



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XXVIII

MISCELLANEOUS

Schemes for reviewing past business

404 Schemes for reviewing past business

- (1) Subsection (2) applies if the Treasury are satisfied that there is evidence suggesting—
 - (a) that there has been a widespread or regular failure on the part of authorised persons to comply with rules relating to a particular kind of activity; and
 - (b) that, as a result, private persons have suffered (or will suffer) loss in respect of which authorised persons are (or will be) liable to make payments (“compensation payments”).
- (2) The Treasury may by order (“a scheme order”) authorise the Authority to establish and operate a scheme for—
 - (a) determining the nature and extent of the failure;
 - (b) establishing the liability of authorised persons to make compensation payments; and
 - (c) determining the amounts payable by way of compensation payments.
- (3) An authorised scheme must be made so as to comply with specified requirements.
- (4) A scheme order may be made only if—
 - (a) the Authority has given the Treasury a report about the alleged failure and asked them to make a scheme order;
 - (b) the report contains details of the scheme which the Authority propose to make; and
 - (c) the Treasury are satisfied that the proposed scheme is an appropriate way of dealing with the failure.

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- (5) A scheme order may provide for specified provisions of or made under this Act to apply in relation to any provision of, or determination made under, the resulting authorised scheme subject to such modifications (if any) as may be specified.
- (6) For the purposes of this Act, failure on the part of an authorised person to comply with any provision of an authorised scheme is to be treated (subject to any provision made by the scheme order concerned) as a failure on his part to comply with rules.
- (7) The Treasury may prescribe circumstances in which loss suffered by a person (“A”) acting in a fiduciary or other prescribed capacity is to be treated, for the purposes of an authorised scheme, as suffered by a private person in relation to whom A was acting in that capacity.
- (8) This section applies whenever the failure in question occurred.
- (9) “Authorised scheme” means a scheme authorised by a scheme order.
- (10) “Private person” has such meaning as may be prescribed.
- (11) “Specified” means specified in a scheme order.

Third countries

405 Directions

- (1) For the purpose of implementing a third country decision, the Treasury may direct the Authority to—
 - (a) refuse an application for permission under Part IV made by a body incorporated in, or formed under the law of, any part of the United Kingdom;
 - (b) defer its decision on such an application either indefinitely or for such period as may be specified in the direction;
 - (c) give a notice of objection to a person who has served a notice of control to the effect that he proposes to acquire a 50% stake in a UK authorised person; or
 - (d) give a notice of objection to a person who has acquired a 50% stake in a UK authorised person without having served the required notice of control.
- (2) A direction may also be given in relation to—
 - (a) any person falling within a class specified in the direction;
 - (b) future applications, notices of control or acquisitions.
- (3) The Treasury may revoke a direction at any time.
- (4) But revocation does not affect anything done in accordance with the direction before it was revoked.
- (5) “Third country decision” means a decision of the Council or the Commission under—
 - (a) Article 7(5) of the investment services directive;
 - (b) Article 9(4) of the second banking co-ordination directive;
 - (c) Article 29b(4) of the first non-life insurance directive; or
 - (d) Article 32b(4) of the first life insurance directive.

406 Interpretation of section 405

- (1) For the purposes of section 405, a person (“the acquirer”) acquires a 50% stake in a UK authorised person (“A”) on first falling within any of the cases set out in subsection (2).
- (2) The cases are where the acquirer—
 - (a) holds 50% or more of the shares in A;
 - (b) holds 50% or more of the shares in a parent undertaking (“P”) of A;
 - (c) is entitled to exercise, or control the exercise of, 50% or more of the voting power in A; or
 - (d) is entitled to exercise, or control the exercise of, 50% or more of the voting power in P.
- (3) In subsection (2) “the acquirer” means—
 - (a) the acquirer;
 - (b) any of the acquirer’s associates; or
 - (c) the acquirer and any of his associates.
- (4) “Associate”, “shares” and “voting power” have the same meaning as in section 422.

407 Consequences of a direction under section 405

- (1) If the Authority refuses an application for permission as a result of a direction under section 405(1)(a)—
 - (a) subsections (7) to (9) of section 52 do not apply in relation to the refusal; but
 - (b) the Authority must notify the applicant of the refusal and the reasons for it.
- (2) If the Authority defers its decision on an application for permission as a result of a direction under section 405(1)(b)—
 - (a) the time limit for determining the application mentioned in section 52(1) or (2) stops running on the day of the deferral and starts running again (if at all) on the day the period specified in the direction (if any) ends or the day the direction is revoked; and
 - (b) the Authority must notify the applicant of the deferral and the reasons for it.
- (3) If the Authority gives a notice of objection to a person as a result of a direction under section 405(1)(c) or (d)—
 - (a) sections 189 and 191 have effect as if the notice was a notice of objection within the meaning of Part XII; and
 - (b) the Authority must state in the notice the reasons for it.

