual)~~, and Chapter 9 of *SUP* (the Supervision manual) and Chapter 21 of *ENF* (the Enforcement manual).

The following Regulatory Guides are also relevant:

1. The Enforcement Guide (*EG*)
2. [intentionally blank]

Note: A list of *regulated markets* can be found on the *FSA* website at the following address: www.fsa.gov.uk/register-res/html/prof_exchanges_fram.html

FSA performing functions as competent authority

- 1A.1.4 G In relation to the *transparency rules*, the *FSA* is exercising its functions as the competent authority under Part VI of the *Act* (see section 72(1) of the *Act*).

Other relevant parts of Handbook

Note: Other parts of the *Handbook* that may also be relevant to persons to whom the *transparency rules* apply include *DEPP* (Decision Procedure and Penalties Manual) ~~*DEC* (the Decision making manual)~~, and Chapter 9 of *SUP* (the Supervision manual) and Chapter 21 of *ENF* (the Enforcement manual).

The following Regulatory Guides are also relevant:

1. The Enforcement Guide (*EG*)
2. [intentionally blank]

Note: A list of *regulated markets* can be found on the *FSA* website at the following address: http://www.fsa.gov.uk/register-res/html/prof_exchanges_fram.html

1.4 Suspension of trading

...

- 1.4.5 G The decision-making procedures to be followed by the *FSA* when it:
- (1) requires the suspension of trading of a *financial instrument*;
or
 - (2) refuses an application by an *issuer* to lift a suspension made under section 96C;
- are set out in *DEPPDEC*.