Financial Services Act 1986

1986 CHAPTER 60

An Act to regulate the carrying on of investment business; to make related provision with respect to insurance business and business carried on by friendly societies; to make new provision with respect to the official listing of securities, offers of unlisted securities, takeover offers and insider dealing; to make provision as to the disclosure of information obtained under enactments relating to fair trading, banking, companies and insurance; to make provision for securing reciprocity with other countries in respect of facilities for the provision of financial services; and for connected purposes. [7th November 1986]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

C1 Act amended by S.I. 1988/496, **art. 4**

C2 Act amended by S.I. 1988/803, **art. 5**

C3 Act amended (25.4.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 154**, 155, 156(1); S.I. 1991/878, **art. 2**,Sch.

C4 Certain functions under this Act (transferable in accordance with para. 28 of Sch. 11 to the Act) transferred by S.R. 1987/228, **arts. 2**, 3

C5 Certain functions under this Act transferred by S.I. 1988/738, **art. 3**

C6 Certain functions under this Act transferred by S.I. 1987/942, arts. 3–8, Schs. 1, 2, **3**

C7 Power to apply conferred (4.7.1995) by Companies Act 1989 (c. 40, SIF 27), **ss. 154**, 155, 170(4)(6), 171(5)(b), 181, 215(2); S.I. 1995/1591, **art. 2**

C8 Act: it is provided that in any enactment including this Act and an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30, SIF 115:1), references to the Official List of The Stock Exchange shall have effect as references to the Official List maintained by the new competent authority for the purposes of Pt. IV of the Act, (02. 10. 1991) by S.I. 1991/2000, **reg. 4(5)**

C9 Act except ss. 45, 180 and Sch. 6 amended (01. 01. 1992) by S.I. 1991/2684, arts. 2(1), 4, **Sch. 1**

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Act applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **s.102(3)(b)** (with ss. 60, 101(1), 201(3)).
Act applied (6.4.1996) by 1993 c. 48, **s. 148A** (as inserted (6.4.1996) by 1995 c. 26, s. 173, **Sch. 6 para. 9**); S.I. 1996/778, art. 2(4), **Sch. Pt. IV**
Act extended (with modifications) (1.1.1996) by S.I. 1995/3275, **reg. 56(1)**
Act extended (6.1.1997) by S.I. 1996/2827, **reg. 2(4)**
Act modified (1.7.1994) by S.I. 1994/1696, **art. 67**
Act modified (1.7.1994) (temp.) by S.I. 1994/1696, **art. 71**
Act: functions of the Secretary of State transferred (7.6.1992) to the Treasury by S.I. 1992/1315, **art. 2(1)(b)** (subject to art. 6 of that S.I.).
Act: certain functions transferred (5.1.1998) by S.I. 1997/2781, **arts. 2(2)(3)** (with art. 7)
Act: Power to Treasury to contract out certain functions (18.11.1998) by S.I. 1998/2842, art. 2, **Sch. Pt. II para. 64(b)** (with Sch. Pt. II para.64(a))

Commencement Information

I1 Act partly in force at Royal Assent see s.211(1)(2); s. 212(3) and Sch. 17 in force for specified purposes at 19.6.1995 by S.I. 1995/1538, **art. 2**.

PART I

REGULATION OF INVESTMENT BUSINESS

Modifications etc. (not altering text)

C10 Pt. I (ss. 1-128) amended (S.) (22.5.2000) by S.I. 2000/121, regs. 1, 37, **Sch. 2**

C11 Pt. I (ss. 1–128): power to modify conferred (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 89, 124(3), **Sch. 14 para. 9(c)**

CHAPTER I

PRELIMINARY

1 Investments and investment business.

(1) In this Act, unless the context otherwise requires, "investment" means any asset, right or interest falling within any paragraph in Part I of Schedule 1 to this Act.

(2) In this Act "investment business" means the business of engaging in one or more of the activities which fall within the paragraphs in Part II of that Schedule and are not excluded by Part III of that Schedule.

(3) For the purposes of this Act a person carries on investment business in the United Kingdom if he—

(a) carries on investment business from a permanent place of business maintained by him in the United Kingdom; or

(b) engages in the United Kingdom in one or more of the activities which fall within the paragraphs in Part II of that Schedule and are not excluded by Part III or IV of that Schedule and his doing so constitutes the carrying on by him of a business in the United Kingdom.

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(4) Parts I to IV of that Schedule shall be construed in accordance with Part V.

Modifications etc. (not altering text)

C12 Definition in s. 1(2) applied by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), **s. 76(8)** (as substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 47(3)**).

2 Power to extend or restrict scope of Act.

(1) The Secretary of State may by order amend Schedule 1 to this Act so as—

(a) to extend or restrict the meaning of investment for the purposes of all or any provisions of this Act; or

(b) to extend or restrict for the purposes of all or any of those provisions the activities that are to constitute the carrying on of investment business or the carrying on of such business in the United Kingdom.

(2) The amendments that may be made for the purposes of subsection (1)(b) above include amendments conferring powers on the Secretary of State, whether by extending or modifying any provision of that Schedule which confers such powers or by adding further such provisions.

(3) An order under this section which extends the meaning of investment or extends the activities that are to constitute the carrying on of investment business or the carrying on of such business in the United Kingdom shall be laid before Parliament after being made and shall cease to have effect at the end of the period of twenty-eight days beginning with the day on which it is made (but without prejudice to anything done under the order or to the making of a new order) unless before the end of that period the order is approved by a resolution of each House of Parliament.

(4) In reckoning the period mentioned in subsection (3) above no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(5) Any order under this section to which subsection (3) above does not apply shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) An order under this section may contain such transitional provisions as the Secretary of State thinks necessary or expedient.

Subordinate Legislation Made

P1 S. 2: s. 2 power exercised by S.I. 1991/1104.
S. 2: ss. 2 and 46 (with s. 75(9)) power exercised by S.I.1991/1516.

P2 S. 2: for previous exercises of this power, see Index to Government Orders.

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CHAPTER II

RESTRICTION ON CARRYING ON BUSINESS

3 Persons entitled to carry on investment business.

No person shall carry on, or purport to carry on, investment business in the United Kingdom unless he is an authorised person under Chapter III or an exempted person under Chapter IV of this Part of this Act.

Modifications etc. (not altering text)

C13 S. 3 restricted (1.1.1993) by S.I. 1992/3218, **reg. 5(1)(b)**.
s. 3 excluded (until 1.1.1997) by S.I. 1995/3271, **art. 7**
Ss. 3, 4 excluded (1.1.1996) by S.I. 1995/3275, **reg. 5(1)(a)** (with reg. 5(2))

4 Offences.

(1) Any person who carries on, or purports to carry on, investment business in contravention of section 3 above shall be guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(2) In proceedings brought against any person for an offence under this section it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Modifications etc. (not altering text)

C14 S. 4 restricted (1.1.1993) by S.I. 1992/3218, **reg. 5(1)(b)**.
ss. 3, 4 excluded (1.1.1996) by S.I. 1995/3275, **reg. 5(1)(a)** (with reg. 5(2))

5 Agreements made by or through unauthorised persons.

(1) Subject to subsection (3) below, any agreement to which this subsection applies—

(a) which is entered into by a person in the course of carrying on investment business in contravention of section 3 above; or

(b) which is entered into—

(i) by a person who is an authorised person or an exempted person in respect of the investment business in the course of which he enters into the agreement; but

(ii) in consequence of anything said or done by a person in the course of carrying on investment business in contravention of that section,

shall be unenforceable against the other party; and that party shall be entitled to recover any money or other property paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result of having parted with it.

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(2) The compensation recoverable under subsection (1) above shall be such as the parties may agree or as the court may, on the application of either party, determine.

(3) A court may allow an agreement to which subsection (1) above applies to be enforced or money and property paid or transferred under it to be retained if it is satisfied—
  (a) in a case within paragraph (a) of that subsection, that the person mentioned in that paragraph reasonably believed that his entering into the agreement did not constitute a contravention of section 3 above;
  (b) in a case within paragraph (b) of that subsection, that the person mentioned in sub-paragraph (i) of that paragraph did not know that the agreement was entered into as mentioned in sub-paragraph (ii) of that paragraph; and
  (c) in either case, that it is just and equitable for the agreement to be enforced or, as the case may be, for the money or property paid or transferred under it to be retained.

(4) Where a person elects not to perform an agreement which by virtue of this section is unenforceable against him or by virtue of this section recovers money paid or other property transferred by him under an agreement he shall repay any money and return any other property received by him under the agreement.

(5) Where any property transferred under an agreement to which this section applies has passed to a third party the references to that property in subsections (1), (3) and (4) above shall be construed as references to its value at the time of its transfer under the agreement.

(6) A contravention of section 3 above shall not make an agreement illegal or invalid to any greater extent than is provided in this section.

(7) Subsection (1) above applies to any agreement the making or performance of which by the person seeking to enforce it or from whom money or other property is recoverable under this section constitutes an activity which falls within any paragraph of Part II of Schedule 1 to this Act and is not excluded by Part III or IV of that Schedule.

Modifications etc. (not altering text)
C15 S. 5 extended (with modifications) (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 2**
C16 S. 5(1)(b)(i) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.2**.

6 Injunctions and restitution orders.

(1) If, on the application of the Secretary of State, the court is satisfied—
  (a) that there is a reasonable likelihood that a person will contravene section 3 above; or
  (b) that any person has contravened that section and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may grant an injunction restraining the contravention or, in Scotland, an interdict prohibiting the contravention.

(2) If, on the application of the Secretary of State, the court is satisfied that a person has entered into any transaction in contravention of section 3 above the court may order that person and any other person who appears to the court to have been knowingly

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concerned in the contravention to take such steps as the court may direct for restoring the parties to the position in which they were before the transaction was entered into.

(3) The court may, on the application of the Secretary of State, make an order under subsection (4) below or, in relation to Scotland, under subsection (5) below if satisfied that a person has been carrying on investment business in contravention of section 3 above and—

(a) that profits have accrued to that person as a result of carrying on that business; or

(b) that one or more investors have suffered loss or been otherwise adversely affected as a result of his contravention of section 47 or 56 below or failure to act substantially in accordance with any of the rules or regulations made under Chapter V of this Part of this Act.

(4) The court may under this subsection order the person concerned to pay into court, or appoint a receiver to recover from him, such sum as appears to the court to be just having regard—

(a) in a case within paragraph (a) of subsection (3) above, to the profits appearing to the court to have accrued;

(b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect; or

(c) in a case within both paragraphs (a) and (b) of that subsection, to the profits and to the extent of the loss or other adverse effect.

(5) The court may under this subsection order the person concerned to pay to the applicant such sum as appears to the court to be just having regard to the considerations mentioned in paragraphs (a) to (c) or subsection (4) above.

(6) Any amount paid into court by or recovered from a person in pursuance of an order under subsection (4) or (5) above shall be paid out to such person or distributed among such persons as the court may direct, being a person or persons appearing to the court to have entered into transactions with that person as a result of which the profits mentioned in paragraph (a) of subsection (3) above have accrued to him or the loss or other adverse effect mentioned in paragraph (b) of that subsection has been suffered.

(7) On an application under subsection (3) above the court may require the person concerned to furnish it with such accounts or other information as it may require for establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of that subsection and for determining how any amounts are to be paid or distributed under subsection (6) above; and the court may require any such accounts or other information to be verified in such manner as it may direct.

(8) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

(9) Nothing in this section affects the right of any person other than the Secretary of State to bring proceedings in respect of any of the matters to which this section applies.

Modifications etc. (not altering text)

C17 S. 6 restricted (1.11.1992) by S.R. 1980/346, Order 93, rule 7 (as inserted by S.R. 1992/399, **rule15**).

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CHAPTER III

AUTHORISED PERSONS

Modifications etc. (not altering text)
C18 Chapters III–XI (ss. 7–111): certain functions transferred by S.I. 1990/354, **art. 5**

Members of recognised self-regulating organisations

7 Authorisation by membership of recognised self-regulating organisation.

(1) Subject to subsection (2) below, a member of a recognised self-regulating organisation is an authorised person by virtue of his membership of that organisation.

(2) This section does not apply to a member who is an authorised person by virtue of section 22 or 23 below or an insurance company which is an authorised person by virtue of section 31 below.

Modifications etc. (not altering text)
C19 S. 7 amended (1.1.1993) by S.I. 1992/3218, **reg. 48(1)**.
s. 7 extended (1.1.1996) by S.I. 1995/3275, **reg. 21(1)**

8 Self-regulating organisations.

(1) In this Act a "self-regulating organisation" means a body (whether a body corporate or an unincorporated association) which regulates the carrying on of investment business of any kind by enforcing rules which are binding on persons carrying on business of that kind either because they are members of that body or because they are otherwise subject to its control.

(2) In this Act references to the members of a self-regulating organisation are references to the persons who, whether or not members of the organisation, are subject to its rules in carrying on the business in question.

(3) In this Act references to the rules of a self-regulating organisation are references to the rules (whether or not laid down by the organisation itself) which the organisation has power to enforce in relation to the carrying on of the business in question or which relate to the admission and expulsion of members of the organisation or otherwise to its constitution.

(4) In this Act references to guidance issued by a self-regulating organisation are references to guidance issued or any recommendation made by it to all or any class of its members or persons seeking to become members which would, if it were a rule, fall within subsection (3) above.

9 Applications for recognition.

(1) A self-regulating organisation may apply to the Secretary of State for an order declaring it to be a recognised self-regulating organisation for the purposes of this Act.

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(2) Any such application—

(a) shall be made in such manner as the Secretary of State may direct; and

(b) shall be accompanied by such information as the Secretary of State may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.

(4) The directions and requirements given or imposed under subsections (2) and (3) above may differ as between different applications.

(5) Any information to be furnished to the Secretary of State under this section shall, if he so requires, be in such form or verified in such manner as he may specify.

(6) Every application shall be accompanied by a copy of the applicant's rules and of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form.

Modifications etc. (not altering text)

C20 S. 9 amended (14.6.2000) by 2000 c. 8, ss. 431(1), 432(2), **Sch. 21 para. 1(1)**

10 Grant and refusal of recognition.

(1) The Secretary of State may, on an application duly made in accordance with section 9 above and after being furnished with all such information as he may require under that section, make or refuse to make an order ("a recognition order") declaring the applicant to be a recognised self-regulating organisation.

(2) Subject to subsection (4) below and to Chapter XIV of this Part of this Act, the Secretary of State shall make a recognition order if it appears to him from the information furnished by the organisation making the application and having regard to any other information in his possession that the requirements of subsection (3) below and of Schedule 2 to this Act are satisfied as respects that organisation.

(3) Where there is a kind of investment business with which the organisation is not concerned, its rules must preclude a member from carrying on investment business of that kind unless he is an authorised person otherwise than by virtue of his membership of the organisation or an exempted person in respect of that business.

(4) The Secretary of State may refuse to make a recognition order in respect of an organisation if he considers that its recognition is unnecessary having regard to the existence of one or more other organisations which are concerned with investment business of a kind with which the applicant is concerned and which have been or are likely to be recognised under this section.

(5) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect specifying a requirement which in the opinion of the Secretary of State is not satisfied, stating that the application is refused on the ground mentioned in subsection (4) above or stating that it is refused by virtue of Chapter XIV.

(6) A recognition order shall state the date on which it takes effect.

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Modifications etc. (not altering text)

C21 S. 10 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.3**.
s. 10(3) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 3**

11 Revocation of recognition.

(1) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him—

(a) that section 10(3) above or any requirement of Schedule 2 to this Act is not satisfied in the case of the organisation to which the recognition order relates (“the recognised organisation");

(b) that the recognised organisation has failed to comply with any obligation to which it is subject by virtue of this Act; or

(c) that the continued recognition of the organisation is undesirable having regard to the existence of one or more other organisations which have been or are to be recognised under section 10 above.

(2) An order revoking a recognition order shall state the date on which it takes effect and that date shall not be earlier than three months after the day on which the revocation order is made.

(3) Before revoking a recognition order the Secretary of State shall give written notice of his intention to do so to the recognised organisation, take such steps as he considers reasonably practicable for bringing the notice to the attention of members of the organisation and publish it in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.

(4) A notice under subsection (3) above shall state the reasons for which the Secretary of State proposes to act and give particulars of the rights conferred by subsection (5) below.

(5) An organisation on which a notice is served under subsection (3) above, any member of the organisation and any other person who appears to the Secretary of State to be affected may within three months after the date of service or publication, or within such longer time as the Secretary of State may allow, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State; and the Secretary of State shall have regard to any representations made in accordance with this subsection in determining whether to revoke the recognition order.

(6) If in any case the Secretary of State considers it essential to do so in the interests of investors he may revoke a recognition order without regard to the restriction imposed by subsection (2) above and notwithstanding that no notice has been given or published under subsection (3) above or that the time for making representations in pursuance of such a notice has not expired.

(7) An order revoking a recognition order may contain such transitional provisions as the Secretary of State thinks necessary or expedient.

(8) A recognition order may be revoked at the request or with the consent of the recognised organisation and any such revocation shall not be subject to the restrictions imposed by subsections (1) and (2) or the requirements of subsections (3) to (5) above.

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(9) On making an order revoking a recognition order the Secretary of State shall give the organisation written notice of the making of the order, take such steps as he considers reasonably practicable for bringing the making of the order to the attention of members of the organisation and publish a notice of the making of the order in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.

Modifications etc. (not altering text)

C22 S. 11 amended (14.6.2000) by 2000 c. 8, ss. 431(1), 432(2), **Sch. 21 para. 1(3)(a)(6)**

C23 S. 11(2)-(7)(9) applied (with modifications) (*temp.* from 26.11.2001 until 1.12.2001) by S.I. 2001/3755, regs. 7, 50, **Sch. 6 para. 4** (with regs. 39, 45); S.I. 2001/3538, **art. 2(1)**

C24 S. 11(2)-(5)(7)(9) applied (with modifications) (*temp.* from 26.11.2001 until 1.12.2001) by S.I. 2001/3755, regs. 13, 50, Sch. 2 para. 1(5), **Sch. 6 para. 9(a)** (with regs. 39, 45); S.I. 2001/3538, **art. 2(1)**

C25 S. 11(2)-(9) applied (with modifications) (19.12.1995) by S.I. 1995/3272, **reg. 7(2)**

12 Compliance orders.

(1) If at any time it appears to the Secretary of State—

(a) that subsection (3) of section 10 above or any requirement of Schedule 2 to this Act is not satisfied in the case of a recognised organisation; or

(b) that a recognised organisation has failed to comply with any obligation to which it is subject by virtue of this Act,

he may, instead of revoking the recognition order under section 11 above, make an application to the court under this section.

(2) If on any such application the court decides that subsection (3) of section 10 or the requirement in question is not satisfied or, as the case may be, that the organisation has failed to comply with the obligation in question it may order the organisation to take such steps as the court directs for securing that that subsection or requirement is satisfied or that that obligation is complied with.

(3) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

Modifications etc. (not altering text)

C26 S. 12 applied (25.4.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 154**, 155, 169(2)

C27 S. 12: certain functions transferred by S.I. 1990/354, **art. 4(5)**

C28 S. 12 amended (14.6.2000) by 2000 c. 8, ss. 431(1), 432(2), **Sch. 21 para. 1(3)(b)(6)**

C29 S. 12 applied (with modifications) (15.8.1995) by S.I. 1995/2049, **regs. 6**, 7-18

13 Alteration of rules for protection of investors.

(1) . . . . . [F1]

[[F2](2) If at any time it appears to the Secretary of State that—

(a) a recognised self-regulating organisation is concerned with two or more kinds of investment business, and

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(b) the requirement in paragraph 3(1) of Schedule 2 to this Act is not satisfied in respect of investment business of one or more but not all of those kinds,

he may, instead of revoking the recognition order or making an application under section 12 above, direct the organisation to alter, or himself alter, its rules so that they preclude a member from carrying on investment business of a kind in respect of which that requirement is not satisfied, unless he is an authorised person otherwise than by virtue of membership of the organisation or is an exempted person in respect of that business.**]**

[[F3](3) A direction under this section is enforceable on the application of the Secretary of State by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.**]**

(4) . . . . . [F4]

(7) Section 11(2) to (7) and (9) above shall, with the necessary modifications, have effect in relation to any direction given or alteration made by the Secretary of State under subsection (2) above as they have effect in relation to an order revoking a recognition order.

(8) The fact that the rules of a recognised organisation have been altered by or pursuant to a direction given by the Secretary of State or pursuant to an order made by the court under this section shall not preclude their subsequent alteration or revocation by that organisation.

Textual Amendments

F1 S. 13(1) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 206(1), 212, Sch. 23 Pt. I para. 1(2), **Sch. 24**

F2 S. 13(2) substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 1(3)**

F3 S. 13(3) substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 1(4)**

F4 S. 13(4)–(6) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 206(1), 212, Sch. 23 Pt. I para. 1(5), **Sch. 24**

Modifications etc. (not altering text)

C30 S. 13 amended (14.6.2000) by 2000 c. 8, ss. 431(1), 432(2), **Sch. 21 para. 1(4)**

C31 S. 13(2) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.4**.
s. 13(2) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 4**

14 Notification requirements.

(1) The Secretary of State may make regulations requiring a recognised organisation to give him forthwith notice of the occurrence of such events relating to the organisation or its members as are specified in the regulations and such information in respect of those events as is so specified.

(2) The Secretary of State may make regulations requiring a recognised organisation to furnish him at such times or in respect of such periods as are specified in the regulations with such information relating to the organisation or its members as is so specified.

(3) The notices and information required to be given or furnished under the foregoing provisions of this section shall be such as the Secretary of State may reasonably require for the exercise of his functions under this Act.

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(4) Regulations under the foregoing provisions of this section may require information to be given in a specified form and to be verified in a specified manner.

(5) Any notice or information required to be given or furnished under the foregoing provisions of this section shall be given in writing or in such other manner as the Secretary of State may approve.

(6) Where a recognised organisation amends, revokes or adds to its rules or guidance it shall within seven days give the Secretary of State written notice of the amendment, revocation or addition; but notice need not be given of the revocation of guidance other than such as is mentioned in section 9(6) above or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned.

(7) Contravention of, or of regulations under, this section shall not be an offence.

Persons authorised by recognised professional bodies

15 Authorisation by certification by recognised professional body.

(1) A person holding a certificate issued for the purposes of this Part of this Act by a recognised professional body is an authorised person.

(2) Such a certificate may be issued by a recognised professional body to an individual, a body corporate, a partnership or an unincorporated association.

(3) A certificate issued to a partnership—

(a) shall be issued in the partnership name; and

(b) shall authorise the carrying on of investment business in that name by the partnership to which the certificate is issued, by any partnership which succeeds to that business or by any person who succeeds to that business having previously carried it on in partnership;

and, in relation to a certificate issued to a partnership constituted under the law of England and Wales or Northern Ireland or the law of any other country or territory under which a partnership is not a legal person, references in this Act to the person who holds the certificate or is certified shall be construed as references to the persons or person for the time being authorised by the certificate to carry on investment business as mentioned in paragraph (b) above.

16 Professional bodies.

(1) In this Act a “professional body” means a body which regulates the practice of a profession and references to the practice of a profession do not include references to carrying on a business consisting wholly or mainly of investment business.

(2) In this Act references to the members of a professional body are references to individuals who, whether or not members of the body, are entitled to practise the profession in question and, in practising it, are subject to the rules of that body.

(3) In this Act references to the rules of a professional body are references to the rules (whether or not laid down by the body itself) which the body has power to enforce in relation to the practice of the profession in question and the carrying on of investment business by persons practising that profession or which relate to the grant, suspension

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or withdrawal of certificates under section 15 above, the admission and expulsion of members or otherwise to the constitution of the body.

(4) In this Act references to guidance issued by a professional body are references to guidance issued or any recommendation made by it to all or any class of its members or persons seeking to become members, or to persons or any class of persons who are or are seeking to be certified by the body, and which would, if it were a rule, fall within subsection (3) above.

17 Applications for recognition.

(1) A professional body may apply to the Secretary of State for an order declaring it to be a recognised professional body for the purposes of this Act.

(2) Subsections (2) to (6) of section 9 above shall have effect in relation to an application under subsection (1) above as they have effect in relation to an application under subsection (1) of that section.

18 Grant and refusal of recognition.

(1) The Secretary of State may, on an application duly made in accordance with section 17 above and after being furnished with all such information as he may require under that section, make or refuse to make an order (“a recognition order") declaring the applicant to be a recognised professional body.

(2) The Secretary of State may make a recognition order if it appears to him from the information furnished by the body making the application and having regard to any other information in his possession that the requirements of subsection (3) below and of Schedule 3 to this Act are satisfied as respects that body.

(3) The body must have rules which impose acceptable limits on the kinds of investment business which may be carried on by persons certified by it and the circumstances in which they may carry on such business and which preclude a person certified by that body from carrying on any investment business outside those limits unless he is an authorised person otherwise than by virtue of the certification or an exempted person in respect of that business.

(4) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect, stating the reasons for the refusal.

(5) A recognition order shall state the date on which it takes effect.

19 Revocation of recognition.

(1) A recognition order under section 18 above may be revoked by a further order made by the Secretary of State if at any time it appears to him—
   (a) that section 18(3) above or any requirement of Schedule 3 to this Act is not satisfied in the case of the body to which the recognition order relates; or
   (b) that the body has failed to comply with any obligation to which it is subject by virtue of this Act.

(2) Subsections (2) to (9) of section 11 above shall have effect in relation to the revocation of a recognition order under this section as they have effect in relation to the revocation of a recognition order under subsection (1) of that section.

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20 Compliance orders.

(1) If at any time it appears to the Secretary of State—

(a) that subsection (3) of section 18 above or any requirement of Schedule 3 to this Act is not satisfied in the case of a recognised professional body; or

(b) that such a body has failed to comply with any obligation to which it is subject by virtue of this Act,

he may, instead of revoking the recognition order under section 19 above, make an application to the court under this section.

(2) If on any such application the court decides that subsection (3) of section 18 above or the requirement in question is not satisfied or, as the case may be, that the body has failed to comply with the obligation in question it may order the body to take such steps as the court directs for securing that that subsection or requirement is satisfied or that that obligation is complied with.

(3) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

21 Notification requirements.

(1) The Secretary of State may make regulations requiring a recognised professional body to give him forthwith notice of the occurrence of such events relating to the body, its members or persons certified by it as are specified in the regulations and such information in respect of those events as is so specified.

(2) The Secretary of State may make regulations requiring a recognised professional body to furnish him at such times or in respect of such periods as are specified in the regulations with such information relating to the body, its members and persons certified by it as is so specified.

(3) The notices and information required to be given or furnished under the foregoing provisions of this section shall be such as the Secretary of State may reasonably require for the exercise of his functions under this Act.

(4) Regulations under the foregoing provisions of this section may require information to be given in a specified form and to be verified in a specified manner.

(5) Any notice or information required to be given or furnished under the foregoing provisions of this section shall be given in writing or in such other manner as the Secretary of State may approve.

(6) Where a recognised professional body amends, revokes or adds to its rules or guidance it shall within seven days give the Secretary of State written notice of the amendment, revocation or addition; but—

(a) notice need not be given of the revocation of guidance other than such as is mentioned in section 9(6) above or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned; and

(b) notice need not be given in respect of any rule or guidance, or rules or guidance of any description, in the case of which the Secretary of State has waived compliance with this subsection by notice in writing to the body concerned;

and any such waiver may be varied or revoked by a further notice in writing.

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(7) Contravention of, or of regulations under, this section shall not be an offence.

Insurance companies

22 Authorised insurers.

A body which is authorised under section 3 or 4 of the [M1]Insurance Companies Act 1982 to carry on insurance business which is investment business and carries on such insurance business in the United Kingdom is an authorised person as respects—

(a) any insurance business which is investment business; and

(b) any other investment business which that body may carry on without contravening section 16 of that Act.

Modifications etc. (not altering text)

C32 S. 22 amended (1.7.1994) by S.I. 1994/1696, **reg. 57**

Marginal Citations

M1 1982 c. 50.

Friendly societies

[[F5]23 Friendly societies.

A friendly society which carries on investment business in the United Kingdom is an authorised person as respects any investment business which it carries on for or in connection with any of the activities mentioned in Schedule 2 to the Friendly Societies Act 1992.**]**

Textual Amendments

F5 S. 23 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. I para.1** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Collective investment schemes

24 Operators and trustees of recognised schemes.

The operator or trustee of a scheme recognised under section 86 below is an authorised person as respects—

(a) investment business which consists in operating or acting as trustee in relation to that scheme; and

(b) any investment business which is carried on by him in connection with or for the purposes of that scheme.

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[Investment companies with variable capital]

24A [F6] Investment companies with variable capital

An investment company with variable capital is an authorised person as respects—

(a) investment business which consists in operating the collective investment scheme constituted by the company; and

(b) any investment business which is carried on by the company in connection with or for the purposes of operating that scheme.

Textual Amendments

F6 S. 24A inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 para. 11**

Persons authorised by the Secretary of State

25 Authorisation by Secretary of State.

A person holding an authorisation granted by the Secretary of State under the following provisions of this Chapter is an authorised person.

26 Applications for authorisation.

(1) An application for authorisation by the Secretary of State may be made by—

(a) an individual;

(b) a body corporate;

(c) a partnership; or

(d) an unincorporated association.

(2) Any such application—

(a) shall be made in such manner as the Secretary of State may direct;

(b) shall contain or be accompanied by—

(i) information as to the investment business which the applicant proposes to carry on and the services which he will hold himself out as able to provide in the carrying on of that business; and

(ii) such other information as the Secretary of State may reasonably require for the purpose of determining the application; and

(c) shall contain the address of a place in the United Kingdom for the service on the applicant of any notice or other document required or authorised to be served on him under this Act.

(3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.

(4) The directions and requirements given or imposed under subsections (2) and (3) above may differ as between different applications.

(5) Any information to be furnished to the Secretary of State under this section shall, if he so requires, be in such form or verified in such manner as he may specify.

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Modifications etc. (not altering text)

C33 S. 26 amended (1.1.1993) by S.I. 1992/3218, **reg.49**.
s. 26 extended (1.1.1996) by S.I. 1995/3275, **reg. 22**

C34 S. 26(2)(5) applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg. 95(2)**.

27 Grant and refusal of authorisation.

(1) The Secretary of State may, on an application duly made in accordance with section 26 above and after being furnished with all such information as he may require under that section, grant or refuse the application.

(2) The Secretary of State shall grant the application if it appears to him from the information furnished by the applicant and having regard to any other information in his possession that the applicant is a fit and proper person to carry on the investment business and provide the services described in the application.

(3) In determining whether to grant or refuse an application the Secretary of State may take into account any matter relating to any person who is or will be employed by or associated with the applicant for the purposes of the business in question, to any person who is or will be acting as an appointed representative in relation to that business and—

(a) if the applicant is a body corporate, to any director or controller of the body, to any other body corporate in the same group or to any director or controller of any such other body corporate;

(b) if the applicant is a partnership, to any of the partners;

(c) if the applicant is an unincorporated association, to any member of the governing body of the association or any officer or controller of the association.

(4) In determining whether to grant or refuse an application the Secretary of State may also have regard to any business which the applicant proposes to carry on in connection with his investment business.

(5) In the case of an applicant who is authorised to carry on investment business in a member State other than the United Kingdom the Secretary of State shall have regard to that authorisation.

(6) An authorisation granted to a partnership—

(a) shall be granted in the partnership name; and

(b) shall authorise the carrying on of investment business in that name (or with the Secretary of State's consent in any other name) by the partnership to which the authorisation is granted, by any partnership which succeeds to that business or by any person who succeeds to that business having previously carried it on in partnership;

and, in relation to an authorisation granted to a partnership constituted under the law of England and Wales or Northern Ireland or the law of any other country or territory under which a partnership is not a legal person, references in this Act to the holder of the authorisation or the authorised person shall be construed as references to the persons or person for the time being authorised by the authorisation to carry on investment business as mentioned in paragraph (b) above.

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(7) An authorisation granted to an unincorporated association shall apply to the carrying on of investment business in the name of the association and in such manner as may be specified in the authorisation.

(8) The Secretary of State shall give an applicant for authorisation written notice of the grant of authorisation specifying the date on which it takes effect.

Modifications etc. (not altering text)

C35 S. 27 amended (1.1.1993) by S.I. 1992/3218, **reg.50**.
s. 27 extended by S.I. 1995/3275, **reg. 23(1)(2)**
s. 27 applied (with modifications) (18.7.1996) by S.I. 1996/1669, **reg. 9(1)**

28 Withdrawal and suspension of authorisation.

(1) The Secretary of State may at any time withdraw or suspend any authorisation granted by him if it appears to him—

(a) that the holder of the authorisation is not a fit and proper person to carry on the investment business which he is carrying on or proposing to carry on; or

(b) without prejudice to paragraph (a) above, that the holder of the authorisation has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act.

(2) For the purposes of subsection (1)(a) above the Secretary of State may take into account any such matters as are mentioned in section 27(3) and (4) above.

(3) Where the holder of the authorisation is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in paragraph (b) of subsection (1) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules; and where he is a person certified by a recognised professional body the rules, prohibitions and requirements referred to in that paragraph include the rules of that body which regulate the carrying on by him of investment business and any prohibition or requirement imposed by virtue of those rules.

(4) The suspension of an authorisation shall be for a specified period or until the occurrence of a specified event or until specified conditions are complied with; and while an authorisation is suspended the holder shall not be an authorised person.

(5) Any period, event or conditions specified under subsection (4) above in the case of an authorisation may be varied by the Secretary of State on the application of the holder.

Modifications etc. (not altering text)

C36 S. 28: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(c)**.

C37 S. 28 applied (with modifications) (18.7.1996) by S.I. 1996/1669, **reg. 9(2)**
s. 28(1)(a) modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 5**

C38 S. 28(1)(a) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.5**.

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29 Notice of proposed refusal, withdrawal or suspension.

(1) Where the Secretary of State proposes—

(a) to refuse an application under section 26 or 28(5) above; or

(b) to withdraw or suspend an authorisation,

he shall give the applicant or the authorised person written notice of his intention to do so, stating the reasons for which he proposes to act.

(2) In the case of a proposed withdrawal or suspension the notice shall state the date on which it is proposed that the withdrawal or suspension should take effect and, in the case of a proposed suspension, its proposed duration.

(3) Where the reasons stated in a notice under this section relate specifically to matters which—

(a) refer to a person identified in the notice other than the applicant or the holder of the authorisation; and

(b) are in the opinion of the Secretary of State prejudicial to that person in any office or employment,

the Secretary of State shall, unless he considers it impracticable to do so, serve a copy of the notice on that person.

(4) A notice under this section shall give particulars of the right to require the case to be referred to the Tribunal under Chapter IX of this Part of this Act.

(5) Where a case is not required to be referred to the Tribunal by a person on whom a notice is served under this section the Secretary of State shall, at the expiration of the period within which such a requirement can be made—

(a) give that person written notice of the refusal, withdrawal or suspension; or

(b) give that person written notice of the grant of the application or, as the case may be, written notice that the authorisation is not to be withdrawn or suspended;

and the Secretary of State may give public notice of any decision notified by him under paragraph (a) or (b) above and the reasons for the decision except that he shall not do so in the case of a decision notified under paragraph (b) unless the person concerned consents to his doing so.

Modifications etc. (not altering text)

C39 S. 29 applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg. 96(5)(6)**.
s. 29(1) modified (1.1.1996) by S.I. 1995/3275, **reg. 17(9)(a)**
s. 29(4) modified (1.1.1996) by S.I. 1995/3275, **reg. 17(9)(b)**
S. 29: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(c)**.

30 Withdrawal of applications and authorisations by consent.

(1) An application under section 26 above may be withdrawn before it is granted or refused; and, subject to subsections (2) and (3) below, an authorisation granted under section 27 above may be withdrawn by the Secretary of State at the request or with the consent of the authorised person.

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(2) The Secretary of State may refuse to withdraw any such authorisation if he considers that the public interest requires any matter affecting the authorised person to be investigated as a preliminary to a decision on the question whether the Secretary of State should in respect of that person exercise his powers under section 28 above or under any other provision of this Part of this Act.

(3) The Secretary of State may also refuse to withdraw an authorisation where in his opinion it is desirable that a prohibition or restriction should be imposed on the authorised person under Chapter VI of this Part of this Act or that a prohibition or restriction imposed on that person under that Chapter should continue in force.

(4) The Secretary of State may give public notice of any withdrawal of authorisation under subsection (1) above.

Persons authorised in other member States

31 Authorisation in other member State.

(1) A person carrying on investment business in the United Kingdom is an authorised person if—
   (a) he is established in a member State other than the United Kingdom;
   (b) the law of that State recognises him as a national of that or another member State; and
   (c) he is for the time being authorised under that law to carry on investment business or investment business of any particular kind.

(2) For the purposes of this Act a person is established in a member State other than the United Kingdom if his head office is situated in that State and he does not transact investment business from a permanent place of business maintained by him in the United Kingdom.

(3) This section applies to a person only if the provisions of the law under which he is authorised to carry on the investment business in question—
   (a) afford to investors in the United Kingdom protection, in relation to his carrying on of that business, which is at least equivalent to that provided for them by the provisions of this Chapter relating to members of recognised self-regulating organisations or to persons authorised by the Secretary of State; or
   (b) satisfy the conditions laid down by a Community instrument for the co-ordination or approximation of the laws, regulations or administrative provisions of member States relating to the carrying on of investment business or investment business of the relevant kind.

(4) A certificate issued by the Secretary of State and for the time being in force to the effect that the provisions of the law of a member State comply with the requirements of subsection (3)(a) above, either as respects all investment business or as respects investment business of a particular kind, shall be conclusive evidence of that matter but the absence or revocation of such a certificate shall not be regarded as indicating that those requirements are not complied with.

(5) This section shall not apply to a person by virtue of paragraph (b) of subsection (3) above unless the authority by which he is authorised to carry on the investment business in question certifies that he is authorised to do so under a law which complies with the requirements of that paragraph.

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Modifications etc. (not altering text)

C40 S. 31 amended (1.1.1993) by S.I. 1992/3218, **reg.51**.
s. 31 extended (1.1.1996) by S.I. 1995/3275, **reg. 24**

32 Notice of commencement of business.

(1) A person who is an authorised person by virtue of section 31 above shall be guilty of an offence unless, not less than seven days before beginning to carry on investment business in the United Kingdom, he has given notice of his intention to do so to the Secretary of State either in writing or in such other manner as the Secretary of State may approve.

(2) The notice shall contain—

(a) information as to the investment business which that person proposes to carry on in the United Kingdom and the services which he will hold himself out as able to provide in the carrying on of that business;

(b) information as to the authorisation of that person in the member State in question;

(c) the address of a place (whether in the United Kingdom or elsewhere) for the service on that person of any notice or other document required or authorised to be served on him under this Act;

(d) such other information as may be prescribed;

and the notice shall comply with such requirements as to the form in which any information is to be given and as to its verification as may be prescribed.

(3) A notice by a person claiming to be authorised by virtue of subsection (3)(b) of section 31 above shall be accompanied by a copy of the certificate required by subsection (5) of that section.

(4) A person guilty of an offence under subsection (1) above shall be liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(5) In proceedings brought against any person for an offence under subsection (1) above it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Modifications etc. (not altering text)

C41 S. 32(2)(a) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.6**.
s. 32(2)(a) modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 6**

33 Termination and suspension of authorisation.

(1) If it appears to the Secretary of State that a person who is an authorised person by virtue of section 31 above has contravened any provision of this Act or of any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act the Secretary of State may direct—

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(a) that he shall cease to be an authorised person by virtue of that section; or

(b) that he shall not be an authorised person by virtue of that section for a specified period or until the occurrence of a specified event or until specified conditions are complied with.

(2) In the case of a person who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in subsection (1) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules; and in the case of a person who is certified by a recognised professional body the rules, prohibitions and requirements referred to in that subsection include the rules of that body which regulate the carrying on by him of investment business and any prohibition or requirement imposed by virtue of those rules.

(3) Any period, event or condition specified in a direction under subsection (1)(b) above may be varied by the Secretary of State on the application of the person to whom the direction relates.

(4) The Secretary of State shall consult the relevant supervisory authority before giving a direction under this section unless he considers it essential in the interests of investors that the direction should be given forthwith but in that case he shall consult the authority immediately after giving the direction and may then revoke or vary it if he considers it appropriate to do so.

(5) The Secretary of State shall revoke a direction under this section if he is satisfied, after consulting the relevant supervisory authority, that it will secure that the person concerned will comply with the provisions mentioned in subsection (1) above.

(6) In this section "the relevant supervisory authority" means the authority of the member State where the person concerned is established which is responsible for supervising the carrying on of investment business of the kind which that person is or was carrying on.

Modifications etc. (not altering text)

C42 S. 33: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(c)**.

C43 S. 33(1): certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para.2**.

34 Notice of proposed termination or suspension.

(1) Where the Secretary of State proposes—

(a) to give a direction under section 33 above; or

(b) to refuse an application under subsection (3) of that section,

he shall give the authorised person written notice of his intention to do so, stating the reasons for which he proposes to act.

(2) In the case of a proposed direction under section 33 above the notice shall state the date on which it is proposed that the direction should take effect and, in the case of a proposed direction under subsection (1)(b) of that section, its proposed duration.

(3) Where the reasons stated in a notice under this section relate specifically to matters which—

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(a) refer to a person identified in the notice other than the authorised person; and
(b) are in the opinion of the Secretary of State prejudicial to that person in any office or employment,

the Secretary of State shall, unless he considers it impracticable to do so, serve a copy of the notice on that other person.

(4) A notice under this section shall give particulars of the right to require the case to be referred to the Tribunal under Chapter IX of this Part of this Act.

(5) Where a case is not required to be referred to the Tribunal by a person on whom a notice is served under this section the Secretary of State shall, at the expiration of the period within which such a requirement can be made—
(a) give that person written notice of the direction or refusal; or
(b) give that person written notice that the direction is not to be given or, as the case may be, of the grant of the application;

and the Secretary of State may give public notice of any decision notified by him under paragraph (a) or (b) above and the reasons for the decision except that he shall not do so in the case of a decision within paragraph (b) unless the person concerned consents to his doing so.

Modifications etc. (not altering text)
C44 S. 34: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(c)**.

CHAPTER IV

EXEMPTED PERSONS

Modifications etc. (not altering text)
C45 Chapters III–XI (ss. 7–111): certain functions transferred by S.I. 1990/354, **art. 5**

The Bank of England

35 The Bank of England.

The Bank of England is an exempted person.

Recognised investment exchanges and clearing houses

36 Investment exchanges.

(1) A recognised investment exchange is an exempted person as respects anything done in its capacity as such which constitutes investment business.

(2) In this Act references to the rules of an investment exchange are references to the rules made or conditions imposed by it with respect to the matters dealt with in Schedule 4

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to this Act, with respect to the admission of persons to or their exclusion from the use of its facilities or otherwise relating to its constitution.

(3) In this Act references to guidance issued by an investment exchange are references to guidance issued or any recommendation made by it to all or any class of its members or users or persons seeking to become members of the exchange or to use its facilities and which would, if it were a rule, fall within subsection (2) above.

37 Grant and revocation of recognition.

(1) Any body corporate or unincorporated association may apply to the Secretary of State for an order declaring it to be a recognised investment exchange for the purposes of this Act.

(2) Subsections (2) to (5) of section 9 above shall have effect in relation to an application under subsection (1) above as they have effect in relation to an application under subsection (1) of that section; and every application under subsection (1) above shall be accompanied by—
   (a) a copy of the applicant's rules;
   (b) a copy of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form; and
   (c) particulars of any arrangements which the applicant has made or proposes to make for the provision of clearing services.

(3) The Secretary of State may, on an application duly made in accordance with subsection (1) above and after being furnished with all such information as he may require in connection with the application, make or refuse to make an order ("a recognition order") declaring the applicant to be a recognised investment exchange for the purposes of this Act.

(4) Subject to Chapter XIV of this Part of this Act, the Secretary of State may make a recognition order if it appears to him from the information furnished by the exchange making the application and having regard to any other information in his possession that the requirements of Schedule 4 to this Act are satisfied as respects that exchange.

(5) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect stating the reasons for the refusal.

(6) A recognition order shall state the date on which it takes effect.

(7) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him—
   (a) that any requirement of Schedule 4 to this Act is not satisfied in the case of the exchange to which the recognition order relates; or
   (b) that the exchange has failed to comply with any obligation to which it is subject by virtue of this Act;

   and subsections (2) to (9) of section 11 above shall have effect in relation to the revocation of a recognition order under this subsection as they have effect in relation to the revocation of such an order under subsection (1) of that section.

(8) Section 12 above shall have effect in relation to a recognised investment exchange and the requirements and obligations referred to in subsection (7) above as it has effect in relation to the requirements and obligations there mentioned.

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Modifications etc. (not altering text)

C46 S. 37(7)(a) modified (1.3.1994) by S.I. 1994/188, **reg. 4(b)**

C47 Ss. 37(7)(b), 39(7)(b) applied (25.4.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 154**, 155, 169(2)

38 Clearing houses.

(1) A recognised clearing house is an exempted person as respects anything done by it in its capacity as a person providing clearing services for the transaction of investment business.