408 EFTA firms

- (1) If a third country decision has been taken, the Treasury may make a determination in relation to an EFTA firm which is a subsidiary undertaking of a parent undertaking which is governed by the law of the country to which the decision relates.
- (2) “Determination” means a determination that the firm concerned does not qualify for authorisation under Schedule 3 even if it satisfies the conditions in paragraph 13 or 14 of that Schedule.
- (3) A determination may also be made in relation to any firm falling within a class specified in the determination.

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- (4) The Treasury may withdraw a determination at any time.
- (5) But withdrawal does not affect anything done in accordance with the determination before it was withdrawn.
- (6) If the Treasury make a determination in respect of a particular firm, or withdraw such a determination, they must give written notice to that firm.
- (7) The Treasury must publish notice of any determination (or the withdrawal of any determination)—
 - (a) in such a way as they think most suitable for bringing the determination (or withdrawal) to the attention of those likely to be affected by it; and
 - (b) on, or as soon as practicable after, the date of the determination (or withdrawal).
- (8) “EFTA firm” means a firm, institution or undertaking which—
 - (a) is an EEA firm as a result of paragraph 5(a), (b) or (d) of Schedule 3; and
 - (b) is incorporated in, or formed under the law of, an EEA State which is not a member State.
- (9) “Third country decision” has the same meaning as in section 405.

409 Gibraltar

- (1) The Treasury may by order—
 - (a) modify Schedule 3 so as to provide for Gibraltar firms of a specified description to qualify for authorisation under that Schedule in specified circumstances;
 - (b) modify Schedule 3 so as to make provision in relation to the exercise by UK firms of rights under the law of Gibraltar which correspond to EEA rights;
 - (c) modify Schedule 4 so as to provide for Gibraltar firms of a specified description to qualify for authorisation under that Schedule in specified circumstances;
 - (d) modify section 264 so as to make provision in relation to collective investment schemes constituted under the law of Gibraltar;
 - (e) provide for the Authority to be able to give notice under section 264(2) on grounds relating to the law of Gibraltar;
 - (f) provide for this Act to apply to a Gibraltar recognised scheme as if the scheme were a scheme recognised under section 264.
- (2) The fact that a firm may qualify for authorisation under Schedule 3 as a result of an order under subsection (1) does not prevent it from applying for a Part IV permission.
- (3) “Gibraltar firm” means a firm which has its head office in Gibraltar or is otherwise connected with Gibraltar.
- (4) “Gibraltar recognised scheme” means a collective investment scheme—
 - (a) constituted in an EEA State other than the United Kingdom, and
 - (b) recognised in Gibraltar under provisions which appear to the Treasury to give effect to the provisions of a relevant Community instrument.
- (5) “Specified” means specified in the order.

- (6) “UK firm” and “EEA right” have the same meaning as in Schedule 3.

International obligations

410 International obligations

- (1) If it appears to the Treasury that any action proposed to be taken by a relevant person would be incompatible with Community obligations or any other international obligations of the United Kingdom, they may direct that person not to take that action.
- (2) If it appears to the Treasury that any action which a relevant person has power to take is required for the purpose of implementing any such obligations, they may direct that person to take that action.
- (3) A direction under this section—
- (a) may include such supplemental or incidental requirements as the Treasury consider necessary or expedient; and
 - (b) is enforceable, on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (4) “Relevant person” means—
- (a) the Authority;
 - (b) any person exercising functions conferred by Part VI on the competent authority;
 - (c) any recognised investment exchange (other than one which is an overseas investment exchange);
 - (d) any recognised clearing house (other than one which is an overseas clearing house);
 - (e) a person included in the list maintained under section 301; or
 - (f) the scheme operator of the ombudsman scheme.

Tax treatment of levies and repayments

411 Tax treatment of levies and repayments

- (1) In the Income and Corporation Taxes Act 1988 (“the 1988 Act”), in section 76 (expenses of management: insurance companies), for subsections (7) and (7A) substitute—
- “(7) For the purposes of this section any sums paid by a company by way of a levy shall be treated as part of its expenses of management.
- (7A) “Levy” means—
- (a) a payment required under rules made under section 136(2) of the Financial Services and Markets Act 2000 (“the Act of 2000”);
 - (b) a levy imposed under the Financial Services Compensation Scheme;
 - (c) a payment required under rules made under section 234 of the Act of 2000;

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(d) a payment required in accordance with the standard terms fixed under paragraph 18 of Schedule 17 to the Act of 2000.”

(2) After section 76 of the 1988 Act insert—

“76A Levies and repayments under the Financial Services and Markets Act 2000

- (1) In computing the amount of the profits to be charged under Case I of Schedule D arising from a trade carried on by an authorised person (other than an investment company)—
- (a) to the extent that it would not be deductible apart from this section, any sum expended by the authorised person in paying a levy may be deducted as an allowable expense;
 - (b) any payment which is made to the authorised person as a result of a repayment provision is to be treated as a trading receipt.
- (2) “Levy” has the meaning given in section 76(7A).
- (3) “Repayment provision” means any provision made by virtue of—
- (a) section 136(7) of the Financial Services and Markets Act 2000 (“the Act of 2000”);
 - (b) section 214(1)(e) of the Act of 2000.
- (4) “Authorised person” has the same meaning as in the Act of 2000.