(2) In this Act references to the rules of a clearing house are references to the rules made or conditions imposed by it with respect to the provision by it or its members of clearing services under clearing arrangements, that is to say, arrangements with a recognised investment exchange for the provision of clearing services in respect of transactions effected on the exchange.

(3) In this Act references to guidance issued by a clearing house are references to guidance issued or any recommendation made by it to all or any class of its members or persons using or seeking to use its services and which would, if it were a rule, fall within subsection (2) above.

39 Grant and revocation of recognition.

(1) Any body corporate or unincorporated association may apply to the Secretary of State for an order declaring it to be a recognised clearing house for the purposes of this Act.

(2) Subsections (2) to (5) of section 9 above shall have effect in relation to an application under subsection (1) above as they have effect in relation to an application under subsection (1) of that section; and any application under subsection (1) above shall be accompanied by—

(a) a copy of the applicant's rules;

(b) a copy of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form; and

(c) particulars of any recognised investment exchange with which the applicant proposes to make clearing arrangements and of any other person (whether or not such an exchange) for whom the applicant provides clearing services.

(3) The Secretary of State may, on an application duly made in accordance with subsection (1) above and after being furnished with all such information as he may require in connection with the application, make or refuse to make an order ("a recognition order") declaring the applicant to be a recognised clearing house for the purposes of this Act.

(4) Subject to Chapter XIV of this Part of this Act, the Secretary of State may make a recognition order if it appears to him from the information furnished by the clearing house making the application and having regard to any other information in his possession that the clearing house—

(a) has financial resources sufficient for the proper performance of its functions;

(b) has adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules or, as respects monitoring, arrangements providing for that function to be performed on behalf of the

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clearing house (and without affecting its responsibility) by another body or person who is able and willing to perform it;

(c) provides or is able to provide clearing services which would enable a recognised investment exchange to make arrangements with it that satisfy the requirements of Schedule 4 to this Act; and

(d) is able and willing to comply with duties corresponding to those imposed in the case of a recognised investment exchange by paragraph 5 of that Schedule.

(5) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect stating the reasons for the refusal.

(6) A recognition order shall state the date on which it takes effect.

(7) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him—

(a) that any requirement of subsection (4) above is not satisfied in the case of the clearing house; or

(b) that the clearing house has failed to comply with any obligation to which it is subject by virtue of this Act;

and subsections (2) to (9) of section 11 above shall have effect in relation to the revocation of a recognition order under this subsection as they have effect in relation to the revocation of such an order under subsection (1) of that section.

(8) Section 12 above shall have effect in relation to a recognised clearing house and the requirements and obligations referred to in subsection (7) above as it has effect in relation to the requirements and obligations there mentioned.

Modifications etc. (not altering text)

C48 Ss. 37(7)(b), 39(7)(b) applied (25.4.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 154**, 155, 169(2)

40 Overseas investment exchanges and clearing houses.

(1) Any application under section 37(1) or 39(1) above by a body or association whose head office is situated in a country outside the United Kingdom shall contain the address of a place in the United Kingdom for the service on that body or association of notices or other documents required or authorised to be served on it under this Act.

(2) In relation to any such body or association sections 37(4) and 39(4) above shall have effect with the substitution for the requirements there mentioned of the following requirements, that is to say—

(a) that the body or association is, in the country in which its head office is situated, subject to supervision which, together with the rules and practices of that body or association, is such that investors in the United Kingdom are afforded protection in relation to that body or association at least equivalent to that provided by the provisions of this Act in relation to investment exchanges and clearing houses in respect of which recognition orders are made otherwise than by virtue of this subsection; and

(b) that the body or association is able and willing to co-operate, by the sharing of information and otherwise, with the authorities, bodies and persons responsible in the United Kingdom for the supervision and regulation of investment business or other financial services; and

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(c) that adequate arrangements exist for such co-operation between those responsible for the supervision of the body or association in the country mentioned in paragraph (a) above and the authorities, bodies and persons mentioned in paragraph (b) above.

(3) In determining whether to make a recognition order by virtue of subsection (2) above the Secretary of State may have regard to the extent to which persons in the United Kingdom and persons in the country mentioned in that subsection have access to the financial markets in each others' countries.

(4) In relation to a body or association declared to be a recognised investment exchange or recognised clearing house by a recognition order made by virtue of subsection (2) above—

(a) the reference in section 36(2) above to the matters dealt with in Schedule 4 to this Act shall be construed as a reference to corresponding matters;

(b) sections 37(7) and (8) and 39(7) and (8) above shall have effect as if the requirements mentioned in section 37(7)(a) and in section 39(7)(a) were those of subsection (2)(a) and (b) above; and

(c) the grounds on which the order may be revoked under section 37(7) or 39(7) above shall include the ground that it appears to the Secretary of State that revocation is desirable in the interests of investors and potential investors in the United Kingdom.

(5) In this section "country" includes any territory or any part of a country or territory.

(6) A body or association declared to be a recognised investment exchange or recognised clearing house by a recognition order made by virtue of subsection (2) above is in this Act referred to as an "overseas investment exchange" or an "overseas clearing house".

Modifications etc. (not altering text)

C49 S. 40(2) modified (1.3.1994) by S.I. 1994/188, **reg. 4(b)**

41 Notification requirements.

(1) The Secretary of State may make regulations requiring a recognised investment exchange or recognised clearing house to give him forthwith notice of the occurrence of such events relating to the exchange or clearing house as are specified in the regulations and such information in respect of those events as is so specified.

(2) The Secretary of State may make regulations requiring a recognised investment exchange or recognised clearing house to furnish him at such times or in respect of such periods as are specified in the regulations with such information relating to the exchange or clearing house as is so specified.

(3) The notices and information required to be given or furnished under the foregoing provisions of this section shall be such as the Secretary of State may reasonably require for the exercise of his functions under this Act.

(4) Regulations under the foregoing provisions of this section may require information to be given in a specified form and to be verified in a specified manner.

(5) Where a recognised investment exchange—

(a) amends, revokes or adds to its rules or guidance; or

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(b) makes, terminates or varies any clearing arrangements,

it shall within seven days give written notice to the Secretary of State of the amendment, revocation or addition or, as the case may be, of the matters mentioned in paragraph (b) above.

(6) Where a recognised clearing-house—

(a) amends, revokes or adds to its rules or guidance; or

(b) makes a change in the persons for whom it provides clearing services,

it shall within seven days give written notice to the Secretary of State of the amendment, revocation or addition or, as the case may be, of the change.

(7) Notice need not be given under subsection (5) or (6) above of the revocation of guidance other than such as is mentioned in section 37(2)(b) or 39(2)(b) above or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned.

Other exemptions

42 Lloyd's.

The Society of Lloyd's and persons permitted by the Council of Lloyd's to act as underwriting agents at Lloyd's are exempted persons as respects investment business carried on in connection with or for the purpose of insurance business at Lloyd's.

43 Listed money market institutions.

(1) A person for the time being included in a list maintained by the Bank of England for the purposes of this section ("a listed institution") is an exempted person in respect of, and of anything done for the purposes of, any transaction to which Part I or Part II of Schedule 5 to this Act applies and in respect of any arrangements made by him with a view to other persons entering into a transaction to which Part III of that Schedule applies.

(2) The conditions imposed by the Bank of England for admission to the list referred to in this section and the arrangements made by it for a person's admission to and removal from the list shall require the approval of the Treasury; and this section shall cease to have effect if that approval is withdrawn but without prejudice to its again having effect if approval is given for fresh conditions or arrangements.

(3) The Bank of England shall publish the list as for the time being in force and provide a certified copy of it at the request of any person wishing to refer to it in legal proceedings.

(4) Such a certified copy shall be evidence or, in Scotland, sufficient evidence of the contents of the list; and a copy purporting to be certified by or on behalf of the Bank shall be deemed to have been duly certified unless the contrary is shown.

Modifications etc. (not altering text)

C50 S. 43 amended by SI 1990/696, art. 2
S. 43 amended (1.1.1993) by S.I. 1992/3218, **reg.52**.
s. 43 extended (1.1.1996) by S.I. 1995/3275, **reg. 26(1)**

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s. 43 applied (with modifications) (18.7.1996) by S.I. 1996/1669, **reg. 9(3)**

44 Appointed representatives.

(1) An appointed representative is an exempted person as respects investment business carried on by him as such a representative.

(2) For the purposes of this Act an appointed representative is a person—

(a) who is employed by an authorised person (his "principal") under a contract for services which—

(i) requires or permits him to carry on investment business to which this section applies; and

(ii) complies with subsections (4) and (5) below; and

(b) for whose activities in carrying on the whole or part of that investment business his principal has accepted responsibility in writing;

and the investment business carried on by an appointed representative as such is the investment business for which his principal has accepted responsibility.

(3) This section applies to investment business carried on by an appointed representative which consists of—

(a) procuring or endeavouring to procure the persons with whom he deals to enter into investment agreements with his principal or (if not prohibited by his contract) with other persons;

(b) giving advice to the persons with whom he deals about entering into investment agreements with his principal or (if not prohibited by his contract) with other persons; or

(c) giving advice as to the sale of investments issued by his principal or as to the exercise of rights conferred by an investment whether or not issued as aforesaid.

(4) If the contract between an appointed representative and his principal does not prohibit the representative from procuring or endeavouring to procure persons to enter into investment agreements with persons other than his principal it must make provision for enabling the principal either to impose such a prohibition or to restrict the kinds of investment to which those agreements may relate or the other persons with whom they may be entered into.

(5) If the contract between an appointed representative and his principal does not prohibit the representative from giving advice about entering into investment agreements with persons other than his principal it must make provision for enabling the principal either to impose such a prohibition or to restrict the kinds of advice which the representative may give by reference to the kinds of investment in relation to which or the persons with whom the representative may advise that investment agreements should be made.

(6) The principal of an appointed representative shall be responsible, to the same extent as if he had expressly authorised it, for anything said or done or omitted by the representative in carrying on the investment business for which he has accepted responsibility.

(7) In determining whether an authorised person has complied with—

(a) any provision contained in or made under this Act; or

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(b) any rules of a recognised self-regulating organisation or recognised professional body,

anything which a person who at the material time is or was an appointed representative of the authorised person has said, done or omitted as respects investment business for which the authorised person has accepted responsibility shall be treated as having been said, done or omitted by the authorised person.

(8) Nothing in subsection (7) above shall cause the knowledge or intentions of an appointed representative to be attributed to his principal for the purpose of determining whether the principal has committed a criminal offence unless in all the circumstances it is reasonable for them to be attributed to him.

(9) In this Act "investment agreement" means any agreement the making or performance of which by either party constitutes an activity which falls within any paragraph of Part II of Schedule 1 to this Act or would do so apart from Parts III and IV of that Schedule.

Modifications etc. (not altering text)

C51 S. 44 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.7**.

C52 S. 44(2) applied (1.4.1994) by S.I. 1993/1933, **reg. 13(6)**.
s. 44 extended (1.1.1997) by S.I. 1995/3275, **reg. 27**
s. 44 modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 7**

45 Miscellaneous exemptions.

(1) Each of the following persons is an exempted person to the extent specified in relation to that person—

(a) **[**[F7]the Public Trustee**]** when acting in the exercise of his functions under section 9 of the [M2]Administration of Estates Act 1925;

(b) the Probate Judge of the High Court of Northern Ireland when acting in the exercise of his functions under section 3 of the [M3]Administration of Estates Act (Northern Ireland) 1955;

(c) the Accountant General of the Supreme Court when acting in the exercise of his functions under Part VI of the [M4]Administration of Justice Act 1982;

(d) the Accountant of Court when acting in the exercise of his functions in connection with the consignation or deposit of sums of money;

(e) the Public Trustee when acting in the exercise of his functions under the [M5]Public Trustee Act 1906;

(f) the Master of the Court of Protection when acting in the exercise of his functions under Part VII of the [M6]Mental Health Act 1983;

(g) the Official Solicitor to the Supreme Court when acting as judicial trustee under the [M7]Judicial Trustees Act 1896;

(h) a registrar of a county court when managing funds paid into court;

(i) a sheriff clerk when acting in the exercise of his functions in connection with the consignation or deposit of sums of money;

(j) a person acting in his capacity as manager of a fund established under section 22 **[**[F8]or 22A**]** of the [M8]Charities Act 1960 **[**[F9], section 24 or 25 of the Charities Act 1993**]**, section 25 of the [M9]Charities Act (Northern Ireland) 1964, section 11 of the [M10]Trustee Investments Act 1961 or section 42 of the [M11]Administration of Justice Act 1982;

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(k) the Central Board of Finance of the Church of England or a Diocesan Authority within the meaning of the [M12]Church Funds Investment Measure 1958 when acting in the exercise of its functions under that Measure;

(l) a person acting in his capacity as an official receiver within the meaning of section 399 of the [M13]Insolvency Act 1986 or in that capacity within the meaning of any corresponding provision in force in Northern Ireland.

(2) Where a bankruptcy order is made in respect of an authorised person or of a person whose authorisation is suspended under section 28 above or who is the subject of a direction under section 33(1)(b) above or a winding-up order is made in respect of a partnership which is such a person, the trustee in bankruptcy or liquidator acting in his capacity as such is an exempted person but—

(a) sections 48 to 71 below and, so far as relevant to any of those provisions, Chapter IX of this Part of this Act; and

(b) sections 104, 105 and 106 below,

shall apply to him to the same extent as they applied to the bankrupt or partnership and, if the bankrupt or partnership was subject to the rules of a recognised self-regulating organisation or recognised professional body, he shall himself also be subject to those rules.

(3) In the application of subsection (2) above to Scotland—

(a) for the reference to a bankruptcy order being made in respect of a person there shall be substituted a reference to the estate of that person being sequestrated;

(b) the reference to a winding-up order in respect of a partnership is a reference to such an order made under section 72 below;

(c) for the reference to the trustee in bankruptcy there shall be substituted a reference to the interim trustee or permanent trustee within the meaning of the [M14]Bankruptcy (Scotland) Act 1985; and

(d) for the references to the bankrupt there shall be substituted references to the debtor.

(4) In the application of subsection (2) above to Northern Ireland for the reference to a bankruptcy order there shall be substituted a reference to an order of adjudication of bankruptcy and the reference to a trustee in bankruptcy shall include a reference to an assignee in bankruptcy.

Textual Amendments

F7 Words in s. 45(1)(a) substituted (1.7.1995) by 1994 c. 36, s. 21(1), **Sch. 1 para. 10** (with s. 20); S.I. 1995/1317, **art. 2**

F8 Words in s. 45(1)(j) inserted (1.9.1992) by Charities Act 1992 (c. 41), s. 78(1), **Sch. 6 para. 14**; S.I. 1992/1900, art. 2, **Sch. 1**.

F9 Words in s. 45(1)(j) inserted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), **Sch. 6 para. 22**.

Modifications etc. (not altering text)

C53 S. 45 (1)(j) restricted (1.12.1999) by S.I. 1999/2999, **art. 2**

C54 s. 45(2) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 8**.
s. 45 modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 8**

Marginal Citations

M2 1925 c. 23.

M3 1955 c. 24 (N.I.).

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M4 1982 c. 53.
M5 1906 c. 55.
M6 1983 c. 20.
M7 1896 c. 35.
M8 1960 c. 58.
M9 1964 c. 33. (N.I.).
M10 1961 c. 62.
M11 1982 c. 53.
M12 1958 No. 1.
M13 1986 c. 45.
M14 1985 c. 66.

Supplemental

46 Power to extend or restrict exemptions.

(1) The Secretary of State may by order provide—

(a) for exemptions additional to those specified in the foregoing provisions of this Chapter; or

(b) for removing or restricting any exemption conferred by section 42, 43 or 45 above;

and any such order may contain such transitional provisions as the Secretary of State thinks necessary or expedient.

(2) An order making such provision as is mentioned in paragraph (a) of subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament; and no order making such provision as is mentioned in paragraph (b) of that subsection shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

CHAPTER V

CONDUCT OF INVESTMENT BUSINESS

Modifications etc. (not altering text)
C55 Chapters III–XI (ss. 7–111): certain functions transferred by S.I. 1990/354, **art. 5**

47 Misleading statements and practices.

(1) Any person who—

(a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive or dishonestly conceals any material facts; or

(b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,

is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) to enter or offer to enter into, or to refrain from

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entering or offering to enter into, an investment agreement or to exercise, or refrain from exercising, any rights conferred by an investment.

(2) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any investments is guilty of an offence if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.

(3) In proceedings brought against any person for an offence under subsection (2) above it shall be a defence for him to prove that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the matters mentioned in that subsection.

(4) Subsection (1) above does not apply unless—
- (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the United Kingdom;
- (b) the person on whom the inducement is intended to or may have effect is in the United Kingdom; or
- (c) the agreement is or would be entered into or the rights are or would be exercised in the United Kingdom.

(5) Subsection (2) above does not apply unless—
- (a) the act is done or the course of conduct is engaged in in the United Kingdom; or
- (b) the false or misleading impression is created there.

(6) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

[[F10]47A Statements of principle.

(1) The Secretary of State may issue statements of principle with respect to the conduct and financial standing expected of persons authorised to carry on investment business.

(2) The conduct expected may include compliance with a code or standard issued by another person, as for the time being in force, and may allow for the exercise of discretion by any person pursuant to any such code or standard.

(3) Failure to comply with a statement of principle under this section is a ground for the taking of disciplinary action or the exercise of powers of intervention, but it does not of itself give rise to any right of action by investors or other persons affected or affect the validity of any transaction.

(4) The disciplinary action which may be taken by virtue of subsection (3) is—
- (a) the withdrawal or suspension of authorisation under section 28 or the termination or suspension of authorisation under section 33,
- (b) the giving of a disqualification direction under section 59,
- (c) the making of a public statement under section 60, [F11]. . .

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(d) the application by the Secretary of State for an injunction, interdict or other order under section 61(1);

[[F12]or

(e) the giving of a direction under regulation 18 of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 (directions) or the making of an application for an order under regulation 20 of those Regulations (application to court to remove director or depositary);**]**

and the reference in that subsection to powers of intervention is to the powers conferred by Chapter VI of this Part.

(5) Where a statement of principle relates to compliance with a code or standard issued by another person, the statement of principle may provide—

(a) that failure to comply with the code or standard shall be a ground for the taking of disciplinary action, or the exercise of powers of intervention, only in such cases and to such extent as may be specified; and

(b) that no such action shall be taken, or any such power exercised, except at the request of the person by whom the code or standard in question was issued.

(6) The Secretary of State shall exercise his powers in such manner as appears to him appropriate to secure compliance with statements of principle under this section.**]**

Textual Amendments

F10 S. 47A inserted by Companies Act 1989 (c. 40, SIF 27), **s. 192** and brought into force by S.I. 1990/354, **art. 3**

F11 Word in s. 47A(4)(c) omitted (6.1.1997) by virtue of S.I. 1996/2827, reg. 75, **Sch. 8 para. 12**

F12 S. 47A(4)(e) and the preceding word
"or"
inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 para. 12**

Modifications etc. (not altering text)

C56 S. 47A: certain functions transferred by SI 1990/354, art. 4(3)(a)

C57 S. 47A: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 3**.
S. 47A amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 9**.
s. 47A amended (1.7.1994) by S.I. 1994/1696, **reg. 58(1)**
s. 47A modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 9(1)(2)**
s. 47A extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 Pt. II para. 4(1)**

C58 S. 47A(1)(4) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 9(1)**.
s. 47A(4) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 9(1)(2)**
s. 47A extended (1.1.1996) by S.I. 1995/3275, reg. 58, **Sch. 11 para. 4**

[[F13]**47B Modification or waiver of statements of principle in particular cases.**

(1) The relevant regulatory authority may on the application of any person—

(a) modify a statement of principle issued under section 47A so as to adapt it to his circumstances or to any particular kind of business carried on by him, or

(b) dispense him from compliance with any such statement of principle, generally or in relation to any particular kind of business carried on by him.

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(2) The powers conferred by this section shall not be exercised unless it appears to the relevant regulatory authority—
  (a) that compliance with the statement of principle in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and
  (b) that the exercise of those powers will not result in any undue risk to investors.

(3) The powers conferred by this section may be exercised unconditionally or subject to conditions; and section 47A(3) applies in the case of failure to comply with a condition as in the case of failure to comply with a statement of principle.

(4) The relevant regulatory authority for the purposes of this section is—
  (a) in the case of a member of a recognised self-regulating organisation or professional body, in relation to investment business in the carrying on of which he is subject to the rules of the organisation or body, that organisation or body;
  (b) in any other case, or in relation to other investment business, the Secretary of State.

(5) The references in paragraph 4(1) of Schedule 2 and paragraph 4(2) of Schedule 3 (requirements for recognition of self-regulating organisations and professional bodies) to monitoring and enforcement of compliance with statements of principle include monitoring and enforcement of compliance with conditions imposed by the organisation or body under this section.**]**

Textual Amendments
F13 S. 47B inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **s. 192**

48 Conduct of business rules.

(1) The Secretary of State may make rules regulating the conduct of investment business by authorised persons but those rules shall not apply to . . . [F14] persons certified by a recognised professional body in respect of investment business in the carrying on of which they are subject to the rules of the . . . [F14] body.

(2) Rules under this section may in particular make provision—
  (a) prohibiting a person from carrying on, or holding himself out as carrying on—
    (i) investment business of any kind specified in the rules; or
    (ii) investment business of a kind or on a scale other than that notified by him to the Secretary of State in connection with an application for authorisation under Chapter III of this Part of this Act, in a notice under section 32 above or in accordance with any provision of the rules or regulations in that behalf;
  (b) prohibiting a person from carrying on investment business in relation to persons other than those of a specified class or description;
  (c) regulating the manner in which a person may hold himself out as carrying on investment business;
  (d) regulating the manner in which a person makes a market in any investments;
  (e) as to the form and content of advertisements in respect of investment business;

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(f) requiring the principals of appointed representatives to impose restrictions on the investment business carried on by them;

(g) requiring the disclosure of the amount or value, or of arrangements for the payment or provision, of commissions or other inducements in connection with investment business and restricting the matters by reference to which or the manner in which their amount or value may be determined;

(h) enabling or requiring information obtained by an authorised person in the course of carrying on one part of his business to be withheld by him from persons with whom he deals in the course of carrying on another part and for that purpose enabling or requiring persons employed in one part of that business to withhold information from those employed in another part;

(i) as to the circumstances and manner in which and the time when or the period during which action may be taken for the purpose of stabilising the price of investments of any specified description;

(j) for arrangements for the settlement of disputes;

(k) requiring the keeping of accounts and other records, as to their form and content and for their inspection;

(l) requiring a person to whom the rules apply to make provision for the protection of investors in the event of the cessation of his investment business in consequence of his death, incapacity or otherwise.

(3) Subsection (2) above is without prejudice to the generality of subsection (1) above and accordingly rules under this section may make provision for matters other than those mentioned in subsection (2) or further provision as to any of the matters there mentioned except that they shall not impose limits on the amount or value of commissions or other inducements paid or provided in connection with investment business.

(4) Rules under this section may also regulate or prohibit the carrying on in connection with investment business of any other business or the carrying on of any other business which is held out as being for the purposes of investment.

(5) In paragraph (e) of subsection (2) above "advertisement" does not include any advertisement which is subject to section 154 below or which is required or permitted to be published by listing rules under Part IV of this Act and relates to securities which have been admitted to listing under that Part; **[F15**. . ..

(6) Nothing done in conformity with rules made under paragraph (h) of subsection (2) above shall be regarded as a contravention of section 47 above.

(7) Section 47(2) above shall not be regarded as contravened by anything done for the purpose of stabilising the price of investments if it is done in conformity with rules made under this section and—

(a) **[**[F16](i)**]** in respect of investments which fall within any of paragraphs 1 to 5 of Schedule 1 to this Act and are specified by the rules; and

[[F17](ii)**]** during such period before or after the issue of those investments as is specified by the rules **[**[F18]or**]**

[[F18](b) (i) in respect of such investments as are mentioned in subparagraph (a)(i) above; and

(ii) during a period starting with the date of the first public announcement of an offer of those investments which states the price or the minimum price at which the investments are to be sold and ending on the

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30th day after the closing date specified in the announcement for acceptances of such offer.**]**

[[F19](7A) For the purposes of subparagraph (b)(ii) of subsection (7) above "an offer" means an offer for cash (other than in relation to the issue of the investments in question) where either—

(a) the investments have been admitted to dealing on a recognised investment exchange or any other exchange of repute outside the United Kingdom; or

(b) the offer is on the occasion of such admission or conditional on such admission;

and the total cost of the investments subject to the offer at the price stated in the first public announcement mentioned in subsection (7) above is at least £15,000,000 (or the equivalent in the currency or unit of account in which the price is stated on the date of the announcement).**]**

(8) The Secretary of State may by order amend subsection (7) above—

(a) by restricting or extending the kinds of investment to which it applies;

(b) by restricting it so as to apply only in relation to the issue of investments in specified circumstances or by extending it, in respect of investments of any kind specified in the order, so as to apply to things done during a specified period before or after events other than the issue of those investments.

(9) No order shall be made under subsection (8) above unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

(10) Rules under this section may contain such incidental and transitional provisions as the Secretary of State thinks necessary or expedient.

[[F20](11) Section 63A below (application of designated rules) has effect as regards the application of rules under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.**]**

Textual Amendments

F14 Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 206(1), 212, Sch. 23 Pt. I para. 2(2), **Sch. 24**

F15 Words in s. 48(5) repealed (19.6.1995) by S.I. 1995/1537, reg. 17, **Sch. 2 Pt. II para. 5(a)**

F16 Word inserted by S.I. 1988/717, **art. 2**(*a*)

F17 Word substituted by S.I. 1988/717, **art. 2**(*b*)

F18 S. 48(7)(b) and word immediately preceding it inserted by S.I. 1988/717, **art. 2**(*c*)

F19 S. 48(7A) inserted by S.I. 1988/717, **art. 2**(*d*)

F20 S. 48(11) inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 2(3)**

Modifications etc. (not altering text)

C59 S. 48: certain functions transferred by S.I. 1990/354, **art. 4(5)**

C60 S. 48 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 10**.

C61 S. 48(1)(2) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 10(1)**.
s. 48 amended (1.7.1994) by S.I. 1994/1669, **reg. 58(2)**
s. 48 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 10(1)**
s. 48 modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 10(2)**
s. 48 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 10(2)**

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C62 S. 48(8) extended by S.I. 1986/1034 (N.I. 8), **art. 15(2)** as substituted by S.I. 1989/2404 (N.I. 18) art. 30

49 Financial resources rules.

[[F21](1) The Secretary of State may make rules requiring—

(a) a person authorised to carry on investment business by virtue of section 25 or 31 above, or

(b) a member of a recognised self-regulating organisation carrying on investment business in the carrying on of which he is subject to the rules of the organisation,

to have and maintain in respect of that business such financial resources as are required by the rules.**]**

(2) Without prejudice to the generality of subsection (1) above, rules under this section may—

(a) impose requirements which are absolute or which are to vary from time to time by reference to such factors as are specified in or determined in accordance with the rules;

(b) impose requirements which take account of any business (whether or not investment business) carried on by the person concerned in conjunction with or in addition to the business mentioned in subsection (1) above;

(c) make provision as to the assets, liabilities and other matters to be taken into account in determining a person's financial resources for the purposes of the rules and the extent to which and the manner in which they are to be taken into account for that purpose.

[[F22](3) Section 63A below (application of designated rules) has effect as regards the application of rules under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.**]**

Textual Amendments

F21 S. 49(1) substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 3(2)**

F22 S. 49(3) inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 3(3)**

Modifications etc. (not altering text)

C63 S. 49: certain functions transferred by S.I. 1990/354, **art. 4(5)**

C64 S. 49 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 11(1)**.
s. 49 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 11(1)**

C65 S. 49(2) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 11(2)**.
s. 49(2) modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 11(2)**

50 Modification of conduct of business and financial resources rules for particular cases.

(1) The Secretary of State may, on the application of any person to whom any rules made under section 48 or 49 above apply, alter the requirements of the rules so as to adapt them to the circumstances of that person or to any particular kind of business carried on or to be carried on by him.

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(2) The Secretary of State shall not exercise the powers conferred by subsection (1) above in any case unless it appears to him that—

(a) compliance with the requirements in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors; and

(b) the exercise of those powers will not result in any undue risk to investors.

(3) The powers conferred by subsection (1) above may be exercised unconditionally or subject to conditions.

[[F23](4) The powers conferred by subsection (1) above shall not be exercised in a case where the powers conferred by section 63B below are exercisable (powers of recognised self-regulating organisation in relation to designated rules).**]**

Textual Amendments

F23 S. 50(4) inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 4**

Modifications etc. (not altering text)

C66 S. 50: certain functions transferred by SI 1990/354, art. 4(5)

51 Cancellation rules.

(1) The Secretary of State may make rules for enabling a person who has entered or offered to enter into an investment agreement with an authorised person to rescind the agreement or withdraw the offer within such period and in such manner as may be prescribed.

(2) Without prejudice to the generality of subsection (1) above, rules under this section may make provision—

(a) for requiring the service of notices with respect to the rights exercisable under the rules;

(b) for the restitution of property and the making or recovery of payments where those rights are exercised; and

(c) for such other incidental matters as the Secretary of State thinks necessary or expedient.

Modifications etc. (not altering text)

C67 S. 51(1) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 12(1)**.
s. 51 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 12**

52 Notification regulations.

(1) The Secretary of State may make regulations requiring authorised persons to give him forthwith notice of the occurrence of such events as are specified in the regulations and such information in respect of those events as is so specified.

(2) The Secretary of State may make regulations requiring authorised persons to furnish him at such times or in respect of such periods as are specified in the regulations with such information as is so specified.

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(3) Regulations under this section shall not apply to a member of a recognised self-regulating organisation or a person certified by a recognised professional body unless he carries on investment business in the carrying on of which he is **[**[F24]not subject to the rules of that organisation or body**]**.

(4) Without prejudice to the generality of subsections (1) and (2) above, regulations under this section may relate to—

(a) the nature of the investment business being carried on;

(b) the nature of any other business carried on with or for the purposes of the investment business;

(c) any proposal of an authorised person to alter the nature or extent of any business carried on by him;

(d) any person becoming or ceasing to be a person of the kind to whom regard could be had by the Secretary of State under subsection (3) of section 27 above in deciding an application for authorisation under that section;

(e) the financial position of an authorised person as respects his investment business or any other business carried on by him;

(f) any property managed, and any property or money held, by an authorised person on behalf of other persons.

(5) Regulations under this section may require information to be given in a specified form and to be verified in a specified manner.

(6) Any notice or information required to be given or furnished under this section shall be given in writing or in such other manner as the Secretary of State may approve.

Textual Amendments

F24 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 5**

Modifications etc. (not altering text)

C68 S. 52: certain functions transferred by S.I. 1990/354, **art. 4(5)**

C69 S. 52 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.13**.
s. 52 amended (1.7.1994) by S.I. 1994/1696, **reg. 58(3)**
s. 52 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 13**

53 Indemnity rules.

(1) The Secretary of State may make rules concerning indemnity against any claim in respect of any description of civil liability incurred by an authorised person in connection with his investment business.

(2) Rules under this section shall not apply to a member of a recognised self-regulating organisation or a person certified by a recognised professional body in respect of investment business in the carrying on of which he is subject to the rules of the organisation or body unless that organisation or body has requested that rules under this section should apply to him; and any such request shall not be capable of being withdrawn after rules giving effect to it have been made but without prejudice to the power of the Secretary of State to revoke the rules if he thinks fit.

(3) For the purpose of providing indemnity the rules—

(a) may authorise the Secretary of State to establish and maintain a fund or funds;

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(b) may authorise the Secretary of State to take out and maintain insurance with insurers authorised to carry on insurance business under the law of the United Kingdom or any other member State;

(c) may require any person to whom the rules apply to take out and maintain insurance with any such insurer.

(4) Without prejudice to the generality of the foregoing provisions, the rules may—

(a) specify the terms and conditions on which, and the extent to which, indemnity is to be available and any circumstances in which the right to it is to be excluded or modified;

(b) provide for the management, administration and protection of any fund maintained by virtue of subsection (3)(a) above and require persons to whom the rules apply to make payments to any such fund;

(c) require persons to whom the rules apply to make payments by way of premium on any insurance policy maintained by the Secretary of State by virtue of subsection (3)(b) above;

(d) prescribe the conditions which an insurance policy must satisfy for the purposes of subsection (3)(c) above;

(e) authorise the Secretary of State to determine the amount which the rules require to be paid to him or an insurer, subject to such limits or in accordance with such provisions as may be prescribed by the rules;

(f) specify circumstances in which, where sums are paid by the Secretary of State or an insurer in satisfaction of claims against a person subject to the rules, proceedings may be taken against that person by the Secretary of State or the insurer;

(g) specify circumstances in which persons are exempt from the rules;

(h) empower the Secretary of State to take such steps as he considers necessary or expedient to ascertain whether or not the rules are being complied with; and

(i) contain incidental or supplementary provisions.

Modifications etc. (not altering text)

C70 S. 53 (other than subsection (2)) applied (with modfications) (12.2.1992) by S.I. 1992/225, **reg.111**.

C71 S. 53(1) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.14**.
s. 53 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 14**

54 Compensation fund.

(1) The Secretary of State may by rules establish a scheme for compensating investors in cases where persons who are or have been authorised persons are unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with their investment businesses.

(2) Without prejudice to the generality of subsection (1) above, rules under this section may—

(a) provide for the administration of the scheme and, subject to the rules, the determination and regulation of any matter relating to its operation by a body appearing to the Secretary of State to be representative of, or of any class of, authorised persons;

(b) establish a fund out of which compensation is to be paid;

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(c) provide for the levying of contributions from, or from any class of, authorised persons and otherwise for financing the scheme and for the payment of contributions and other money into the fund;

(d) specify the terms and conditions on which, and the extent to which, compensation is to be payable and any circumstances in which the right to compensation is to be excluded or modified;

(e) provide for treating compensation payable under the scheme in respect of a claim against any person as extinguishing or reducing the liability of that person in respect of the claim and for conferring on the body administering the scheme a right of recovery against that person, being, in the event of his insolvency, a right not exceeding such right, if any, as the claimant would have had in that event; and

(f) contain incidental and supplementary provisions.

(3) A scheme under this section shall not be made so as to apply to persons who are members of a recognised self-regulating organisation except after consultation with that organisation or, except at the request of a recognised professional body, to persons who are certified by it and subject to its rules in carrying on all the investment business carried on by them; and no scheme applying to such persons shall be made unless the Secretary of State is satisfied that the rules establishing it make sufficient provision—

(a) for the administration of the scheme by a body on which the interests of those persons are adequately represented; and

(b) for securing that the amounts which they are liable to contribute reflect, so far as practicable, the amount of the claims made or likely to be made in respect of those persons.

(4) Where a scheme applies to such persons as are mentioned in subsection (3) above the rules under this section may—

(a) constitute the recognised self-regulating organisation or recognised professional body in question as the body administering the scheme in relation to those persons;

(b) provide for the levying of contributions from that organisation or body instead of from those persons; and

(c) establish a separate fund for the contributions and compensation payable in respect of those persons, with or without provision for payments and repayments in specified circumstances between that and any other fund established by the scheme.

(5) A request by a recognised professional body under subsection (3) above shall not be capable of being withdrawn after rules giving effect to it have been made but without prejudice to the power of the Secretary of State to revoke the rules if he thinks fit.

(6) Rules may be made—

(a) for England and Wales, under sections 411 and 412 of the [M15]Insolvency Act 1986;

(b) for Scotland—

(i) under the said section 411; and

(ii) in relation to the application of this section where the persons who are or have been authorised persons are persons whose estates may be sequestrated under the [M16]Bankruptcy (Scotland) Act 1985, by the Secretary of State under this section; and

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(c) for Northern Ireland, under **[**[F25]Article 359 of the Insolvency (Northern Ireland) Order 1989**]** and section 65 of the [M17]Judicature (Northern Ireland) Act 1978,

for the purpose of integrating any procedure for which provision is made by virtue of subsection (2)(e) above into the general procedure on a winding-up, bankruptcy or sequestration.

Textual Amendments

F25 Words in s. 54(6)(c) substituted (N.I.) (1.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), **Sch. 9 Pt. II para. 46**; S.R. 1991/411, **art.2**.

Modifications etc. (not altering text)

C72 S. 54 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.15**.
C73 S. 54(1)(2)(6) applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg. 105(6)**.
C74 S. 54(2) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 15(b)**.
s. 54 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 15**

Marginal Citations

M15 1986 c. 45.
M16 1985 c. 66.
M17 1978 c. 23.

55 Clients' money.

(1) The Secretary of State may make regulations with respect to money (in this section referred to as "clients' money") which authorised persons, or authorised persons of any description, hold in such circumstances as are specified in the regulations.

(2) Without prejudice to the generality of subsection (1) above, regulations under this section may—

(a) provide that clients' money held by an authorised person is held on trust;

(b) require clients' money to be paid into an account the title of which contains the word "client" and which is with an institution of a kind specified in the regulations or, in the case of . . . [F26] a person certified by a recognised professional body, by the rules of that . . . [F26] body;

(c) make provision with respect to the opening and keeping of clients' accounts, including provision as to the circumstances in which money other than clients' money may be paid into such accounts and the circumstances in which and the persons to whom money held in such accounts may be paid out;

(d) require the keeping of accounts and records in respect of clients' money;

(e) require any such accounts to be examined by an accountant having such qualifications as are specified in the regulations and require the accountant to report to the Secretary of State, or in the case of . . . [F26] a person certified by a recognised professional body, to that . . . [F26] body, whether in his opinion the provisions of the regulations have been complied with and on such other matters as may be specified in the regulations;

(f) authorise the retention, to such extent and in such cases as may be specified in regulations, of so much of clients' money as represents interest.

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(3) Where an authorised person is required to have an auditor; whether by virtue of any provision contained in or made under any enactment (including this Act) or of the rules of any such . . . [F27] body as is mentioned in paragraph (b) of subsection (2) above, the regulations may require the examination and report referred to in paragraph (e) of that subsection to be carried out and made by that auditor.

(4) An institution with which an account is kept in pursuance of regulations made under this section does not incur any liability as constructive trustee where money is wrongfully paid from the account unless the institution permits the payment with knowledge that it is wrongful or having deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.

(5) In the application of this section to Scotland for the reference to money being held on trust there shall be substituted a reference to its being held as agent for the person who is entitled to call for it to be paid over to him or to be paid on his direction or to have it otherwise credited to him.

[[F28](6) Section 63A below (application of designated regulations) has effect as regards the application of regulations under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.**]**

Textual Amendments

F26 Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 206(1), 212, Sch. 23 Pt. I para. 6(2), **Sch. 24**

F27 Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 206(1), 212, Sch. 23 Pt. I para. 6(3), **Sch. 24**

F28 S. 55(6) inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 6(4)**

Modifications etc. (not altering text)

C75 S. 55: certain functions transferred by S.I. 1990/354, **art. 4(5)**
S. 55 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.16**.
s.55 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 16**

56 Unsolicited calls.

(1) Except so far as permitted by regulations made by the Secretary of State, no person shall in the course of or in consequence of an unsolicited call—

(a) made on a person in the United Kingdom; or

(b) made from the United Kingdom on a person elsewhere,

by way of business enter into an investment agreement with the person on whom the call is made or procure or endeavour to procure that person to enter into such an agreement.

(2) A person shall not be guilty of an offence by reason only of contravening subsection (1) above, but subject to subsection (4) below—

(a) any investment agreement which is entered into in the course of or in consequence of the unsolicited call shall not be enforceable against the person on whom the call was made; and

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(b) that person shall be entitled to recover any money or other property paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result of having parted with it.

(3) The compensation recoverable under subsection (2) above shall be such as the parties may agree or as a court may, on the application of either party, determine.

(4) A court may allow an agreement to which subsection (2) above applies to be enforced or money and property paid or transferred under it to be retained if it is satisfied—

(a) that the person on whom the call was made was not influenced, or not influenced to any material extent, by anything said or done in the course of or in consequence of the call;

(b) without prejudice to paragraph (a) above, that the person on whom the call was made entered into the agreement—

(i) following discussions between the parties of such a nature and over such a period that his entering into the agreement can fairly be regarded as a consequence of those discussions rather than the call; and

(ii) was aware of the nature of the agreement and any risks involved in entering into it; or

(c) that the call was not made by—

(i) the person seeking to enforce the agreement or to retain the money or property or a person acting on his behalf or an appointed representative whose principal he was; or

(ii) a person who has received or is to receive, or in the case of an appointed representative whose principal has received or is to receive, any commission or other inducement in respect of the agreement from a person mentioned in sub-paragraph (i) above.

(5) Where a person elects not to perform an agreement which by virtue of this section is unenforceable against him or by virtue of this section recovers money paid or other property transferred by him under an agreement he shall repay any money and return any other property received by him under the agreement.

(6) Where any property transferred under an agreement to which this section applies has passed to a third party the references to that property in this section shall be construed as references to its value at the time of its transfer under the agreement.

[[F29](7) Section 63A below (application of designated regulations) has effect as regards the application of regulations under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.

As it applies to such persons in respect of such business the reference in subsection (1) above to conduct permitted by regulations made by the Secretary of State shall be construed—

(a) where or to the extent that the regulations do not apply, as a reference to conduct permitted by the rules of the organisation; and

(b) where or to the extent that the regulations do apply but are expressed to have effect subject to the rules of the organisation, as a reference to conduct permitted by the regulations together with the rules of the organisation.

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(7A) In the application of this section to anything done by a person certified by a recognised professional body in carrying on investment business in the carrying on of which he is subject to the rules of the body, the reference in subsection (1) above to conduct permitted by regulations made by the Secretary of State shall be construed as a reference to conduct permitted by the rules of the body.**]**

(8) In this section "unsolicited call" means a personal visit or oral communication made without express invitation.

Textual Amendments

F29 S. 56(7)(7A) substituted for subsection (7) by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 7**

Modifications etc. (not altering text)

C76 S. 56: certain functions transferred by S.I. 1990/354, **art. 4(5)**

57 Restrictions on advertising.

(1) Subject to section 58 below, no person other than an authorised person shall issue or cause to be issued an investment advertisement in the United Kingdom unless its contents have been approved by an authorised person.

(2) In this Act "an investment advertisement" means any advertisement inviting persons to enter or offer to enter into an investment agreement or to exercise any rights conferred by an investment to acquire, dispose of, underwrite or convert an investment or containing information calculated to lead directly or indirectly to persons doing so.

(3) Subject to subsection (4) below, any person who contravenes this section shall be guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(4) A person who in the ordinary course of a business other than investment business issues an advertisement to the order of another person shall not be guilty of an offence under this section if he proves that he believed on reasonable grounds that the person to whose order the advertisement was issued was an authorised person, that the contents of the advertisement were approved by an authorised person or that the advertisement was permitted by or under section 58 below.

(5) If in contravention of this section a person issues or causes to be issued an advertisement inviting persons to enter or offer to enter into an investment agreement or containing information calculated to lead directly or indirectly to persons doing so, then, subject to subsection (8) below—

(a) he shall not be entitled to enforce any agreement to which the advertisement related and which was entered into after the issue of the advertisement; and

(b) the other party shall be entitled to recover any money or other property paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result of having parted with it.

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(6) If in contravention of this section a person issues or causes to be issued an advertisement inviting persons to exercise any rights conferred by an investment or containing information calculated to lead directly or indirectly to persons doing so, then, subject to subsection (8) below—

(a) he shall not be entitled to enforce any obligation to which a person is subject as a result of any exercise by him after the issue of the advertisement of any rights to which the advertisement related; and

(b) that person shall be entitled to recover any money or other property paid or transferred by him under any such obligation, together with compensation for any loss sustained by him as a result of having parted with it.

(7) The compensation recoverable under subsection (5) or (6) above shall be such as the parties may agree or as a court may, on the application of either party, determine.

(8) A court may allow any such agreement or obligation as is mentioned in subsection (5) or (6) above to be enforced or money or property paid or transferred under it to be retained if it is satisfied—

(a) that the person against whom enforcement is sought or who is seeking to recover the money or property was not influenced, or not influenced to any material extent, by the advertisement in making his decision to enter into the agreement or as to the exercise of the rights in question; or

(b) that the advertisement was not misleading as to the nature of the investment, the terms of the agreement or, as the case may be, the consequences of exercising the rights in question and fairly stated any risks involved in those matters.

(9) Where a person elects not to perform an agreement or an obligation which by virtue of subsection (5) or (6) above is unenforceable against him or by virtue of either of those subsections recovers money paid or other property transferred by him under an agreement or obligation he shall repay any money and return any other property received by him under the agreement or, as the case may be, as a result of exercising the rights in question.

(10) Where any property transferred under an agreement or obligation to which subsection (5) or (6) above applies has passed to a third party the references to that property in this section shall be construed as references to its value at the time of its transfer under the agreement or obligation.

Modifications etc. (not altering text)

C77 S. 57: excluded by S.I. 1988/716, **arts. 3(1)**, 4(2), 5(2), 6, 7(2), 8, 9

C78 S. 57: excluded by S.I. 1988/316, **arts. 3(1)(2)**, 4(1), 5, 6(2), 7(2), 10(1), 11, 12

C79 S. 57: excluded by S.I. 1990/27, **art. 2**

C80 S. 57: excluded (S.) by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), **s. 31(2)**

C81 S. 57 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.17**.
s. 57 excluded (19.6.1995) by S.I. 1995/1266, **arts. 3(1)(2)**, 4(1), 5(1)(2), 6(1), 7, 8(2), 9(2), 10(2), 11(2), 12(1), 13, 14, 15, 16(1), 17, 18
s. 57 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 17**
s. 57 restricted (15.7.1996) by S.I. 1996/1586, **regs. 3-18**
s. 57 excluded (19.6.1995) by S.I. 1995/1536, **arts. 3(1)**, 4(2), 5(2), 6, 7(2), 8(1), 11-15

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58 Exceptions from restrictions on advertising.

(1) Section 57 above does not apply to—

(a) any advertisement issued or caused to be issued by, and relating only to investments issued by—

(i) the government of the United Kingdom, of Northern Ireland or of any country or territory outside the United Kingdom;

(ii) a local authority in the United Kingdom or elsewhere;

(iii) the Bank of England or the central bank of any country or territory outside the United Kingdom; or

(iv) any international organisation the members of which include the United Kingdom or another member State;

(b) any advertisement issued or caused to be issued by a person who is exempt under section 36, 38, 42, 43, 44 or 45 above, or by virtue of an order under section 46 above, if the advertisement relates to a matter in respect of which he is exempt.

(c) any advertisement which is issued or caused to be issued by a national of a member State other than the United Kingdom in the course of investment business lawfully carried on by him in such a State and which confirms with any rules made under section 48(2)(e) above;

(d) any advertisement which—

(i) is subject to section 154 below; or

(ii) consists of or any part of listing particulars, supplementary listing particulars **[**[F30], a prospectus approved in accordance with listing rules made under section 144(2) or 156A(1) below, a solamentary prospectus approved in accordance with listing rules made for the purposes of section 147(1) below as applied by section 154A or 156A(3) below**]** or any other document required or permitted to be published by listing rules under Part IV of this Act [F31]. . ..

[F32](2) . . . . . .

(3) Section 57 above does not apply to an advertisement issued in such circumstances as may be specified in an order made by the Secretary of State for the purpose of exempting from that section—

(a) advertisements appearing to him to have a private character, whether by reason of a connection between the person issuing them and those to whom they are issued or otherwise;

(b) advertisements appearing to him to deal with investment only incidentally;

(c) advertisements issued to persons appearing to him to be sufficiently expert to understand any risks involved; or

(d) such other classes of advertisement as he thinks fit.

(4) An order under subsection (3) above may require any person who by virtue of the order is authorised to issue an advertisement to comply with such requirements as are specified in the order.

(5) An order made by virtue of paragraph (a), (b) or (c) of subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament; and no order shall be made by virtue of paragraph (d) of that subsection unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

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(6) **[**[F33]Subsections (1)(c) above does**]** not apply to any advertisement relating to an investment falling within paragraph 5 of Schedule 1 to this Act.

Textual Amendments

F30 Words in s. 58(1)(d)(ii) inserted (19.6.1995) by S.I. 1995/1537, reg. 17, **Sch. 2 Pt. II para. 6(a)**

F31 Words in s. 58(1)(d)(ii) repealed (19.6.1995) by S.I. 1995/1537, reg. 17, **Sch. 2 para. 5(b)**

F32 S. 58(2) repealed (19.6.1995) by S.I. 1995/1537, reg. 17, **Sch. 2 Pt. II para. 5(c)**

F33 Words in s. 58(6) substituted (19.6.1995) by S.I. 1995/1537, **reg. 17**, SCh. 2 Pt. II para. 6(b)

59 Employment of prohibited persons.

(1) If it appears to the Secretary of State that any individual is not a fit and proper person to be employed in connection with investment business or investment business of a particular kind he may direct that he shall not, without the written consent of the Secretary of State, be employed in connection with investment business or, as the case may be, investment business of that kind—

(a) by authorised persons or exempted persons; or

(b) by any specified person or persons, or by persons of any specified description, falling within paragraph (a) above.

(2) A direction under this section (“a disqualification direction") shall specify the date on which it is to take effect and a copy of it shall be served on the person to whom it relates.

(3) Any consent by the Secretary of State to the employment of a person who is the subject of a disqualification direction may relate to employment generally or to employment of a particular kind, may be given subject to conditions and restrictions and may be varied by him from time to time.

(4) Where the Secretary of State proposes—

(a) to give a disqualification direction in respect of any person; or

(b) to refuse an application for his consent under this section or for the variation of such consent,

he shall give that person or the applicant written notice of his intention to do so, stating the reasons for which he proposes to act and giving particulars of the right to require the case to be referred to the Tribunal under Chapter IX of this Part of this Act.

(5) Any person who accepts or continues in any employment in contravention of a disqualification direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.

(6) It shall be the duty of an authorised person and an appointed representative to take reasonable care not to employ or continue to employ a person in contravention of a disqualification direction.

(7) The Secretary of State may revoke a disqualification direction.

(8) In this section references to employment include references to employment otherwise than under a contract of service.

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Modifications etc. (not altering text)

C82 S. 59 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.18**.
s. 59 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 18**

60 Public statement as to person's misconduct.

(1) If it appears to the Secretary of State that a person who is or was an authorised person by virtue of section 22, 24, 25 or 31 above has contravened—

(a) any provision of rules or regulations made under this Chapter or of section 56 or 59 above; or

(b) any condition imposed under section 50 above,

he may publish a statement to that effect.

(2) Before publishing a statement under subsection (1) above the Secretary of State shall give the person concerned written notice of the proposed statement and of the reasons for which he proposes to act.

(3) Where the reasons stated in the notice relate specifically to matters which—

(a) refer to a person identified in the notice other than the person who is or was the authorised person; and

(b) are in the opinion of the Secretary of State prejudicial to that person in any office or employment,

the Secretary of State shall, unless he considers it impracticable to do so, serve a copy of the notice on that other person.

(4) A notice under this section shall give particulars of the right to have the case referred to the Tribunal under Chapter IX of this Part of this Act.

(5) Where a case is not required to be referred to the Tribunal by a person on whom a notice is served under this section the Secretary of State shall, at the expiration of the period within which such a requirement can be made, give that person written notice that the statement is or is not to be published; and if it is to be published the Secretary of State shall after publication send a copy of it to that person and to any person on whom a copy of the notice under subsection (2) above was served.

Modifications etc. (not altering text)

C83 S. 60: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(c)**.
S. 60 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.19**.

C84 S. 60(1)(3) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 19(a)(b)**.
s. 60(1)(3) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 19**
s. 60 extended (6.1.1997) by S.I. 1996/2827, **reg. 18(6)**

61 Injunctions and restitution orders.

(1) If on the application of the Secretary of State the court is satisfied—

(a) that there is a reasonable likelihood that any person will contravene any provision of—

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(i) rules or regulations made under this Chapter;

(ii) sections 47, 56, 57, or 59 above;

(iii) any requirements imposed by an order under section 58(3) above; or

(iv) the rules of a recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house to which that person is subject and which regulate the carrying on by him of investment business,

or any condition imposed under section 50 above;

(b) that any person has contravened any such provision or condition and that there is a reasonable likelihood that the contravention will continue or be repeated; or

(c) that any person has contravened any such provision or condition and that there are steps that could be taken for remedying the contravention,

the court may grant an injunction restraining the contravention or, in Scotland, an interdict prohibiting the contravention or, as the case may be, make an order requiring that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct to remedy it.

(2) No application shall be made by the Secretary of State under subsection (1) above in respect of any such rules as are mentioned in subsection (1)(a)(iv) above unless it appears to him that the organisation, body, exchange or clearing house is unable or unwilling to take appropriate steps to restrain the contravention or to require the person concerned to take such steps as are mentioned in subsection (1) above.

(3) The court may, on the application of the Secretary of State, make an order under subsection (4) below or, in relation to Scotland, under subsection (5) below if satisfied—

(a) that profits have accrued to any person as a result of his contravention of any provision or condition mentioned in subsection (1)(a) above; or

(b) that one or more investors have suffered loss or been otherwise adversely affected as a result of that contravention.

(4) The court may under this subsection order the person concerned to pay into court, or appoint a receiver to recover from him, such sum as appears to the court to be just having regard—

(a) in a case within paragraph (a) of subsection (3) above, to the profits appearing to the court to have accrued;

(b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect; or

(c) in a case within both paragraphs (a) and (b) of that subsection, to the profits and to the extent of the loss or other adverse effect.

(5) The court may under this subsection order the person concerned to pay to the applicant such sum as appears to the court to be just having regard to the considerations mentioned in paragraphs (a) to (c) of subsection (4) above.

(6) Any amount paid into court by or recovered from a person in pursuance of an order under subsection (4) or (5) above shall be paid out to such person or distributed among such persons as the court may direct, being a person or persons appearing to the court to have entered into transactions with that person as a result of which the profits mentioned in paragraph (a) of subsection (3) above have accrued to him or the loss or adverse effect mentioned in paragraph (b) of that subsection has been suffered.

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(7) On an application under subsection (3) above the court may require the person concerned to furnish it with such accounts or other information as it may require for establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of that subsection and for determining how any amounts are to be paid or distributed under subsection (6) above; and the court may require any such accounts or other information to be verified in such manner as it may direct.

(8) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

(9) Nothing in this section affects the right of any person other than the Secretary of State to bring proceedings in respect of the matters to which this section applies.

Modifications etc. (not altering text)

C85 S. 61 applied (25.4.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 154**, 155, 169(1)

C86 S. 61: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(c)**.
S. 61 restricted (1.11.1992) by S.R. 1980/346, Order 93, rule 7 (as inserted by S.R. 1992/399, **rule15**).
s. 61 extended (6.1.1997) by S.I. 1996/2827, **reg. 18(6)**
s. 61(2)-(9) applied (with modifications) (19.12.1995) by S.I. 1995/3272, **reg. 9(2)**

C87 S. 61(3): certain functions of the Secretary of State transferred to The Securities and Investments Board subject to a reservation that they are to be exercisable by the Secretary of State concurrently (6.2.1991) by S.I. 1991/200, **art. 3(1)**.

C88 S. 61(6)(7) applied (with modifications) (*temp.* from 26.11.2001 until 1.12.2001) by S.I. 2001/3755, regs 9(7), 50, **Sch. 6 para. 6(a)** (with regs. 39, 45); S.I. 2001/3538, **art. 2(1)**

62 Actions for damages.

(1) Without prejudice to section 61 above, a contravention of—

(a) any rules or regulations made under this Chapter;

(b) any conditions imposed under section 50 above;

(c) any requirements imposed by an order under section 58(3) above;

(d) the duty imposed by section 59(6) above,

shall be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) Subsection (1) applies also to a contravention by a member of a recognised self-regulating organisation or a person certified by a recognised professional body of any rules of the organisation or body relating to a matter in respect of which rules or regulations have been or could be made under this Chapter in relation to an authorised person who is not such a member or so certified.

(3) Subsection (1) above does not apply—

(a) to a contravention of rules made under section 49 or conditions imposed under section 50 in connection with an alteration of the requirements of those rules; or

(b) by virtue of subsection (2) above to a contravention of rules relating to a matter in respect of which rules have been or could be made under section 49.

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(4) A person shall not be guilty of an offence by reason of any contravention to which subsection (1) above applies or of a contravention of rules made under section 49 above or such conditions as are mentioned in subsection (3)(a) above and no such contravention shall invalidate any transaction.

Modifications etc. (not altering text)

C89 S. 62 saved by S.I. 1991/488, **art.4**

C90 S. 62 extended (6.1.1997) by S.I. 1996/2827, **reg.18(6)**

[F34 62A Restriction of right of action.

(1) No action in respect of a contravention to which section 62 above applies shall lie at the suit of a person other than a private investor, except in such circumstances as may be specified by regulations made by the Secretary of State.

(2) The meaning of the expression "private investor" for the purposes of subsection (1) shall be defined by regulations made by the Secretary of State.

(3) Regulations under subsection (1) may make different provision with respect to different cases.

(4) The Secretary of State shall, before making any regulations affecting the right to bring an action in respect of a contravention of any rules or regulations made by a person other than himself, consult that person.**]**

Textual Amendments

F34 S. 62A inserted (the insertion being partly in force by S.I. 1990/354, **art. 3** but otherwise 1.4.1991 subject to transitional provisions and savings) by Companies Act 1989 (c. 40, SIF 27), **s. 193(1)**; S.I. 1991/488, **arts. 3**, 4

63 Gaming contracts.

(1) No contract to which this section applies shall be void or unenforceable by reason of—

(a) section 18 of the M18 Gaming Act 1845, section 1 of the M19 Gaming Act 1892 or any corresponding provisions in force in Northern Ireland; or

(b) any rule of the law of Scotland whereby a contract by way of gaming or wagering is not legally enforceable.

(2) This section applies to any contract entered into by either or each party by way of business and the making or performance of which by either party constitutes an activity which falls within paragraph 12 of Schedule 1 to this Act or would do so apart from Parts III and IV of that Schedule.

Marginal Citations

M18 1845 c. 109.

M19 1892 c. 9.

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[F35 63A Application of designated rules and regulations to members of self-regulating organisations.

(1) The Secretary of State may in rules and regulations under—

(a) section 48 (conduct of business rules),

(b) section 49 (financial resources rules),

(c) section 55 (clients' money regulations), or

(d) section 56 (regulations as to unsolicited calls),

designate provisions which apply, to such extent as may be specified, to a member of a recognised self-regulating organisation in respect of investment business in the carrying on of which he is subject to the rules of the organisation.

(2) It may be provided that the designated rules or regulations have effect, generally or to such extent as may be specified, subject to the rules of the organisation.

(3) A member of a recognised self-regulating organisation who contravenes a rule or regulation applying to him by virtue of this section shall be treated as having contravened the rules of the organisation.

(4) It may be provided that, to such extent as may be specified, the designated rules or regulations may not be modified or waived (under section 63B below or section 50) in relation to a member of a recognised self-regulating organisation.

Where such provision is made any modification or waiver previously granted shall cease to have effect, subject to any transitional provision or saving contained in the rules or regulations.

(5) Except as mentioned in subsection (1), the rules and regulations referred to in that subsection do not apply to a member of a recognised self-regulating organisation in respect of investment business in the carrying on of which he is subject to the rules of the organisation.]

Textual Amendments

F35 Ss. 63A, 63B inserted by Companies Act 1989 (c. 40, SIF 27), **s. 194**

Modifications etc. (not altering text)

C91 S. 63A: functions transferred by S.I. 1990/354, **art. 4(2)(a)**

[F36 63B Modification or waiver of designated rules and regulations.

(1) A recognised self-regulating organisation may on the application of a member of the organisation—

(a) modify a rule or regulation designated under section 63A so as to adapt it to his circumstances or to any particular kind of business carried on by him, or

(b) dispense him from compliance with any such rule or regulation, generally or in relation to any particular kind of business carried on by him.

(2) The powers conferred by this section shall not be exercised unless it appears to the organisation—

(a) that compliance with the rule or regulation in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and

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(b) that the exercise of those powers will not result in any undue risk to investors.

(3) The powers conferred by this section may be exercised unconditionally or subject to conditions; and section 63A(3) applies in the case of a contravention of a condition as in the case of contravention of a designated rule or regulation.

(4) The reference in paragraph 4(1) of Schedule 2 (requirements for recognition of self-regulating organisations) to monitoring and enforcement of compliance with rules and regulations includes monitoring and enforcement of compliance with conditions imposed by the organisation under this section.**]**

Textual Amendments

F36 Ss. 63A, 63B inserted by Companies Act 1989 (c. 40, SIF 27), **s. 194**

[[F37]63C Codes of practice.

(1) The Secretary of State may issue codes of practice with respect to any matters dealt with by statements of principle issued under section 47A or by rules or regulations made under any provision of this Chapter.

(2) In determining whether a person has failed to comply with a statement of principle—
(a) a failure by him to comply with any relevant provision of a code of practice may be relied on as tending to establish failure to comply with the statement of principle, and
(b) compliance by him with the relevant provisions of a code of practice may be relied on as tending to negative any such failure.

(3) A contravention of a code of practice with respect to a matter dealt with by rules or regulations shall not of itself give rise to any liability or invalidate any transaction; but in determining whether a person's conduct amounts to contravention of a rule or regulation—
(a) contravention by him of any relevant provision of a code of practice may be relied on as tending to establish liability, and
(b) compliance by him with the relevant provisions of a code of practice may be relied on as tending to negative liability.

(4) Where by virtue of section 63A (application of designated rules and regulations to members of self-regulating organisations) rules or regulations—
(a) do not apply, to any extent, to a member of a recognised self-regulating organisation, or
(b) apply, to any extent, subject to the rules of the organisation,

a code of practice with respect to a matter dealt with by the rules or regulations may contain provision limiting its application to a corresponding extent.**]**

Textual Amendments

F37 S. 63C added by Companies Act 1989 (c. 40, SIF 27), **s. 195**

Modifications etc. (not altering text)

C92 S. 63C: certain functions transferred by S.I. 1990/354, **art. 4(3)(b)**

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CHAPTER VI

POWERS OF INTERVENTION

Modifications etc. (not altering text)

C93 Chapters III–XI (ss. 7–111): certain functions transferred by S.I. 1990/354, **art. 5**

64 Scope of powers.

(1) The powers conferred on the Secretary of State by this Chapter shall be exercisable in relation to any authorised person or, except in the case of the power conferred by section 65 below, any appointed representative of his if it appears to the Secretary of State—

(a) that the exercise of the powers is desirable for the protection of investors;

(b) that the authorised person is not fit to carry on investment business of a particular kind or to the extent to which he is carrying it on or proposing to carry it on; or

(c) that the authorised person has contravened any provision of this Act or of any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act.

(2) For the purposes of subsection (1)(b) above the Secretary of State may take into account any matters that could be taken into account in deciding whether to withdraw or suspend an authorisation under Chapter III of this Part of this Act.

(3) The powers conferred by this Chapter may be exercised in relation to a person whose authorisation is suspended under section 28 above or who is the subject of a direction under section 33(1)(b) above and references in this Chapter to an authorised person shall be construed accordingly.

(4) The powers conferred by this Chapter shall not be exercisable in relation to—

(a) an authorised person who is a member of a recognised self-regulating organisation or a person certified by a recognised professional body and is subject to the rules of such an organisation or body in carrying on all the investment business carried on by him; or

(b) an appointed representative whose principal or, in the case of such a representative with more than one principal, each of whose principals is a member of such an organisation or body and is subject to the rules of such an organisation or body in carrying on the investment business in respect of which his principal or each of his principals has accepted responsibility for his activities;

except that the powers conferred by virtue of section 67(1)(b) below may on any of the grounds specified in subsection (1) above be exercised in relation to such a person at the request of any such organisation of which he or, in the case of an appointed representative, any of his principals is a member or any such body by which he or, as the case may be, any of his principals is certified.

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Modifications etc. (not altering text)

C94 S. 64 applied (with modifications) (15.8.1995) by S.I. 1995/2049, **regs. 6**, 7-18

C95 S. 64(1) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.20**.
s. 64 modified (1.7.1994) by S.I. 1994/1696, **reg. 59(1)**
s. 64 modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 20**

65 Restriction of business.

(1) The Secretary of State may prohibit an authorised person from—

(a) entering into transactions of any specified kind or entering into them except in specified circumstances or to a specified extent;

(b) soliciting business from persons of a specified kind or otherwise than from such persons or in a specified country or territory outside the United Kingdom;

(c) carrying on business in a specified manner or otherwise than in a specified manner.

(2) A prohibition under this section may relate to transactions entered into in connection with or for the purposes of investment business or to other business which is carried on in connection with or for the purposes of investment business.

Modifications etc. (not altering text)

C96 S. 65(1) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.21**.
s. 65 modified (1.7.1994) by S.I. 1994/1696, **reg. 59(2)**
s. 65 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para.21**
s. 65 applied (with modifications) by S.I. 1995/2049, **regs. 6**, 7-18

66 Restriction on dealing with assets.

(1) The Secretary of State may prohibit an authorised person or appointed representative from disposing of or otherwise dealing with any assets, or any specified assets, of that person or, as the case may be, representative in any specified manner or otherwise than in a specified manner.

(2) A prohibition under this section may relate to assets outside the United Kingdom.

Modifications etc. (not altering text)

C97 S. 66 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.22**.

C98 S. 66(1) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 22(a)**.
s. 66 applied (with modifications) (15.8.1995) by S.I. 1995/2049, **regs. 6**, 7-18

67 Vesting of assets in trustee.

(1) The Secretary of State may impose a requirement that all assets, or all assets of any specified class or description, which at any time while the requirement is in force—

(a) belong to an authorised person or appointed representative; or

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(b) belong to investors and are held by or to the order of an authorised person or appointed representative,

shall be transferred to and held by a trustee approved by the Secretary of State.

(2) Where a requirement is imposed under this section it shall be the duty of the authorised person or, as the case may be, appointed representative to transfer the assets to the trustee and to give him all such other assistance as may be required to enable him to discharge his functions in accordance with the requirement.

(3) Assets held by a trustee in accordance with a requirement under this section shall not be released or dealt with except in accordance with directions given by the Secretary of State or in such circumstances as may be specified by him.

(4) A requirement under this section may relate to assets outside the United Kingdom.

Modifications etc. (not altering text)

C99 S. 67 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.23**.

C100 S. 67(1)(b) amended (1.1.1993) by S.I. 1992/3218, **reg. 16(3)**.

68 Maintenance of assets in United Kingdom.

(1) The Secretary of State may require an authorised person or appointed representative to maintain in the United Kingdom assets of such value as appears to the Secretary of State to be desirable with a view to ensuring that the authorised person or, as the case may be, appointed representative will be able to meet his liabilities in respect of investment business carried on by him in the United Kingdom.

(2) The Secretary of State may direct that for the purposes of any requirement under this section assets of any specified class or description shall or shall not be taken into account.

Modifications etc. (not altering text)

C101 S. 68 applied (with modifications) (15.8.1995) by S.I. 1995/2049, **regs. 6**, 7-18

69 Rescission and variation.

The Secretary of State may, either of his own motion or on the application of a person on whom a prohibition or requirement has been imposed under this Chapter, rescind or vary the prohibition or requirement if it appears to the Secretary of State that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

Modifications etc. (not altering text)

C102 S. 69 applied (12.2.1992) by S.I. 1992/225, **reg. 96(5)(6)**.
s. 69 applied (with modifications) (15.8.1995) by S.I. 1995/2049, **regs. 6**, 7-18

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70 Notices.

(1) The power to impose, rescind or vary a prohibition or requirement under this Chapter shall be exercisable by written notice served by the Secretary of State on the person concerned; and any such notice shall take effect on such date as is specified in the notice.

(2) If the Secretary of State refuses to rescind or vary a prohibition or requirement on the application of the person to whom it applies he shall serve that person with a written notice of the refusal.

(3) A notice imposing a prohibition or requirement, or varying a prohibition or requirement otherwise than on the application of the person to whom it applies, and a notice under subsection (2) above shall state the reasons for which the prohibition or requirement was imposed or varied or, as the case may be, why the application was refused.

(4) Where the reasons stated in a notice to which subsection (3) above applies relate specifically to matters which—

(a) refer to a person identified in the notice other than the person to whom the prohibition or requirement applies; and

(b) are in the opinion of the Secretary of State prejudicial to that person in any office or employment,

the Secretary of State shall, unless he considers it impracticable to do so, serve a copy of the notice on that person.

(5) A notice to which subsection (3) above applies shall give particulars of the right to have the case referred to the Tribunal under Chapter IX of this Part of this Act.

(6) The Secretary of State may give public notice of any prohibition or requirement imposed by him under this Chapter and of the rescission and variation of any such prohibition or requirement; and any such notice may, if the Secretary of State thinks fit, include a statement of the reasons for which the prohibition or requirement was imposed, rescinded or varied.

Modifications etc. (not altering text)

C103 S. 70(2)-(6) applied (12.2.1992) by S.I. 1992/225, **reg. 96(5)(6)**.
s. 70 applied (with modifications) (15.8.1995) by S.I. 1995/2049, **regs. 6**, 7-18

71 Breach of prohibition or requirement.

(1) Sections 60, 61, and 62 above shall have effect in relation to a contravention of a prohibition or requirement imposed under this Chapter as they have effect in relation to any such contravention as is mentioned in those sections.

(2) In its application by virtue of this section, section 62(2) shall have effect with the substitution—

(a) for the reference to the rules of a recognised self-regulating organisation of a reference to any prohibition or requirement imposed by it in the exercise of powers for purposes corresponding to those of this Chapter; and

(b) for the reference to the rules of a recognised professional body of a reference to any prohibition or requirement imposed in the exercise of powers for such

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purposes by that body or by any other body or person having functions in respect of the enforcement of the recognised professional body's rules relating to the carrying on of investment business.

(3) This section is without prejudice to any equitable remedy available in respect of property which by virtue of a requirement under section 67 above is subject to a trust.

Modifications etc. (not altering text)
C104 S. 71 restricted (1.11.1992) by S.R. 1980/346, Order 93, rule 7 (as inserted by S.R. 1992/399, **rule15**).

CHAPTER VII

WINDING UP AND ADMINISTRATION ORDERS

Modifications etc. (not altering text)
C105 Chapters III–XI (ss. 7–111): certain functions transferred by S.I. 1990/354, **art. 5**

72 Winding up orders.

(1) On a petition presented by the Secretary of State by virtue of this section, the court having jurisdiction under the [M20]Insolvency Act 1986 may wind up an authorised person or appointed representative to whom this subsection applies if—
  (a) the person is unable to pay his debts within the meaning of section 123 or, as the case may be, section 221 of that Act; or
  (b) the court is of the opinion that it is just and equitable that the person should be wound up.

(2) Subsection (1) above applies to any authorised person, any person whose authorisation is suspended under section 28 above or who is the subject of a direction under section 33(1)(b) above or any appointed representative who is—
  (a) a company within the meaning of section 735 of the [M21]Companies Act 1985;
  (b) an unregistered company within the meaning of section 220 of the Insolvency Act 1986;
  (c) an oversea company within the meaning of section 744 of the Companies Act 1985; or
  (d) a partnership.

(3) For the purposes of a petition under subsection (1) above a person who defaults in an obligation to pay any sum due and payable under any investment agreement shall be deemed to be unable to pay his debts.

(4) Where a petition is presented under subsection (1) above for the winding up of a partnership on the ground mentioned in paragraph (b) of subsection (1) above or, in Scotland, on a ground mentioned in paragraph (a) or (b) of that subsection, the court shall have jurisdiction and the Insolvency Act 1986 shall have effect as if the partnership were an unregistered company within the meaning of section 220 of that Act.

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(5) The Secretary of State shall not present a petition under subsection (1) above for the winding up of any person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body and is subject to the rules of the organisation or body in the carrying on of all investment business carried on by him, unless that organisation or body has consented to his doing so.

[[F38](6) Subsection (5) above does not apply to the presentation of a petition under subsection (1) above for the winding up of an investment company with variable capital.**]**

Textual Amendments
F38 S. 72(6) inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 para. 13**

Modifications etc. (not altering text)
C106 S. 72 applied (with modifications) (15.8.1995) by S.I. 1995/2049, **regs. 6**, 7-18

Marginal Citations
M20 1986 c. 45.
M21 1985 c. 6.

73 Winding up orders: Northern Ireland.

(1) On a petition presented by the Secretary of State by virtue of this section, the High Court in Northern Ireland may wind up an authorised person or appointed representative to whom this subsection applies if—
  (a) the person is unable to pay his debts within the meaning of **[**[F39]Article 103 or, as the case may be, Article 185 of the Insolvency (Northern Ireland) Order 1989**]**; or
  (b) the court is of the opinion that it is just and equitable that the person should be wound up.

(2) Subsection (1) above applies to any authorised person, any person whose authorisation is suspended under section 28 above or who is the subject of a direction under section 33(1)(b) above or any appointed representative who is—
  (a) a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986;
  (b) an unregistered company within the meaning of **[**[F39]Article 184 of the Insolvency (Northern Ireland) Order 1989**]**; or
  (c) a Part XXIII company within the meaning of Article 2 of **[**[F39]the Companies (Northern Ireland) Order 1986**]**; or
  (d) a partnership.

(3) For the purposes of a petition under subsection (1) above a person who defaults in an obligation to pay any sum due and payable under any investment agreement shall be deemed to be unable to pay his debts.

(4) Where a petition is presented under subsection (1) above for the winding up of a partnership on the ground mentioned in paragraph (b) of subsection (1) above, the High Court in Northern Ireland shall have jurisdiction and the **[**[F39]Insolvency (Northern

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Ireland) Order 1989**]** shall have effect as if the partnership were an unregistered company within the meaning of **[**[F39]Article 184**]** of that Order.

(5) The Secretary of State shall not present a petition under subsection (1) above for the winding up of any person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body and is subject to the rules of the organisation or body in the carrying on of all investment business carried on by him, unless that organisation or body has consented to his doing so.

Textual Amendments

F39 Words in s. 73(1)(a),(2)(b),(c) and (4) substituted (N.I.)(1. 10. 1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), **Sch. 9 Pt. II para. 47**; S.R. 1991/411, **art.2**.

74 Administration orders.

A petition may be presented under section 9 of the [M22]Insolvency Act 1986 (applications for administration orders) in relation to a company to which section 8 of that Act applies **[**[F40], or under Article 22 of the Insolvency (Northern Ireland) Order 1989 (applications for administration orders) in relation to a company to which Article 21 of that Order applies,**]** which is an authorised person, a person whose authorisation is suspended under section 28 above or who is the subject of a direction under section 33(1)(b) above or an appointed representative—

(a) in the case of an authorised person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body, by that organisation or body; and

(b) in the case of an appointed representative or an authorised person who is not authorised as mentioned in paragraph (a) above or is so authorised but is not subject to the rules of the organisation or body in question in the carrying on of all investment business carried on by him, by the Secretary of State.

Textual Amendments

F40 Words in s. 74 inserted (N.I.)(1. 10. 1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), **Sch. 9 Pt. II para. 48**; S.R. 1991/411, **art.2**.

Modifications etc. (not altering text)

C107 S. 74 applied (with modifications) (15.8.1995) by S.I. 1995/2049, **regs. 6**, 7-18

Marginal Citations

M22 1986 c. 45.

CHAPTER VIII

COLLECTIVE INVESTMENT SCHEMES

Modifications etc. (not altering text)

C108 Chapters III–XI (ss. 7–111): certain functions transferred by S.I. 1990/354, **art. 5**

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C109 Ch. VIII (ss. 75–95): certain functions transferred by S.I. 1988/738, **art. 3(1)(2)(3)**

Preliminary

75 Interpretation.

(1) In this Act "a collective investment scheme" means, subject to the provisions of this section, any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements must be such that the persons who are to participate as mentioned in subsection (1) above (in this Act referred to as "participants") do not have day to day control over the management of the property in question, whether or not they have the right to be consulted or to give directions; and the arrangements must also have either or both of the characteristics mentioned in subsection (3) below.

(3) Those characteristics are—

(a) that the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;

(b) that the property in question is managed as a whole by or on behalf of the operator of the scheme.

(4) Where any arrangements provide for such pooling as is mentioned in paragraph (a) of subsection (3) above in relation to separate parts of the property in question, the arrangements shall not be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

(5) Arrangements are not a collective investment scheme if—

(a) the property to which the arrangements relate (other than cash awaiting investment) consists of investments falling within any of paragraphs 1 to 5, 6 (so far as relating to units in authorised unit trust schemes and recognised schemes) and 10 of Schedule 1 to this Act;

(b) each participant is the owner of a part of that property and entitled to withdraw it at any time; and

(c) the arrangements do not have the characteristics mentioned in paragraph (a) of subsection (3) above and have those mentioned in paragraph (b) of that subsection only because the parts of the property belonging to different participants are not bought and sold separately except where a person becomes or ceases to be a participant.

(6) The following are not collective investment schemes—

(a) arrangements operated by a person otherwise than by way of business;

(b) arrangements where each of the participants carries on a business other than investment business and enters into the arrangements for commercial purposes related to that business;

(c) arrangements where each of the participants is a body corporate in the same group as the operator;

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(d) arrangements where—

(i) each of the participants is a bona fide employee or former employee (or the wife, husband, widow, widower, child or step-child under the age of eighteen of such an employee or former employee) of a body corporate in the same group as the operator; and

(ii) the property to which the arrangements relate consists of shares or debentures (as defined in paragraph 20(4) of Schedule 1 to this Act) in or of a member of that group;

(e) arrangements where the receipt of the participants' contributions constitutes the acceptance of deposits in the course of a business which is a deposit-taking business for the purposes of the [M23]Banking Act 1979 and does not constitute a transaction prescribed for the purposes of section 2 of that Act by regulations made by the Treasury;

(f) franchise arrangements, that is to say, arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the good-will attached to it;

(g) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;

(h) arrangements under which the rights or interests of the participants are investments falling within paragraph 5 of Schedule 1 to this Act;

(i) arrangements the purpose of which is the provision of clearing services and which are operated by an authorised person, a recognised clearing house or a recognised investment exchange;

(j) contracts of insurance;

(k) occupational pension schemes.

[[F41](l) arrangements which by virtue of **[**[F42]any of paragraphs 34 to 36**]** of Schedule 1 to this Act are not collective investment schemes for the purposes of that Schedule.**]**

(7) No body incorporated under the law of, or of any part of, the United Kingdom relating to building societies or industrial and provident societies or registered under any such law relating to friendly societies, and no other body corporate other than an open-ended investment company, shall be regarded as constituting a collective investment scheme.

(8) In this Act—

"a unit trust scheme" means a collective investment scheme under which the property in question is held on trust for the participants;

"an open-ended investment company" means a collective investment scheme under which—

(a) the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that body; and

(b) the rights of the participants are represented by shares in or securities of that body which—

(i) the participants are entitled to have redeemed or repurchased, or which (otherwise than under Chapter VII of Part V of the

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[M24]Companies Act 1985 or the corresponding Northern Ireland provision) are redeemed or repurchased from them by, or out of funds provided by, that body; or

(ii) the body ensures can be sold by the participants on an investment exchange at a price related to the value of the property to which they relate;

"trustee", in relation to a unit trust scheme, means the person holding the property in question on trust for the participants and, in relation to a collective investment scheme constituted under the law of a country or territory outside the United Kingdom, means any person who (whether or not under a trust) is entrusted with the custody of the property in question;

"units" means the rights or interests (however described) of the participants in a collective investment scheme;

"the operator", in relation to a unit trust scheme with a separate trustee, means the manager and, in relation to an open-ended investment company, means that company.

(9) If an order under section 2 above amends the references to a collective investment scheme in Schedule 1 to this Act it may also amend the provisions of this section.

Textual Amendments

F41 S. 75(6)(l) substituted for paragraphs (l) to (n) as provided by S.I. 1990/349, **art. 6(b)** (paragraphs (l) to (n) added as provided by S.I. 1988/803, **art. 5** (which was revoked by S.I. 1990/349, **art. 8(c)**))

F42 Words in s. 75(6)(l) substituted (1.1.1997) by S.I. 1996/2996, **art. 3(1)**

Modifications etc. (not altering text)

C110 S. 75(6) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 22**

C111 S. 75(6) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 24**.
s. 75 applied (1.5.1995) by 1995 c. 4, **s. 127(17)** (with Sch. 8 paras. 55(2), 57(1))

Marginal Citations

M23 1979 c. 37.

M24 1985 c. 6.

Promotion of schemes

76 Restrictions on promotion.

(1) Subject to subsections (2), (3) and (4) below, an authorised person shall not—

(a) issue or cause to be issued in the United Kingdom any advertisement inviting persons to become or offer to become participants in a collective investment scheme or containing information calculated to lead directly or indirectly to persons becoming or offering to become participants in such a scheme; or

(b) advise or procure any person in the United Kingdom to become or offer to become a participant in such a scheme,

unless the scheme is an authorised unit trust scheme **[**[F43]or an investment company with variable capital**]** or a recognised scheme under the following provisions of this Chapter.

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(2) Subsection (1) above shall not apply if the advertisement is issued to or the person mentioned in paragraph (b) of that subsection is—

(a) an authorised person; or

(b) a person whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, to which the scheme relates.

(3) Subsection (1) above shall not apply to anything done in accordance with regulations made by the Secretary of State for the purpose of exempting from that subsection the promotion otherwise than to the general public of schemes of such descriptions as are specified in the regulations.

(4) The Secretary of State may by regulations make provision for exempting single property schemes from subsection (1) above.

(5) For the purposes of subsection (4) above a single property scheme is a scheme which has the characteristics mentioned in subsection (6) below and satisfies such other requirements as are specified in the regulations conferring the exemption.

(6) The characteristics referred to above are—

(a) that the property subject to the scheme (apart from cash or other assets held for management purposes) consists of—

(i) a single building (or a single building with ancillary buildings) managed by or on behalf of the operator of the scheme; or

(ii) a group of adjacent or contiguous buildings managed by him or on his behalf as a single enterprise,

with or without ancillary land and with or without furniture, fittings or other contents of the building or buildings in question; and

(b) that the units of the participants in the scheme are either dealt in on a recognised investment exchange or offered on terms such that any agreement for their acquisition is conditional on their admission to dealings on such an exchange.

(7) Regulations under subsection (4) above may contain such supplementary and transitional provisions as the Secretary of State thinks necessary and may also contain provisions imposing obligations or liabilities on the operator and trustee (if any) of an exempted scheme, including, to such extent as he thinks appropriate, provisions for purposes corresponding to those for which provision can be made under section 85 below in relation to authorised unit trust schemes.

Textual Amendments

F43 Words in s. 76(1) inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 Pt. I para. 14**

Modifications etc. (not altering text)

C112 S. 76 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 25**.
s. 76 extended (1.1.1996) by S.I. 1995/3275, reg. 37, **Sch. 7 para. 23**

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Authorised unit trust schemes

77 Applications for authorisation.

(1) Any application for an order declaring a unit trust scheme to be an authorised unit trust scheme shall be made by the manager and trustee, or proposed manager and trustee, of the scheme and the manager and trustee shall be different persons.

(2) Any such application—
  (a) shall be made in such manner as the Secretary of State may direct; and
  (b) shall contain or be accompanied by such information as he may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.

(4) The directions and requirements given or imposed under subsections (2) and (3) above may differ as between different applications.

(5) Any information to be furnished to the Secretary of State under this section shall, if he so requires, be in such form or verified in such manner as he may specify.

Modifications etc. (not altering text)
C113 S. 77(2) extended (1.12.2001) by S.I. 2001/2957, **art. 8(3)**; S.I. 2001/3538, **art. 2(1)**

78 Authorisation orders.

(1) The Secretary of State may, on an application duly made in accordance with section 77 above and after being furnished with all such information as he may require under that section, make an order declaring a unit trust scheme to be an authorised unit trust scheme for the purposes of this Act if—
  (a) it appears to him that the scheme complies with the requirements of the regulations made under section 81 below and that the following provisions of this section are satisfied; and
  (b) he has been furnished with a copy of the trust deed and a certificate signed by a solicitor to the effect that it complies with such of those requirements as relate to its contents.

(2) The manager and the trustee must be persons who are independent of each other.

(3) The manager and the trustee must each be a body corporate incorporated in the United Kingdom or another member State, the affairs of each must be administered in the country in which it is incorporated, each must have a place of business in the United Kingdom and, if the manager is incorporated in another member State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 86 below.

(4) The manager and the trustee must each be an authorised person and neither must be prohibited from acting as manager or trustee, as the case may be, by or under rules under section 48 above, by or under the rules of any recognised self-regulating organisation of which the manager or trustee is a member or by a prohibition imposed under section 65 above.

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(5) The name of the scheme must not be undesirable or misleading; and the purposes of the scheme must be reasonably capable of being successfully carried into effect.

(6) The participants must be entitled to have their units redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme; but a scheme shall be treated as complying with this subsection if it requires the manager to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in this subsection.

(7) The Secretary of State shall inform the applicants of his decision on the application not later than six months after the date on which the application was received.

(8) On making an order under this section the Secretary of State may issue a certificate to the effect that the scheme complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument.

79 Revocation of authorisation.

(1) The Secretary of State may revoke an order declaring a unit trust scheme to be an authorised unit trust scheme if it appears to him—
   (a) that any of the requirements for the making of the order are no longer satisfied;
   (b) that it is undesirable in the interests of the participants or potential participants that the scheme should continue to be authorised; or
   (c) without prejudice to paragraph (b) above, that the manager or trustee of the scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act.

(2) For the purposes of subsection (1)(b) above the Secretary of State may take into account any matter relating to the scheme, the manager or trustee, a director or controller of the manager or trustee or any person employed by or associated with the manager or trustee in connection with the scheme.

(3) In the case of a manager or trustee who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in subsection (1)(c) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules.

(4) The Secretary of State may revoke an order declaring a unit trust scheme to be an authorised unit trust scheme at the request of the manager or trustee of the scheme; but he may refuse to do so if he considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the order should be revoked or that revocation would not be in the interests of the participants or would be incompatible with a Community obligation.

80 Representations against refusal or revocation.

(1) Where the Secretary of State proposes—
   (a) to refuse an application for an order under section 78 above; or

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(b) to revoke such an order otherwise than at the request of the manager or trustee of the scheme,

he shall give the applicants or, as the case may be, the manager and trustee of the scheme written notice of his intention to do so, stating the reasons for which he proposes to act and giving particulars of the rights conferred by subsection (2) below.

(2) A person on whom a notice is served under subsection (1) above may, within twenty-one days of the date of service, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.

(3) The Secretary of State shall have regard to any representations made in accordance with subsection (2) above in determining whether to refuse the application or revoke the order, as the case may be.

81 Constitution and management.

(1) The Secretary of State may make regulations as to the constitution and management of authorised unit trust schemes, the powers and duties of the manager and trustee of any such scheme and the rights and obligations of the participants in any such scheme.

(2) Without prejudice to the generality of subsection (1) above, regulations under this section may make provision—

(a) as to the issue and redemption of the units under the scheme;

(b) as to the expenses of the scheme and the means of meeting them;

(c) for the appointment, removal, powers and duties of an auditor for the scheme;

(d) for restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;

(e) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records;

(f) requiring the preparation of periodical reports with respect to the scheme and the furnishing of those reports to the participants and to the Secretary of State; and

(g) with respect to the amendment of the scheme.

(3) Regulations under this section may make provision as to the contents of the trust deed, including provision requiring any of the matters mentioned in subsection (2) above to be dealt with in the deed; but regulations under this section shall be binding on the manager, trustee and participants independently of the contents of the deed and, in the case of the participants, shall have effect as if contained in it.

(4) Regulations under this section shall not impose limits on the remuneration payable to the manager of a scheme.

(5) Regulations under this section may contain such incidental and transitional provisions as the Secretary of State thinks necessary or expedient.

Modifications etc. (not altering text)

C114 S. 81 amended (6.1.1997) by S.I. 1996/2827, **reg. 6(1)**

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82 Alteration of schemes and changes of manager or trustee.

(1) The manager of an authorised unit trust scheme shall give written notice to the Secretary of State of—

(a) any proposed alteration to the scheme; and

(b) any proposal to replace the trustee of the scheme;

and any notice given in respect of a proposed alteration involving a change in the trust deed shall be accompanied by a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the regulations made under section 81 above.

(2) The trustee of an authorised unit trust scheme shall give written notice to the Secretary of State of any proposal to replace the manager of the scheme.

(3) Effect shall not be given to any such proposal unless—

(a) the Secretary of State has given his approval to the proposal; or

(b) one month has elapsed since the date on which the notice was given under subsection (1) or (2) above without the Secretary of State having notified the manager or trustee that the proposal is not approved.

(4) Neither the manager nor the trustee of an authorised unit trust scheme shall be replaced except by persons who satisfy the requirements of section 78(2) to (4) above.

Modifications etc. (not altering text)

C115 S. 82(1) extended (1.12.2001) by S.I. 2001/2957 art. 5(1)(b)(3); S.I. 2001/3538, **art. 2(1)**

83 Restrictions on activities of manager.

(1) The manager of an authorised unit trust scheme shall not engage in any activities other than those mentioned in subsection (2) below.

(2) Those activities are—

(a) acting as manager of—

(i) a unit trust scheme;

(ii) an open-ended investment company or any other body corporate whose business consists of investing its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of its funds by or on behalf of that body; or

(iii) any other collective investment scheme under which the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;

[[F44](aa) acting as a director of an investment company with variable capital;**]**

(b) activities for the purposes of or in connection with those mentioned in paragraph (a) **[**[F45]or (aa)**]** above.

(3) A prohibition under section 65 above may prohibit the manager of an authorised unit trust scheme from inviting persons in any specified country or territory outside the United Kingdom to become participants in the scheme.