76B Levies and repayments under the Financial Services and Markets Act 2000: investment companies

- (1) For the purposes of section 75 any sums paid by an investment company—
- (a) by way of a levy, or
 - (b) as a result of an award of costs under costs rules,
- shall be treated as part of its expenses of management.
- (2) If a payment is made to an investment company as a result of a repayment provision, the company shall be charged to tax under Case VI of Schedule D on the amount of that payment.
- (3) “Levy” has the meaning given in section 76(7A).
- (4) “Costs rules” means—
- (a) rules made under section 230 of the Financial Services and Markets Act 2000;
 - (b) provision relating to costs contained in the standard terms fixed under paragraph 18 of Schedule 17 to that Act.
- (5) “Repayment provision” has the meaning given in section 76A(3).”

Gaming contracts

412 Gaming contracts

- (1) No contract to which this section applies is void or unenforceable because of—

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- (a) section 18 of the Gaming Act 1845, section 1 of the Gaming Act 1892 or Article 170 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985; or
 - (b) any rule of the law of Scotland under which a contract by way of gaming or wagering is not legally enforceable.
- (2) This section applies to a contract if—
- (a) it is entered into by either or each party by way of business;
 - (b) the entering into or performance of it by either party constitutes an activity of a specified kind or one which falls within a specified class of activity; and
 - (c) it relates to an investment of a specified kind or one which falls within a specified class of investment.
- (3) Part II of Schedule 2 applies for the purposes of subsection (2)(c), with the references to section 22 being read as references to that subsection.
- (4) Nothing in Part II of Schedule 2, as applied by subsection (3), limits the power conferred by subsection (2)(c).
- (5) “Investment” includes any asset, right or interest.
- (6) “Specified” means specified in an order made by the Treasury.

Limitation on powers to require documents

413 Protected items

- (1) A person may not be required under this Act to produce, disclose or permit the inspection of protected items.
- (2) “Protected items” means—
- (a) communications between a professional legal adviser and his client or any person representing his client which fall within subsection (3);
 - (b) communications between a professional legal adviser, his client or any person representing his client and any other person which fall within subsection (3) (as a result of paragraph (b) of that subsection);
 - (c) items which—
 - (i) are enclosed with, or referred to in, such communications;
 - (ii) fall within subsection (3); and
 - (iii) are in the possession of a person entitled to possession of them.
- (3) A communication or item falls within this subsection if it is made—
- (a) in connection with the giving of legal advice to the client; or
 - (b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.
- (4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

Service of notices

414 Service of notices

- (1) The Treasury may by regulations make provision with respect to the procedure to be followed, or rules to be applied, when a provision of or made under this Act requires a notice, direction or document of any kind to be given or authorises the imposition of a requirement.
- (2) The regulations may, in particular, make provision—
 - (a) as to the manner in which a document must be given;
 - (b) as to the address to which a document must be sent;
 - (c) requiring, or allowing, a document to be sent electronically;
 - (d) for treating a document as having been given, or as having been received, on a date or at a time determined in accordance with the regulations;
 - (e) as to what must, or may, be done if the person to whom a document is required to be given is not an individual;
 - (f) as to what must, or may, be done if the intended recipient of a document is outside the United Kingdom.
- (3) Subsection (1) applies however the obligation to give a document is expressed (and so, in particular, includes a provision which requires a document to be served or sent).
- (4) Section 7 of the Interpretation Act 1978 (service of notice by post) has effect in relation to provisions made by or under this Act subject to any provision made by regulations under this section.

Jurisdiction

415 Jurisdiction in civil proceedings

- (1) Proceedings arising out of any act or omission (or proposed act or omission) of—
 - (a) the Authority,
 - (b) the competent authority for the purposes of Part VI,
 - (c) the scheme manager, or
 - (d) the scheme operator,in the discharge or purported discharge of any of its functions under this Act may be brought before the High Court or the Court of Session.
- (2) The jurisdiction conferred by subsection (1) is in addition to any other jurisdiction exercisable by those courts.

Removal of certain unnecessary provisions

416 Provisions relating to industrial assurance and certain other enactments

- (1) The following enactments are to cease to have effect—
 - (a) the Industrial Assurance Act 1923;
 - (b) the Industrial Assurance and Friendly Societies Act 1948;
 - (c) the Insurance Brokers (Registration) Act 1977.

- (2) The Industrial Assurance (Northern Ireland) Order 1979 is revoked.
- (3) The following bodies are to cease to exist—
 - (a) the Insurance Brokers Registration Council;
 - (b) the Policyholders Protection Board;
 - (c) the Deposit Protection Board;
 - (d) the Board of Banking Supervision.
- (4) If the Treasury consider that, as a consequence of any provision of this section, it is appropriate to do so, they may by order make any provision of a kind that they could make under this Act (and in particular any provision of a kind mentioned in section 339) with respect to anything done by or under any provision of Part XXI.
- (5) Subsection (4) is not to be read as affecting in any way any other power conferred on the Treasury by this Act.