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Textual Amendments

F44 S. 83(2)(aa) inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 Pt. I para. 15(a)**

F45 Words in s. 83(2)(b) inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 Pt. I para. 15(b)**

Modifications etc. (not altering text)

C116 S. 83(1) extended (1.12.2001) by S.I. 2001/2957, **art. 5(1)(b)(3)**; S.I. 2001/3538, **art. 2(1)**

84 Avoidance of exclusion clauses.

Any provision of the trust deed of an authorised unit trust scheme shall be void in so far as it would have the effect of exempting the manager or trustee from liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the scheme.

85 Publication of scheme particulars.

(1) The Secretary of State may make regulations requiring the manager of an authorised unit trust scheme to submit to him and publish or make available to the public on request a document (“scheme particulars") containing information about the scheme and complying with such requirements as are specified in the regulations.

(2) Regulations under this section may require the manager of an authorised unit trust scheme to submit and publish or make available revised or further scheme particulars if—

(a) there is a significant change affecting any matter contained in such particulars previously published or made available whose inclusion was required by the regulations; or

(b) a significant new matter arises the inclusion of information in respect of which would have been required in previous particulars if it had arisen when those particulars were prepared.

(3) Regulations under this section may provide for the payment, by the person or persons who in accordance with the regulations are treated as responsible for any scheme particulars, of compensation to any person who has become or agreed to become a participant in the scheme and suffered loss as a result of any untrue or misleading statement in the particulars or the omission from them of any matter required by the regulations to be included.

(4) Regulations under this section shall not affect any liability which any person may incur apart from the regulations.

Modifications etc. (not altering text)

C117 S. 85 amended (6.1.1997) by S.I. 1996/2827, **reg. 6(1)**

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Recognition of overseas schemes

86 Schemes constituted in other member States.

(1) Subject to subsection (2) below, a collective investment scheme constituted in a member State other than the United Kingdom is a recognised scheme if it satisfies such requirements as are prescribed for the purposes of this section.

(2) Not less than two months before inviting persons in the United Kingdom to become participants in the scheme the operator of the scheme shall give written notice to the Secretary of State of his intention to do so, specifying the manner in which the invitation is to be made; and the scheme shall not be a recognised scheme by virtue of this section if within two months of receiving the notice the Secretary of State notifies—

(a) the operator of the scheme; and

(b) the authorities of the State in question who are responsible for the authorisation of collective investment schemes,

that the manner in which the invitation is to be made does not comply with the law in force in the United Kingdom.

(3) The notice to be given to the Secretary of State under subsection (2) above—

(a) shall be accompanied by a certificate from the authorities mentioned in subsection (2)(b) above to the effect that the scheme complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument;

(b) shall contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and

(c) shall contain or be accompanied by such other information and documents as may be prescribed.

(4) A notice given by the Secretary of State under subsection (2) above shall give the reasons for which he considers that the law in force in the United Kingdom will not be complied with and give particulars of the rights conferred by subsection (5) below.

(5) A person on whom a notice is served by the Secretary of State under subsection (2) above may, within twenty-one days of the date of service, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.

(6) The Secretary of State may in the light of any representations made in accordance with subsection (5) above withdraw his notice and in that event the scheme shall be a recognised scheme from the date on which the notice is withdrawn.

(7) Rules under section 48 above shall not apply to investment business in respect of which the operator or trustee of a scheme recognised under this section is an authorised person by virtue of section 24 above except so far as they make provision as respects—

(a) procuring persons to become participants in the scheme and advising persons on the scheme and the exercise of the rights conferred by it;

(b) matters incidental to those mentioned in paragraph (a) above.

[[F46]This subsection also applies to statements of principle under section 47A and codes of practice under section 63A so far as they relate to matters falling within the rule-making power in section 48.**]**

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(8) For the purposes of this section a collective investment scheme is constituted in a member State if—

(a) it is constituted under the law of that State by a contract or under a trust and is managed by a body corporate incorporated under that law; or

(b) it takes the form of an open-ended investment company incorporated under that law.

(9) If the operator of a scheme recognised under this section gives written notice to the Secretary of State stating that he desires the scheme no longer to be recognised under this section it shall cease to be so recognised when the notice is given.

Textual Amendments

F46 Words added by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 8**

Modifications etc. (not altering text)

C118 S. 86: certain functions transferred by S.I. 1990/354, **art. 4(5)**

87 Schemes authorised in designated countries or territories.

(1) Subject to subsection (3) below, a collective investment scheme which is not a recognised scheme by virtue of section 86 above but is managed in and authorised under the law of a country or territory outside the United Kingdom is a recognised scheme if—

(a) that country or territory is designated for the purposes of this section by an order made by the Secretary of State; and

(b) the scheme is of a class specified by the order.

(2) **[**[F47]Subject to subsection (2A) below,**]**the Secretary of State shall not make an order designating any country or territory for the purposes of this section unless he is satisfied that the law under which collective investment schemes of the class to be specified by the order are authorised and supervised in that country or territory affords to investors in the United Kingdom protection at least equivalent to that provided for them by this Chapter in the case of an authorised unit trust scheme.

[[F48](2A) Nothing in subsection (2) above shall require the comparison set out in that subsection to be made where—

(a) the class of collective investment schemes to be specified in an order includes schemes having characteristics corresponding to those of an investment company with variable capital; and

(b) having regard to the characteristics of such schemes, it appears more appropriate to consider whether investors in the United Kingdom are afforded protection at least equivalent to that provided for them by the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996;

and, to the extent that the requirements of paragraph (b) above are met, the relevant comparison shall be between the protection afforded to investors in the United Kingdom by the law under which collective investment schemes of the class to be specified in the order are authorised and supervised in the country or territory concerned and the protection provided for such investors by the Open-Ended

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Investment Companies (Investment Companies with Variable Capital) Regulations 1996.**]**

(3) A scheme shall not be recognised by virtue of this section unless the operator of the scheme gives written notice to the Secretary of State that he wishes it to be recognised; and the scheme shall not be recognised if within such period from receiving the notice as may be prescribed the Secretary of State notifies the operator that the scheme is not to be recognised.

(4) The notice given by the operator under subsection (3) above—

(a) shall contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and

(b) shall contain or be accompanied by such information and documents as may be prescribed.

(5) Section 85 above shall have effect in relation to a scheme recognised under this section as it has effect in relation to an authorised unit trust scheme, taking references to the manager as references to the operator and, in the case of an operator who is not an authorised person, references to publishing particulars as references to causing them to be published; and regulations made by virtue of this subsection may make provision whereby compliance with any requirements imposed by or under the law of a country or territory designated under this section is treated as compliance with any requirement of the regulations.

(6) An order under subsection (1) above may contain such transitional provisions as the Secretary of State thinks necessary or expedient and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F47 Words in s. 87(2) inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 Pt. I**, para. 16(a)

F48 S. 87(2A) inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 Pt. I para. 16(b)**

88 Other overseas schemes.

(1) The Secretary of State may, on the application of the operator of a scheme which—

(a) is managed in a country or territory outside the United Kingdom; but

(b) does not satisfy the requirements mentioned in section 86(1) above and in relation to which there is no relevant order under section 87(1) above,

make an order declaring the scheme to be a recognised scheme if it appears to him that it affords adequate protection to the participants, makes adequate provision for the matters dealt with by regulations under section 81 above and satisfies the following provisions of this section.

(2) The operator must be a body corporate or the scheme must take the form of an open-ended investment company.

(3) Subject to subsection (4) below, the operator and the trustee, if any, must be fit and proper persons to act as operator or, as the case may be, as trustee; and for that purpose the Secretary of State may take into account any matter relating to—

(a) any person who is or will be employed by or associated with the operator or trustee for the purposes of the scheme;

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(b) any director or controller of the operator or trustee;

(c) any other body corporate in the same group as the operator or trustee and any director or controller of any such other body.

(4) Subsection (3) above does not apply to an operator or trustee who is an authorised person and not prohibited from acting as operator or trustee, as the case may be, by or under rules under section 48 above, by or under the rules of any recognised self-regulating organisation of which he is a member or by any prohibition imposed under section 65 above.

(5) If the operator is not an authorised person he must have a representative in the United Kingdom who is an authorised person and has power to act generally for the operator and to accept service of notices and other documents on his behalf.

(6) The name of the scheme must not be undesirable or misleading; and the purposes of the scheme must be reasonably capable of being successfully carried into effect.

(7) The participants must be entitled to have their units redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme; but a scheme shall be treated as complying with this subsection if it requires the operator to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in this subsection.

(8) Subsections (2) to (5) of section 77 above shall apply also to an application under this section.

(9) So much of section 82 above as applies to an alteration of the scheme shall apply also to a scheme recognised under this section, taking references to the manager as references to the operator and with the omission of the requirement relating to the solicitor's certificate; and if the operator or trustee of any such scheme is to be replaced the operator or, as the case may be, the trustee, or in either case the person who is to replace him, shall give at least one month's notice to the Secretary of State.

(10) Section 85 above shall have effect in relation to a scheme recognised under this section as it has effect in relation to an authorised unit trust scheme, taking references to the manager as references to the operator and, in the case of an operator who is not an authorised person, references to publishing particulars as references to causing them to be published.

89 Refusal and revocation of recognition.

(1) The Secretary of State may at any time direct that a scheme shall cease to be recognised by virtue of section 87 above or revoke an order under section 88 above if it appears to him—

(a) that it is undesirable in the interests of the participants or potential participants in the United Kingdom that the scheme should continue to be recognised;

(b) without prejudice to paragraph (a) above, that the operator or trustee of the scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act; or

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(c) in the case of an order under section 88 that any of the requirements for the making of the order are no longer satisfied.

(2) For the purposes of subsection (1)(a) above the Secretary of State may take into account any matter relating to the scheme the operator or trustee, a director or controller of the operator or trustee or any person employed by or associated with the operator or trustee in connection with the scheme.

(3) In the case of an operator or trustee who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in subsection (1)(b) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules.

(4) The Secretary of State may give such a direction or revoke such an order as is mentioned in subsection (1) above at the request of the operator or trustee of the scheme; but he may refuse to do so if he considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the direction should be given or the order revoked or that the direction or revocation would not be in the interests of the participants.

(5) Where the Secretary of State proposes—

(a) to notify the operator of a scheme under section 87(3) above; or

(b) to give such a direction or to refuse to make or to revoke such an order as is mentioned in subsection (1) above,

he shall give the operator written notice of his intention to do so, stating the reasons for which he proposes to act and giving particulars of the rights conferred by subsection (6) below.

(6) A person on whom a notice is served under subsection (5) above may, within twenty-one days of the date of service, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.

(7) The Secretary of State shall have regard to any representations made in accordance with subsection (6) above in determining whether to notify the operator, give the direction or refuse to make or revoke the order, as the case may be.

90 Facilities and information in the United Kingdom.

(1) The Secretary of State may make regulations requiring operators of recognised schemes to maintain in the United Kingdom, or in such part or parts of it as may be specified in the regulations, such facilities as he thinks desirable in the interests of participants and as are specified in the regulations.

(2) The Secretary of State may by notice in writing require the operator of any recognised scheme to include such explanatory information as is specified in the notice in any investment advertisement issued or caused to be issued by him in the United Kingdom in which the scheme is named.

Powers of intervention

91 Directions.

(1) If it appears to the Secretary of State—

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(a) that any of the requirements for the making of an order declaring a scheme to be an authorised unit trust scheme are no longer satisfied;

(b) that the exercise of the power conferred by this subsection is desirable in the interests of participants or potential participants in the scheme; or

(c) without prejudice to paragraph (b) above, that the manager or trustee of such a scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act,

he may give a direction under subsection (2) below.

(2) A direction under this subsection may—

(a) require the manager of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme on a date specified in the direction until such further date as is specified in that or another direction;

(b) require the manager and trustee of the scheme to wind it up by such date as is specified in the direction or, if no date is specified, as soon as practicable.

(3) The revocation of the order declaring an authorised unit trust scheme to be such a scheme shall not affect the operation of any direction under subsection (2) above which is then in force; and a direction may be given under that subsection in relation to a scheme in the case of which the order declaring it to be an authorised unit trust scheme has been revoked if a direction under that subsection was already in force at the time of revocation.

(4) Sections 60, 61 and 62 above shall have effect in relation to a contravention of a direction under subsection (2) above as they have effect in relation to any such contravention as is mentioned in those sections.

(5) If it appears to the Secretary of State—

(a) that the exercise of the power conferred by this subsection is desirable in the interests of participants or potential participants in a scheme recognised under section 87 or 88 above who are in the United Kingdom;

(b) without prejudice to paragraph (a) above, that the operator of such a scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act; or

(c) that any of the requirements for the recognition of a scheme under section 88 above are no longer satisfied,

he may direct that the scheme shall not be a recognised scheme for a specified period or until the occurrence of a specified event or until specified conditions are complied with.

(6) For the purposes of subsections (1)(b) and (5)(a) above the Secretary of State may take into account any matter relating to the scheme, the manager, operator or trustee, a director or controller of the manager, operator or trustee or any person employed by or associated with the manager, operator or trustee in connection with the scheme.

(7) In the case of a manager, operator or trustee who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in

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subsections (1)(c) and (5)(b) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules.

(8) The Secretary of State may, either of his own motion or on the application of the manager, trustee or operator of the scheme concerned, withdraw or vary a direction given under this section if it appears to the Secretary of State that it is no longer necessary for the direction to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

Modifications etc. (not altering text)
C119 S. 91 restricted (1.11.1992) by S.R. 1980/346, Order 93, rule 7 (as inserted by S.R. 1992/399, **rule15**).

92 Notice of directions.

(1) The power to give a direction under section 91 above in relation to a scheme shall be exercisable by written notice served by the Secretary of State on the manager and trustee or, as the case may be, on the operator of the scheme and any such notice shall take effect on such date as is specified in the notice.

(2) If the Secretary of State refuses to withdraw or vary a direction on the application of the manager, trustee or operator of the scheme concerned he shall serve that person with a written notice of refusal.

(3) A notice giving a direction, or varying it otherwise than on the application of the manager, trustee or operator concerned, or refusing to withdraw or vary a direction on the application of such a person shall state the reason for which the direction was given or varied or, as the case may be, why the application was refused.

(4) The Secretary of State may give public notice of a direction given by him under section 91 above and of any withdrawal or variation of such a direction; and any such notice may, if the Secretary of State thinks fit, include a statement of the reasons for which the direction was given, withdrawn or varied.

93 Applications to the court.

(1) In any case in which the Secretary of State has power to give a direction under section 91(2) above in relation to an authorised unit trust scheme or, by virtue of subsection (3) of that section, in relation to a scheme which has been such a scheme, he may apply to the court—

(a) for an order removing the manager or trustee, or both the manager and trustee, of the scheme and replacing either or both of them with a person or persons nominated by him and appearing to him to satisfy the requirements of section 78 above; or

(b) if it appears to the Secretary of State that no, or no suitable, person satisfying those requirements is available, for an order removing the manager or trustee, or both the manager and trustee, and appointing an authorised person to wind the scheme up.

(2) On an application under this section the court may make such order as it thinks fit; and the court may, on the application of the Secretary of State, rescind any such order as is mentioned in paragraph (b) of subsection (1) above and substitute such an order as is mentioned in paragraph (a) of that subsection.

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(3) The Secretary of State shall give written notice of the making of an application under this section to the manager and trustee of the scheme concerned and take such steps as he considers appropriate for bringing the making of the application to the attention of the participants.

(4) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

(5) Section 83 above shall not apply to a manager appointed by an order made on an application under subsection (1)(b) above.

Modifications etc. (not altering text)
C120 S. 93(1) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.26**.
s. 93(1) extended (1.1.1996) by S.I. 1995/3275, reg. 37, **Sch. 7 para. 24**

Supplemental

94 Investigations.

(1) The Secretary of State may appoint one or more competent inspectors to investigate and report on—
(a) the affairs of, or of the manager or trustee of, any authorised unit trust scheme;
(b) the affairs of, or of the operator or trustee of, any recognised scheme so far as relating to activities carried on in the United Kingdom; or
(c) the affairs of, or of the operator or trustee of, any other collective investment scheme,

if it appears to the Secretary of State that it is in the interests of the participants to do so or that the matter is of public concern.

(2) An inspector appointed under subsection (1) above to investigate the affairs of, or of the manager, trustee or operator of, any scheme may also, if he thinks it necessary for the purposes of that investigation, investigate the affairs of, or of the manager, trustee or operator of, any other such scheme as is mentioned in that subsection whose manager, trustee or operator is the same person as the manager, trustee or operator of the first-mentioned scheme.

(3) Sections 434 to 436 of the [M25]Companies Act 1985 (production of documents and evidence to inspectors), . . . [F49], shall apply in relation to an inspector appointed under this section as they apply to an inspector appointed under section 431 of that Act but with the modifications specified in subsection (4) below.

(4) In the provisions applied by subsection (3) above for any reference to a company . . . [F50] there shall be substituted a reference to the scheme under investigation by virtue of this section . . . [F50] and any reference to an officer . . . [F50] of the company shall include a reference to any director of the manager, trustee or operator of the scheme.

(5) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the

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Court of Session except that a lawyer may be required to furnish the name and address of his client.

(6) Where a person claims a lien on a document its production under this section shall be without prejudice to the lien.

[[F51](7) Nothing in this section requires a person (except as mentioned in subsection (7A) below) to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

(a) the person to whom the obligation of confidence is owed consents to the disclosure or production, or

(b) the making of the requirement was authorised by the Secretary of State.

(7A) Subsection (7) does not apply where the person owing the obligation of confidence or the person to whom it is owed is—

(a) the manager, operator or trustee of the scheme under investigation, or

(b) a manager, operator or trustee whose own affairs are under investigation.**]**

(8) An inspector appointed under this section may, and if so directed by the Secretary of State shall, make interim reports to the Secretary of State and on the conclusion of his investigation shall make a final report to him.

[[F52](8A) If it appears to the Secretary of State that matters have come to light in the course of the inspectors' investigation which suggest that a criminal offence has been committed, and those matters have been referred to the appropriate prosecuting authority, he may direct the inspectors to take no further steps in the investigation or to take only such further steps as are specified in the direction.

(8B) Where an investigation is the subject of a direction under subsection (8A), the inspectors shall make a final report to the Secretary of State only where the Secretary of State directs them to do so.**]**

(9) Any such report shall be written or printed as the Secretary of State may direct and the Secretary of State may, if he thinks fit—

(a) furnish a copy, on request and on payment of the prescribed fee, to the manager, trustee or operator or any participant in a scheme under investigation or any other person whose conduct is referred to in the report; and

(b) cause the report to be published.

[[F53](10) A person who is convicted on a prosecution instituted as a result of an investigation under this section may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Secretary of State may determine in respect of general staff costs and overheads.**]**

Textual Amendments

F49 Words repealed by Companies Act 1989 (c. 40, SIF 27), s. 212, **Sch. 24**

F50 Words repealed by Companies Act 1989 (c. 40, SIF 27), s. 212, **Sch. 24**

F51 S. 94(7)(7A) substituted for subsection (7) by Companies Act 1989 (c. 40, SIF 27), **s. 72(2)**

F52 S. 94(8A)(8B) inserted by Companies Act 1989 (c. 40, SIF 27), **s. 72(3)**

F53 S. 94(10) inserted by Companies Act 1989 (c. 40, SIF 27), **s. 72(4)**

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Modifications etc. (not altering text)
C121 S. 94: certain functions transferred by S.I. 1988/738, **art. 3(4)**

Marginal Citations
M25 1985 c. 6.

95 Contraventions.

(1) A person who contravenes any provision of this Chapter, a manager or trustee of an authorised unit trust scheme who contravenes any regulations made under section 81 above and a person who contravenes any other regulations made under this Chapter shall be treated as having contravened rules made under Chapter V of this Part of this Act or, in the case of a person who is an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.

(2) Subsection (1) above applies also to any contravention by the operator of a recognised scheme of a requirement imposed under section 90(2) above.

[[F54](3) The disciplinary action which may be taken by virtue of section 47A(3) (failure to comply with statement of principle) includes—

(a) the giving of a direction under section 91(2), and

(b) the application by the Secretary of State for an order under section 93;

and subsection (6) of section 47A (duty of the Secretary of State as to exercise of powers) has effect accordingly.**]**

Textual Amendments
F54 S. 95(3) inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 9**

CHAPTER IX

THE TRIBUNAL

Modifications etc. (not altering text)
C122 Chapters III–XI (ss. 7–111): certain functions transferred by S.I. 1990/354, **art. 5**
C123 Chapter IX (ss. 96-101) applied with modifications (12.2.1992) by S.I 1992/225, reg. 96(7)

96 The Financial Services Tribunal.

(1) For the purposes of this Act there shall be a Tribunal known as the Financial Services Tribunal (in this Act referred to as “the Tribunal”).

(2) There shall be a panel of not less than ten persons to serve as members of the Tribunal when nominated to do so in accordance with subsection (3) below; and that panel shall consist of—

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(a) persons with legal qualifications appointed by the Lord Chancellor after consultation with the Lord Advocate, including at least one person qualified in Scots law; and

(b) persons appointed by the Secretary of State who appear to him to be qualified by experience or otherwise to deal with the cases that may be referred to the Tribunal.

(3) Where a case is referred to the Tribunal the Secretary of State shall nominate three persons from the panel to serve as members of the Tribunal in respect of that case and nominate one of them to be chairman.

(4) The person nominated to be chairman of the Tribunal in respect of any case shall be a person with legal qualifications and, so far as practicable, at least one of the other members shall be a person with recent practical experience in business relevant to the case.

(5) If while a case is being dealt with by the Tribunal one of the three persons serving as members in respect of that case becomes unable to act the case may, with the consent of the Secretary of State and of the person or persons at whose request the case was referred to the Tribunal, be dealt with by the other two members.

(6) Schedule 6 to this Act shall have effect as respects the Tribunal and its proceedings.

Modifications etc. (not altering text)

C124 It is provided that ss. 96, 97(6), 99-101, Sch. 6 shall continue (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 105**, 108 (with art. 23(2))

C125 S. 96: functions of the Lord Advocate transferred to the Secretary of State, and all property, rights and liabilities to which the Lord Advocate is entitled or subject in connection with any such function transferred to the Secretary for Scotland (19.5.1999) by S.I. 1999/678, arts. 2, 3, **Sch.** (with art. 7)

C126 S. 96(2)(a): transfer of certain functions (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

C127 S. 96(2)(a): Certain functions made exercisable (30.6.1999) by S.I. 1999/1748, art. 3, **Sch. 1 para. 9**

97 References to the Tribunal.

(1) Any person—

(a) on whom a notice is served under section 29, 34, 59(4), 60(2) or 70 above; or

(b) on whom a copy of a notice under section 29, 34, 60(2) or 70 above is served or on whom the Secretary of State considers that a copy of such a notice would have been served if it had been practicable to do so,

may within twenty-eight days of the date of service of the notice require the Secretary of State to refer the matter to which the notice relates to the Tribunal and, subject to the provisions of this section, the Secretary of State shall refer that matter accordingly.

(2) The Secretary of State need not refer a matter to the Tribunal at the request of the person on whom a notice was served under section 29, 34, 59(4) or 60(2) above if within the period mentioned in subsection (1) above he—

(a) decides to grant the application or, as the case may be, decides not to withdraw or suspend the authorisation, give the direction or publish the statement to which the notice relates; and

(b) gives written notice of his decision to that person.

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(3) The Secretary of State need not refer a matter to the Tribunal at the request of the person on whom a notice is served under section 70 above if—

(a) that matter is the refusal of an application for the rescission or variation of a prohibition or requirement and within the period mentioned in subsection (1) above he—

(i) decides to grant the application; and

(ii) gives written notice of his decision to that person; or

(b) that matter is the imposition or variation of a prohibition or rerquirement, being a prohibition, requirement or variation which has not yet taken effect, and within the period mentioned in subsection (1) above and before the prohibition, requirement or variation takes effect he—

(i) decides to rescind the prohibition or requirement or decides not to make the variation; and

(ii) gives written notice of his decision to that person.

(4) Where the notice served on a person under section 29 or 34 above—

(a) proposed the withdrawal of an authorisation or the giving of a direction under section 33(1)(a) above; or

(b) proposed the suspension of an authorisation or the giving of a direction under section 33(1)(b) above,

and at any time within the period mentioned in subsection (1) above the Secretary of State serves a new notice on that person in substitution for that previously served, then, if the substituted notice complies with subsection (5) below, subsection (1) above shall have effect in relation to the substituted notice instead of the original notice and as if the period there mentioned were twenty-eight days after the date of service of the original notice or fourteen days after the date of service of the substituted notice, whichever ends later.

(5) A notice served in substitution for a notice within subsection (4)(a) above complies with this subsection if it proposes—

(a) the suspension of an authorisation or the giving of a direction under section 33(1)(b) above; or

(b) the exercise of the power conferred by section 60 above;

and a notice served in substitution for a notice within subsection (4)(b) above complies with this subsection if it proposes a less severe suspension or direction under section 33(1)(b) or the exercise of the power conferred by section 60 above.

(6) The reference of the imposition or variation of a prohibition or requirement under Chapter VI of this Part of this Act to the Tribunal shall not affect the date on which it comes into effect.

Modifications etc. (not altering text)

C128 s. 97: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(c)**.
S. 97 amended (1.1.1993) by S.I. 1992/3218, reg. 15(5), **Sch. 4 para.2**.
s. 97 extended (1.1.1996) by S.I. 1996/3275, regs. 9(5), 20, 42(10), Sch. 4, para. 2, **Sch. 6**, para. 8
s. 97(1) modified (1.1.1996) by S.I. 1995/3275, **reg. 17(9)(c)**

C129 It is provided that ss. 96, 97(6), 99-101, Sch. 6 shall continue (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 105**, 108 (with art. 23(2))

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98 Decisions on references by applicant or authorised person etc.

(1) Where a case is referred to the Tribunal at the request of a person within section 97(1)(a) above the Tribunal shall—

(a) investigate the case; and

(b) make a report to the Secretary of State stating what would in its opinion be the appropriate decision in the matter and the reasons for that opinion;

and it shall be the duty of the Secretary of State to decide the matter forthwith in accordance with the Tribunal's report.

(2) Where the matter referred to the Tribunal is the refusal of an application the Tribunal may under this section report that the appropriate decision would be to grant or refuse the application or—

(a) in the case of an application for the variation of a suspension, direction, consent, prohibition or requirement, to vary it in a specified manner;

(b) in the case of an application for the rescission of a prohibition or requirement, to vary the prohibition or requirement in a specified manner.

(3) Where the matter referred to the Tribunal is any action of the Secretary of State other than the refusal of an application the Tribunal may report that the appropriate decision would be—

(a) to take or not to take the action taken or proposed to be taken by the Secretary of State or to take any other action that he could take under the provision in question; or

(b) to take instead or in addition any action that he could take in the case of the person concerned under any one or more of the provisions mentioned in subsection (4) below other than that under which he was acting or proposing to act.

(4) Those provisions are sections 28, 33 and 60 above and Chapter VI of this Part of this Act; and sections 29, 34, 60(2) and (3) and 70(2) and (4) above shall not apply to any action taken by the Secretary of State in accordance with the Tribunal's report.

(5) The Tribunal shall send a copy of its report under this section to the person at whose request the case was referred to it; and the Secretary of State shall serve him with a written notice of the decision made by him in accordance with the report.

Modifications etc. (not altering text)

C130 S. 98: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(c)**.

C131 S. 98(2)(a) amended (1.1.1993) by S.I. 1992/3218, reg. 15(5), **Sch. 4 para. 3(1)(a)**.

C132 S. 98(2)(b) amended (1.1.1993) by S.I. 1992/3218, reg. 15(5), **Sch. 4 para. 3(1)(b)**.

C133 S. 98(3)(b) amended (1.1.1993) by S.I. 1992/3218, reg. 15(5), **Sch. 4 para. 3(2)**.
s. 98 modified (1.1.1996) by S.I. 1995/3275, **reg. 9(5)**, SCh. 4 para. 3(1)(3)
s. 98(3)(b) extended (1.1.1996) by S.I. 1995/3275, reg. 9(5), **Sch. 4**, para. 3(2)

99 Decisions on references by third parties.

Where a case is referred to the Tribunal at the request of a person within section 97(1)(b) above the Tribunal shall report to the Secretary of State whether the reasons stated in the notice in question which relate to that person are substantiated; and the Tribunal

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shall send a copy of the report to that person and to the person on whom the notice was served.

Modifications etc. (not altering text)

C134 It is provided that ss. 96, 97(6), 99-101, Sch. 6 shall continue (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 105**, 108 (with art. 23(2))

C135 S. 99: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(c)**.

100 Withdrawal of reference.

(1) A person who has required a case to be referred to the Tribunal may at any time before the conclusion of the proceedings before the Tribunal withdraw the reference.

(2) The Secretary of State may at any such time withdraw any reference made at the request of a person on whom a notice was served under any of the provisions mentioned in subsection (1)(a) of section 97 above if he—

(a) decides as mentioned in subsection (2)(a) or (3)(a)(i) or (b)(i) of that section; and

(b) gives such a notice as is mentioned in subsection (2)(b) or (3)(a)(ii) or (b)(ii) of that section;

but a reference shall not be withdrawn by virtue of such a decision and notice as are mentioned in paragraph (b) of subsection (3) unless the decision is made and the notice is given before the prohibition, requirement or variation has taken effect.

(3) Where a case is withdrawn from the Tribunal under this section the Tribunal shall not further investigate the case or make a report under section 98 or 99 above; but where the reference is withdrawn otherwise than by the Secretary of State he may require the Tribunal to make a report to him on the results of its investigation up to the time when the reference was withdrawn.

(4) Where two or more persons have required a case to be referred to the Tribunal the withdrawal of the reference by one or more of them shall not affect the functions of the Tribunal as respects the case so far as relating to a person who has not withdrawn the reference.

(5) Where a person on whom a notice was served under section 29, 34 or 60 above withdraws a case from the Tribunal subsection (5) of each of those sections shall apply to him as if he had not required the case to be referred.

Modifications etc. (not altering text)

C136 It is provided that ss. 96, 97(6), 99-101, Sch. 6 shall continue (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 105**, 108 (with art. 23(2))

C137 S. 100: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(c)**.

C138 S. 100(2) amended (1.1.1993) by S.I. 1992/3218, reg. 15(5), **Sch. 4 para.4(1)**.
s. 100(2) extended (1.1.1996) by S.I. 1995/3275, reg. 9(5), **Sch. 4 para. 4(1)**
s. 100 modified (1.1.1996) by S.I. 1995/3275, reg. 9(5), **Sch. 4 para. 4(2)**

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101 Reports.

(1) In preparing its report on any case the Tribunal shall have regard to the need to exclude, so far as practicable, any matter which relates to the affairs of a particular person (not being a person who required or could have required the case to be referred to the Tribunal) where the publication of that matter would or might, in the opinion of the Tribunal, seriously and prejudicially affect the interests of that person.

(2) The Secretary of State may, in such cases as he thinks fit, publish the report of the Tribunal and offer copies of any such report for sale.

(3) The Secretary of State may, on request and on payment of the prescribed fee, supply a copy of a report of the Tribunal to any person whose conduct is referred to in the report or whose interests as a client or creditor are affected by the conduct of a person to whom the proceedings before the Tribunal related.

(4) If the Secretary of State is of opinion that there is good reason for not disclosing any part of a report he may cause that part to be omitted from the report as published under subsection (2) or from the copy of it supplied under subsection (3) above.

(5) A copy of a report of the Tribunal endorsed with a certificate signed by or on behalf of the Secretary of State stating that it is a true copy shall be admissible as evidence of the opinion of the Tribunal as to any matter referred to in the report; and a certificate purporting to be signed as aforesaid shall be deemed to have been duly signed unless the contrary is shown.

Modifications etc. (not altering text)

C139 It is provided that ss. 96, 97(6), 99-101, Sch. 6 shall continue (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 105**, 108 (with art. 23(2))

C140 S. 101: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(c)**.

C141 S. 101(5) extended (12.2.1992) by S.I. 1992/225, **reg.101**.

CHAPTER X

INFORMATION

Modifications etc. (not altering text)

C142 Chapters III–XI (ss. 7–111): certain functions transferred by S.I. 1990/354, **art. 5**

102 Register of authorised persons and recognised organisations etc.

(1) The Secretary of State shall keep a register containing an entry in respect of—

(a) each person who is an authorised person by virtue of an authorisation granted by the Secretary of State;

(b) each other person who appears to him to be an authorised person by virtue of any provision of this Part of this Act;

(c) each recognised self-regulating organisation, recognised professional body, recognised investment exchange and recognised clearing house;

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(d) each authorised unit trust scheme and recognised scheme;

(e) each person in respect of whom a direction under section 59 above is in force.

(2) The entry in respect of each authorised person shall consist of—

(a) a statement of the provision by virtue of which he is an authorised person;

(b) in the case of a person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body, the name and address of the organisation or body;

[[F55](bb) in the case of an investment company with variable capital which is an authorised person by virtue of section 24A above, the name of the company, the address of the company's head office and the names and addresses of the directors and depositary of the company;**]**

(c) in the case of a person who is an authorised person by virtue of section 25 or 31 above, information as to the services which that person holds himself out as able to provide;

(d) in the case of a person who is an authorised person by virtue of section 31 above, the address notified to the Secretary of State under section 32 above;

(e) in the case of a person who is an authorised person by virtue of any provision other than section 31 above, the date on which he became an authorised person by virtue of that provision; and

(f) such other information as the Secretary of State may determine.

(3) The entry in respect of each such organisation, body, exchange or clearing house as is mentioned in subsection (1)(c) above shall consist of its name and address and such other information as the Secretary of State may determine.

(4) The entry in respect of each such scheme as is mentioned in subsection (1)(d) above shall consist of its name and, in the case of an authorised unit trust scheme, the name and address of the manager and trustee and, in the case of a recognised scheme, the name and address of the operator and of any representative of the operator in the United Kingdom and, in either case, such other information as the Secretary of State may determine.

(5) The entry in respect of each such person as is mentioned in subsection (1)(e) above shall include particulars of any consent for that person's employment given by the Secretary of State.

(6) Where it appears to the Secretary of State that any person in respect of whom there is an entry in the register by virtue of subsection (1)(a) **[**[F56], (b) or (bb)**]** above has ceased to be an authorised person (whether by death, by withdrawal or other cessation of his authorisation, as a result of his ceasing to be a member of a recognised self-regulating organisation or otherwise) the Secretary of State shall make a note to that effect in the entry together with the reason why the person in question is no longer an authorised person.

(7) Where—

(a) an organisation, body, exchange or clearing house in respect of which there is an entry in the register by virtue of paragraph (c) of subsection (1) above has ceased to be recognised or ceased to exist;

(b) an authorised unit trust scheme or recognised scheme in respect of which there is an entry in the register by virtue of paragraph (d) of that subsection has ceased to be authorised or recognised; or

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(c) the direction applying to a person in respect of whom there is an entry in the register by virtue of paragraph (e) of that subsection has ceased to have effect,

the Secretary of State shall make a note to that effect in the entry.

(8) An entry in respect of which a note is made under subsection (6) or (7) above may be removed from the register at the end of such period as the Secretary of State thinks appropriate.

Textual Amendments

F55 S. 102(2)(bb) inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 Pt. I**, para. 17(a)

F56 Words in s. 102(6) substituted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 Pt. I**, para.17(b)

Modifications etc. (not altering text)

C143 S. 102 modified by S.I. 1987/942, **art. 9**
S. 102 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 27**.
s. 102 extended (1.1.1996) by S.I. 1995/3275, reg. 37, **Sch. 7 para. 25**
s. 102 modified (1.1.1996) by S.I. 1995/3275, **reg. 28(1)**

103 Inspection of register.

(1) The information contained in the entries included in the register otherwise than by virtue of section 102(1)(e) above shall be open to inspection; and the Secretary of State may publish the information contained in those entries in any form he thinks appropriate and may offer copies of any such information for sale.

(2) A person shall be entitled to ascertain whether there is an entry in the register by virtue of subsection (1)(e) of section 102 above (not being an entry in respect of which there is a note under subsection (7) of that section) in respect of a particular person specified by him and, if there is such an entry, to inspect it.

(3) Except as provided by subsection (2) above the information contained in the register by virtue of section 102(1)(e) above shall not be open to inspection by any person unless he satisfies the Secretary of State that he has a good reason for seeking the information.

(4) A person to whom information is made available by the Secretary of State under subsection (3) above shall not, without the consent of the Secretary of State or of the person to whom the information relates, make use of it except for the purpose for which it was made available.

(5) Information which by virtue of this section is open to inspection shall be open to inspection free of charge but only at such times and places as the Secretary of State may appoint; and a person entitled to inspect any information may obtain a certified copy of it from the Secretary of State on payment of the prescribed fee.

(6) The register may be kept by the Secretary of State in such form as he thinks appropriate with a view to facilitating inspection of the information which it contains.

104 Power to call for information.

(1) The Secretary of State may by notice in writing require a person who is authorised to carry on investment business by virtue of section 22, 24, **[**[F57]24A,**]**25 or 31 above to

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furnish him with such information as he may reasonably require for the exercise of his functions under this Act.

(2) The Secretary of State may by notice in writing require a recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house to furnish him with such information as he may reasonably require for the exercise of his functions under this Act.

(3) The Secretary of State may require any information which he requires under this section to be furnished within such reasonable time and verified in such manner as he may specify.

(4) Sections 60, 61 and 62 above shall have effect in relation to a contravention of a requirement imposed under subsection (1) above as they have effect in relation to a contravention of the provisions to which those sections apply.

Textual Amendments

F57 Words in s. 104(1) inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 para. 18**

Modifications etc. (not altering text)

C144 S. 104 restricted (1.11.1992) by S.R. 1980/346, Order 93, rule 7 (as inserted by S.R. 1992/399, **rule 15**).
S. 104 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 28**.

C145 S. 104(1) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 28(a)**.
s. 104 amended (1.7.1994) by S.I. 1994/1696, **reg. 60(1)**
s. 104 extended (1.1.1996) by S.I. 1995/3275, reg. 37, **Sch. 7 para. 26**

105 Investigation powers.

(1) The powers of the Secretary of State under this section shall be exercisable in any case in which it appears to him that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any person so far as relevant to any investment business which he is or was carrying on or appears to the Secretary of State to be or to have been carrying on.

(2) Those powers shall not be exercisable for the purpose of investigating the affairs of any exempted person unless he is an appointed representative or the investigation is in respect of investment business in respect of which he is not an exempted person and shall not be exercisable for the purpose of investigating the affairs of a member of a recognised self-regulating organisation or a person certified by a recognised professional body in respect of investment business in the carrying on of which he is subject to its rules unless—

(a) that organisation or body has requested the Secretary of State to investigate those affairs; or

(b) it appears to him that the organisation or body is unable or unwilling to investigate them in a satisfactory manner.

(3) The Secretary of State may require the person whose affairs are to be investigated ("the person under investigation") or any connected person to attend before the Secretary of State at a specified time and place and answer questions or otherwise furnish information with respect to any matter relevant to the investigation.

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(4) The Secretary of State may require the person under investigation or any other person to produce at a specified time and place any specified documents which appear to the Secretary of State to relate to any matter relevant to the investigation; and—

(a) if any such documents are produced, the Secretary of State may take copies or extracts from them or require the person producing them or any connected person to provide an explanation of any of them;

(b) if any such documents are not produced, the Secretary of State may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) A statement by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

(6) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session except that a lawyer may be required to furnish the name and address of his client.

(7) . . . . . [F58]

(8) Where a person claims a lien on a document its production under this section shall be without prejudice to the lien.

(9) In this section—

"connected person", in relation to any other person means—

(a) any person who is or was that other person's partner, employee, agent, appointed representative, banker, auditor or solicitor; and

(b) where the other person is a body corporate, any person who is or was a director, secretary or controller of that body corporate or of another body corporate of which it is or was a subsidiary; and

(c) where the other person is an unincorporated association, any person who is or was a member of the governing body or an officer or controller of the association; and

(d) where the other person is an appointed representative, any person who is or was his principal; and

(e) where the other person is the person under investigation (being a body corporate), any related company of that body corporate and any person who is a connected person in relation to that company;

"documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, **[**[F59]the power to require its production includes power to require the production of**]** a copy of the information in legible form;

"related company", in relation to a person under investigation (being a body corporate), means any other body corporate which is or at any material time was—

(a) a holding company or subsidiary of the person under investigation;

(b) a subsidiary of a holding company of that person; or

(c) a holding company of a subsidiary of that person,

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and whose affairs it is in the Secretary of State's opinion necessary to investigate for the purpose of investigating the affairs of that person.

(10) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the fifth level on the standard scale or to both.

[[F60](11) A person who is convicted on a prosecution instituted as a result of an investigation under this section may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Secretary of State may determine in respect of general staff costs and overheads.**]**

Textual Amendments

F58 S. 105(7) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 73(2), 212, **Sch. 24**

F59 Words substituted by Companies Act 1989 (c. 40, SIF 27), **s. 73(3)**

F60 S. 105(11) inserted by Companies Act 1989 (c. 40, SIF 27), **s. 73(4)**

Modifications etc. (not altering text)

C146 S. 105 applied (12.2.1992) by S.I. 1992/225, **reg.110**.
s. 105 applied (with modifications) (15.8.1995) by S.I. 1995/2049, **regs. 6**, 7-18

106 Exercise of investigation powers by officer etc.

(1) The Secretary of State may authorise any officer of his or any other competent person to exercise on his behalf all or any of the powers conferred by section 105 above but no such authority shall be granted except for the purpose of investigating the affairs, or any aspects of the affairs, of a person specified in the authority.

(2) No person shall be bound to comply with any requirement imposed by a person exercising powers by virtue of an authority granted under this section unless he has, if required to do so, produced evidence of his authority.

[[F61](2A) A person shall not by virtue of an authority under this section be required to disclose any information or produce any documents in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

(a) he is the person under investigation or a related company,

(b) the person to whom the obligation of confidence is owed is the person under investigation or a related company,

(c) the person to whom the obligation of confidence is owed consents to the disclosure or production, or

(d) the imposing on him of a requirement with respect to such information or documents has been specifically authorised by the Secretary of State.

In this subsection "documents", "person under investigation" and "related company" have the same meaning as in section 105.**]**

(3) Where the Secretary of State authorises a person other than one of his officers to exercise any powers by virtue of this section that person shall make a report to the

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Secretary of State in such manner as he may require on the exercise of those powers and the results of exercising them.

Textual Amendments

F61 S. 106(2A) inserted by Companies Act 1989 (c. 40, SIF 27), **s. 73(5)**

Modifications etc. (not altering text)

C147 S. 106 applied (12.2.1992) by S.I. 1992/225, **reg.110**.
S. 106 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.29**.
s. 106 applied (with modifications) (15.8.1995) by S.I. 1995/2049, **regs. 6**, 7-18
s. 106 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 27**

CHAPTER XI

AUDITORS

Modifications etc. (not altering text)

C148 Chapters III–XI (ss. 7–111): certain functions transferred by S.I. 1990/354, **art. 5**

107 Appointment of auditors.

[[F62](1) The Secretary of State may make rules requiring—

(a) a person authorised to carry on investment business by virtue of section 25 or 31 above, or

(b) a member of a recognised self-regulating organisation carrying on investment business in the carrying on of which he is subject to the rules of the organisation,

and who, apart from the rules, is not required by or under any enactment to appoint an auditor, to appoint as an auditor a person satisfying such conditions as to qualifications and otherwise as may be specified in or imposed under the rules.**]**

(2) Rules under this section may make provision—

(a) specifying the manner in which and the time within which an auditor is to be appointed;

(b) requiring the Secretary of State to be notified of any such appointment and enabling the Secretary of State to make an appointment if no appointment is made or notified as required by the rules;

(c) with respect to the remuneration of an auditor appointed under the rules;

(d) with respect to the term of office, removal and resignation of any such auditor;

(e) requiring any such auditor who is removed, resigns or is not reappointed to notify the Secretary of State whether there are any circumstances connected with his ceasing to hold office which he considers should be brought to the Secretary of State's attention.

(3) An auditor appointed under the rules shall in accordance with the rules examine and report on the accounts of the authorised person in question and shall for that purpose have such duties and powers as are specified in the rules.

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[[F63](4) In its application to members of recognised self-regulating organisations, this section has effect subject to section 107A below.**]**

Textual Amendments

F62 S. 107(1) substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 10(2)**

F63 S. 107(4) added by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 10(3)**

Modifications etc. (not altering text)

C149 S. 107: certain functions transferred by S.I. 1990/354, **art. 4(5)**
S. 107 applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg.98**.
S. 107 amended (1.7.1994) by S.I. 1994/1696, **reg. 60(2)**

C150 S. 107(3) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.30**.
s. 107(3) modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 28**

[[F64]107A Application of audit rules to members of self-regulating organisations.

(1) The Secretary of State may in rules under section 107 designate provisions which apply, to such extent as may be specified, to a member of a recognised self-regulating organisation in respect of investment business in the carrying on of which he is subject to the rules of the organisation.

(2) It may be provided that the designated rules have effect, generally or to such extent as may be specified, subject to the rules of the organisation.

(3) A member of a recognised self-regulating organisation who contravenes a rule applying to him by virtue of that section shall be treated as having contravened the rules of the organisation.

(4) Except as mentioned above, rules made under section 107 do not apply to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.

(5) A recognised self-regulating organisation may on the application of a member of the organisation—
  (a) modify a rule designated under this section so as to adapt it to his circumstances or to any particular kind of business carried on by him, or
  (b) dispense him from compliance with any such rule, generally or in relation to any particular kind of business carried on by him.

(6) The powers conferred by subsection (5) shall not be exercised unless it appears to the organisation—
  (a) that compliance with the rule in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and
  (b) that the exercise of those powers will not result in any undue risk to investors.

(7) The powers conferred by subsection (5) may be exercised unconditionally or subject to conditions; and subsection (3) applies in the case of a contravention of a condition as in the case of contravention of a designated rule.

(8) The reference in paragraph 4(1) of Schedule 2 (requirements for recognition of self-regulating organisations) to monitoring and enforcement of compliance with rules

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includes monitoring and enforcement of compliance with conditions imposed by the organisation under subsection (7).**]**

Textual Amendments

F64 S. 107A inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 11**

108 Power to require second audit.

(1) If in any case it appears to the Secretary of State that there is good reason to do so he may direct any person who is authorised to carry on investment business by virtue of section **[**[F65]24A,**]** 25 or 31 above to submit for further examination by a person approved by the Secretary of State—

(a) any accounts on which that person's auditor has reported or any information given under section 52 or 104 above which has been verified by that auditor; or

(b) such matters contained in any such accounts or information as are specified in the direction;

and the person making the further examination shall report his conclusions to the Secretary of State.

(2) Any further examination and report required by a direction under this section shall be at the expense of the authorised person concerned and shall be carried out and made within such time as is specified in the direction or within such further time as the Secretary of State may allow.

(3) The person carrying out an examination under this section shall have all the powers that were available to the auditor; and it shall be the duty of the auditor to afford him all such assistance as he may require.

(4) Where a report made under this section relates to accounts which under any enactment are required to be sent to or made available for inspection by any person or to be delivered for registration, the report, or any part of it (or a note that such a report has been made) may be similarly sent, made available or delivered by the Secretary of State.

Textual Amendments

F65 Words in s. 108(1) inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 para. 19**

Modifications etc. (not altering text)

C151 S. 108 applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg. 98**.

109 Communication by auditor with supervisory authorities.

(1) No duty to which an auditor of an authorised person may be subject shall be regarded as contravened by reason of his communicating in good faith to the Secretary of State, whether or not in response to a request from him, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that person and which is relevant to any functions of the Secretary of State under this Act.

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(2) If it appears to the Secretary of State that any auditor or class of auditor to whom subsection (1) above applies is not subject to satisfactory rules made or guidance issued by a professional body specifying circumstances in which matters are to be communicated to the Secretary of State as mentioned in that subsection the Secretary of State may himself make rules applying to that auditor or that class of auditor and specifying such circumstances; and it shall be the duty of an auditor to whom the rules made by the Secretary of State apply to communicate a matter to the Secretary of State in the circumstances specified by the rules.

(3) The matters to be communicated to the Secretary of State in accordance with any such rules or guidance may include matters relating to persons other than the authorised person.

(4) No such rules as are mentioned in subsection (2) above shall be made by the Secretary of State unless a draft of them has been laid before and approved by a resolution of each House of Parliament.

(5) This section applies to—

(a) the communication by an auditor to a recognised self-regulating organisation or recognised professional body of matters relevant to its function of determining whether a person is a fit and proper person to carry on investment business; and

(b) the communication to such an organisation or body or any other authority or person of matters relevant to its or his function of determining whether a person is complying with the rules applicable to his conduct of investment business,

as it applies to the communication to the Secretary of State of matters relevant to his functions under this Act.

Modifications etc. (not altering text)

C152 S. 109(1) amended by S.I. 1987/942, **art. 10**
S. 109(1) applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg.98**.
S. 109(1) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.31**.
s. 109(1) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 29**
s. 109(1)(3) applied (with modifications) (18.7.1996) by S.I. 1996/1669, **reg. 10(1)**

110 Overseas business.

(1) A person incorporated or having his head office outside the United Kingdom who is authorised as mentioned in subsection (1) of section 107 above may, whether or not he is required to appoint an auditor apart from the rules made under that subsection, appoint an auditor in accordance with those rules in respect of the investment business carried on by him in the United Kingdom and in that event that person shall be treated for the purposes of this Chapter as the auditor of that person.

(2) In the case of a person to be appointed as auditor of a person incorporated or having his head office outside the United Kingdom the conditions as to qualifications imposed by or under the rules made under that section may be regarded as satisfied by qualifications obtained outside the United Kingdom which appear to the Secretary of State to be equivalent.

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(3) A person incorporated or having his head office outside the United Kingdom shall not be regarded for the purposes of section 25 above as a fit and proper person to carry on investment business unless—

(a) he has appointed an auditor in accordance with rules made under section 107 above in respect of the investment business carried on by him in the United Kingdom; or

(b) he has an auditor having qualifications, powers and duties appearing to the Secretary of State to be equivalent to those applying to an auditor appointed in accordance with those rules,

and, in either case, the auditor is able and willing to communicate with the Secretary of State and other bodies and persons as mentioned in section 109 above.

Modifications etc. (not altering text)

C153 S. 110 applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg.98**.

C154 S. 110(3) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.32**.
s. 110(3) modified (1.1.1996) by S.I. 1995/3275, **reg. 32**, SCh. 7 para. 30

111 Offences and enforcement.

(1) Any authorised person and any officer, controller or manager of an authorised person, who knowingly or recklessly furnishes an auditor appointed under the rules made under section 107 or a person carrying out an examination under section 108 above with information which the auditor or that person requires or is entitled to require and which is false or misleading in a material particular shall be guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(2) The duty of an auditor under section 108(3) above shall be enforceable by mandamus or, in Scotland, by an order for specific performance under section 91 of the [M26]Court of Session Act 1868.

(3) If it appears to the Secretary of State that an auditor has failed to comply with the duty mentioned in section 109(2) above, the Secretary of State may disqualify him from being the auditor of an authorised person or any class of authorised person; but the Secretary of State may remove any disqualification imposed under this subsection if satisfied that the person in question will in future comply with that duty.

(4) An authorised person shall not appoint as auditor a person disqualified under subsection (3) above; and a person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body who contravenes this subsection shall be treated as having contravened the rules of the organisation or body.

Marginal Citations

M26 1868 c. 100.

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CHAPTER XII

FEES

112 Application fees.

(1) An applicant for a recognition order under Chapter III or IV of this Part of this Act shall pay such fees in respect of his application as may be required by a scheme made and published by the Secretary of State; and no application for such an order shall be regarded as duly made unless this subsection is complied with.

(2) A scheme made for the purposes of subsection (1) above shall specify the time when the fees are to be paid and may—

(a) provide for the determination of the fees in accordance with a specified scale or other specified factors;

(b) provide for the return or abatement of any fees where an application is refused or withdrawn; and

(c) make different provision for different cases.

(3) Any scheme made for the purposes of subsection (1) above shall come into operation on such date as is specified in the scheme (not being earlier than the day on which it is first published) and shall apply to applications made on or after the date on which it comes into operation.

(4) The power to make a scheme for the purposes of subsection (1) above includes power to vary or revoke a previous scheme made under those provisions.

(5) Every application under section 26, 77 or 88 above shall be accompanied by the prescribed fee and every notice given to the Secretary of State under section 32, 86(2) or 87(3) above shall be accompanied by such fee as may be prescribed; and no such application or notice shall be regarded as duly made or given unless this subsection is complied with.

Modifications etc. (not altering text)

C155 Ss. 112, 113: certain functions transferred by S.I. 1988/738, **art. 3(1)(2)(3)**

C156 S. 112(5) amended (6.1.1997) by S.I. 1996/2827, **reg. 74(3)(a)**

113 Periodical fees.

(1) Every recognised self-regulating organisation, recognised professional body, recognised investment exchange and recognised clearing house shall pay such periodical fees to the Secretary of State as may be prescribed.

(2) So long as a body is authorised under section 22 above to carry on insurance business which is investment business it shall pay to the Secretary of State such periodical fees as may be prescribed.

[[F66](3) So long as a friendly society is authorised under section 23 above to carry on investment business it shall pay to the Friendly Societies Commission such periodical fees as the Commission may by regulations specify.**]**

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(4) A person who is an authorised person by virtue of section 25 or 31 above shall pay such periodical fees to the Secretary of State as may be prescribed.

(5) If a person fails to pay any fee which is payable by him under subsection (4) above the Secretary of State may serve on him a written notice requiring him to pay the fee within twenty-eight days of service of the notice; and if the fee is not paid within that period that person's authorisation shall cease to have effect unless the Secretary of State otherwise directs.

(6) A direction under subsection (5) above may be given so as to have retrospective effect; and the Secretary of State may under that subsection direct that the person in question shall continue to be an authorised person only for such period as is specified in the direction.

(7) Subsection (5) above is without prejudice to the recovery of any fee as a debt due to the Crown.

(8) The manager of each authorised unit trust scheme and the operator of each recognised scheme shall pay such periodical fees to the Secretary of State as may be prescribed.

Textual Amendments

F66 S. 113(3) substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. I para.2** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Modifications etc. (not altering text)

C157 Ss. 112, 113: certain functions transferred by S.I. 1988/738, **art. 3(1)(2)(3)**

C158 S. 113 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.33**.
s. 113 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 31**
s. 113(8) amended (6.1.1997) by S.I. 1996/2827, **reg. 74(3)(b)**

CHAPTER XIII

TRANSFER OF FUNCTIONS TO DESIGNATED AGENCY

114 Power to transfer functions to designated agency.

(1) If it appears to the Secretary of State—

(a) that a body corporate has been established which is able and willing to discharge all or any of the functions to which this section applies; and

(b) that the requirements of Schedule 7 to this Act are satisfied in the case of that body,

he may, subject to the provisions of this section and Chapter XIV of this Part of this Act, make an order transferring all or any of those functions to that body.

(2) The body to which functions are transferred by the first order made under subsection (1) above shall be the body known as The Securities and Investments Board Limited if it appears to the Secretary of State that it is able and willing to discharge them, that the requirements mentioned in paragraph (b) of that subsection are satisfied

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in the case of that body and that he is not precluded from making the order by the subsequent provisions of this section or Chapter XIV of this Part of this Act.

(3) An order under subsection (1) above is in this Act referred to as "a delegation order" and a body to which functions are transferred by a delegation order is in this Act referred to as "a designated agency".

(4) Subject to subsections (5) and (6) below, this section applies to any functions of the Secretary of State under Chapters II to XII of this Part of this Act and to his functions under paragraphs 23 and 25(2) of Schedule 1 and paragraphs 4, 5 and 15 of Schedule 15 to this Act.

(5) This section does not apply to any functions under—

(a) section 31(4);

(b) section 46;

(c) section 48(8);

(d) section 58(3);

[[F67](dd) section 62A;**]**

(e) section 86(1) or 87(1);

(f) section 96;

(g) section 109(2) above.

(6) This section does not apply to the making or revocation of a recognition order in respect of an overseas investment exchange or overseas clearing house or the making of an application to the court under section 12 above in respect of any such exchange or clearing house.

(7) Any function may be transferred by a delegation order either wholly or in part.

(8) In the case of a function under section 6 or 72 or a function under section 61 which is exercisable by virtue of subsection (1)(a)(ii) or (iii) of that section, the transfer may be subject to a reservation that it is to be exercisable by the Secretary of State concurrently with the designated agency and any transfer of a function under section 94, 105 or 106 shall be subject to such a reservation.

[[F68](9) The Secretary of State shall not make a delegation order transferring any legislative functions unless—

(a) the agency has furnished him with a copy of the instruments it proposes to issue or make in the exercise of those functions, and

(b) he is satisfied that those instruments will afford investors an adequate level of protection and, in the case of such provisions as are mentioned in Schedule 8 to this Act, comply with the principles set out in that Schedule.

In this subsection "legislative functions" means the functions of issuing or making statements of principle, rules, regulations or codes of practice.**]**

(10) The Secretary of State shall also before making a delegation order transferring any functions to a designated agency require it to furnish him with a copy of any guidance intended to have continuing effect which it proposes to issue in writing or other legible form and the Secretary of State may take any such guidance into account in determining whether he is satisfied as mentioned in subsection (9)(b) above.

(11) No delegation order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

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(12) In this Act references to guidance issued by a designated agency are references to guidance issued or any recommendation made by it which is issued or made to persons generally or to any class of persons, being, in either case, persons who are or may be subject to **[**[F69]statements of principle, rules, regulations or codes of practice issued or made**]** by it, or who are or may be recognised or authorised by it, in the exercise of its functions under a delegation order.

Textual Amendments

F67 S. 114(5)(dd) inserted by Companies Act 1989 (c. 40, SIF 27), **s. 193(2)**

F68 S. 114(9) substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 12(2)**

F69 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 12(3)**

Modifications etc. (not altering text)

C159 S. 114: certain functions transferred by S.I. 1987/942, arts. 3, 4, Schs. 1, **2**

C160 S. 114: applied with modifications (25.4.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 154**, 155, 168(1); S.I. 1991/878, art. 2, **Sch.**

C161 S. 114: applied (1.10.1991) by S.I. 1990/1504 (N.I. 10), **art. 91**; S.R. 1991/438, **art. 2(d)**.
s. 114 extended (6.1.1997) by S.I. 1996/2827, **reg. 73(1)(2)**
s. 114 extended (1.1.1996) by S.I. 1995/3275, **reg. 56(2)**

115 Resumption of transferred functions.

(1) The Secretary of State may at the request or with the consent of a designated agency make an order resuming all or any of the functions transferred to the agency by a delegation order.

(2) The Secretary of State may, in the circumstances mentioned in subsection (3), (4) or (5) below, make an order resuming—

(a) all the functions transferred to a designated agency by a delegation order; or

(b) all, all legislative or all administrative functions transferred to a designated agency by a delegation order so far as relating to investments or investment business of any class.

(3) An order may be made under subsection (2) above if at any time it appears to the Secretary of State that any of the requirements of Schedule 7 to this Act are not satisfied in the case of the agency.

(4) An order may be made under subsection (2) above as respects functions relating to any class of investment or investment business if at any time it appears to the Secretary of State that the agency is unable or unwilling to discharge all or any of the transferred functions in respect of all or any investments or investment business falling within that class.

[[F70](5) Where the transferred functions consist of or include any legislative functions, an order may be made under subsection (2) above if at any time it appears to the Secretary of State that the instruments issued or made by the agency do not satisfy the requirements of section 114(9)(b) above.**]**

(6) An order under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament; and no other order shall be made under this

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section unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

(7) In **[**[F71]this section**]**—

(a) "legislative functions" means **[**[F71]functions of issuing or making statements of principle, rules, regulations or codes of practice**]**;

(b) "administrative functions" means functions other than legislative functions;

but the resumption of legislative functions shall not deprive a designated agency of any function of prescribing fees to be paid or information to be furnished in connection with administrative functions retained by the agency; and the resumption of administrative functions shall extend to the function of prescribing fees to be paid and information to be furnished in connection with those administrative functions.

Textual Amendments

F70 S. 115(5) substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 13(2)**

F71 Words substituted as provided by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 13(3)**

Modifications etc. (not altering text)

C162 S. 115 modified (N.I.)(1.10.1991) by S.I. 1990/1504, **art. 91**; S.R. 1991/438, **art.2(d)**
S. 115 modified (7.6.1992) by S.I. 1992/1315, **art. 6(2)**.

C163 S. 115(2) restricted by Companies Act 1989 (c. 40, SIF 27), **s. 240(6)**

116 Status and exercise of transferred functions.

Schedule 9 to this Act shall have effect as respects the status of a designated agency and the exercise of the functions transferred to it by a delegation order.

117 Reports and accounts.

(1) A designated agency shall at least once in each year for which the delegation order is in force made a report to the Secretary of State on the discharge of the functions transferred to it by the order and on such other matters as the order may require.

(2) The Secretary of State shall lay before Parliament copies of each report received by him under this section.

(3) The Secretary of State may give directions to a designated agency with respect to its accounts and the audit of its accounts; and it shall be the duty of the agency to comply with the directions.

(4) Subsection (3) above shall not apply to a designated agency which is a company to which **[**[F72]section 226**]** of the [M27]Companies Act 1985 applies; but the Secretary of State may require any designated agency (whether or not such a company) to comply with any provisions of that Act which would not otherwise apply to it or direct that any provision of that Act shall apply to the agency with such modifications as are specified in the direction; and it shall be the duty of the agency to comply with any such requirement or direction.

(5) In subsection (4) above the references to the Companies Act 1985 and **[**[F72]section 226**]** of that Act include references to the corresponding Northern Ireland provisions.

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Textual Amendments

F72 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 23, **Sch. 10 para. 36(2)**

Marginal Citations

M27 1985 c. 6.

118 Transitional and supplementary provisions.

(1) A delegation order shall not affect anything previously done in the exercise of a function which is transferred by the order; and any order resuming a function shall not affect anything previously done by the designated agency in the exercise of a function which is resumed.

(2) A delegation order and an order resuming any functions transferred by a delegation order may contain, or the Secretary of State may by a separate order under this section make, such transitional and other supplementary provisions as he thinks necessary or expedient in connection with the delegation order or the order resuming the functions in question.

(3) The provisions that may be made under subsection (2) above in connection with a delegation order include, in particular, provisions—

(a) for modifying or excluding any provision of this Act in its application to any function transferred by the order;

(b) for applying to a designated agency, in connection with any such function, any provision applying to the Secretary of State which is contained in or made under any other enactment;

(c) for the transfer of any property, rights or liabilities from the Secretary of State to a designated agency;

(d) for the carrying on and completion by a designated agency of anything in process of being done by the Secretary of State when the order takes effect; and

(e) for the substitution of a designated agency for the Secretary of State in any instrument, contract or legal proceedings.

(4) The provisions that may be made under subsection (2) above in connection with an order resuming any functions include, in particular, provisions—

(a) for the transfer of any property, rights or liabilities from the agency to the Secretary of State;

(b) for the carrying on and completion by the Secretary of State of anything in process of being done by the agency when the order takes effect;

(c) for the substitution of the Secretary of State for the agency in any instrument, contract or legal proceedings; and

(d) in a case where some functions remain with the agency, for modifying or excluding any provision of this Act in its application to any such functions.

(5) In a case where any function of a designated agency is resumed and is to be immediately transferred by a delegation order to another designated agency, the provisions that may be made under subsection (2) above may include provisions for any of the matters mentioned in paragraphs (a) to (c) of subsection (4) above, taking references to the Secretary of State as references to that other agency.

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(6) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Subordinate Legislation Made

P3 For exercises of this power see the Index to Government Orders.

P4 S. 118(2): S. 114(1) (with s. 118(2)) power exercised by S.I 1991/200.

118 Transitional and supplementary provisions. U.K.

(1) A delegation order shall not affect anything previously done in the exercise of a function which is transferred by the order; and any order resuming a function shall not affect anything previously done by the designated agency in the exercise of a function which is resumed.

(2) A delegation order and an order resuming any functions transferred by a delegation order may contain, or the Secretary of State may by a separate order under this section make, such transitional and other supplementary provisions as he thinks necessary or expedient in connection with the delegation order or the order resuming the functions in question.

(3) The provisions that may be made under subsection (2) above in connection with a delegation order include, in particular, provisions—

(a) for modifying or excluding any provision of this Act in its application to any function transferred by the order;

(b) for applying to a designated agency, in connection with any such function, any provision applying to the Secretary of State which is contained in or made under any other enactment;

(c) for the transfer of any property, rights or liabilities from the Secretary of State to a designated agency;

(d) for the carrying on and completion by a designated agency of anything in process of being done by the Secretary of State when the order takes effect; and

(e) for the substitution of a designated agency for the Secretary of State in any instrument, contract or legal proceedings.

(4) The provisions that may be made under subsection (2) above in connection with an order resuming any functions include, in particular, provisions—

(a) for the transfer of any property, rights or liabilities from the agency to the Secretary of State;

(b) for the carrying on and completion by the Secretary of State of anything in process of being done by the agency when the order takes effect;

(c) for the substitution of the Secretary of State for the agency in any instrument, contract or legal proceedings; and

(d) in a case where some functions remain with the agency, for modifying or excluding any provision of this Act in its application to any such functions.

(5) In a case where any function of a designated agency is resumed and is to be immediately transferred by a delegation order to another designated agency, the provisions that may be made under subsection (2) above may include provisions for

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any of the matters mentioned in paragraphs (a) to (c) of subsection (4) above, taking references to the Secretary of State as references to that other agency.

(6) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

CHAPTER XIV

PREVENTION OF RESTRICTIVE PRACTICES

Examination of rules and practices

119 Recognised self-regulating organisations, investment exchanges and clearing houses.

(1) The Secretary of State shall not make a recognition order in respect of a self-regulating organisation, investment exchange or clearing house unless he is satisfied that—

[[F73](a) in the case of a self-regulating organisation, the rules and any guidance of which copies are furnished with the application for the order, together with any statements of principle, rules, regulations or codes of practice to which members of the organisation would be subject by virtue of Chapter V of this Part,

(b) in the case of an investment exchange, the rules and any guidance of which copies are furnished with the application for the order, together with any arrangements of which particulars are furnished with the application,

(c) in the case of a clearing house, the rules and any guidance of which copies are furnished with the application for the order,**]**

do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition or, if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.

(2) The powers conferred by subsection (3) below shall be exercisable by the Secretary of State if at any time it appears to him that—

[[F74](a) in the case of a self-regulating organisation—

(i) any rules made or guidance issued by the organisation,

(ii) any practices of the organisation, or

(iii) any practices of persons who are members of, or otherwise subject to the rules made by, the organisation,

together with any statements of principle, rules, regulations or codes of practice to which members of the organisation are subject by virtue of Chapter V of this Part,

(b) in the case of a recognised investment exchange—

(i) any rules made or guidance issued by the exchange,

(ii) any practices of the exchange, or

(iii) any practices of persons who are members of, or otherwise subject to the rules made by, the exchange,

(c) in the case of a recognised clearing house—

(i) any rules made or guidance issued by the clearing house,

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(ii) any practices of the clearing house, or

(iii) any practices of persons who are members of, or otherwise subject to the rules made by, the clearing house,

or any clearing arrangements made by the clearing house,**]**

have, or are intended or likely to have, to a significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is necessary for the protection of investors.

(3) The powers exercisable under this subsection are—

(a) to revoke the recognition order of the organisation, exchange or clearing house;

(b) to direct it to take specified steps for the purpose of securing that **[**[F75]its rules, or the**]** guidance, arrangements or practices in question do not have the effect mentioned in subsection (2) above;

(c) to make alterations in **[**[F76]its rules**]** for that purpose;

and subsections (2) to (5), (7) and (9) of section 11 above shall have effect in relation to the revocation of a recognition order under this subsection as they have effect in relation to the revocation of such an order under subsection (1) of that section.

(4) Subsection (3)(c) above does not apply to an overseas investment exchange or overseas clearing house.

(5) The practices referred to in **[**[F77]paragraph (a)(ii), (b)(ii) and (c)(ii)**]** of subsection (2) above are practices of the organisation, exchange or clearing house in its capacity as such, being, in the case of a clearing house, practices in respect of its clearing arrangements; . . . [F78]

[[F79](6) The practices referred to in paragraph (a)(iii), (b)(iii) and (c)(iii) of subsection (2) above are—

(a) in relation to a recognised self-regulating organisation, practices in relation to business in respect of which the persons in question are subject to—

(i) the rules of the organisation, or

(ii) statements of principle, rules, regulations or codes of practice to which its members are subject by virtue of Chapter V of this Part,

and which are required or contemplated by the rules of the organisation or by those statements, rules, regulations or codes, or by guidance issued by the organisation,

(b) in relation to a recognised investment exchange or clearing house, practices in relation to business in respect of which the persons in question are subject to the rules of the exchange or clearing house, and which are required or contemplated by its rules or guidance,

or which are otherwise attributable to the conduct of the organisation, exchange or clearing house as such.**]**

Textual Amendments

F73 S. 119(1)(a)—(c) substituted for (1)(a)(b) by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 14(2)**

F74 S. 119(2)(a)—(c) substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 14(3)**

F75 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 14(4)(a)**

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F76 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 14(4)(b)**
F77 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 14(5)(a)**
F78 Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 206(1), 212, Sch. 23 para. 14(5)(b), **Sch. 24**
F79 S. 119(6) inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 14(6)**

Modifications etc. (not altering text)
C164 S. 119 amended (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **ss. 154**, 155, 169(4)
C165 S. 119(1)(2) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.34**.
s. 119(1)(2) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 32**
s. 119(1)(2) amended (1.7.1994) by S.I. 1994/1696, **reg. 62(1)**

120 Modification of s. 119 where recognition function is transferred.

(1) This section applies instead of section 119 above where the function of making or revoking a recognition order in respect of a self-regulating organisation, investment exchange or clearing house is exercisable by a designated agency.

(2) The designated agency—
(a) shall send to the Secretary of State a copy of the rules and of any guidance or arrangements of which copies or particulars are furnished with any application made to the agency for a recognition order together with any other information supplied with or in connection with the application; and
(b) shall not make the recognition order without the leave of the Secretary of State;

and he shall not give leave in any case in which he would (apart from the delegation order) have been precluded by section 119(1) above from making the recognition order.

(3) A designated agency shall send the Secretary of State a copy of any notice received by it under section 14(6) or 41(5) or (6) above.

(4) If at any time it appears to the Secretary of State in the case of a recognised self-regulating organisation, recognised investment exchange or recognised clearing house that there are circumstances such that (apart from the delegation order) he would have been able to exercise any of the powers conferred by subsection (3) of section 119 above he may, notwithstanding the delegation order, himself exercise the power conferred by paragraph (a) of that subsection or direct the designated agency to exercise the power conferred by paragraph (b) or (c) of that subsection in such manner as he may specify.

121 Designated agencies.

(1) The Secretary of State shall not make a delegation order transferring any function to a designated agency unless he is satisfied that any **[**[F80]statements of principle, rules, regulations, codes of practice**]** and guidance of which copies are furnished to him under section 114(9) or (10) above do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition or, if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.

(2) The powers conferred by subsection (3) below shall be exercisable by the Secretary of State if at any time it appears to him that—

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(a) any **[**[F81]statements of principle, rules, regulations or codes of practice issued or made**]** by a designated agency in the exercise of functions transferred to it by a delegation order or any guidance issued by a designated agency;

(b) any practices of a designated agency; or

(c) any practices of persons who are subject to **[**[F81]statements of principle, rules, regulations or codes of practice issued or made**]** by it in the exercise of those functions,

have, or are intended or are likely to have, to any significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is necessary for the protection of investors.

(3) The powers exercisable under this subsection are—

(a) to make an order in respect of the agency under section 115(2) above as if the circumstances were such as are there mentioned; or

(b) to direct the agency to take specified steps for the purpose of securing that the **[**[F82]statements of principle, rules, regulations, codes of practice**]**, guidance or practices in question do not have the effect mentioned in subsection (2) above.

(4) The practices referred to in paragraph (b) of subsection (2) above are practices of the designated agency in its capacity as such; and the practices referred to in paragraph (c) of that subsection are practices in relation to business in respect of which the persons in question are subject to any such **[**[F83]statements of principle, rules, regulations, or codes of practice**]** as are mentioned in paragraph (a) of that subsection and which are required or contemplated by those **[**[F83]statements of principle, rules, regulations, or codes of practice**]** or by any such guidance as is there mentioned or are otherwise attributable to the conduct of the agency in its capacity as such.

Textual Amendments

F80 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 15(2)**

F81 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 15(3)**

F82 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 15(4)**

F83 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 15(5)**

Modifications etc. (not altering text)

C166 S. 121 amended (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **ss. 154**, 155, 169(4)
s. 121 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 33**
s. 121 amended (1.7.1994) by S.I. 1994/1696, **reg. 62(2)**

C167 S. 121(1)(2) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.35**.

Consultation with Director General of Fair Trading

122 Reports by Director General of Fair Trading.

(1) The Secretary of State shall before deciding—

(a) whether to refuse to make, or to refuse leave for the making of, a recognition order in pursuance of section 119(1) or 120(2) above; or

(b) whether he is precluded by section 121(1) above from making a delegation order,

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send to the Director General of Fair Trading (in this Chapter referred to as "the Director") a copy of the rules **[**[F84], statements of principle, regulations and codes of practice**]** and of any guidance or arrangements which the Secretary of State is required to consider in making that decision together with such other information as the Secretary of State considers will assist the Director in discharging his functions under subsection (2) below.

(2) The Director shall report to the Secretary of State whether, in his opinion, the rules, **[**[F85]statements of principle, regulations, codes of practice,**]** guidance or arrangements of which copies are sent to him under subsection (1) above have, or are intended or likely to have, to any significant extent the effect of restricting, distorting, or preventing competition and, if so, what that effect is likely to be; and in making any such decision as is mentioned in that subsection the Secretary of State shall have regard to the Director's report.

(3) The Secretary of State shall send the Director copies of any notice received by him under section 14(6), 41(5) or (6) or 120(3) above or under paragraph 4 of Schedule 9 to this Act together with such other information as the Secretary of State considers will assist the Director in discharging his functions under subsections (4) and (5) below.

(4) The Director shall keep under review—

(a) the **[**[F86]rules, statements of principle, regulations, codes of practice, guidance and arrangements**]** mentioned in section 119(2) and 121(2) above; and

(b) the matters specified in the notices of which copies are sent to him under subsection (3) above;

and if at any time he is of the opinion that any such **[**[F87]rules, statements of principle, regulations, codes of practice, guidance, arrangements**]** or matters, or any such **[**[F87]rules, statements of principle, regulations, codes of practice, guidance or arrangements**]** taken together with any such matters, have, or are intended or likely to have, to any significant extent the effect mentioned in subsection (2) above, he shall make a report to the Secretary of State stating his opinion and what that effect is or is likely to be.

(5) The Director may report to the Secretary of State his opinion that any such matter as is mentioned in subsection (4)(b) above does not in his opinion have, and is not intended or likely to have, to any significant extent the effect mentioned in subsection (2) above.

(6) The Director may from time to time consider whether any such practices as are mentioned in section 119(2) or 121(2) above have, or are intended or likely to have, to any significant extent the effect mentioned in subsection (2) above and, if so, what that effect is or is likely to be; and if he is of that opinion he shall make a report to the Secretary of State stating his opinion and what the effect is or is likely to be.

(7) The Secretary of State shall not exercise his powers under section 119(3), 120(4) or 121(3) above except after receiving and considering a report from the Director under subsection (4) or (6) above.

(8) The Director may, if he thinks fit, publish any report made by him under this section but shall exclude from a published report, so far as practicable, any matter which relates to the affairs of a particular person (other than the self-regulating organisation, investment exchange, clearing house or designated agency concerned) the publication of which would or might in his opinion seriously and prejudicially affect the interests of that person.

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Textual Amendments

F84 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 16(2)**
F85 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 16(3)**
F86 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 16(4)(a)**
F87 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 16(4)(b)**

123 Investigations by Director General of Fair Trading.

(1) For the purpose of investigating any matter with a view to its consideration under section 122 above the Director may by a notice in writing—

(a) require any person to produce, at a time and place specified in the notice, to the Director or to any person appointed by him for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the investigation; or

(b) require any person carrying on any business to furnish to the Director such information as may be specified or described in the notice, and specify the time within which, and the manner and form in which, any such information is to be furnished.

(2) A person shall not under this section be required to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.

(3) Subsections **[**[F88](6)**]** to (8) of section 85 of the [M28]Fair Trading Act 1973 (enforcement provisions) shall apply in relation to a notice under this section as they apply in relation to a notice under subsection (1) of that section **[**[F89]but as if, in subsection (7) of that section, for the words from “anyone" to “the Commission" there was substituted “the Director"**]**.

Textual Amendments

F88 “(6)" substituted by Companies Act 1989 (c. 40, SIF 27), s. 153, **Sch. 20 para. 26**
F89 Words inserted by Companies Act 1989 (c. 40, SIF 27), s. 153, **Sch. 20 para. 26**

Marginal Citations

M28 1973 c. 41.

Consequential exemptions from competition law

124 The Fair Trading Act 1973.

(1) For the purpose of determining whether a monopoly situation within the meaning of the Fair Trading Act 1973 exists by reason of the circumstances mentioned in section 7(1)(c) of that Act, no accound shall be taken of—

(a) the rules made or guidance issued by a recognised self-regulating organisation, recognised investment exchange or recognised clearing house

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or any conduct constituting such a practice as is mentioned in section 119(2) above;

(b) any clearing arrangements or any conduct required or contemplated by any such arrangements; or

(c) the **[**[F90]statements of principle, rules, regulations, codes of practice or guidance issued or made**]** by a designated agency in the exercise of functions transferred to it by a delegation order or any conduct constituting such a practice as is mentioned in section 121(2) above.

(2) Where a recognition order is revoked there shall be disregarded for the purpose mentioned in subsection (1) above any such conduct as is mentioned in that subsection which occurred while the order was in force.

(3) Where on a monopoly reference under section 50 or 51 of the said Act of 1973 falling within section 49 of that Act the Monopolies and Mergers Commission find that a monopoly situation within the meaning of that Act exists and—

(a) that the person (or, if more than one, any of the persons) in whose favour it exists is subject to the rules of a recognised self-regulating organisation, recognised investment exchange or recognised clearing house or to the **[**[F91]statements of principle, rules, regulations or codes of practice issued or made**]** by a designated agency in the exercise of functions transferred to it by a delegation order; or

(b) that any such person's conduct in carrying on any business to which those **[**[F91]statements of principle, rules, regulations or codes of practice**]** relate is the subject of guidance issued by such an organisation, exchange, clearing house or agency; or

(c) that any such person is a party to any clearing arrangements; or

(d) that the person (or, if more than one, any of the persons) in whose favour the monopoly situation exists is such an organisation, exchange or clearing house as is mentioned in paragraph (a) above or a designated agency,

the Commission, in making their report on that reference, shall exclude from their consideration the question whether the **[**[F91]statements of principle, rules, regulations, codes of practice**]**, guidance or clearing arrangements or any acts or omissions of such an organisation, exchange, clearing house or agency as is mentioned in paragraph (d) above in its capacity as such operate, or may be expected to operate, against the public interest; and section 54(3) of that Act shall have effect subject to the provisions of this subsection.

Textual Amendments

F90 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 17(2)**

F91 Words substituted as provided by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 17(3)(a)**

125 The Restrictive Trade Practices Act 1976.

(1) The [M29]Restrictive Trade Practices Act 1976 shall not apply to any agreement for the constitution of a recognised self-regulating organisation, recognised investment exchange or recognised clearing house, including any term deemed to be contained in it by virtue of section 8(2) or 16(3) of that Act.

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(2) The said Act of 1976 shall not apply to any agreement the parties to which consist of or include—

(a) any such organisation, exchange or clearing house as is mentioned in subsection (1) above; or

(b) a person who is subject to the rules of any such organisation, exchange or clearing house or to the rules or regulations made by a designated agency in the exercise of functions transferred to it by a delegation order,

by reason of any term the inclusion of which in the agreement is required or contemplated by the rules, regulations or guidance of that organisation, exchange, clearing house or agency.

(3) The said Act of 1976 shall not apply to any clearing arrangements or to any agreement between a recognised investment exchange and a recognised clearing house by reason of any term the inclusion of which in the agreement is required or contemplated by any clearing arrangements.

(4) Where the recognition order in respect of a self-regulating organisation, investment exchange or clearing house is revoked the foregoing provisions shall have effect as if the organisation, exchange or clearing house had continued to be recognised until the end of the period of six months beginning with the day on which the revocation takes effect.

(5) Where an agreement ceases by virtue of this section to be subject to registration—

(a) the Director shall remove from the register maintained by him under the said Act of 1976 any particulars which are entered or filed in that register in respect of the agreement; and

(b) any proceedings in respect of the agreement which are pending before the Restrictive Practices Court shall be discontinued.

(6) Where an agreement which has been exempt from registration by virtue of this section ceases to be exempt in consequence of the revocation of a recognition order, the time within which particulars of the agreement are to be furnished in accordance with section 24 of and Schedule 2 to the said Act of 1976 shall be the period of one month beginning with the day on which the agreement ceased to be exempt from registration.

(7) Where in the case of an agreement registered under the said Act of 1976 a term ceases to fall within subsection (2) or (3) above in consequence of the revocation of a recognition order and particulars of that term have not previously been furnished to the Director under [F92]. . . that Act, those particulars shall be furnished to him within the period of one month beginning with the day on which the term ceased to fall within that subsection.

(8) The [M30]Restrictive Trade Practices (Stock Exchange) Act 1984 shall cease to have effect.

Textual Amendments

F92 Words in s. 125(7) repealed (3.1.1995) by 1994 c. 40, ss. 39, 81, 82(2), Sch. 11 para. 8, **Sch. 17**

Marginal Citations

M29 1976 c. 34.

M30 1984 c. 2.

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126 The Competition Act 1980.

(1) No course of conduct constituting any such practice as is mentioned in section 119(2) or 121(2) above shall constitute an anti-competitive practice for the purposes of the [M31]Competition Act 1980.

(2) Where a recognition order or delegation order is revoked, there shall not be treated as an anti-competitive practice for the purposes of that Act any such course of conduct as is mentioned in subsection (1) above which occurred while the order was in force.

Marginal Citations

M31 1980 c. 21.

Recognised professional bodies

127 Modification of Restrictive Trade Practices Act 1976 in relation to recognised professional bodies.

(1) This section applies to—

(a) any agreement for the constitution of a recognised professional body, including any term deemed to be contained in it by virtue of section 16(3) of the [M32]Restrictive Trade Practices Act 1976; and

(b) any other agreement—

(i) the parties to which consist of or include such a body, a person certified by such a body or a member of such a body; and

(ii) to which that Act applies by virtue of any term the inclusion of which in the agreement is required or contemplated by rules or guidance of that body relating to the carrying on of investment business by persons certified by it.

(2) If it appears to the Secretary of State that the restrictions in an agreement to which this section applies—

(a) do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or

(b) if all or any of them have, or are intended or likely to have, that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors,

he may give a direction to the Director requiring him not to make an application to the Restrictive Practices Court under Part I of the said Act of 1976 in respect of the agreement.

(3) If it appears to the Secretary of State that one or more (but not all) of the restrictions in an agreement to which this section applies—

(a) do not have, and are not intended or likely to have, to any significant extent the effect mentioned in subsection (2) above; or

(b) if they have, or are intended or likely to have, that effect to any significant extent that the effect is not greater than is necessary for the protection of investors,

he may make a declaration to that effect and give notice of it to the Director and the Restrictive Practices Court.

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(4) The Restrictive Practices Court shall not in any proceedings begun by an application made after notice has been given to it of a declaration under this section make any finding or exercise any power under Part I of the said Act of 1976 in relation to a restriction in respect of which the declaration has effect.

(5) The Director shall not make any application to the Restrictive Practices Court under Part I of the said Act of 1976 in respect of any agreement to which this section applies unless—

(a) he has notified the Secretary of State of his intention to do so; and

(b) the Secretary of State has either notified him that he does not intend to give a direction or make a declaration under this section or has given him notice of a declaration in respect of it;

and where the Director proposes to make any such application he shall furnish the Secretary of State with particulars of the agreement and the restrictions by virtue of which the said Act of 1976 applies to it and such other information as he considers will assist the Secretary of State in deciding whether to exercise his powers under this section or as the Secretary of State may request.

(6) The Secretary of State may—

(a) revoke a direction or declaration under this section;

(b) vary any such declaration; or

(c) give a direction or make a declaration notwithstanding a previous notification to the Director that he did not intend to give a direction or make a declaration,

if he is satisfied that there has been a material change of circumstances such that the grounds for the direction or declaration have ceased to exist, that there are grounds for a different declaration or that there are grounds for giving a direction or making a declaration, as the case may be.

(7) The Secretary of State shall give notice to the Director of the revocation of a direction and to the Director and the Restrictive Practices Court of the revocation or variation of a declaration; and no such variation shall have effect so as to restrict the powers of the Court in any proceedings begun by an application already made by the Director.

(8) A direction or declaration under this section shall cease to have effect if the agreement in question ceases to be one to which this section applies.

(9) This section applies to information provisions as it applies to restrictions.

Marginal Citations

M32 1976 c. 34.

Supplemental

128 Supplementary provisions.

(1) Before the Secretary of State exercises a power under section 119(3)(b) or (c) above, his power to refuse leave under section 120(2) above or his power to give a direction under section 120(4) above in respect of a self-regulating organisation, investment exchange or clearing house, or his power under section 121(3)(b) above in respect of a designated agency, he shall—

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(a) give written notice of his intention to do so to the organisation, exchange, clearing house or agency and take such steps (whether by publication or otherwise) as he thinks appropriate for bringing the notice to the attention of any other person who in his opinion is likely to be affected by the exercise of the power; and

(b) have regard to any representation made within such time as he considers reasonable by the organisation, exchange, clearing house or agency or by any such other person.

(2) A notice under subsection (1) above shall give particulars of the manner in which the Secretary of State proposes to exercise the power in question and state the reasons for which he proposes to act; and the statement of reasons may include matters contained in any report received by him under section 122 above.

(3) Any direction given under this Chapter shall, on the application of the person by whom it was given, be enforceable by mandamus or, in Scotland, by an order for specific performance under section 91 of the [M33]Court of Session Act 1868.

(4) The fact that any rules or regulations made by a recognised self-regulating organisation, investment exchange or clearing house or by a designated agency have been altered by or pursuant to a direction given by the Secretary of State under this Chapter shall not preclude their subsequent alteration or revocation by that organisation, exchange, clearing house or agency.

(5) In determining under this Chapter whether any guidance has, or is likely to have, any particular effect the Secretary of State and the Director may assume that the persons to whom it is addressed will act in conformity with it.

Marginal Citations

M33 1868 c. 100.

[[F93]CHAPTER XV

RELATIONS WITH OTHER REGULATORY AUTHORITIES]

Textual Amendments

F93 Ch. XV (ss. 128A, 128B, 128C) inserted by Companies Act 1989 (c.40, SIF 27), **s. 196**

128A Relevance of other controls.

In determining—

(a) in relation to a self-regulating organisation, whether the requirements of Schedule 2 are met, or

(b) in relation to a professional body, whether the requirements of Schedule 3 are met,

the Secretary of State shall take into account the effect of any other controls to which members of the organisation or body are subject.

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Modifications etc. (not altering text)
C168 S. 128A: functions transferred by S.I. 1990/354, **art. 4(2)(b)**

[F94 128B Relevance of information given and action taken by other regulatory authorities.

(1) The following provisions apply in the case of—
  (a) a person whose principal place of business is in a country or territory outside the United Kingdom, or
  (b) a person whose principal business is other than investment business;
  and in relation to such a person "the relevant regulatory authority" means the appropriate regulatory authority in that country or territory or, as the case may be, in relation to his principal business.

(2) The Secretary of State may regard himself as satisfied with respect to any matter relevant for the purposes of this Part if—
  (a) the relevant regulatory authority informs him that it is satisfied with respect to that matter, and
  (b) he is satisfied as to the nature and scope of the supervision exercised by that authority.

(3) In making any decision with respect to the exercise of his powers under this Part in relation to any such person, the Secretary of State may take into account whether the relevant regulatory authority has exercised, or proposes to exercise, its powers in relation to that person.

(4) The Secretary of State may enter into such arrangements with other regulatory authorities as he thinks fit for the purposes of this section.

(5) Where any functions under this Part have been transferred to a designated agency, nothing in this section shall be construed as affecting the responsibility of the Secretary of State for the discharge of Community obligations or other international obligations of the United Kingdom.**]**

Textual Amendments
F94 Ch. XV (ss. 128A, 128B, 128C) inserted by Companies Act 1989 (c.40, SIF 27), **s. 196**

Modifications etc. (not altering text)
C169 S. 128B: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para.5**.
C170 S. 128B(1)–(4): certain functions transferred by S.I. 1990/354, **art. 4(3)(c)**

[F95 128C Enforcement in support of overseas regulatory authority.

(1) The Secretary of State may exercise his disciplinary powers or powers of intervention at the request of, or for the purpose of assisting, an overseas regulatory authority.

(2) The disciplinary powers of the Secretary of State means his powers—
  (a) to withdraw or suspend authorisation under section 28 or to terminate or suspend authorisation under section 33,

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(b) to give a disqualification direction under section 59,

(c) to make a public statement under section 60, or

(d) to apply for an injunction, interdict or other order under section 61(1);

and the reference to his powers of intervention is to the powers conferred by Chapter VI of this Part.

(3) An "overseas regulatory authority" means an authority in a country or territory outside the United Kingdom which exercises—

(a) any function corresponding to—

(i) a function of the Secretary of State under this Act, the Insurance Companies Act 1982 or the Companies Act 1985,

(ii) a function under this Act of a designated agency, transferee body or competent authority, or

(iii) a function of the Bank of England under the Banking Act 1987, or

(b) any functions in connection with the investigation of, or the enforcement of rules (whether or not having the force of law) relating to, conduct of the kind prohibited by the Company Securities (Insider Dealing) Act 1985, or

(c) any function prescribed for the purposes of this subsection, being a function which in the opinion of the Secretary of State relates to companies or financial services.

(4) In deciding whether to exercise those powers the Secretary of State may take into account, in particular—

(a) whether corresponding assistance would be given in that country or territory to an authority exercising regulatory functions in the United Kingdom;

(b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;

(c) the seriousness of the case and its importance to persons in the United Kingdom;

(d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(5) The Secretary of State may decline to exercise those powers unless the oveseas regulatory authority undertakes to make such contribution towards the cost of their exercise as the Secretary of State considers appropriate.

(6) The reference in subsection (3)(c) to financial services includes, in particular, investment business, insurance and banking.**]**

Textual Amendments

F95 Ch. XV (ss. 128A, 128B, 128C) inserted by Companies Act 1989 (c.40, SIF 27), **s. 196**

Modifications etc. (not altering text)

C171 S. 128C: certain functions transferred by SI 1990/354, art. 4(3)(d)

C172 S. 128C amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.36**.

C173 S. 128C(1)(4)(5): certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para.5**.

C174 S. 128C(1) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.36**.

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PART II

INSURANCE BUSINESS

129 Application of investment business provisions to regulated insurance companies.

Schedule 10 to this Act shall have effect with respect to the application of the foregoing provisions of this Act to regulated insurance companies, that is to say—

(a) insurance companies to which Part II of the [M34]Insurance Companies Act 1982 applies; and

(b) insurance companies which are authorised persons by virtue of section 31 above.

Modifications etc. (not altering text)
C175 S. 129 amended (1.7.1994) by S.I. 1994/1696, **reg. 63(1)**

Marginal Citations
M34 1982 c. 50.

130 Restriction on promotion of contracts of insurance.

(1) Subject to subsections (2) and (3) below, no person shall—

(a) issue or cause to be issued in the United Kingdom an advertisement—

(i) inviting any person to enter or offer to enter into a contract of insurance rights under which constitute an investment for the purposes of this Act, or

(ii) containing information calculated to lead directly or indirectly to any person doing so; or

(b) in the course of a business, advise or procure any person in the United Kingdom to enter into such a contract.

(2) Subsection (1) above does not apply where the contract of insurance referred to in that subsection is to be with—

(a) a body authorised under section 3 or 4 of the [M35]Insurance Companies Act 1982 to effect and carry out such contracts of insurance;

(b) a body registered under the enactments relating to friendly societies;

(c) an insurance company the head office of which is in a member State other than the United Kingdom and which is entitled to carry on there insurance business of the relevant class;

(d) an insurance company which has a branch or agency in such a member State and is entitled under the law of that State to carry on there insurance business of the relevant class;

and in this subsection "the relevant class" means the class of insurance business specified in Schedule 1 or 2 to the Insurance Companies Act 1982 into which the effecting and carrying out of the contract in question falls.

(3) Subsection (1) above also does not apply where—

(a) the contract of insurance referred to in that subsection is to be with an insurance company authorised to effect or carry out such contracts of

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insurance in any country or territory which is for the time being designated for the purposes of this section by an order made by the Secretary of State; and

(b) any conditions imposed by the order designating the country or territory have been satisfied.

(4) The Secretary of State shall not make an order designating any country or territory for the purposes of this section unless he is satisfied that the law under which insurance companies are authorised and supervised in that country or territory affords adequate protection to policy holders and potential policy holders against the risk that the companies may be unable to meet their liabilities; and, if at any time it appears to him that the law of a country or territory which has been designated under this section does not satisfy that requirement, he may by a further order revoke the order designating that country or territory.

(5) An order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Subject to subsections (7) and (8) below, any person who contravenes this section shall be guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(7) A person who in the ordinary course of a business other than investment business issues an advertisement to the order of another person shall not be guilty of an offence under this section if he proves that the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any person under his direction or control and that he believed on reasonable grounds after due enquiry that the person to whose order the advertisement was issued was an authorised person.

(8) A person other than the insurance company with which the contract of insurance is to be made shall not be guilty of an offence under this section if he proves that he believed on reasonable grounds after due enquiry that subsection (2) or (3) above applied in the case of the contravention in question.

Marginal Citations

M35 1982 c. 50.

131 Contracts made after contravention of s. 130.

(1) Where there has been a contravention of section 130 above, then, subject to subsections (3) and (4) below—

(a) the insurance company shall not be entitled to enforce any contract of insurance with which the advertisement, advice or procurement was concerned and which was entered into after the contravention occurred; and

(b) the other party shall be entitled to recover any money or other property paid or transferred by him under the contract, together with compensation for any loss sustained by him as a result of having parted with it.

(2) The compensation recoverable under subsection (1) above shall be such as the parties may agree or as a court may, on the application of either party, determine.

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(3) In a case where the contravention referred to in subsection (1) above was a contravention by the insurance company with which the contract was made, the court may allow the contract to be enforced of money or property paid or transferred under it to be retained if it is satisfied—

(a) that the person against whom enforcement is sought or who is seeking to recover the money or property was not influenced, or not influenced to any material extent, by the advertisement or, as the case may be, the advice in making his decision to enter into the contract; or

(b) that the advertisement or, as the case may be, the advice was not misleading as to the nature of the company with which the contract was to be made or the terms of the contract and fairly stated any risks involved in entering into it.

(4) In a case where the contravention of section 130 above referred to in subsection (1) above was a contravention by a person other than the insurance company with which the contract was made the court may allow the contract to be enforced or money or property paid or transferred under it to be retained if it is satisfied that at the time the contract was made the company had no reason to believe that any contravention of section 130 above had taken place in relation to the contract.

(5) Where a person elects not to perform a contract which by virtue of subsection (1) above is unenforceable against him or by virtue of that subsection recovers money paid or other property transferred by him under a contract he shall not be entitled to any benefits under the contract and shall repay any money and return any other property received by him under the contract.

(6) Where any property transferred under a contract to which this section applies has passed to a third party the references to that property in this section shall be construed as references to its value at the time of its transfer under the contract.

(7) A contravention of section 130 above by an authorised person shall be actionable at the suit of any person who suffers loss as a result of the contravention.

(8) Section 61 above shall have effect in relation to a contravention or proposed contravention of section 130 above as it has effect in relation to a contravention or proposed contravention of section 57 above.

Modifications etc. (not altering text)

C176 S. 131 restricted (1.11.1992) by S.R. 1980/346, Order 93, rule 7 (as inserted by S.R. 1992/399, **rule15**).

132 Insurance contracts effected in contravention of s. 2 of Insurance Companies Act 1982.

(1) Subject to subsection (3) below, a contract of insurance (not being an agreement to which section 5(1) above applies) which is entered into by a person in the course of carrying on insurance business in contravention of section 2 of the [M36]Insurance Companies Act 1982 shall be unenforceable against the other party; and that party shall be entitled to recover any money or other property paid or transferred by him under the contract, together with compensation for any loss sustained by him as a result of having parted with it.

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(2) The compensation recoverable under subsection (1) above shall be such as the parties may agree or as a court may, on the application of either party, determine.

(3) A court may allow a contract to which subsection (1) above applies to be enforced or money or property paid or transferred under it to be retained if it is satisfied—

(a) that the person carrying on insurance business reasonably believed that his entering into the contract did not constitute a contravention of section 2 of the said Act of 1982; and

(b) that it is just and equitable for the contract to be enforced or, as the case may be, for the money or property paid or transferred under it to be retained.

(4) Where a person elects not to perform a contract which by virtue of this section is unenforceable against him or by virtue of this section recovers money or property paid or transferred under a contract he shall not be entitled to any benefits under the contract and shall repay any money and return any other property received by him under the contract.

(5) Where any property transferred under a contract to which this section applies has passed to a third party the references to that property in this section shall be construed as references to its value at the time of its transfer under the contract.

(6) A contravention of section 2 of the said Act of 1982 shall not make a contract of insurance illegal or invalid to any greater extent than is provided in this section; and a contravention of that section in respect of a contract of insurance shall not affect the validity of any re-insurance contract entered into in respect of that contract.

Modifications etc. (not altering text)

C177 S. 132 extended (19.11.1992) by S.I. 1992/2890, **reg.10**.
s. 132 modified (1.7.1994) by S.I. 1994/1696, **reg. 64**

Marginal Citations

M36 1982 c. 50.

133 Misleading statements as to insurance contracts.

(1) Any person who—

(a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive or dishonestly conceals any material facts; or

(b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,

is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) to enter into or offer to enter into, or to refrain from entering or offering to enter into, a contract of insurance with an insurance company (not being an investment agreement) or to exercise, or refrain from exercising, any rights conferred by such a contract.

(2) Subsection (1) above does not apply unless—

(a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the United Kingdom;

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(b) the person on whom the inducement is intended to or may have effect is in the United Kingdom; or

(c) the contract is or would be entered into or the rights are or would be exercisable in the United Kingdom.

(3) A person guilty of an offence under this section shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

[F96]134 . . . . . .

Textual Amendments

F96 S. 134 repealed (1.7.1994) by S.I. 1994/1696, reg. 68, **Sch. 8 Pt. I para. 12**

135 Communication by auditor with Secretary of State.

(1) After section 21 of the Insurance Companies Act 1982 there shall be inserted—

"**21A Communication by auditor with Secretary of State.**

(1) No duty to which an auditor of an insurance company to which this Part of this Act applies may be subject shall be regarded as contravened by reason of his communicating in good faith to the Secretary of State, whether or not in response to a request from him, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that company and which is relevant to any functions of the Secretary of State under this Act.

(2) If it appears to the Secretary of State that any auditor or class of auditor to whom subsection (1) above applies is not subject to satisfactory rules made or guidance issued by a professional body specifying circumstances in which matters are to be communicated to the Secretary of State as mentioned in that subsection the Secretary of State may make regulations applying to that auditor or class of auditor and specifying such circumstances; and it shall be the duty of an auditor to whom the regulations made by the Secretary of State apply to communicate a matter to the Secretary of State in the circumstances specified by the regulations.

(3) The matters to be communicated to the Secretary of State in accordance with any such rules or guidance or regulations may include matters relating to persons other than the company.

(4) No regulations shall be made under subsection (2) above unless a draft of them has been laid before and approved by a resolution of each House of Parliament.

(5) If it appears to the Secretary of State that an auditor has failed to comply with the duty mentioned in subsection (2) above, the Secretary of State may disqualify him from being the auditor of an insurance company or any class

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of insurance company to which Part II of this Act applies; but the Secretary of State may remove any disqualification imposed under this subsection if satisfied that the person in question will in future comply with that duty.

(6) An insurance company to which this Part of this Act applies shall not appoint as auditor a person disqualified under subsection (5) above.".

(2) In section 71(7) of that Act (which lists the provisions of that Act default in complying with which is not an offence) after the words "section 16" there shall be inserted the word "21A", and in section 97(4) of that Act (which provides that regulations under that Act are to be subject to annulment) after the word "Act" there shall be inserted the words ", except regulations under section 21A(3),".

136 Arrangements to avoid unfairness between separate insurance funds etc.

(1) After section 31 of the [M37]Insurance Companies Act 1982 there shall be inserted—

"**31A Arrangements to avoid unfairness between separate insurance funds etc.**

(1) An insurance company to which this Part of this Act applies which carries on long term business in the United Kingdom shall secure that adequate arrangements are in force for securing that transactions affecting assets of the company (other than transactions outside its control) to not operate unfairly between the section 28 fund or funds and the other assets of the company or, in a case where the company has more than one identified fund, between those funds.

(2) In this section—

"the section 28 fund or funds" means the assets representing the fund or funds maintained by the company under section 28(1)(b) above; and

"identified fund", in relation to a company, means assets representing the company's receipts from a particular part of its long term business which can be identified as such by virtue of accounting or other records maintained by the company."

(2) In section 71(7) of that Act (which lists the provisions of that Act default in complying with which is not an offence) before the word "or" there shall be inserted the word "31A".

Marginal Citations
M37 1982 c. 50.

137 Regulations in respect of linked long term policies.

In section 78(2) of the [M38]Insurance Companies Act 1982 (regulations in respect of linked long term policies) after paragraph (a) there shall be inserted—

"(aa) restricting the proportion of those benefits which may be determined by reference to property of a specified description or a specified index;".

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Marginal Citations

M38 1982 c. 50.

138 Insurance brokers.

(1) Rules made under section 8 of the [M39]Insurance Brokers (Registration) Act 1977 may require an applicant for registration or enrolment to state whether he is an authorised person or exempted person under Part I of this Act and, if so, to give particulars of the authorisation or exemption; and an individual shall be treated as satisfying the requirements of section 3(2)(a) of that Act (applicant for registration to satisfy Council as to his character and suitability) if he is an authorised person or a member of a partnership or unincorporated association which is an authorised person.

(2) In drawing up any statement under section 10 of that Act or making any rules under section 11 or 12 of that Act after the coming into force of this section the Insurance Brokers Registration Council shall take proper account of any provisions applicable to, and powers exercisable in relation to, registered insurance brokers or enrolled bodies corporate under this Act.

(3) In section 12(1) and (2) of that Act (which requires the Council to make professional indemnity rules) for the words “The Council shall" there shall be substituted the words “The Council may".

(4) In section 15 of that Act (erasure from register and list for unprofessional conduct etc.) after subsection (2) there shall be inserted—

“(2A) The Disciplinary Committee may, if they think fit, direct that the name of a registered insurance broker or enrolled body corporate shall be erased from the register or list if it appears to the Committee that any responsible person has concluded that the broker (or a related person) or the body corporate has contravened or failed to comply with—

(a) any provision of the Financial Services Act 1986 or any rule or regulation made under it to which he or it is or was subject at the time of the contravention or failure; or

(b) any rule of any recognised self-regulating organisation or recognised professional body (within the meaning of that Act), to which he is or was subject at that time.

(2B) In subsection (2A) above—

(a) “responsible person” means a person responsible under the Financial Services Act 1986 or under the rules of any recognised self-regulating organisation or recognised professional body (within the meaning of that Act) for determining whether any contravention of any provision of that Act or rules or regulations made under it or any rules of that organisation or body has occurred; and

(b) “related person” means a partnership or unincorporated association of which the broker in question is (or was at the time of the failure or contravention in question) a member or a body corporate of which he is (or was at that time) a director.”

(5) The Insurance Brokers Registration Council shall co-operate, by the sharing of information and otherwise, with the Secretary of State and any other authority, body or

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person having responsibility for the supervision or regulation of investment business or other financial services.

(6) For the purposes of the said Act of 1977 "authorised insurers" shall include—

(a) an insurance company the head office of which is in a member State other than the United Kingdom and which is entitled to carry on there insurance business corresponding to that mentioned in the definition of "authorised insurers" in that Act; and

(b) an insurance company which has a branch or agency in such a member State and is entitled under the law of that State to carry on there insurance business corresponding to that mentioned in that definition.

Marginal Citations

M39 1977 c. 46.

139 Industrial assurance.

(1) In section 5 of the [M40]Industrial Assurance Act 1923 (prohibition on issue of illegal policies) the references to policies which are illegal or not within the legal powers of a society or company shall not be construed as applying to any policy issued—

(a) in the course of carrying on investment business in contravention of section 3 above; or

(b) in the course of carrying on insurance business in contravention of section 2 of the [M41]Insurance Companies Act 1982.

(2) In section 20(4) of the said Act of 1923 the reference to a person employed by a collecting society or industrial assurance company and in section 34 of that Act the references to a person in the regular employment of such a society or company shall include references to an appointed representative of such a society or company but as respects section 34 only if the contract in question is an investment agreement.

[F97](3) . . . . . .

[F97](4) . . . . . .

(5) The foregoing provisions of this secdtion shall apply to Northern Ireland with the substitution for the references to sections 5, 20(4), 32 and 34 of the said Act of 1923 [F98]. . . of references to Articles 20, 27(2), 36 and 38 of the [M42]Industrial Assurance (Northern Ireland) Order 1979 [F98]. . . and for the references to the Industrial Assurance Commissioner of references to the Industrial Assurance Commissioner for Northern Ireland.

Textual Amendments

F97 S. 139(3)(4) repealed (28.4.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 22 Pt.I** (with ss. 7(5), 93(4)); S.I. 1993/1186, art. 2(1), **Sch. 1A**ppendix; S.I. 1993/2213, art. 2(1), **Sch. 5A**ppendix.

F98 Words in s. 139(5) repealed (28.4.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 22 Pt.I** (with ss. 7(5), 93(4)); S.I. 1993/1186, art. 2(1), **Sch. 1A**ppendix; S.I. 1993/2213, art. 2(1), **Sch. 5A**ppendix.

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Modifications etc. (not altering text)

C178 S. 139(1) amended (1.7.1994) by S.I. 1994/1696, **reg. 65**

Marginal Citations

M40 1923 c. 8.
M41 1982 c. 50.
M42 1979/1574 (N.I. 13).

PART III

FRIENDLY SOCIETIES

140 Friendly societies.

Schedule 11 to this Act shall have effect as respects the regulation of friendly societies.

141 Indemnity schemes.

(1) Any two or more registered friendly societies **[**[F99]or, until the date on which section 97 of the Friendly Societies Act 1992 comes into force, any two or more friendly societies**]** may, notwithstanding any provision to the contrary in their rules, enter into arrangements for the purpose of making funds available to meet losses incurred by any society which is a party to the arrangements or by the members of any such society by virtue of their membership of it.

(2) No such arrangements shall come into force unless they have been approved by **[**[F100]the Friendly Societies Commission**]**.

Textual Amendments

F99 Words in s. 141(1) inserted (1.5.1993) by S.I. 1993/932, **reg.6**.
F100 Words in s. 141(2) substituted (1.2.1993 for specified purposes and 28.4.1993 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. I para. 3** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 4**; S.I. 1993/1186, art. 2(2), **Sch. 2**.

PART IV

OFFICIAL LISTING OF SECURITIES

Modifications etc. (not altering text)

C179 Pt. IV (ss. 142-157) modified (1.4.1992) by S.I. 1992/231, **art. 84(2)**; S.R. 1992/117, **art. 3(1)**.
Pt. IV (ss. 142-157) applied (6.1.1994) by 1993 c. 43, **s. 107(4)**; S.I. 1993/3237, **art. 2(2)**.
Pt. IV (Ss. 142-157) applied (with modifications) (19.6.1995) by S.I. 1995/1537, reg. 20, **Sch. 4 para. 4**

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142 Official listing.

(1) No investment to which this section applies shall be admitted to the Official List [F101]. . . except in accordance with the provisions of this Part of this Act.

(2) Subject to subsections (3) and (4) below, this section applies to any investment falling within paragraph 1, 2, 4 or 5 of Schedule 1 to this Act.

(3) In the application of those paragraphs for the purposes of subsection (2) above—

(a) paragraphs 1, 4 and 5 shall have effect as if paragraph 1 did not contain the exclusion relating to building societies, industrial and provident societies or credit unions;

(b) paragraph 2 shall have effect as if it included any instrument falling within paragraph 3 issued otherwise than by the government of a member State or a local authority in a member State; and

(c) paragraphs 4 and 5 shall have effect as if they referred only to investments falling within paragraph 1.

(4) The Secretary of State may by order direct that this section shall apply also to investments falling within paragraph 6 of Schedule 1 to this Act or to such investments of any class or description.

(5) An order under subsection (4) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) In this Part of this Act "the competent authority" means, subject to section 157 below, **[**[F102]The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited**]**; and that authority may make rules (in this Act referred to as "listing rules") for the purposes of any of the following provisions.

(7) In this Part of this Act—

[[F103]"approved exchange" means, in relation to dealings in securities, a recognised investment exchange approved by the Treasury for the purposes of the Public Offers of Securities Regulations 1995 either generally or in relation to such dealings;**]**

"issuer", in relation to any securities, means the person by whom they have been or are to be issued except that in relation to a certificate or other instrument falling within paragraph 5 of Schedule 1 to this Act it means the person who issued or is to issue the securities to which the certificate or instrument relates;

[[F104] "the Official List"means the list maintained by the competent authority for the purposes of this Part of this Act**]**

"securities" means investments to which this section applies;

and references to listing are references to inclusion in the Official List in pursuance of this Part of this Act.

[[F105](7A) For the purposes of this Part of this Act—

(a) a person offers securities if, as principal—

(i) he makes an offer which, if accepted, would give rise to a contract for their issue or sale (which for this purpose includes any disposal for valuable consideration) by him or by another person with whom he has made arrangements for their issue or sale; or

(ii) he invites a person to make such an offer,

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but not otherwise; and, except where the context otherwise requires, "offer" and "offeror" shall be construed accordingly; and

(b) whether a person offers securities to the public in the United Kingdom shall be determined in accordance with Schedule 11A to this Act.**]**

[[F106](8) Any functions of the competent authority under this Part of this Act may be exercised by its governing body or by any committee or sub-committee of that body or by any officer or servant of the authority except that listing rules—

(a) shall be made only by the governing body of the authority or by a committee or sub-committee of that body; and

(b) if made by a committee or sub-committee, shall cease to have effect at the end of the period of twenty-eight days beginning with the day on which they are made (but without prejudice to anything done under them) unless before the end of that period they are confirmed by the governing body of the authority.**]**

(9) Nothing in this Part of this Act affects the powers of **[**[F107]the competent authority**]** in respect of investments to which this section does not apply and such investments may be admitted to the Official List otherwise than in accordance with this Part of this Act.

Textual Amendments

F101 Words in s. 142(1) deleted (2. 10. 1991) by S.I. 1991/2000, **reg. 3(1)(a)**.
F102 Words in s. 142(6) substituted (2. 10. 1991) by S.I. 1991/2000, **reg. 3(1)(b)**.
F103 Definition in s. 142(7) inserted (19.6.1995) by S.I. 1995/1537, reg. 17, **Sch. 2 para. 1(2)**
F104 Words in s. 142(7) substituted (2. 10. 1991) by S.I. 1991/2000, **reg. 3(1)(c)**.
F105 S. 142(7A) inserted (19.6.1995) by S.I. 1995/1537, reg. 17, **Sch. 2 para. 1(3)**
F106 S. 142(8) substituted (2. 10. 1991) by S.I. 1991/2000, **reg. 3(1)(d)**.
F107 Words in s. 142(9) substituted (2. 10. 1991) by S.I. 1991/2000, **reg. 3(1)(e)**.

Modifications etc. (not altering text)

C180 S. 142 modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 35**
C181 S. 142(6) applied (3.5.1994) by 1988 c. 1, **Chapter 5A**, s. 246S(4) (as inserted by 1994 c. 9, s. 138, **Sch. 16 Pt. I**, para. 1)

143 Applications for listing.

(1) An application for listing shall be made to the competent authority in such manner as the listing rules may require.

(2) No application for the listing of any securities shall be made except by or with the consent of the issuer of the securities.

(3) No application for listing shall be made in respect of securities to be issued by a private company or by an old public company within the meaning of section 1 of the [M43]Companies Consolidation (Consequential Provisions) Act 1985 or the corresponding Northern Ireland provision.

Marginal Citations

M43 1985 c. 9.

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144 Admission to list.

(1) The competent authority shall not admit any securities to the Official List except on an application duly made in accordance with section 143 above and unless satisfied that—

(a) the requirements of the listing rules made by the authority for the purposes of this section and in force when the application is made; and

(b) any other requirements imposed by the authority in relation to that application,

are complied with.

[[F108](2) Listing rules shall require as a condition of the admission to the Official List of any securities for which application for admission has been made and which are to be offered to the public in the United Kingdom for the first time before admission—

(a) the submission to, and approval by, the authority of a prospectus in such form and containing such information as may be specified in the rules; and

(b) the publication of that prospectus.

(2A) Listing rules may require as a condition of the admission to the Official List of any other securities—

(a) the submission to, and approval by, the authority of a document (in this Act referred to as “listing particulars") in such forms and containing such information as may be specified in the rules; and

(b) the publication of that document;

or, in such cases as may be specified by the rules, the publication of a document other than listing particulars or a prospectus.

(2B) Subsections (2) and (2A) have effect without prejudice to the generality of the power of the competent authority to make listing rules for the purposes of this section.**]**

(3) The competent authority may refuse an application—

(a) if it considers that by reason of any matter relating to the issuer the admission of the securities would be detrimental to the interests of investors; or

(b) in the case of securities already officially listed in another member State, if the issuer has failed to comply with any obligations to which he is subject by virtue of that listing.

(4) The competent authority shall notify the applicant of its decision on the application within six months from the date on which the application is received or, if within that period the authority has required the applicant to furnish further information in connection with the application, from the date on which that information is furnished.

(5) If the competent authority does not notify the applicant of its decision within the time required by subsection (4) above it shall be taken to have refused the application.

(6) When any securities have been admitted to the Official List their admission shall not be called in question on the ground that any requirement or condition for their admission has not been complied with.

Textual Amendments

F108 S. 144(2)(2A)(2B) substituted (19.6.1995) for s. 144(2) by S.I. 1995/1537, **reg. 17**, SCh. 2 para. 2(1)

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145 Discontinuance and suspension of listing.

(1) The competent authority may, in accordance with the listing rules, discontinue the listing of any securities if satisfied that there are special circumstances which preclude normal regular dealings in the securities.

(2) The competent authority may in accordance with the listing rules suspend the listing of any securities.

(3) Securities the listing of which is suspended under subsection (2) above shall nevertheless be regarded as listed for the purposes of sections 153 and 155 below.

(4) This section applies to securities included in the Official List at the coming into force of this Part of this Act as it applies to securities included by virtue of this Part.

146 General duty of disclosure in listing particulars.

(1) In addition to the information specified by listing rules or required by the competent authority as a condition of the admission of any securities to the Official List any listing particulars submitted to the competent authority under section 144 above shall contain all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of—
   (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
   (b) the rights attaching to those securities.

(2) The information to be included by virtue of this section shall be such information as is mentioned in subsection (1) above which is within the knowledge of any person responsible for the listing particulars or which it would be reasonable for him to obtain by making enquiries.

(3) In determining what information is required to be included in listing particulars by virtue of this section regard shall be had—
   (a) to the nature of the securities and of the issuer of the securities;
   (b) to the nature of the persons likely to consider their acquisition;
   (c) to the fact that certain matters may reasonably be expected to be within the knowledge of professional advisers of any kind which those persons may reasonably be expected to consult; and
   (d) to any information available to investors or their professional advisers by virtue of requirements imposed under section 153 below or by or under any other enactment or by virtue of requirements imposed by a recognised investment exchange for the purpose of complying with paragraph 2(2)(b) of Schedule 4 to this Act.

147 Supplementary listing particulars.

(1) If at any time after the preparation of listing particulars for submission to the competent authority under section 144 above and before the commencement of dealings in the securities following their admission to the Official List—
   (a) there is a significant change affecting any matter contained in those particulars whose inclusion was required by section 146 above or by listing rules or by the competent authority; or

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(b) a significant new matter arises the inclusion of information in respect of which would have been so required if it had arisen when the particulars were prepared,

the issuer of the securities shall, in accordance with listing rules made for the purposes of this section, submit to the competent authority for its approval and, if approved, publish supplementary listing particulars of the change or new matter.

(2) In subsection (1) above "significant" means significant for the purpose of making an informed assessment of the matters mentioned in section 146(1) above.

(3) Where the issuer of the securities is not aware of the change or new matter in question he shall not be under any duty to comply with subsection (1) above unless he is notified of it by a person responsible for the listing particulars; but it shall be the duty of any person responsible for those particulars who is aware of such a matter to give notice of it to the issuer.

(4) Subsection (1) above applies also as respects matters contained in any supplementary listing particulars previously published under this section in respect of the securities in question.

148 Exemptions for disclosure.

(1) The competent authority may authorise the omission from listing particulars or supplementary listing particulars of any information the inclusion of which would otherwise be required by section 146 above—

(a) on the ground that its disclosure would be contrary to the public interest;

(b) subject to subsection (2) below, on the ground that its disclosure would be seriously detrimental to the issuer of the securities; or

(c) in the case of securities which fall within paragraph 2 of Schedule 1 to this Act as modified by section 142(3)(b) above and are of any class specified by listing rules, on the ground that its disclosure is unnecessary for persons of the kind who may be expected normally to buy or deal in the securities.

(2) No authority shall be granted under subsection (1)(b) above in respect of, and no such authority shall be regarded as extending to, information the non-disclosure of which would be likely to mislead a person considering the acquisition of the securities as to any facts the knowledge of which it is essential for him to have in order to make an informed assessment.

(3) The Secretary of State or the Treasury may issue a certificate to the effect that the disclosure of any information (including information that would otherwise have to be included in particulars for which they are themselves responsible) would be contrary to the public interest and the competent authority shall be entitled to act on any such certificate in exercising its powers under subsection (1)(a) above.

(4) This section is without prejudice to any powers of the competent authority under rules made by virtue of section 156(2) below.

149 Registration of listing particulars.

(1) On or before the date on which listing particulars or supplementary listing particulars are published as required by listing rules a copy of the particulars shall be delivered for registration to the registrar of companies and a statement that a copy has been delivered to him shall be included in the particulars.

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(2) In subsection (1) above "the registrar of companies" means—

(a) if the securities in question are or are to be issued by a company incorporated in Great Britain, the registrar of companies in England and Wales or the registrar of companies in Scotland according to whether the company's registered office is in England and Wales or in Scotland;

(b) if the securities in question are or are to be issued by a company incorporated in Northern Ireland, the registrar of companies for Northern Ireland;

(c) in any other case, any of those registrars.

(3) If any particulars are published without a copy of them having been delivered as required by this section the issuer of the securities in question and any person who is knowingly a party to the publication shall be guilty of an offence and liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

150 Compensation for false or misleading particulars.

(1) Subject to section 151 below, the person or persons responsible for any listing particulars or supplementary listing particulars shall be liable to pay compensation to any person who has acquired any of the securities in question and suffered loss in respect of them as a result of any untrue or misleading statement in the particulars or the omission from them of any matter required to be included by section 146 or 147 above.

(2) Where listing rules require listing particulars to include information as to any particular matter on the basis that the particulars must include a statement either as to that matter or, if such is the case, that there is no such matter, the omission from the particulars of the information shall be treated for the purposes of subsection (1) above as a statement that there is no such matter.

(3) Subject to section 151 below, a person who fails to comply with section 147 above shall be liable to pay compensation to any person who has acquired any of the securities in question and suffered loss in respect of them as a result of the failure.

(4) This section does not affect any liability which any person may incur apart from this section.

(5) References in this section to the acquisition by any person of securities include references to his contracting to acquire them or an interest in them.

(6) No person shall by reason of being a promoter of a company or otherwise incur any liability for failing to disclose any information which he would not be required to disclose in listing particulars in respect of a company's securities if he were responsible for those particulars or, if he is responsible for them, which he is entitled to omit by virtue of section 148 above.

[[F109]The reference above to a person incurring liability includes a reference to any other person being entitled as against that person to be granted any civil remedy or to rescind or repudiate any agreement.**]**

Textual Amendments

F109 Words inserted by Companies Act 1989 (c. 40, SIF 27), **s. 197(1)**

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Modifications etc. (not altering text)

C182 S. 150 applied (with modifications) (E.W.) by Water Act 1989 (c. 15, SIF 130), **s. 90(2)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

C183 S. 150 continued (1.12.2001) by S.I. 2001/2957, **art. 7(1)(2)**; S.I. 2001/3538, **art. 2(1)**

C184 S. 150 modified (6.1.1994) by 1993 c. 43, **s. 107(2)(3)**; S.I. 1993/3237, **art. 2(2)**.

151 Exemption from liability to pay compensation.

(1) A person shall not incur any liability under section 150(1) above for any loss in respect of securities caused by any such statement or omission as is there mentioned if he satisfies the court that at the time when the particulars were submitted to the competent authority he reasonably believed, having made such enquiries (if any) as were reasonable, that the statement was true and not misleading or that the matter whose omission caused the loss was properly omitted and—

(a) that he continued in that belief until the time when the securities were acquired; or

(b) that they were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire the securities in question; or

(c) that before the securities were acquired he had taken all such steps as it was reasonable for him to have taken to secure that a correction was brought to the attention of those persons; or

(d) that he continued in that belief until after the commencement of dealings in the securities following their admission to the Official List and that the securities were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused.

(2) A person shall not incur any liability under section 150(1) above for any loss in respect of securities caused by a statement purporting to be made by or on the authority of another person as an expert which is, and is stated to be, included in the particulars with that other person's consent if he satisfies the court that at the time when the particulars were submitted to the competent authority he believed on reasonable grounds that the other person was competent to make or authorise the statement and had consented to its inclusion in the form and context in which it was included and—

(a) that he continued in that belief until the time when the securities were acquired; or

(b) that they were acquired before it was reasonably practicable to bring the fact that the expert was not competent or had not consented to the attention of persons likely to acquire the securities in question; or

(c) that before the securities were acquired he had taken all such steps as it was reasonable for him to have taken to secure that that fact was brought to the attention of those persons; or

(d) that he continued in that belief until after the commencement of dealings in the securities following their admission to the Official List and that the securities were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused.

(3) Without prejudice to subsections (1) and (2) above, a person shall not incur any liability under section 150(1) above for any loss in respect of any securities caused by any such statement or omission as is there mentioned if he satisfies the court—

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(a) that before the securities were acquired a correction, or where the statement was such as is mentioned in subsection (2), the fact that the expert was not competent or had not consented had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities in question; or

(b) that he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the securities were acquired.

(4) A person shall not incur any liability under section 150(1) above for any loss resulting from a statement made by an official person or contained in a public official document which is included in the particulars if he satisfies the court that the statement is accurately and fairly reproduced.

(5) A person shall not incur any liability under section 150(1) or (3) above if he satisfies the court that the person suffering the loss acquired the securities in question with knowledge that the statement was false or misleading, of the omitted matter or of the change or new matter, as the case may be.

(6) A person shall not incur any liability under section 150(3) above if he satisfies the court that he reasonably believed that the change or new matter in question was not such as to call for supplementary listing particulars.

(7) In this section "expert" includes any engineer, valuer, accountant or other person whose profession, qualifications or experience give authority to a statement made by him; and references to the acquisition of securities include references to contracting to acquire them or an interest in them.

Modifications etc. (not altering text)
C185 S. 151 continued (1.12.2001) by S.I. 2001/2957, **art. 7(1)(2)**; S.I. 2001/3538, **art. 2(1)**

152 Persons responsible for particulars.

(1) For the purposes of this Part of this Act the persons responsible for listing particulars or supplementary listing particulars are—

(a) the issuer of the securities to which the particulars relate;

(b) where the issuer is a body corporate, each person who is a director of that body at the time when the particulars are submitted to the competent authority;

(c) where the issuer is a body corporate, each person who has authorised himself to be named, and is named, in the particulars as a director or as having agreed to become a director of that body either immediately or at a future time;

(d) each person who accepts, and is stated in the particulars as accepting, responsibility for, or for any part of, the particulars;

(e) each person not falling within any of the foregoing paragraphs who has authorised the contents of, or any part of, the particulars.

(2) A person is not responsible for any particulars by virtue of subsection (1)(b) above if they are published without his knowledge or consent and on becoming aware of their publication he forthwith gives reasonable public notice that they were published without his knowledge or consent.

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(3) Where a person has accepted responsibility for, or authorised, only part of the contents of any particulars, he is responsible under subsection (1)(d) or (e) above for only that part and only if it is included in (or subsequently in) the form and context to which he has agreed.

(4) Where the particulars relate to securities which are to be issued in connection with an offer by (or by a wholly-owned subsidiary of), the issuer for, or an agreement for the acquisition by (or by a wholly-owned subsidiary of) the issuer of, securities issued by another person or in connection with any arrangement whereby the whole of the undertaking of another person is to become the undertaking of the issuer (of a wholly-owned subsidiary of the issuer or of a body corporate which will become such a subsidiary by virtue of the arrangement) then if—

(a) that other person; and

(b) where that other person is a body corporate, each person who is a director of that body at the time when the particulars are submitted to the competent authority and each other person who has authorised himself to be named, and is named, in the particulars as a director of that body,

is responsible by virtue of paragraph (d) of subsection (1) above for any part of the particulars relating to that other person or to the securities or undertaking to which the offer, agreement or arrangement relates, no person shall be responsible for that part under paragraph (a), (b) or (c) of that subsection but without prejudice to his being responsible under paragraph (d).

[[F110](4A) Where—

(a) the same document contains particulars relating to the securities of two or more successor companies within the meaning of Part III of the Electricity (Northern Ireland) Order 1992; and

(b) any person's responsibility for any information included in the document is stated in the document to be confined to its inclusion as part of the particulars relating to the securities of any one of those companies,

that person shall not be treated as responsible for that information in so far as it is stated in the document to form part of the particulars relating to the securities of any other of those companies.**]**

(5) Neither paragraph (b) nor paragraph (c) of subsection (1) above applies in the case of an issuer of international securities of a class specified by listing rules for the purposes of section 148(1)(c) above; and neither of those paragraphs nor paragraph (b) of subsection (4) above applies in the case of any director certified by the competent authority as a person to whom that paragraph should not apply by reason of his having an interest, or of any other circumstances, making it inappropriate for him to be responsible by virtue of that paragraph.

(6) In subsection (5) above "international securities" means any investment falling within paragraph 2 of Schedule 1 to this Act as modified by section 142(3)(b) above which is of a kind likely to be dealt in by bodies incorporated in or persons resident in a country or territory outside the United Kingdom, is denominated in a currency other than sterling or is otherwise connected with such a country or territory.

(7) In this section "wholly-owned subsidiary", in relation to a person other than a body corporate, means any body corporate that would be his wholly-owned subsidiary if he were a body corporate.

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(8) Nothing in this section shall be construed as making a person responsible for any particulars by reason of giving advice as to their contents in a professional capacity.

(9) Where by virtue of this section the issuer of any shares pays or is liable to pay compensation under section 150 above for loss suffered in respect of shares for which a person has subscribed no account shall be taken of that liability or payment in determining any question as to the amount paid on subscription for those shares or as to the amount paid up or deemed to be paid up on them.

Textual Amendments

F110 S. 152(4A) inserted (1.4.1992) by S.I. 1992/232, **art.3**; S.R. 1992/117, **art. 3(1)**.

153 Obligations of issuers of listed securities.

(1) Listing rules may specify requirements to be complied with by issuers of listed securities and make provision with respect to the action that may be taken by the competent authority in the event of non-compliance, including provision—

(a) authorising the authority to publish the fact that an issuer has contravened any provision of the rules; and

(b) if the rules require an issuer to publish any information, authorising the authority to publish it in the event of his failure to do so.

(2) This section applies to the issuer of securities included in the Official List at the coming into force of this Part of this Act as it applies to the issuer of securities included by virtue of this Part.

154 Advertisements etc. in connection with listing applications.

(1) Where listing particulars are or are to be published in connection with an application for the listing of any securities no advertisement or other information of a kind specified by listing rules shall be issued in the United Kingdom unless the contents of the advertisement or other information have been submitted to the competent authority and that authority has either—

(a) approved those contents; or

(b) authorised the issue of the advertisement or information without such approval.

(2) An authorised person who contravenes this section shall be treated as having contravened rules made under Chapter V of Part I of this Act or, in the case of a person who is an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.

(3) Subject to subsection (4) below, a person other than an authorised person, who contravenes this section shall be guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(4) A person who in the ordinary course of a business other than investment business issues an advertisement or other information to the order of another person shall

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not be guilty of an offence under this section if he proves that he believed on reasonable grounds that the advertisement or information had been approved or its issue authorised by the competent authority.

(5) Where information has been approved, or its issue has been authorised, under this section neither the person issuing it nor any person responsible for, or for any part of, the listing particulars shall incur any civil liability by reason of any statement in or omission from the information if that information and the listing particulars, taken together, would not be likely to mislead persons of the kind likely to consider the acquisition of the securities in question.

[[F111]The reference above to a person incurring civil liability includes a reference to any other person being entitled as against that person to be granted any civil remedy or to rescind or repudiate any agreement.**]**

Textual Amendments

F111 Words inserted by Companies Act 1989 (c. 40, SIF 27), **s. 197(2)**

Modifications etc. (not altering text)

C186 S. 154 applied (with modifications) (E.W.) by Water Act 1989 (c. 15, SIF 130), **s. 90(2)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
S. 154 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.37**.
S. 154 modified (6.1.1994) by 1993 c. 43, **s. 107(2)(3)**; S.I. 1993/3237, **art. 2(2)**.
s. 154 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 36**

C187 S. 154(3) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 37(b)**.

[[F112]154AApplication of Part IV to prospectuses.

Sections 146 to 152 and 154 above shall apply in relation to a prospectus required by listing rules in accordance with section 144(2) above as they apply in relation to listing particulars, but as if—

(a) any reference to listing particulars were a reference to a prospectus and any reference to supplementary listing particulars were a reference to a supplementary prospectus; and

(b) notwithstanding section 142(7) above, any reference in section 152 above (other than in subsection (1)(b) of that section) to the issuer of securities included a reference to the person offering or proposing to offer them.**]**

Textual Amendments

F112 S. 154A inserted (19.6.1995) by S.I. 1995/1537, reg. 17, **Sch. 2 para. 2(3)**

155 Fees.

Listing rules may require the payment of fees to the competent authority in respect of applications for listing and the retention of securities in the Official List.

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services Act 1986 (Repealed) is up to date with all changes known to be in force on or before 14 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)*

156 Listing rules: general provisions.

(1) Listing rules may make different provision for different cases.

(2) Listing rules may authorise the competent authority to dispense with or modify the application of the rules in particular cases and by reference to any circumstances.

(3) Listing rules shall be made by an instrument in writing.

(4) Immediately after an instrument containing listing rules is made it shall be printed and made available to the public with or without payment.

(5) A person shall not be taken to have contravened any listing rule if he shows that at the time of the alleged contravention the instrument containing the rule had not been made available as required by subsection (4) above.

(6) The production of a printed copy of an instrument purporting to be made by the competent authority on which is endorsed a certificate signed by an officer of the authority authorised by it for that purpose and stating—
   (a) that the instrument was made by the authority;
   (b) that the copy is a true copy of the instrument; and
   (c) that on a specified date the instrument was made available to the public as required by subsection (4) above,

   shall be prima facie evidence or, in Scotland, sufficient evidence of the facts stated in the certificate.

(7) Any certificate purporting to be signed as mentioned in subsection (6) above shall be deemed to have been duly signed unless the contrary is shown.

(8) Any person wishing in any legal proceedings to cite an instrument made by the competent authority may require the authority to cause a copy of it to be endorsed with such a certificate as is mentioned in subsection (6) above.

[F113 156A Approval of prospectus where no application for listing.

(1) Listing rules may also provide for a prospectus to be submitted to and approved by the competent authority where—
   (a) securities are to be offered to the public in the United Kingdom for the first time;
   (b) no application for listing of the securities has been made under this Part of this Act; and
   (c) the prospectus is submitted by or with the consent of the issuer of the securities.

(2) Listing rules made under subsection (1) above may make provision—
   (a) as to the information to be contained in, and the form of, a prospectus submitted under any such rules; and
   (b) subject to the provisions of the Public Offers of Securities Regulations 1995, as to the timing and manner of publication of such a prospectus.

(3) Sections 146 to 152 and 154 above shall apply in relation to such a prospectus as they apply in relation to listing particulars but as if—

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(a) any reference to listing particulars were a reference to a prospectus and any reference to supplementary listing particulars were a reference to a supplementary prospectus;

(b) in section 146(1) above—

(i) the words "as a condition of the admission of any securities to the Official List" were omitted; and

(ii) for the words "section 144 above" there were substituted "section 156A(1) below";

(c) in section 147(1) above, for the words "under section 144 above and before the commencement of dealings in the securities following their admission to the Official List" there were substituted "under section 156A(1) below and before the end of the period during which the offer to which the prospectus relates remains open";

(d) in subsections (1)(d) and (2)(d) of section 151 above—

(i) the words "that he continued in that belief until after the commencement of dealings in the securities following their admission to the Official List and" were omitted; and

(ii) the words "and, if the securities are dealt in on an approved exchange, that he continued in that belief until after the commencement of dealings in the securities on that exchange" were added at the end;

(e) notwithstanding section 142(7) above, any reference in section 152 above (other than in subsection (1)(b) of that section) to the issuer of securities included a reference to the person offering or proposing to offer them; and

(f) in section 154(1) above, for the words "Where listing particulars are or are to be published in connection with an application for the listing of any securities" there were substituted "Where a prospectus is or is to be published in connection with an application for approval, then, until the end of the period during which the offer to which the prospectus relates remains open,".

(4) Listing rules made under this section may require the payment of fees to the competent authority in respect of a prospectus submitted for approval under the rules.**]**

Textual Amendments

F113 Ss. 156A, 156B inserted (19.6.1995) by S.I. 1995/1537, reg. 17, **Sch. 2 para. 2(4)**

[F114]156B Publication of prospectus.

(1) Where listing rules made under section 144(2) above require the publication of a prospectus, it shall not be lawful, before the time of publication of the prospectus, to offer the securities in question to the public in the United Kingdom.

(2) An authorised person who contravenes subsection (1) above shall be treated as contravening rules made under Chapter V of Part I of this Act or, in the case of a person who is an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.

(3) A person, other than an authorised person, who contravenes subsection (1) above shall be guilty of an offence and liable—

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(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale.

(4) Without prejudice to any liability under section 150 above, a person shall not be regarded as contravening subsection (1) above by reason only of a prospectus not having fully complied with the requirements of listing rules as to its form or content.

(5) Any contravention of subsection (1) above shall be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty.

Textual Amendments

F114 Ss. 156A, 156B inserted (19.6.1995) by S.I. 1995/1537, reg. 17, **Sch. 2 para. 2(4)**

Modifications etc. (not altering text)

C188 S. 156B(3) restricted (30.6.1995) by S.I. 1995/1537, **reg. 17**, SCh. 2 para. 3

[F115]157 . . . . . .

Textual Amendments

F115 S. 157 repealed (2. 10. 1991) by S.I. 1991/2000, **reg. 3(2)**.

PART VI

TAKEOVER OFFERS

172 Takeover offers.

(1) The provisions set out in Schedule 12 to this Act shall be substituted for sections 428, 429 and 430 of the [M45]Companies Act 1985.

(2) Subsection (1) above does not affect any case in which the offer in respect of the scheme or contract mentioned in section 428(1) was made before the coming into force of this section.

Marginal Citations

M45 1985 c. 6.

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PART VII

INSIDER DEALING

[F125]173 . . . . . .

Textual Amendments

F125 S. 173 repealed (1.3.1994) by 1993 c. 36, ss. 78(3), 79(14), **Sch. 6 Pt.I**; S.I. 1994/242, art. 2, **Sch.** Appendix

[F126]174 . . . . . .

Textual Amendments

F126 S. 174 repealed (1.3.1994) by 1993 c. 36, ss. 78(3), 79(14), **Sch. 6 Pt.I**; S.I. 19994/242, art. 2, Sch. Appendix

[F127]175 . . . . . .

Textual Amendments

F127 S. 175 repealed (1.3.1994) by 1993 c. 36, ss. 78(3), 79(14), **Sch. 6 Pt.I**; S.I. 1994/242, art. 2, **Sch.** Appendix

[F128]176 . . . . . .

Textual Amendments

F128 S. 176 repealed (1.3.1994) by 1993 c. 36, ss. 78(3), 79(14), **Sch. 6 Pt.I**; S.I. 1994/242, art. 2, **Sch.** Appendix

177 Investigations into insider dealing.

(1) If it appears to the Secretary of State that there are circumstances suggesting that **[**[F129]an offence under Part V of the Criminal Justice Act 1993 (insider dealing) may have been committed**]**, he may appoint one or more competent inspectors to carry out such investigations as are requisite to establish whether or not any such **[**[F129]offence has been committed**]** and to report the results of their investigations to him.

(2) The appointment under this section of an inspector may limit the period during which he is to continue his investigation or confine it to particular matters.

[[F130](2A) At any time during the investigation the Secretary of State may vary the appointment by limiting or extending the period during which the inspector is to continue his investigation or by confining the investigation to particular matters.**]**

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(3) If the inspectors consider that any person is or may be able to give information concerning any such **[**[F131]offence**]** they may require that person—

(a) to produce to them any documents in his possession or under his control **[**[F132]which appear to them to be relevant to the investigation**]**

(b) to attend before them; and

(c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give;

and it shall be the duty of that person to comply with that requirement.

(4) An inspector may examine on oath any person who he considers is or may be able to give information concerning any such **[**[F133]offence**]**, and may administer an oath accordingly.

(5) The inspectors shall make such interim reports to the Secretary of State as they think fit or he may direct and on the conclusion of the investigation they shall make a final report to him.

[[F134](5A) If the Secretary of State thinks fit, he may direct the inspector to take no further steps in the investigation or to take only such further steps as are specified in the direction; and where an investigation is the subject of such a direction, the inspectors shall make a final report to the Secretary of State only where the Secretary of State directs them to do so.**]**

(6) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

(7) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.

[[F135](8) A person shall not under this section be required to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

(a) the person to whom the obligation of confidence is owed consents to the disclosure or production, or

(b) the making of the requirement was authorised by the Secretary of State.**]**

(9) Where a person claims a lien on a document its production under this section shall be without prejudice to his lien.

(10) In this section "document" includes information recorded in any form; and in relation to information recorded otherwise than in legible form **[**[F136]the power to require its production includes power to require the production of**]** a copy of the information in legible form.

[[F137](11) A person who is convicted on a prosecution instituted as a result of an investigation under this section may in the same proceedings be ordered to pay the expenses of the investigation to such an extent as may be specified in the order.

There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Secretary of State may determine in respect of general staff costs and overheads.**]**

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Textual Amendments

F129 Words in s. 177(1) substituted (1.3.1994) by 1993 c. 36, s. 78(3), **Sch. 5 para. 9(1)**; S.I. 1994/242, art. 2, **Sch.**

F130 S. 177(2A) inserted by Companies Act 1989 (c. 40, SIF 27), **s. 74(2)**

F131 Word in s. 177(3) substituted (1.3.1994) by 1993 c. 36, s. 78(3), **Sch. 5 para. 9(2)(a)**; S.I. 1994/242, art. 2, **Sch.**

F132 Words in s. 177(3)(a) substituted (1.3.1994) by 1993 c. 36, s. 78(3), **Sch. 5 para. 9(2)(b)**; 1994/242, art. 2, Sch.

F133 Word in s. 177(4) substituted (1.3.1994) by 1993 c. 36, s. 78(3), **Sch. 5 para. 9(3)**; 1994/242, art. 2, Sch.

F134 S. 177(5A) inserted by Companies Act 1989 (c. 40, SIF 27), **s. 74(3)**

F135 S. 177(8) substituted by Companies Act 1989 (c. 40, SIF 27), **s. 74(4)**

F136 Words substituted by Companies Act 1989 (c. 40, SIF 27), **s. 74(5)**

F137 S. 177(11) inserted by Companies Act 1989 (c. 40, SIF 27), **s. 74(6)**

178 Penalties for failure to co-operate with s. 177 investigations.

(1) If any person—

(a) refuses to comply with any request under subsection (3) of section 177 above; or

(b) refuses to answer any question put to him by the inspectors appointed under that section with respect to any matter relevant for establishing whether or not any suspected **[**[F138]offence has been committed**]**,

the inspectors may certify that fact in writing to the court and the court may inquire into the case.

(2) If, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement which may be offered in defence, the court is satisfied that he did without reasonable excuse refuse to comply with such a request or answer any such question, the court may—

(a) punish him in like manner as if he had been guilty of contempt of the court; or

(b) direct that the Secretary of State may exercise his powers under this section in respect of him;

and the court may give a direction under paragraph (b) above notwithstanding that the offender is not within the jurisdiction of the court if the court is satisfied that he was notified of his right to appear before the court and of the powers available under this section.

(3) Where the court gives a direction under subsection (2)(b) above in respect of an authorised person the Secretary of State may serve a notice on him—

(a) cancelling any authorisation of his to carry on investment business after the expiry of a specified period after the service of the notice;

(b) disqualifying him from becoming authorised to carry on investment business after the expiry of a specified period;

(c) restricting any authorisation of his in respect of investment business during a specified period to the performance of contracts entered into before the notice comes into force;

(d) prohibiting him from entering into transactions of a specified kind or entering into them except in specified circumstances or to a specified extent;

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(e) prohibiting him from soliciting business from persons of a specified kind or otherwise than from such persons; or

(f) prohibiting him from carrying on business in a specified manner or otherwise than in a specified manner.

(4) The period mentioned in paragraphs (a) and (c) of subsection (3) above shall be such period as appears to the Secretary of State reasonable to enable the person on whom the notice is served to complete the performance of any contracts entered into before the notice comes into force and to terminate such of them as are of a continuing nature.

(5) Where the court gives a direction under subsection (2)(b) above in the case of an unauthorised person the Secretary of State may direct that any authorised person who knowingly transacts investment business of a specified kind, or in specified circumstances or to a specified extent, with or on behalf of that unauthorised person shall be treated as having contravened rules made under Chapter V of Part I of this Act or, in the case of a person who is an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.

(6) A person shall not be treated for the purposes of subsection (2) above as having a reasonable excuse for refusing to comply with a request or answer a question in a case where the **[**[F139]offence or suspected offence**]** being investigated relates to dealing by him on the instructions or for the account of another person, by reason that at the time of the refusal—

(a) he did not know the identity of that other person; or

(b) he was subject to the law of a country or territory outside the United Kingdom which prohibited him from disclosing information relating to the dealing without the consent of that other person, if he might have obtained that consent or obtained exemption from that law.

(7) A notice served on a person under subsection (3) above may be revoked at any time by the Secretary of State by serving a revocation notice on him; and the Secretary of State shall revoke such a notice if it appears to him that he has agreed to comply with the relevant request or answer the relevant question.

(8) The revocation of such a notice as is mentioned in subsection (3)(a) above shall not have the effect of reviving the authorisation cancelled by the notice except where the person would (apart from the notice) at the time of the revocation be an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body; but nothing in this subsection shall be construed as preventing any person who has been subject to such a notice from again becoming authorised after the revocation of the notice.

(9) If it appears to the Secretary of State—

(a) that a person on whom he serves a notice under subsection (3) above is an authorised person by virtue of an authorisation granted by a designated agency or by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body; or

(b) that a person on whom he serves a revocation notice under subsection (7) above was such an authorised person at the time that the notice which is being revoked was served,

he shall serve a copy of the notice on that agency, organisation or body.

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(10) The functions to which section 114 above applies shall include the functions of the Secretary of State under this section but any transfer of those functions shall be subject to a reservation that they are to be exercisable by him concurrently with the designated agency and so as to be exercisable by the agency subject to such conditions or restrictions as the **[**[F140]Treasury**]** may from time to time impose.

Textual Amendments

F138 Words in s. 178(1)(b) substituted (1.3.1994) by 1993 c. 36, ss. 78(3), 79(13), **Sch. 5 para. 10(1)**; S.I. 1994/242, art. 2, **Sch.**

F139 Words in s. 178(6) substituted (1.3.1994) by 1993 c. 36, ss. 78(3), 79(13), **Sch. 5 para. 10(2)**; S.I. 1994/242, art. 2, **Sch.**

F140 Words in s. 178(10) substituted (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para. 3**.

Modifications etc. (not altering text)

C191 S. 178: certain functions transferred by S.I. 1987/942, **art. 5**

C192 S. 178 extended by S.I. 1986/1034 (N.I. 8), **art. 16A(8)(11)** (as inserted by S.I. 1989/2404 (N.I. 18), **art. 31(11)**)

C193 S. 178 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 39**.

C194 S. 178(3)(4)(5) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 39(1)(a)(c)(d)**.
s. 178(3) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 37(1)(a)**
s. 178(3) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 37(2)(a)**
s. 178(4) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 37(1)(c)**
s. 178(5) modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 37(1)(d)(e)**
s. 178(7) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 37(2)(b)**

PART VIII

RESTRICTIONS ON DISCLOSURE OF INFORMATION

179 Restrictions on disclosure of information.

(1) Subject to section 180 below, information which is restricted information for the purposes of this section and relates to the business or other affairs of any person shall not be disclosed by a person mentioned in subsection (3) below ("the primary recipient") or any person obtaining the information directly or indirectly from him without the consent of the person from whom the primary recipient obtained the information and if different, the person to whom it relates.

(2) Subject to subsection (4) below, information is restricted information for the purposes of this section if it was obtained by the primary recipient for the purposes of, or in the discharge of his functions under, this Act or any rules or regulations made under this Act (whether or not by virtue of any requirement to supply it made under those provisions).

(3) The persons mentioned in subsection (1) above are—

(a) the Secretary of State;

[[F141](aa) the Treasury;**]**

(b) any designated agency, transferee body or body administering a scheme under section 54 above;

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(c) the Director General of Fair Trading;

(d) the Chief Registrar of friendly societies;

[[F142](e) the Friendly Societies Commission**]**

(f) the Bank of England;

(g) any member of the Tribunal;

(h) any person appointed or authorised to exercise any powers under section 94, 106 or 177 above; . . . [F143]

(i) any officer or servant of any such person **[**[F144]as is mentioned in paragraphs (a) to (h) above**]**;

[[F145](j) any constable or other person named in a warrant issued under this Act.**]**

(4) Information shall not be treated as restricted information for the purposes of this section if it has been made available to the public by virtue of being disclosed in any circumstances in which or for any purpose for which disclosure is not precluded by this section.

(5) Subject to section 180 below, information obtained by the competent authority in the exercise of its functions under Part IV of this Act or received by it pursuant to a Community obligation from any authority exercising corresponding functions in another member State shall not be disclosed without the consent of the person from whom the competent authority obtained the information and, if different, the person to whom it relates.

(6) Any person who contravenes this section shall be guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

Textual Amendments

F141 S. 179(3)(aa) inserted (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para.4**

F142 S. 179(3)(e) substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. I para. 4** (with ss. 7(5), 93(4)); S.I. 1993.16, art. 2, Sch.4; S.I. 1993/2213, art. 2(1), **Sch.5**.

F143 Word repealed by Companies Act 1989 (c. 40, SIF 27), ss. 75(1)(a), 212, **Sch. 24**

F144 Words inserted by Companies Act 1989 (c. 40, SIF 27), **s. 75(1)(b)**

F145 S. 179(3)(j) inserted by Companies Act 1989 (c. 40, SIF 27),s. 75(1)(c)

Modifications etc. (not altering text)

C195 S. 179 modified by Companies Act 1989 (c. 40, SIF 27), **s. 88(3)(b)**
S. 179 extended (with modifications) (12.2.1992) by S.I. 1992/225, **reg. 113(2)(3)(4)**.
s. 179 excluded (1.7.1994) by S.I. 1994/1696, **reg. 66(1)**
s. 179 excluded (18.7.1996) by S.I. 1996/1669, **reg. 12(2)**
s. 179 excluded (1.1.1996) by S.I. 1995/3275, **reg. 48(2)**

C196 S. 179(2) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.40**.

180 Exceptions from restrictions on disclosure.

(1) Section 179 above shall not preclude the disclosure of information—

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(a) with a view to the institution of or otherwise for the purposes of criminal proceedings;

(b) with a view to the institution of or otherwise for the purposes of any civil proceedings arising under or by virtue of this Act or proceedings before the Tribunal;

[[F146](bb) for the purpose of enabling or assisting the Treasury to exercise any of their powers under this Act or under Part III or VII of the Companies Act 1989;**]**

(c) for the purpose of enabling or assisting the Secretary of State to exercise any powers conferred on him by this Act or by the enactments relating to companies insurance companies or insolvency **[**[F147]or by Part II, III or VII of the Companies Act 1989**]** or for the purpose of enabling or assisting any inspector appointed by him under the enactments relating to companies to discharge his functions;

(d) for the purpose of enabling or assisting the Department of Economic Development for Northern Ireland to exercise any powers conferred on it by the enactments relating to companies or insolvency or for the purpose of enabling or assisting any inspector appointed by it under the enactments relating to companies to discharge his functions;

[[F148](e) for the purpose—

(i) of enabling or assisting a designated agency to discharge its functions under this Act or Part VII of the Companies Act 1989,

(ii) of enabling or assisting a transferee body or the competent authority to discharge its functions under this Act, or

(iii) of enabling or assisting the body administering a scheme under section 54 above to discharge its functions under the scheme;**]**

(f) for the purpose of enabling or assisting the Bank of England to discharge its functions under **[**[F149]the Banking Act 1987**]** or any other functions;

(g) for the purpose of enabling or assisting the Deposit Protection Board to discharge its functions under that Act;

[[F150](h) for the purpose of enabling or assisting the Friendly Societies Commission to discharge its functions under this Act, the enactments relating to friendly societies or the enactments relating to industrial assurance**]**

[[F151](hh) for the purpose of enabling or assisting a body established by order under section 46 of the Companies Act 1989 to discharge its functions under Part II of that Act, or of enabling or assisting a recognised supervisory or qualifying body within the meaning of that Part to discharge its functions as such;**]**

(i) for the purpose of enabling or assisting the Industrial Assurance Commissioner or the Industrial Assurance Commissioner for Northern Ireland to discharge his functions under the enactments relating to industrial assurance;

(j) for the purpose of enabling or assisting the Insurance Brokers Registration Council to discharge its functions under the [M46]Insurance Brokers (Registration) Act 1977;

(k) for the purpose of enabling or assisting an official receiver to discharge his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a body which is for the time being a recognised professional body for the purposes of section 391 of the [M47]Insolvency Act 1986 to discharge its functions as such;

(l) for the purpose of enabling or assisting the Building Societies Commission to discharge its functions under the [M48]Building Societies Act 1986;

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(m) for the purpose of enabling or assisting the Director General of Fair Trading to discharge his functions under this Act;

(n) for the purpose of enabling or assisting a recognised self-regulating organisation, recognised investment exchange, recognised professional body, or recognised clearing house to discharge its functions as such;

[[F152](nn) to an Operator approved under the Uncertificated Securities Regulations 1995 if the information is necessary to ensure the proper functioning of a relevant system within the meaning of those Regulations in relation to defaults and potential defaults by market-participants;**]**

(o) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by a solicitor, auditor, accountant, valuer or actuary of his professional duties;

[[F153](oo) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the discharge by a public servant of his duties;**]**

(p) for the purpose of enabling or assisting any person appointed or authorised to exercise any powers under **[**[F154]**[**[F155]section 43A or 44**]**of the Insurance Companies Act 1982, section 447 of the Companies Act 1985,**]** section 94, 106 or 177 above **[**[F154]or section 84 of the Companies Act 1989**]** to discharge his functions;

(q) for the purpose of enabling or assisting an auditor of an authorised person or a person approved under section 108 above to discharge his functions;

[[F156](qq) for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions;**]**

(r) if the information is or has been available to the public from other sources;

(s) in a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained; or

(t) in pursuance of any Community obligation.

[[F157](1A) In subsection (1)—

(a) in paragraph (oo) "public servant" means an officer or servant of the Crown or of any public or other authority for the time being designated for the purposes of that paragraph by order of the Secretary of State; and

(b) in paragraph (qq) "overseas regulatory authority" and "regulatory functions" have the same meaning as in section 82 of the Companies Act 1989.**]**

(2) Section 179 above shall not preclude the disclosure of information to the Secretary of State or to the Treasury if the disclosure is made in the interests of investors or in the public interest.

(3) Subject to subsection (4) below, section 179 above shall not preclude the disclosure of information for the purpose of enabling or assisting any public or other authority for the time being **[**[F158]designated for the purposes of this subsection**]** by an order made by the Secretary of State to discharge any functions which are specified in the order.

(4) An order under subsection (3) above designating an authority for the purposes of that subsection may—

(a) impose conditions subject to which the disclosure of information is permitted by that subsection; and

(b) otherwise restrict the circumstances in which that subsection permits disclosure.

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(5) Section 179 above shall not preclude the disclosure—

(a) of any information contained in an unpublished report of the Tribunal which has been made available to any person under this Act, by the person to whom it was made available or by any person obtaining the information directly or indirectly from him;

(b) of any information contained in any notice or copy of a notice served under this Act, notice of the contents of which has not been given to the public, by the person on whom it was served or any person obtaining the information directly or indirectly from him;

(c) of any information contained in the register kept under section 102 above by virtue of subsection (1)(e) of that section, by a person who has inspected the register under section 103(2) or (3) above or any person obtaining the information directly or indirectly from him.

(6) . . . . . [F159]

(7) Section 179 above shall not preclude the disclosure of information by the Director General of Fair Trading or any officer or servant of his or any person obtaining the information directly or indirectly from the Director or any such officer or servant if the information was obtained by the Director or any such officer or servant for the purposes of or in the discharge of his functions under this Act (whether or not he was the primary recipient of the information within the meaning of section 179 above) and the disclosure is made—

(a) for the purpose of enabling or assisting the Director, the Secretary of State or any other Minister, the Monopolies and Mergers Commission or any Northern Ireland department to discharge any function conferred on him or them by the [M49]Fair Trading Act 1973 (other than Part II or III of that Act), the [M50]Restrictive Trade Practices Act 1976 or the [M51]Competition Act 1980; or

(b) for the purposes of any civil proceedings under any of those provisions;

and information shall not be treated as restricted information for the purposes of section 179 above if it has been made available to the public by virtue of this subsection.

(8) The Secretary of State may by order modify the application of any provision of this section so as—

(a) to prevent the disclosure by virtue of that provision; or

(b) to restrict the extent to which disclosure is permitted by virtue of that provision,

of information received by a person specified in the order pursuant to a Community obligation from a person exercising functions in relation to a collective investment scheme who is also so specified.

(9) An order under **[**[F160]subsection (1A)(a), (3) or (8)**]** above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F146 S. 180(1)(bb) inserted (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para. 5**.

F147 Words inserted (21.2.1990 except to the extent that s. 75(3) refers to Pt. VII of 1989 c. 40 and 25.4.1991 to the extent that s. 75(3) refers to Pt. VII of 1989 c. 40) by Companies Act 1989 (c. 40, SIF 27), **s. 75(2)(3)(a)**; S.I. 1990/142, **art. 4**; S.I. 1991/878, art. 2, **Sch.**

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F148 S. 180(1)(e) with sub-paragraphs (i) to (iii) substituted (21.2.1990 except to the extent that s. 75(3) refers to Pt. VII of 1989 c. 40 and 25.4.1991 to the extent that s. 75(3) refers to Pt. VII of 1989 c. 40) for subsection (e) without sub-paragraphs by Companies Act 1989 (c. 40, SIF 27), **s. 75(2)(3)(b)(6)**; S.I. 1990/142, **art. 4**; S.I. 1991/878, art. 2, **Sch.**

F149 Words substituted by Banking Act 1987 (c. 22, SIF 10), s. 108(1), **Sch. 6 para. 27(3)**

F150 S. 180(1)(h) substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. I para. 5** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 4**; S.I. 1993/2213, art. 2(1), **Sch. 5**.

F151 S. 180(1)(hh) inserted (21.2.1990 to the extent that s. 75(3)(c) refers to a body established by order under s. 46 of 1989 c. 40 but otherwise*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **s. 75(2)(3)(c)**; S.I. 1990/142, **art. 4**.

F152 S. 180(1)(nn) added (19.12.1995) by S.I. 1995/3272, **reg. 40(4)**

F153 S. 180(1)(oo) inserted by Companies Act 1989 (c. 40, SIF 27), **s. 75(3)(d)**

F154 Words inserted by Companies Act 1989 (c. 40, SIF 27), **s. 75(3)(e)**

F155 Words in s. 180(1)(p) substituted (1.7.1994) by S.I. 1994/1696, **reg. 66(3)**

F156 S. 180(1)(qq) inserted by Companies Act 1989 (c. 40, SIF 27), **s. 75(3)(f)**

F157 S. 180(1A) inserted by Companies Act 1989 (c. 40, SIF 27), **s. 75(4)** (the insertion being in force by S.I. 1990/98 only in so far as it provides a definition of "public servant" for the purposes of the new s. 180(1)(oo) but being otherwise*prosp.*)

F158 Words substituted by Companies Act 1989 (c. 40, SIF 27), **s. 75(2)(5)**

F159 S. 180(6) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 75(2)(6), 212, **Sch. 24**

F160 Words substituted as provided by Companies Act 1989 (c. 40, SIF 27), **s. 75(2)(7)**

Modifications etc. (not altering text)

C197 S. 180 modified by Companies Act 1989 (c. 40, SIF 27), **s. 88(3)(b)**
S. 180 extended (with modifications) (12.2.1992) by S.I. 1992/225, **reg. 113(2)(3)(4)**.
s. 180 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para.38**
S. 180: certain functions of the Secretary of State made exercisable concurrently by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 5, **Sch. 3 para. 1**.
S. 180 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 41**.

C198 S. 180(1)(g) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 41(a)**.

Marginal Citations

M46 1977 c. 46.
M47 1986 c. 45.
M48 1986 c. 53.
M49 1973 c. 41.
M50 1976 c. 34.
M51 1980 c. 21.

181 Directions restricting disclosure of information overseas.

(1) If it appears to the Secretary of State to be in the public interest to do so, he may give a direction prohibiting the disclosure to any person in a country or territory outside the United Kingdom which is specified in the direction, or to such persons in such a country or territory as may be so specified, of such information to which this section applies as may be so specified.

(2) A direction under subsection (1) above—

(a) may prohibit disclosure of the information to which it applies by all persons or only by such persons or classes of person as may be specified in it; and

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(b) may prohibit such disclosure absolutely or in such cases or subject to such conditions as to consent or otherwise as may be specified in it;

and a direction prohibiting disclosure by all persons shall be published by the Secretary of State in such manner as appears to him to be appropriate.

(3) This section applies to any information relating to the business or other affairs of any person which was obtained (whether or not by virtue of any requirement to supply it) directly or indirectly—

(a) by a designated agency, a transferee body, the competent authority or any person appointed or authorised to exercise any powers under section 94, 106 or 177 above (or any officer or servant of any such body or person) for the purposes or in the discharge of any functions of that body or person under this Act or any rules or regulations made under this Act or of any monitoring agency functions; or

(b) by a recognised self-regulating organisation, a recognised professional body, a recognised investment exchange or a recognised clearing house other than an overseas investment exchange or clearing house (or any officer or servant of such an organisation, body, investment exchange or clearing house) for the purposes or in the discharge of any of its functions as such or of any monitoring agency functions.

(4) In subsection (3) above "monitoring agency functions" means any functions exercisable on behalf of another body by virtue of arrangements made pursuant to paragraph 4(2) of Schedule 2, paragraph 4(6) of Schedule 3, paragraph 3(2) of Schedule 4C or paragraph 3(2) of Schedule 7 to this Act or of such arrangements as are mentioned in section 39(4)(b) above.

(5) A direction under this section shall not prohibit the disclosure by any person other than a person mentioned in subsection (3) above of—

(a) information relating only to the affairs of that person; or

(b) information obtained by that person otherwise than directly or indirectly from a person mentioned in subsection (3) above.

(6) A direction under this section shall not prohibit the disclosure of information in pursuance of any Community obligation.

(7) A person who knowingly discloses information in contravention of a direction under this section shall be guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

(8) A person shall not be guilty of an offence under this section by virtue of anything done or omitted to be done by him outside the United Kingdom unless he is a British citizen, a British Dependent Territories citizen, a British Overseas citizen or a body corporate incorporated in the United Kingdom.

Modifications etc. (not altering text)

C199 S. 181 extended (12.2.1992) by S.I. 1992/225, **reg. 113(5)**.
S. 181: certain functions of the Secretary of State made exercisable concurrently by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 5, **Sch. 3 para.1**.

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182 Disclosure of information under enactments relating to fair trading, banking, insurance and companies.

The enactments mentioned in Schedule 13 to this Act shall have effect with the amendments there specified (which relate to the circumstances in which information obtained under those enactments may be disclosed).

PART IX

RECIPROCITY

183 Reciprocal facilities for financial business.

(1) If it appears to the Secretary of State or the Treasury that by reason of—
  (a) the law of any country outside the United Kingdom; or
  (b) any action taken by or the practices of the government or any other authority or body in that country,

persons connected with the United Kingdom are unable to carry on investment, insurance or banking business in, or in relation to, that country on terms as favourable as those on which persons connected with that country are able to carry on any such business in, or in relation to, the United Kingdom, the Secretary of State or, as the case may be, the Treasury may serve a notice under this subsection on any person connected with that country who is carrying on or appears to them to intend to carry on any such business in, or in relation to, the United Kingdom.

(2) No notice shall be served under subsection (1) above unless the Secretary of State or, as the case may be, the Treasury consider it in the national interest to serve it; and before doing so the Secretary of State or, as the case may be, the Treasury shall so far as they consider expedient consult such body or bodies as appear to them to represent the interests of persons likely to be affected.

(3) A notice under subsection (1) above shall state the grounds on which it is given (identifying the country in relation to which those grounds are considered to exist); and any such notice shall come into force on such date as may be specified in it.

(4) For the purposes of this section a person is connected with a country if it appears to the Secretary of State or, as the case may be, the Treasury—
  (a) in the case of an individual, that he is a national of or resident in that country or carries on investment, insurance or banking business from a principal place of business there;
  (b) in the case of a body corporate, that it is incorporated or has a principal place of business in that country or is controlled by a person or persons connected with that country;
  (c) in the case of a partnership, that it has a principal place of business in that country or that any partner is connected with that country;
  (d) in the case of an unincorporated association which is not a partnership, that it is formed under the law of that country, has a principal place of business there or is controlled by a person or persons connected with that country.

(5) In this section "country" includes any territory or part of a country or territory; and where it appears to the Secretary of State or, as the case may be, the Treasury that there are such grounds as are mentioned in subsection (1) above in the case of any part

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of a country or territory their powers under that subsection shall also be exercisable in respect of any person who is connected with that country or territory or any other part of it.

Modifications etc. (not altering text)

C200 S. 183 explained by Banking Act 1987 (c. 22, SIF 10), **s. 91**

S. 183: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(a)**.

184 Investment and insurance business.

(1) A notice under section 183 above relating to the carrying on of investment business or insurance business shall be served by the Secretary of State and such a notice may be a disqualification notice, a restriction notice or a partial restriction notice and may relate to the carrying on of business of both kinds.

(2) A disqualification notice as respects investment business or insurance business shall have the effect of—

(a) cancelling any authorisation of the person concerned to carry on that business after the expiry of such period after the service of the notice as may be specified in it;

(b) disqualifying him from becoming authorised to carry on that business after the expiry of that period; and

(c) restricting any authorisation of the person concerned in respect of that business during that period to the performance of contracts entered into before the notice comes into force;

and the period specified in such a notice shall be such period as appears to the Secretary of State to be reasonable to enable the person on whom it is served to complete the performance of those contracts and to terminate such of them as are of a continuing nature.

(3) A restriction notice as respects investment business or insurance business shall have the effect of restricting any authorisation of the person concerned in respect of that business to the performance of contracts entered into before the notice comes into force.

(4) A partial restriction notice as respects investment business may prohibit the person concerned from—

(a) entering into transactions of any specified kind or entering into them except in specified circumstances or to a specified extent;

(b) soliciting business from persons of a specified kind or otherwise than from such persons;

(c) carrying on business in a specified manner or otherwise than in a specified manner.

(5) A partial restriction notice as respects insurance business may direct that the person concerned shall cease to be authorised under section 3 or 4 of the [M52]Insurance Companies Act 1982 to effect contracts of insurance of any description specified in the notice.

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(6) If it appears to the Secretary of State that a person on whom he serves a notice under section 183 above as respects investment business is an authorised person by virtue of an authorisation granted by a designated agency or by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body he shall serve a copy of the notice on that agency, organisation or body.

(7) If it appears to the Secretary of State—

(a) that any person on whom a partial restriction notice has been served by him has contravened any provision of that notice or, in the case of a notice under subsection (5) above, effected a contract of insurance of a description specified in the notice; and

(b) that any such grounds as are mentioned in subsection (1) of section 183 above still exist in the case of the country concerned,

he may serve a disqualification notice or a restriction notice on him under that section.

(8) Sections 28, 33, 60, 61 and 62 above shall have effect in relation to a contravention of such a notice as is mentioned in subsection (4) above as they have effect in relation to any such contravention as is mentioned in those sections.

Modifications etc. (not altering text)

C201 S. 184: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(b)**.
S. 184 restricted (1.11.1992) by S.R. 1980/346, Order 93, rule 7 (as inserted by S.R. 1992/399, **rule15**).

Marginal Citations

M52 1982 c. 50.

185 Banking business.

(1) A notice under section 183 above relating to the carrying on of a deposit-taking business as **[**[F161]an authorised institution within the meaning of the Banking Act 1987**]** shall be served by the Treasury and may be either a disqualification notice or a partial restriction notice.

(2) A disqualification notice relating to such business shall have the effect of—

(a) cancelling any **[**[F162]authorisation**]** granted to the person concerned under the **[**[F162]Banking Act 1987**]**; and

(b) disqualifying him from becoming **[**[F162]an authorised institution**]** within the meaning of that Act.

(3) A partial restriction notice relating to such business may—

(a) prohibit the person concerned from dealing with or disposing of his assets in any manner specified in the direction;

(b) impose limitations on the acceptance by him of deposits;

(c) prohibit him from soliciting deposits either generally or from persons who are not already depositors;

(d) prohibit him from entering into any other transaction or class of transactions;

(e) require him to take certain steps, to pursue or refrain from pursuing a particular course of activities or to restrict the scope of his business in a particular way.

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(4) The Treasury shall serve on the Bank of England a copy of any notice served by them under section 183 above.

(5) Any person who contravenes any provision of a partial restriction notice served on him by the Treasury under this section shall be guilty of an offence and liable—
   (a) on conviction on indictment, to a fine;
   (b) on summary conviction, to a fine not exceeding the statutory maximum.

(6) Any such contravention shall be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty, but no such contravention shall invalidate any transaction.

(7) . . . . . [F163]

Textual Amendments

F161 Words substituted by Banking Act 1987 (c. 22, SIF 10), s. 108(1), **Sch. 6 para. 27(4)(a)**

F162 Words substituted by Banking Act 1987 (c. 22, SIF 10), s. 108(1), **Sch. 6 para. 27(4)(b)**

F163 S. 185(7) repealed by Banking Act 1987 (c. 22, SIF 10), s. 108(2), **Sch. 7 Pt. I**

186 Variation and revocation of notices.

(1) The Secretary of State or the Treasury may vary a partial restriction notice served under section 183 above by a notice in writing served on the person concerned; and any such notice shall come into force on such date as is specified in the notice.

(2) A notice under section 183 above may be revoked at any time by the Secretary of State or, as the case may be, the Treasury by serving a revocation notice on the person concerned; and the Secretary of State or, as the case may be, the Treasury shall revoke a notice if it appears to them that there are no longer any such grounds as are mentioned in subsection (1) of that section in the case of the country concerned.

(3) The revocation of a disqualification notice as respects investment business or insurance business shall not have the effect of reviving the authorisation which was cancelled by the notice except where the notice relates to investment business and the person concerned would (apart from the disqualification notice) at the time of the revocation be an authorised person as respects the investment business in question by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body.

(4) The revocation of a disqualification notice as respects banking business shall not have the effect of reviving the **[**[F164]authorisation**]** which was cancelled by the notice.

(5) Nothing in subsection (3) or (4) above shall be construed as preventing any person who has been subject to a disqualification notice as respects any business from again becoming authorised . . . [F165] after the revocation of the notice.

(6) If it appears to the Secretary of State that a person on whom he serves a notice under this section as respects investment business was an authorised person by virtue of an authorisation granted by a designated agency or by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional

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body at the time that the notice which is being varied or revoked was served, he shall serve a copy of the notice on that agency, organisation or body.

(7) The Treasury shall serve on the Bank of England a copy of any notice served by them under this section **[**[F166]which varies or revokes a notice relating to the carrying on of a deposit-taking business as mentioned in section 185 above.**]**

Textual Amendments

F164 Words substituted by Banking Act 1987 (c. 22, SIF 10), s. 108(1), **Sch. 6 para. 27(5)(a)**

F165 Words repealed by Banking Act 1987 (c. 22, SIF 10), s. 108(1)(2), Sch. 6 para. 27(5)(b), **Sch. 7 Pt. I**

F166 Words in s. 186(7) inserted (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para.6**.

Modifications etc. (not altering text)

C202 S. 186: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(d)**.

PART X

MISCELLANEOUS AND SUPPLEMENTARY

187 Exemption from liability for damages.

(1) Neither a recognised self-regulating organisation nor any of its officers or servants or members of its governing body shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions to which this subsection applies unless the act or omission is shown to have been in bad faith.

(2) The functions to which subsection (1) above applies are the functions of the organisation so far as relating to, or to matters arising out of—

(a) the rules, practices, powers and arrangements of the organisation to which the requirements in paragraphs 1 to 6 of Schedule 2 to this Act apply;

(b) the obligations with which paragraph 7 of that Schedule requires the organisation to comply;

(c) any guidance issued by the organisation;

(d) the powers of the organisation under section 53(2), 64(4), 72(5), 73(5) or 105(2)(a) above; or

(e) the obligations to which the organisation is subject by virtue of this Act.

(3) No designated agency or transferee body nor any member, officer or servant of a designated agency or transferee body shall be liable in damages for anything done or omitted in the discharge or purported discharge of the functions exercisable by the agency by virtue of a delegation order or, as the case may be, the functions exercisable by the body by virtue of a transfer order unless the act or omission is shown to have been in bad faith.

(4) Neither the competent authority nor any member, officer, or servant of that authority shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions of the authority under Part IV of this Act unless the act or omission is shown to have been in bad faith.

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(5) The functions to which subsections (1) and (3) above apply also include any functions exercisable by a recognised self-regulating organisation, designated agency or transferee body on behalf of another body by virtue of arrangements made pursuant to paragraph 4(2) of Schedule 2, paragraph 4(6) of Schedule 3, paragraph 3(2) of Schedule 4 or paragraph 3(2) of Schedule 7 to this Act or of such arrangements as are mentioned in section 39(4)(b) above.

(6) A recognised professional body may make it a condition of any certificate issued by it for the purposes of Part I of this Act that neither the body nor any of its officers or servants or members of its governing body is to be liable in damages for anything done or omitted in the discharge or purported discharge of any functions to which this subsection applies unless the act or omission is shown to have been in bad faith.

(7) The functions to which subsection (6) above applies are the functions of the body so far as relating to, or to matters arising out of—

(a) the rules, practices and arrangements of the body to which the requirements in paragraphs 2 to 5 of Schedule 3 to this Act apply;

(b) the obligations with which paragraph 6 of that Schedule requires the body to comply;

(c) any guidance issued by the body in respect of any matters dealt with by such rules as are mentioned in paragraph (a) above;

(d) the powers of the body under the provisions mentioned in subsection (2)(d) above or under section 54(3) above; or

(e) the obligations to which the body is subject by virtue of this Act.

Modifications etc. (not altering text)

C203 S. 187 continued (1.12.2001) by S.I. 2001/3650, **arts. 1(a)**, 24(2)(c)(5)

C204 S. 187(4) extended (12.2.1992) by S.I. 1992/225, **reg. 94(6)**.
S. 187(4) extended (12.2.1992) by S.I. 1992/225, **reg.117**.
s. 187(4) applied (19.6.1995) by 1995/1537,reg. 23(1)
s. 187(3) applied (with modifications)(19.12.1995) by S.I. 1995/3272, **reg. 11(9)**

[[F167]188 Jurisdiction of High Court and Court of Session.

(1) Proceedings arising out of any act or omission (or proposed act or omission) of—

(a) a recognised self-regulating organisation,

(b) a designated agency,

(c) a transferee body, or

(d) the competent authority,

in the discharge or purported discharge of any of its functions under this Act may be brought in 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.**]**

Textual Amendments

F167 S. 188 substituted by Companies Act 1989 (c. 40, SIF 27), **s. 200(1)**

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Modifications etc. (not altering text)
C205 S. 188 applied (19.6.1995) by S.I. 1995/1537, **reg. 23(2)**

189 Restriction of Rehabilitation of Offenders Act 1974.

(1) The [M53]Rehabilitation of Offenders Act 1974 shall have effect subject to the provisions of this section in cases where the spent conviction is for—

(a) an offence involving fraud or other dishonesty; or

(b) an offence under legislation (whether or not of the United Kingdom) relating to companies [F168]. . ., building societies, industrial and provident societies, credit unions, friendly societies, insurance, banking or other financial services, insolvency, consumer credit or consumer protection **[**[F169]or insider dealing**]**.

(2) Nothing in section 4(1) (restriction on evidence as to spent convictions in proceedings) shall prevent the determination in any proceedings specified in Part I of Schedule 14 to this Act of any issue, or prevent the admission or requirement in any such proceedings of any evidence, relating to a person's previous convictions for any such offence as is mentioned in subsection (1) above or to circumstances ancillary thereto.

(3) A conviction for any such offence as is mentioned in subsection (1) above shall not be regarded as spent for the purposes of section 4(2) (questions relating to an individual's previous convictions) if—

(a) the question is put by or on behalf of a person specified in the first column of Part II of that Schedule and relates to an individual (whether or not the person questioned) specified in relation to the person putting the question in the second column of that Part; and

(b) the person questioned is informed when the question is put that by virtue of this section convictions for any such offence are to be disclosed.

(4) Section 4(3)(b) (spent conviction not to be ground for excluding person from office, occupation etc.) shall not prevent a person specified in the first column of Part III of that Schedule from taking such action as is specified in relation to that person in the second column of that Part by reason, or partly by reason, of a spent conviction for any such offence as is mentioned in subsection (1) above of an individual who is—

(a) the person in respect of whom the action is taken;

(b) as respects action within paragraph 1 or 4 of that Part, an associate of that person; or

(c) as respects action within paragraph 1 of that Part consisting of a decision to refuse or revoke an order declaring a collective investment scheme to be an authorised unit trust scheme or a recognised scheme, the operator or trustee of the scheme or an associate of his,

or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

(5) Parts I, II and III of that Schedule shall have effect subject to Part IV.

(6) In this section and that Schedule "associate" means—

(a) in relation to a body corporate, a director, manager or controller;

(b) in relation to a partnership, a partner or manager;

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(c) in relation to a [[F170]registered] friendly society, a trustee, manager or member of the committee of the society;

(d) in relation to an unincorporated association, a member of its governing body or an officer, manager or controller;

(e) in relation to an individual, a manager.

(7) This section and that Schedule shall apply to Northern Ireland with the substitution for the references to the said Act of 1974 and section 4(1), (2) and (3)(b) of that Act of references to the [M54]Rehabilitation of Offenders (Northern Ireland) Order 1978 and Article 5(1), (2) and (3)(b) of that Order.

Textual Amendments

F168 Words in s. 189(1)(b) repealed (1.3.1994) by 1993 c. 36, s. 79(13)(14), Sch. 5 para. 11, **Sch. 6 Pt.I**; S.I. 1994/242, art. 2, **Sch.** Appendix

F169 Words in s. 189(1)(b) inserted (1.3.1994) by 1993 c. 36, s. 79(13), **Sch. 5 para.11**; S.I. 1994/242, art. 2, **Sch.**

F170 Word in s. 189(6)(c) repealed (*prosp.*) by virtue of Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 22 Pt.I** (with ss. 7(5), 93(4)) (where the repeal is expressed to be in s. 189(5)(c)).

Modifications etc. (not altering text)

C206 S. 189 continued (1.12.2001) by S.I. 2001/3650, **art. 16(1)(a)**

C207 S. 189 continued (S.) (with modifications) (*temp.* from 1.12.2001) by S.I. 2001/3640, **arts. 1(2)**, 3(1)

C208 S. 189 amended (12.2.1992) by S.I. 1992/225, **reg. 115**.
S. 189 amended (*temp.* from 3.9.2001 until 1.12.2001) by S.I. 2001/2659, **art. 6(1)**; S.I. 2001/3538, **art. 2(1)**

Marginal Citations

M53 1974 c. 53.

M54 1978/1908 (N.I. 27).

190 Data protection.

An order under section 30 of the [M55]Data Protection Act 1984 (exemption from subject access provisions of data held for the purpose of discharging designated functions conferred by or under enactments relating to the regulation of financial services etc.) may designate for the purposes of that section as if they were functions conferred by or under such an enactment as is there mentioned—

(a) any functions of a recognised self-regulating organisation in connection with the admission or expulsion of members, the suspension of a person's membership or the supervision or regulation of persons carrying on investment business by virtue of membership of the organisation;

(b) any functions of a recognised professional body in connection with the issue of certificates for the purposes of Part I of this Act, the withdrawal or suspension of such certificates or the supervision or regulation of persons carrying on investment business by virtue of certification by that body;

(c) any functions of a recognised self-regulating organisation for friendly societies in connection with the supervision or regulation of its member societies.

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Modifications etc. (not altering text)
C209 S. 190 amended (12.2.1992) by S.I. 1992/225, **reg.114**.

Marginal Citations
M55 1984 c. 35.

191 Occupational pension schemes.

(1) Subject to the provisions of this section, a person who apart from this section would not be regarded as carrying on investment business shall be treated as doing so if he engages in the activity of management falling within paragraph 14 of Schedule 1 to this Act in a case where the assets referred to in that paragraph are held for the purposes of an occupational pension scheme.

(2) Subsection (1) above does not apply where all decisions, or all day to day decisions, in the carrying on of that activity so far as relating to assets which are investments are taken on behalf of the person concerned by—
  (a) an authorised person;
  (b) an exempted person who in doing so is acting in the course of the business in respect of which he is exempt; or
  (c) a person who does not require authorisation to manage the assets by virtue of Part IV of Schedule 1 to this Act.

(3) The Secretary of State may by order direct that a person of such description as is specified in the order shall not by virtue of this section be treated as carrying on investment business where the assets are held for the purposes of an occupational pension scheme of such description as is so specified, being a scheme in the case of which it appears to the Secretary of State that management by an authorised or exempted person is unnecessary having regard to the size of the scheme and the control exercisable over its affairs by the members.

(4) An order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) For the purposes of subsection (1) above paragraph 14 of Schedule 1 to this Act shall be construed without reference to paragraph 22 of that Schedule.

Modifications etc. (not altering text)
C210 S. 191 excluded by S.I. 1988/724, **art. 2(1)**
S. 191 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.42**.
s. 191 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 39**

[F171 192 International obligations.

(1) If it appears to the Secretary of State—
  (a) that any action proposed to be taken by an authority or body to which this section applies would be incompatible with Community obligations or any other international obligations of the United Kingdom, or

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(b) that any action which that authority or body has power to take is required for the purpose of implementing any such obligation,

he may direct the authority or body not to take or, as the case may be, to take the action in question.

(2) The authorities and bodies to which this section applies are the following—

(a) a recognised self-regulating organisation,

(b) a recognised investment exchange (other than an overseas investment exchange),

(c) a recognised clearing house (other than an overseas clearing house),

(d) a designated agency,

(e) a transferee body,

(f) a competent authority.

[F172](3) . . . . . .

(4) A direction under this section may include such supplementary or incidental requirements as the Secretary of State thinks necessary or expedient.

(5) Where the function of making or revoking a recognition order in respect of an authority or body to which this section applies is exercisable by a designated agency, any direction in respect of that authority or body shall be a direction requiring the agency to give the authority or body such a direction as is specified in the direction given by the Secretary of State.

(6) A direction under this section is enforceable, on the application of the person who gave it, by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.**]**

Textual Amendments

F171 S. 192 with subsections (1) to (6) substituted (25.4.1991) for s. 192 with subsections (1) to (5) by Companies Act 1989 (c. 40, SIF 27), **s. 201**; S.I. 1991/878, art. 2, **Sch.**

F172 S. 192(3) repealed (19.6.1995) by S.I. 1995/1537, regs. 1(1), 17, **Sch. 2 Pt. II para. 5(d)**

Modifications etc. (not altering text)

C211 S. 192(1)(4)(6) extended (12.2.1992) by S.I. 1992/225, **reg. 6(7)**.
s. 192 applied (19.6.1995) by S.I. 1995/1537, **reg. 23(3)**

193 [F173]. . . . . .

Textual Amendments

F173 S. 193 repealed by Banking Act 1987 (c. 22, SIF 10), s. 108(2), **Sch. 7 Pt. I**

194 Transfers to or from recognised clearing houses.

(1) In section 5 of the [M56]Stock Exchange (Completion of Bargains) Act 1976 (protection of trustees etc. in case of transfer of shares etc. to or from a stock exchange nominee)—

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(a) for the words "a stock exchange nominee", in the first place where they occur, there shall be substituted the words "a recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange";

(b) for those words in the second place where they occur there shall be substituted the words "such a clearing house or nominee";

(c) at the end there shall be added the words "; but no person shall be a nominee for the purposes of this section unless he is a person designated for the purposes of this section in the rules of the recognised investment exchange in question".

(2) The provisions of that section as amended by subsection (1) above shall become subsection (1) of that section and after that subsection there shall be inserted—

"(2) In this section "recognised clearing house" means a recognised clearing house within the meaning of the Financial Services Act 1986 acting in relation to a recognised investment exchange within the meaning of that Act and "a recognised investment exchange" has the same meaning as in that Act."

(3) In Article 7 of the [M57]Stock Exchange (Completion of Bargains) (Northern Ireland) Order 1977 (protection of trustees etc. in case of transfer of shares etc. to or from a stock exchange nominee)—

(a) for the words "a stock exchange nominee", in the first place where they occur, there shall be substituted the words "a recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange";

(b) for those words in the second place where they occur there shall be substituted the words "such a clearing house or nominee";

(c) at the end there shall be added the words "; but no person shall be a nominee for the purposes of this Article unless he is a person designated for the purposes of this Article in the rules of the recognised investment exchange in question".

(4) The provisions of that Article as amended by subsection (3) above shall become paragraph (1) of that Article and after that paragraph there shall be inserted—

"(2) In this Article "a recognised clearing house" means a recognised clearing house within the meaning of the Financial Services Act 1986 acting in relation to a recognised investment exchange within the meaning of that Act and "a recognised investment exchange" has the same meaning as in that Act."

(5) In subsection (4) of section 185 of the [M58]Companies Act 1985 (exemption from duty to issue certificates in respect of shares etc. in cases of allotment or transfer to a stock exchange nominee)—

(a) for the words "a stock exchange nominee" in the first place where they occur there shall be substituted the words "a recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange";

(b) for those words in the second place where they occur there shall be substituted the words "such a clearing house or nominee";

(c) at the end of the first paragraph in that subsection there shall be inserted the words "; but no person shall be a nominee for the purposes of this section unless he is a person designated for the purposes of this section in the rules of the recognised investment exchange in question"; and

(d) for the second paragraph in that subsection there shall be substituted—

""Recognised clearing house" means a recognised clearing house within the meaning of the Financial Services Act 1986 acting

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in relation to a recognised investment exchange and "recognised investment exchange" has the same meaning as in that Act.".

(6) In paragraph (4) of Article 195 of the [M59]Companies (Northern Ireland) Order 1986 (duty to issue certificates in respect of shares etc. in cases of allotment or transfer unless it is to a stock exchange nominee)—

(a) for the words "a stock exchange nominee" in the first place where they occur there shall be substituted the words "a recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange";

(b) for those words in the second place where they occur there shall be substituted the words "such a clearing house or nominee";

(c) at the end of the first sub-paragraph in that paragraph there shall be inserted the words "; but no person shall be a nominee for the purposes of this Article unless he is a person designated for the purposes of this Article in the rules of the recognised investment exchange in question"; and

(d) for the second sub-paragraph in that paragraph there shall be substituted " "recognised clearing house" means a recognised clearing house within the meaning of the Financial Services Act 1986 acting in relation to a recognised investment exchange and "recognised investment exchange" has the same meaning as in that Act.".

Marginal Citations

M56 1976 c. 47.
M57 S.I. 1977/1254 (N.I. 21).
M58 1985 c. 6.
M59 S.I. 1986/1032 (N.I.6.)

[[F174]195 Offers of short-dated debentures.

As respects debentures which, under the terms of issue, must be repaid within less than one year of the date of issue—

(a) section 79(2) of the [M60]Companies Act 1985 (offer of debentures of oversea company deemed not to be an offer to the public if made to professional investor) shall apply for the purposes of Chapter I of Part III of that Act as well as for those of Chapter II of that Part; and

(b) Article 89(2) of the [M61]Companies (Northern Ireland) Order 1986 (corresponding provisions for Northern Ireland) shall apply for the purposes of Chapter I of Part IV of that Order as well as for those of Chapter II of that Part.]

Textual Amendments

F174 S. 195 repealed (*prosp.*) by Financial Services Act 1986 (c. 60, SIF 69) s. 212(3), Sch. 17

Modifications etc. (not altering text)

C212 S. 195 amended by Companies Act 1989 (c. 40, SIF 27), **s. 202**

Marginal Citations

M60 1985 c. 6.

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M61 S.I. 1986/1032 (N.I.6).

196 Financial assistance for employees' share schemes.

(1) Section 153 of the [M62]Companies Act 1985 (transactions not prohibited by section 151) shall be amended as follows.

(2) After subsection (4)(b) there shall be inserted—

"(bb) without prejudice to paragraph (b), the provision of financial assistance by a company or any of its subsidiaries for the purposes of or in connection with anything done by the company (or a company connected with it) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company between, and involving the acquisition of beneficial ownership of those shares by, any of the following persons—

(i) the bona fide employees or former employees of that company or of another company in the same group; or

(ii) the wives, husbands, widows, widowers, children or step-children under the age of eighteen of any such employees or former employees.".

[F175](3) . . . . . .

(4) Article 163 of the Companies (Northern Ireland) Order 1986 (transactions not prohibited by Article 161) shall be amended as follows.

(5) After paragraph (4)(b) there shall be inserted—

"(bb) without prejudice to sub-paragraph (b), the provision of financial assistance by a company or any of its subsidiaries for the purposes of or in connection with anything done by the company (or a company connected with it) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company between, and involving the acquisition of beneficial ownership of those shares by, any of the following persons—

(i) the bona fide employees or former employees of that company or of another company in the same group; or

(ii) the wives, husbands, widows, widowers, children, step-children or adopted children under the age of eighteen of such employees or former employees."

[[F176](6) After paragraph (4) there shall be inserted—

"(5) For the purposes of paragraph (4)(bb) a company is connected with another company if—

(a) they are in the same group; or

(b) one is entitled, either alone or with any other company in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other company or of its holding company;

and in this Article "group", in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company."**]**

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Textual Amendments

F175 S. 196(3) repealed (1.10.1991) by Companies Act 1989 (c. 40, SIF 27), s. 212, **Sch. 24**; S.I. 1991/1996, **art. 2(1)(c)(iii)**.

F176 S. 196(6) repealed (29.3.1993) by S.I. 1990/1504 (N.I. 10), art. 113, **Sch. 6**; S.R. 1993/64, **art. 2(c)(ii)**.

Marginal Citations

M62 1985 c. 6.

197 Disclosure of interests in shares: interest held by market maker.

(1) In section 209 of the [M63]Companies Act 1985 (interests to be disregarded for purposes of sections 198 to 202)—

(a) in subsection (1)(f) after the word "jobber" there shall be inserted the words "or market maker";

(b) after subsection (4) there shall be inserted—

"(4A) A person is a market maker for the purposes of subsection (1)(f) if—

(a) he holds himself out at all normal times in compliance with the rules of a recognised investment exchange other than an overseas investment exchange (within the meaning of the Financial Services Act 1986) as willing to buy and sell securities at prices specified by him; and

(b) is recognised as doing so by that investment exchange;

and an interest of such a person in shares is an exempt interest if he carries on business as a market maker in the United Kingdom, is subject to such rules in the carrying on of that business and holds the interest for the purposes of that business.".

(2) In Article 217 of the [M64]Companies (Northern Ireland) Order 1986 (interests to be disregarded for purposes of Articles 206 to 210 (disclosure of interests in shares))—

(a) in paragraph (1)(d) after the word "jobber" there shall be inserted the words "or market maker";

(b) after paragraph (4) there shall be inserted—

"(4A) A person is a market maker for the purposes of paragraph (1)(d) if—

(a) he holds himself out at all normal times in compliance with the rules of a recognised investment exchange other than an overseas investment exchange (within the meaning of the Financial Services Act 1986) as willing to buy and sell securities at prices specified by him; and

(b) is recognised as doing so by that investment exchange,

and an interest of such a person in shares is an exempt interest if he carries on business as a market maker in the United Kingdom, is subject to such rules in the carrying on of that business and holds the interest for the purposes of that business.".

Marginal Citations

M63 1985 c. 6.

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M64 S.I. 1986/1032 (N.I.6).

198 Power to petition for winding up etc. on information obtained under Act.

(1) . . . . . [F177]

(2) In section 8 of the Company Directors Disqualification Act 1986—

(a) after the words "the Companies Act" there shall be inserted the words "or section 94 or 177 of the Financial Services Act 1986"; and

(b) for the words "that Act" there shall be substituted the words "the Companies Act or section 105 of the Financial Services Act 1986".

[F178](3) . . . . . .

Textual Amendments

F177 S. 198(1) repealed by Companies Act 1989 (c. 40, SIF 27), s. 212, **Sch. 24**

F178 S. 198(3) repealed (1.10.1991) by S.I. 1990/1504 (N.I. 10), art. 113, **Sch. 6**; S.R. 1991/438, **art. 5(b)**

199 Powers of entry.

[[F179](1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State that there are reasonable grounds for believing that an offence has been committed—

(a) under section 4, 47, 57, 130, **[**[F180]or 133**]** above, or

[F181]**[**(b) under Part V of the Criminal Justice Act 1993 (insider dealing).**]**

and that there are on any premises documents relevant to the question whether that offence has been committed.

(2) A justice of the peace may also issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, or by a person appointed or authorised to exercise powers under section 94, 106 or 177 above, that there are reasonable grounds for believing that there are on any premises documents whose production has been required under section 94, 105 or 177 above and which have not been produced in compliance with the requirement.**]**

(3) A warrant under this section shall authorise a constable, together with any other person named in it and any other constables—

(a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;

(b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in **[**[F182]subsection (1)**]** or, as the case may be, in subsection (2) above or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) to take copies of any such documents; and

(d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.

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(4) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(5) Any documents of which possession is taken under this section may be retained—

(a) for a period of three months; or

[[F183](b) if within that period proceedings to which the documents are relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.**]**

(6) Any person who **[**[F184]intentionally**]** obstructs the exercise of any rights conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (3)(d) above shall be guilty of an offence and liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(7) The functions to which section 114 above applies shall include the functions of the Secretary of State under this section; but if any of those functions are transferred under that section the transfer may be subject to a reservation that they are to be exercisable by the Secretary of State concurrently with the designated agency and, in the case of functions exercisable by virtue of **[**[F185]subsection (1) above**]**, so as to be exercisable by the agency subject to such conditions or restrictions as the **[**[F186]Treasury**]** may from time to time impose.

[[F187](8) In the application of this section to Scotland for the references to a justice of the peace substitute references to a justice of the peace or a sheriff, and for the references to information on oath substitute references to evidence on oath.**]**

[[F188](8A) In the application of this section to Northern Ireland for the references to information on oath substitute references to complaint on oath.**]**

(9) In this section "documents" includes information recorded in any form . . . [F189]

Textual Amendments

F179 S. 199(1)(2) substituted by Companies Act 1989 (c. 40, SIF 27), **s. 76(2)**
F180 Words in s. 199(1) substituted (19.6.1995) by S.I. 1995/1537, reg. 17, **Sch. 2 para. 7**
F181 S. 199(1)(b) substituted (1.3.1993) c. 36, s. 78(3), Sch. 5 para. 12(1); S.I. 1994/242, art. 2, **Sch.**
F182 Words substituted by Companies Act 1989 (c. 40, SIF 27), **s. 76(3)**
F183 S. 199(5)(b) substituted by Companies Act 1989 (c. 40, SIF 27), **s. 76(4)**
F184 Word inserted by Companies Act 1989 (c. 40, SIF 27), **s. 76(5)**
F185 Words substituted by Companies Act 1989 (c. 40, SIF 27), **s. 76(6)**
F186 Words in s. 199(7) substituted (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para. 3**.
F187 S. 199(8) substituted by Companies Act 1989 (c. 40, SIF 27), **s. 76(7)**
F188 S. 199(8A) inserted (1.3.1994) by 1993 c. 36, s. 78(3), **Sch. 5 para. 12(2)**; S.I. 1994/242, art. 2, **Sch.**
F189 Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 76(8), 212, **Sch. 24**

Modifications etc. (not altering text)

C213 S. 199: certain functions transferred by S.I. 1987/942, **arts. 5**, 6
C214 S. 199 applied (19.6.1995) by S.I. 1995/1537, **reg. 23(4)**
C215 S. 199(3): Powers of seizure extended (*prosp.*) by 2001 c. 16, s. 50, 52-54, 68, **Sch. 1 Pt. 1 para. 40**
C216 S. 199(5) applied (*prosp.*) by 2001 c. 16, **ss. 57(1)(h)(4)**, 138(2)

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200 False and misleading statements.

(1) A person commits an offence if—

(a) for the purposes of or in connection with any application under this Act; or

(b) in purported compliance with any requirement imposed on him by or under this Act,

he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.

(2) A person commits an offence if, not being an authorised person or exempted person, he—

(a) describes himself as such a person; or

(b) so holds himself out as to indicate or be reasonably understood to indicate that he is such a person.

(3) A person commits an offence if, not having a status to which this subsection applies, he—

(a) describes himself as having that status, or

(b) so holds himself out as to indicate or be reasonably understood to indicate that he has that status.

(4) Subsection (3) above applies to the status of recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house.

(5) A person guilty of an offence under subsection (1) above shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(6) A person guilty of an offence under subsection (2) or (3) above shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the fifth level on the standard scale or to both.

(7) Where a contravention of subsection (2) or (3) above involves a public display of the offending description or other matter the maximum fine that may be imposed under subsection (6) above shall be an amount equal to the fifth level on the standard scale multiplied by the number of days for which the display has continued.

(8) In proceedings brought against any person for an offence under subsection (2) or (3) above it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Modifications etc. (not altering text)

C217 S. 200(1)(5) applied (19.6.1995) by S.I. 1995/1537, **reg. 23(5)**

201 Prosecutions.

(1) Proceedings in respect of an offence under any provision of this Act other than section 133 or 185 shall not be instituted—

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(a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions; or

(b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

(2) Proceedings in respect of an offence under section 133 above shall not be instituted—

(a) in England and Wales, except by or with the consent of the Secretary of State, the Industrial Assurance Commissioner or the Director of Public Prosecutions; or

(b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

(3) Proceedings in respect of an offence under section 185 above shall not be instituted—

(a) in England and Wales, except by or with the consent of the Treasury or the Director of Public Prosecutions; or

(b) in Northern Ireland, except by or with the consent of the Treasury or the Director of Public Prosecutions for Northern Ireland.

(4) The functions to which section 114 above applies shall include the function of the Secretary of State under subsection (1) above to institute proceedings but any transfer of that function shall be subject to a reservation that it is to be exercisable by him concurrently with the designated agency and so as to be exercisable by the agency subject to such conditions or restrictions as the **[**[F190]Treasury**]** may from time to time impose.

Textual Amendments

F190 Words in s. 201(4) substituted (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para.3**.

Modifications etc. (not altering text)

C218 S. 201(1): certain functions transferred by S.I. 1987/942, art. 7, **Sch. 3**
s. 201(1) applied (19.6.1995) by S.I. 1995/1537, reg.. 23(6)

202 Offences by bodies corporate, partnerships and unincorporated associations.

(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity; or

(b) a controller of the body corporate,

he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by the members subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where a partnership is guilty of an offence under this Act every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, shall also be guilty of that offence and be liable to be proceeded against and punished accordingly.

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(4) Where an unincorporated association (other than a partnership) is guilty of an offence under this Act—

(a) every officer of the association who is bound to fulfil any duty of which the breach is the offence; or

(b) if there is no such officer, every member of the governing body other than a member who is proved to have been ignorant of or to have attempted to prevent the commission of the offence,

shall also be guilty of the offence and be liable to be proceeded against and punished accordingly.

Modifications etc. (not altering text)

C219 S. 202 applied (19.6.1995) by S.I. 1995/1537, **reg. 23(6)**

203 Jurisdiction and procedure in respect of offences.

(1) Summary proceedings for an offence under this Act may, without prejudice to any jurisdiction exercisable apart from this section, be taken against any body corporate or unincorporated association at any place at which it has a place of business and against an individual at any place where he is for the time being.

(2) Proceedings for an offence alleged to have been committed under this Act by an unincorporated association shall be brought in the name of the association (and not in that of any of its members) and for the purposes of any such proceedings any rules of court relating to the service of documents shall have effect as if the association were a corporation.

(3) Section 33 of the [M65]Criminal Justice Act 1925 and Schedule 3 to the [M66]Magistrates' Courts Act 1980 (procedure on charge of offence against a corporation) shall have effect in a case in which an unincorporated association is charged in England and Wales with an offence under this Act in like manner as they have effect in the case of a corporation.

(4) In relation to any proceedings on indictment in Scotland for an offence alleged to have been committed under this Act by an unincorporated association, **[**[F191]section 70 of the Criminal Procedure (Scotland) Act 1995**]** (proceedings on indictment against bodies corporate) shall have effect as if the association were a body corporate.

(5) Section 18 of the Criminal Justice Act (Northern Ireland) 1945 and Schedule 4 to the [M67]Magistrates' Courts (Northern Ireland) Order [M68]1981 (procedure on charge of offence against a corporation) shall have effect in a case in which an unincorporated association is charged in Northern Ireland with an offence under this Act in like manner as they have effect in the case of a corporation.

(6) A fine imposed on an unincorporated association on its conviction of an offence under this Act shall be paid out of the funds of the association.

Textual Amendments

F191 Words in s. 203(4) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 66 (subject to savings and transitional provisions in s. 4, Sch. 3)

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Modifications etc. (not altering text)

C220 S. 203 applied (19.6.1995) by S.I. 1995/1537, **reg. 23(6)**

Marginal Citations

M65 1925 c. 86.
M66 1980 c. 43.
M67 S.I. 1981/1675 (N.I. 26).
M68 S.I. 1981/1675 (N.I. 26).

204 Service of notices.

(1) This section has effect in relation to any notice, direction or other document required or authorised by or under this Act to be given to or served on any person other than the Secretary of State **[**[F192]or the Friendly Societies Commission**]**.

(2) Any such document may be given to or served on the person in question—
- (a) by delivering it to him;
- (b) by leaving it at his proper address; or
- (c) by sending it by post to him at that address.

(3) Any such document may—
- (a) in the case of a body corporate, be given to or served on the secretary or clerk of that body;
- (b) in the case of a partnership, be given to or served on any partner;
- (c) in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of the association;
- (d) in the case of an appointed representative, be given to or served on his principal.

(4) For the purposes of this section and section 7 of the [M69]Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person is his last known address (whether of his residence or of a place where he carries on business or is employed) and also any address applicable in his case under the following provisions—
- (a) in the case of a member of a recognised self-regulating organisation or a person certified by a recognised professional body who does not have a place of business in the United Kingdom, the address of that organisation or body;
- (b) in the case of a body corporate, its secretary or its clerk, the address of its registered or principal office in the United Kingdom;
- (c) in the case of an unincorporated association (other than a partnership) or a member of its governing body, its principal office in the United Kingdom.

(5) Where a person has notified the Secretary of State of an address or a new address at which documents may be given to or served on him under this Act that address shall also be his proper address for the purposes mentioned in subsection (4) above or, as the case may be, his proper address for those purposes in substitution for that previously notified.

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Textual Amendments

F192 Words in s. 204(1) substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. I para.6** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Modifications etc. (not altering text)

C221 S. 204 applied (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **ss. 154**, 155, 169(5)

Marginal Citations

M69 1978 c. 30.

[[F193]205 General power to make regulations.

The Secretary of State **[**[F194]or the Treasury**]** may make regulations prescribing anything which by this Act is authorised or required to be prescribed.**]**

Textual Amendments

F193 Ss. 205, 205A substituted for s. 205 by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 18**

F194 Words in s. 205 inserted (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para.7**.

Modifications etc. (not altering text)

C222 S. 205 amended (6.1.1997) by S.I. 1996/2827, **reg. 24(8)**

[[F195]205A Supplementary provisions with respect to subordinate legislation.

(1) **[**[F196]Subsections (2) to (4) below**]**apply to any power of the Secretary of State **[**[F197]or the Treasury**]** under this Act—

(a) to issue statements of principle,

(b) to make rules or regulations,

(c) to make orders (other than such orders as are excepted by subsection (4) below), or

(d) to issue codes of practice.

[F198](1A) **[** Subsections (2) to (4) below also apply to any power to make regulations by virtue of regulation 6 of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 in the event that that power becomes exercisable by the Treasury by virtue of an order under section 115 above.**]**

(2) Any such power is exercisable by statutory instrument and includes power to make different provision for different cases.

(3) Except as otherwise provided, a statutory instrument containing statements of principle, rules or regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) The above provisions do not apply to a recognition order, an order declaring a collective investment scheme to be an authorised unit trust scheme or a recognised scheme or to an order revoking any such order.**]**

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Textual Amendments

F195 Ss. 205, 205A substituted for s. 205 by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para 18**

F196 Words in s. 205A substituted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 para. 20(a)**

F197 Words in s. 205A(1) inserted (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para. 8**.

F198 S. 205A(1A) inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 para. 20(b)**

206 Publication of information and advice.

(1) The Secretary of State may publish information or give advice, or arrange for the publication of information or the giving of advice, in such form and manner as he considers appropriate with respect to—

(a) the operation of this Act and the **[**[F199]statements of principle, rules, regulations and codes of practice issued or made**]** under it, including in particular the rights of investors, the duties of authorised persons and the steps to be taken for enforcing those rights or complying with those duties;

(b) any matters relating to the functions of the Secretary of State under this Act or any such **[**[F200]statements of principle, rules, regulations or codes of practice**]**;

[[F201](bb) the operation of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 and any regulations made by virtue of regulation 6 of those Regulations;

(bc) any matters relating to the functions to which regulation 73 of those Regulations relates;**]**

(c) any other matters about which it appears to him to be desirable to publish information or give advice for the protection of investors or any class of investors.

(2) The Secretary of State may offer for sale copies of information published under this section and may, if he thinks fit, make a reasonable charge for advice given under this section at any person's request.

(3) This section shall not be construed as authorising the disclosure of restricted information within the meaning of section 179 above in any case in which it could not be disclosed apart from the provisions of this section.

(4) The functions to which section 114 above applies shall include the functions of the Secretary of State under this section.

Textual Amendments

F199 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 19(a)**

F200 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 19(b)**

F201 S. 206(1)(bb)(bc) inserted (6.1.1997) by S.I. 1996/2827, reg 75, **Sch. 8 para. 21**.

Modifications etc. (not altering text)

C223 S. 206: certain functions transferred by S.I. 1987/942, **art. 8** and S.I. 1990/354, **art. 4(5)**

C224 S. 206 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 40**

C225 S. 206(1) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 43**.

C226 S. 206(1)(*b*) amended by S.I. 1987/942, **art. 11**

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207 Interpretation.

(1) In this Act, except where the context otherwise requires—

"appointed representative" has the meaning given in section 44 above;

"authorised person" means a person authorised under Chapter III of Part I of this Act;

"authorised unit trust scheme" means a unit trust scheme declared by an order of the Secretary of State for the time being in force to be an authorised unit trust scheme for the purposes of this Act;

"body corporate" includes a body corporate constituted under the law of a country or territory outside the United Kingdom;

"certified" and "certification" mean certified or certification by a recognised professional body for the purposes of Part I of this Act;

"clearing arrangements" has the meaning given in section 38(2) above;

"competent authority" means the competent authority for the purposes of Part IV of this Act;

"collective investment scheme" has the meaning given in section 75 above;

"delegation order" and "designated agency" have the meaning given in section 114(3) above;

"director", in relation to a body corporate, includes a person occupying in relation to it the position of a director (by whatever name called) and any person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act;

[[F202]"ensure" and "ensuring", in relation to the performance of transactions on an investment exchange, have the meaning given in paragraph 6 of Schedule 4 to this Act;**]**

"exempted person" means a person exempted under Chapter IV of Part I of this Act;

[[F203]"friendly society", "incorporated friendly society" and "registered friendly society" have the meaning given by section 116 of the Friendly Societies Act 1992**]**

"group", in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company;

"guidance", in relation to a self-regulating organisation, professional body, investment exchange, clearing house or designated agency, has the meaning given in section 8(4), 16(4), 36(3), 38(3) or 114(12) above;

"investment advertisement" has the meaning given in section 57(2) above;

"investment agreement" has the meaning given in section 44(9) above;

[[F204]"investment company with variable capital" and, in relation to such a company, "depositary" have the same meaning as in the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996;**]**

"listing particulars" has the meaning given in section **[**[F205]144(2A)**]**above;

"member", in relation to a self-regulating organisation or professional body, has the meaning given in section 8(2) or 16(2) above;

"occupational pension scheme" means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories

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of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category;

"operator", in relation to a collective investment scheme, shall be construed in accordance with section 75(8) above;

"open-ended investment company" has the meaning given in section 75(8) above;

"overseas investment exchange" and "overseas clearing house" mean a recognised investment exchange or recognised clearing house in the case of which the recognition order was made by virtue of section 40 above;

"participant" has the meaning given in section 75(2) above;

"partnership" includes a partnership constituted under the law of a country or territory outside the United Kingdom;

"prescribed" means prescribed by regulations made by the Secretary of State **[**[F206]or the Treasury**]**;

"principal", in relation to an appointed representative, has the meaning given in section 44 above;

"private company" has the meaning given in section 1(3) of the [M70]Companies Act 1985 or the corresponding Northern Ireland provision;

"recognised clearing house" means a body declared by an order of the Secretary of State for the time being in force to be a recognised clearing house for the purposes of this Act;

"recognised investment exchange" means a body declared by an order of the Secretary of State for the time being in force to be a recognised investment exchange for the purposes of this Act;

"recognised professional body" means a body declared by an order of the Secretary of State for the time being in force to be a recognised professional body for the purposes of this Act;

"recognised scheme" means a scheme recognised under section 86, 87 or 88 above;

"recognised self-regulating organisation" means a body declared by an order of the Secretary of State for the time being in force to be a recognised self-regulating organisation for the purposes of this Act;

"recognised self-regulating organisation for friendly societies" has the meaning given in paragraph 1 of Schedule 11 to this Act;

"recognition order" means an order declaring a body to be a recognised self-regulating organisation, self-regulating organisation for friendly societies, professional body, investment exchange or clearing house;

"[registered friendly society" means—

(a) a society which is a friendly society within the meaning of section 7(1)(a) of the [M71]Friendly Societies Act 1974 and is registered within the meaning of that Act; or

(b) a society which is a friendly society within the meaning of section 1(1)(a) of the [M72]Friendly Societies Act (Northern Ireland) 1970 and is registered or deemed to be registered under that Act;]

"rules", in relation to a self-regulating organisation, professional body, investment exchange or clearing house, has the meaning given in section 8(3), 16(3), 36(2) or 38(2) above;

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"transfer order" and "transferee body" have the meaning given in paragraph 28(4) of Schedule 11 to this Act;

"the Tribunal" means the Financial Services Tribunal;

"trustee", in relation to a collective investment scheme, has the meaning given in section 75(8) above;

"unit trust scheme" and "units" have the meaning given in section 75(8) above.

(2) In this Act "advertisement" includes every form of advertising, whether in a publication, by the display of notices, signs, labels or showcards, by means of circulars, catalogues, price lists or other documents, by an exhibition of pictures or photographic or cinematographic films, by way of sound broadcasting or television **[**[F207]or by inclusion in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service**]**, by the distribution of recordings, or in any other manner; and references to the issue of an advertisement shall be construed accordingly.

(3) For the purposes of this Act an advertisement or other information issued outside the United Kingdom shall be treated as issued in the United Kingdom if it is directed to persons in the United Kingdom or is made available to them otherwise than in a newspaper, journal, magazine or other periodical publication published and circulating principally outside the United Kingdom or in a sound or television broadcast transmitted principally for reception outside the United Kingdom.

(4) . . . . . [F208]

(5) In this Act "controller" means—

(a) in relation to a body corporate, a person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 15 per cent. or more of the voting power at an general meeting of the body corporate or another body corporate of which it is a subsidiary; and

(b) in relation to an unincorporated association—

(i) any person in accordance with whose directions or instructions, either alone or with those of any associate or associates, the officers or members of the governing body of the association are accustomed to act (but disregarding advice given in a professional capacity); and

(ii) any person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 15 per cent. or more of the voting power at any general meeting of the association;

and for the purposes of this subsection "associate", in relation to any person, means that person's wife, husband or minor child or step-child, any body corporate of which that person is a director, any person who is an employee or partner of that person and, if that person is a body corporate, any subsidiary of that body corporate and any employee of any such subsidiary.

(6) In this Act, except in relation to a unit trust scheme or a registered friendly society, "manager" means an employee who—

(a) under the immediate authority of his employer is responsible, either alone or jointly with one or more other persons, for the conduct of his employer's business; or

(b) under the immediate authority of his employer or of a person who is a manager by virtue of paragraph (a) above exercises managerial functions or is responsible for maintaining accounts or other records of his employer;

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and, where the employer is not an individual, references in this subsection to the authority of the employer are references to the authority, in the case of a body corporate, of the directors, in the case of a partnership, of the partners and, in the case of an unincorporated association, of its officers or the members of its governing body.

(7) In this Act "insurance business", "insurance company" and "contract of insurance" have the same meanings as in the [M73]Insurance Companies Act 1982.

(8) Section 736 of the [M74]Companies Act 1985 (meaning of subsidiary and holding company) shall apply for the purposes of this Act.

(9) In the application of this Act to Scotland, references to a matter being actionable at the suit of a person shall be construed as references to the matter being actionable at the instance of that person.

(10) For the purposes of any provision of this Act authorising or requiring a person to do anything within a specified number of days no account shall be taken of any day which is a public holiday in any part of the United Kingdom.

(11) Nothing in Part I of this Act shall be construed as applying to investment business carried on by any person when acting as agent or otherwise on behalf of the Crown.

Textual Amendments

F202 Words inserted as provided by Companies Act 1989 (c. 40, SIF 27), **s. 205(3)**

F203 Definition in s. 207(1) inserted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. I para. 7** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 4**; S.I. 1993/2213, art. 2(1), **Sch. 5**.

F204 Definition in s. 207(1) inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8**, Pt. I para. 22

F205 Words in definition in s. 207(1) substituted (19.6.1995) by S.I. 1995/1537, reg. 17, **Sch. 2 para. 8**

F206 Words in s. 207(1) inserted (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para. 9**.

F207 Words inserted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), **Sch. 20 para. 45(1)(a)**

F208 S. 207(4) repealed by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1)(3), Sch. 20 para. 45(1)(b), **Sch. 21**

Modifications etc. (not altering text)

C227 Definition in s. 207(1) applied by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), **s. 76(8)** (as substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 47(3)**).

C228 S. 207(5)(6) extended (6.1.1997) by S.I. 1996/2827, **reg. 2(3)**
s. 207(5) modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 41**

Marginal Citations

M70 1985 c. 6.

M71 1974 c. 46.

M72 1970 c. 31 (N.I.).

M73 1982 c. 50.

M74 1985 c. 6.

208 Gibraltar.

(1) Subject to the provisions of this section, section 31, 58(1)(c), 86 and 130(2)(c) and (d) above shall apply as if Gibraltar were a member State.

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services Act 1986 (Repealed) is up to date with all changes known to be in force on or before 14 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)*

(2) References in those provisions to a national of a member State shall, in relation to Gibraltar, be construed as references to a British Dependent Territories citizen or a body incorporated in Gibraltar.

(3) In the case of a collective investment scheme constituted in Gibraltar the reference in subsection (3)(a) of section 86 above to a relevant Community instrument shall be taken as a reference to any Community instrument the object of which is the co-ordination or approximation of the laws, regulations or administrative provisions of member States relating to collective investment schemes of a kind which satisfy the requirements prescribed for the purposes of that section.

(4) The Secretary of State may by regulations make such provision as appears to him to be necessary or expedient to secure—

(a) that he may give notice under subsection (2) of section 86 above on grounds relating to the law of Gibraltar; and

(b) that this Act applies as if a scheme which is constituted in a member State other than the United Kingdom and recognised in Gibraltar under provisions which appear to the Secretary of State to give effect to the provisions of a relevant Community instrument were a scheme recognised under that section.

209 Northern Ireland.

(1) This Act extends to Northern Ireland.

(2) Subject to any Order made after the passing of this Act by virtue of subsection (1)(a) of section 3 of the [M75]Northern Ireland Constitution Act 1973 the regulation of investment business, the official listing of securities and offers of unlisted securities shall not be transferred matters for the purposes of that Act but shall for the purposes of subsection (2) of that section be treated as specified in Schedule 3 to that Act.

Marginal Citations

M75 1973 c. 36.

210 Expenses and receipts.

(1) Any expenses incurred by the Secretary of State under this Act shall be defrayed out of moneys provided by Parliament.

(2) Any fees or other sums received by the Secretary of State under this Act shall be paid into the Consolidated Fund.

(3) Subsections (1) and (2) above apply also to expenses incurred and fees received under this Act by **[**[F209]the Friendly Societies Commission**]**.

Textual Amendments

F209 Words in s. 210(3) substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. I para.8** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
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211 Commencement and transitional provisions.

(1) This Act shall come into force on such day as the Secretary of State may by order appoint and different days may be appointed for different provisions or different purposes.

(2) Subsection (1) above does not apply to section 195 which shall come into force when this Act is passed.

(3) Schedule 15 to this Act shall have effect with respect to the transitional matters there mentioned.

Subordinate Legislation Made

P5 S. 211(1) power partly exercised: 10.5.1999 appointed for specified provisions by S.I 1999/727, art. 2

Modifications etc. (not altering text)

C229 S. 211(1): power of appointment conferred by section 211(1) partly exercised: S.I. 1986/1940, 2031, 2246, 1987/623, 907, 1997, 2158, 1988/740, 995, 1960, 2285, 1989/1583

212 Short title, consequential amendments and repeals.

(1) This Act may be cited as the Financial Services Act 1986.

(2) The enactments and instruments mentioned in Schedule 16 to this Act shall have effect with the amendments there specified, being amendments consequential on the provisions of this Act.

(3) The enactments mentioned in Part I of Schedule 17 to this Act and the instruments mentioned in Part II of that Schedule are hereby repealed or revoked to the extent specified in the third column of those Parts.

Commencement Information

I2 S. 212 partly in force; s. 212 not in force at Royal Assent, see. s. 211; s. 212(3) in force for specified purposes at 10.5.1999 by S.I. 1999/727, **art. 2**

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
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SCHEDULES

SCHEDULE 1

Sections 1 and 2.

INVESTMENTS AND INVESTMENT BUSINESS

Modifications etc. (not altering text)
C230 Sch. 1 amended by S.I. 1988/496, **art. 4**
C231 Sch. 1 amended by S.I. 1988/803, **art. 5**

PART I

INVESTMENTS

Shares etc.

1 Shares and stock in the share capital of a company.

Note. In this paragraph "company" includes any body corporate and also any unincorporated body constituted under the law of a country or territory outside the United Kingdom **[**[F210]but does not, except in relation to any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 , include a building society incorporated under the law of, or of any part of, the United Kingdom, nor does it include an open-ended investment company or any body incorporated under the law of, or of any part of, the United Kingdom relating to industrial and provident societies or credit unions.**]**.

Textual Amendments
F210 Words in Sch. 1 para. 1 Note substituted by S.I. 1991/1104, **art. 2**

Modifications etc. (not altering text)
C232 Sch. 1 para. 1 applied (6.4.1997) by 1995 c. 26, **s. 40(2)**; S.I. 1997/664, art. 2(3), **Sch. Pt. II**
Sch. 1 para. 1 applied (with modifications) (19.6.1995) by S.I. 1995/1537, **reg. 3(1)(b)(2)(a)-(d)**
Sch. 1 para. 1 modified (1.1.1996) by S.I.1995/3271, **art. 3**

Debentures

2 Debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness, not being instruments falling within paragraph 3 below.

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
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Note. This paragraph shall not be construed as applying—

(a) to any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;

(b) to a cheque or other bill of exchange, a banker's draft or a letter of credit; or

(c) to a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property, a heritable security or an insurance policy.

Modifications etc. (not altering text)

C233 Sch. 1 para. 2 applied (with modifications) (19.6.1995) by S.I. 1995/1537, **reg. 3(1)(b)(2)(a)-(d)**
Sch. 1 para. 2 applied (6.4.1997) by 1995 c. 26, **s. 40(2)**; S.I. 1997/664, art. 2(3), **Sch. Pt. II**

C234 Sch. 1 para. 2 modified (1.1.1996) by S.I. 1995/3271, **art. 4**

Government and public securities

3 Loan stock, bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority.

Notes

(1) In this paragraph "government, local authority or public authority" means—

(a) the government of the United Kingdom, of Northern Ireland, or of any country or territory outside the United Kingdom;

(b) a local authority in the United Kingdom or elsewhere;

(c) any international organisation the members of which include the United Kingdom or another member State.

(2) The Note to paragraph 2 above shall, so far as applicable, apply also to this paragraph.

[[F211](3) This paragraph does not apply to any instrument creating or acknowledging indebtedness in respect of money received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank or in respect of money raised under the National Loans Act 1968 under the auspices of the Director of Savings or in respect of money treated as having been so raised by virtue of section 11(3) of the National Debt Act 1972.**]**

Textual Amendments

F211 Note added by S.I. 1990/349, **art. 2**

Modifications etc. (not altering text)

C235 Sch. 1 para. 3: definitions in Note (1) of 'government, local authority or public authority" applied by S.I. 1991/489, **art. 2(2)**

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services Act 1986 (Repealed) is up to date with all changes known to be in force on or before 14 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)*

Instruments entitling to shares or securities

4 Warrants or other instruments entitling the holder to subscribe for investments falling within paragraph 1, 2 or 3 above.

Notes

(1) It is immaterial whether the investments are for the time being in existence or identifiable.

(2) An investment falling within this paragraph shall not be regarded as falling within paragraph 7, 8 or 9 below.

Modifications etc. (not altering text)

C236 Sch. 1 para. 4 applied (with modifications) (19.6.1995) by S.I. 1995/1537, **reg. 3(1)(b)(2)(a)-(d)**
Sch. 1 para. 4 applied (6.4.1997) by 1995 c. 26, **s. 40(2)**; S.I. 1997/664, art. 2(3), **Sch. Pt. II**

Certificates representing securities

5 Certificates or other instruments which confer—

(a) property rights in respect of any investment falling within paragraph 1, 2, 3 or 4 above;

(b) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates; or

(c) a contractual right (other than an option) to acquire any such investment otherwise than by subscription.

Note. This paragraph does not apply to any instrument which confers rights in respect of two or more investments issued by different persons or in respect of two or more different investments falling within paragraph 3 above and issued by the same person.

Modifications etc. (not altering text)

C237 Sch. 1 para. 5 applied (with modifications) (19.6.1995) by S.I. 1995/1537, **reg. 3(1)(b)(2)(a)-(d)**
Sch. 1 para. 5 applied (6.4.1997) by 1995 c. 26, **s. 40(2)**; S.I. 1997/664, art. 2(3), **Sch. Pt. II**

Units in collective investment scheme

6 Units in a collective investment scheme, including shares in or securities of an open-ended investment company.

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
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Options

7 Options to acquire or dispose of—

(a) an investment falling within any other paragraph of this Part of this Schedule;

(b) currency of the United Kingdom or of any other country or territory;

(c) gold **[**[F212], palladium, platinum**]** or silver; or

(d) an option to acquire or dispose of an investment falling within this paragraph by virtue of (a), (b) or (c) above.

Textual Amendments

F212 Words inserted by S.I. 1988/496, **art. 2**

Futures

8 Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made.

Notes

(1) This paragraph does not apply if the contract is made for commercial and not investment purposes.

(2) A contract shall be regarded as made for investment purposes if it is made or traded on a recognised investment exchange or made otherwise than on a recognised investment exchange but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.

(3) A contract not falling within Note (2) above shall be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within seven days.

(4) The following are indications that any other contract is made for a commercial purpose and the absence of any of them is an indication that it is made for investment purposes—

(a) either or each of the parties is a producer of the commodity or other property or uses it in his business;

(b) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.

(5) It is an indication that a contract is made for commercial purposes that the price, the lot, the delivery date or the other terms are determined by the parties for the purposes of the particular contract and not by reference to regularly published prices, to standard lots or delivery dates or to standard terms.

(6) The following are also indications that a contract is made for investment purposes—

(a) it is expressed to be as traded on a market or on an exchange;

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(b) performance of the contract is ensured by an investment exchange or a clearing house;

(c) there are arrangements for the payment or provision of margin.

(7) A price shall be taken to have been agreed upon when a contract is made—

(a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or

(b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

Contracts for differences etc.

9 Rights under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

[[F213]*Notes****]*** .

[[F214](1)**]** This paragraph does not apply where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.

[[F215](2) This paragraph does not apply to rights under any contract under which money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank or raised under the National Loans Act 1968 under the auspices of the Director of Savings or under which money raised is treated as having been so raised by virtue of section 11(3) of the National Debt Act 1972.**]**

Textual Amendments

F213 Word substituted by S.I. 1990/349, **art. 2(2)**

F214 Note numbered (1) by S.I. 1990/349, **art. 2(2)**

F215 Note added by S.I. 1990/349, **art. 2(2)**

Long term insurance contracts

10 Rights under a contract the effecting and carrying out of which constitutes long term business within the meaning of the [M76]Insurance Companies Act 1982.

Notes

(1) This paragraph does not apply to rights under a contract of insurance if—

(a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;

(b) no benefits are payable under the contract on a death (other than a death due to accident) unless it occurs within ten years of the date on which the life of the person in question was first insured under the contract or before that person attains a specified age not exceeding seventy years;

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(c) the contract has no surrender value or the consideration consists of a single premium and the surrender value does not exceed that premium; and

(d) the contract does not make provision for its conversion or extension in a manner that would result in its ceasing to comply with paragraphs (a), (b) and (c) above.

(2) Where the provisions of a contract of insurance are such that the effecting and carrying out of the contract—

(a) constitutes both long term business within the meaning of the [M77]Insurance Companies Act 1982 and general business within the meaning of that Act; or

(b) by virtue of section 1(3) of that Act constitutes long term business notwithstanding the inclusion of subsidiary general business provisions,

references in this paragraph to rights and benefits under the contract are references only to such rights and benefits as are attributable to the provisions of the contract relating to long term business.

(3) This paragraph does not apply to rights under a reinsurance contract.

(4) Rights falling within this paragraph shall not be regarded as falling within paragraph 9 above.

Marginal Citations

M76 1982 c. 50.

M77 1982 c. 50.

Rights and interests in investments

11 Rights to and interests in anything which is an investment falling within any other paragraph of this Part of this Schedule.

Notes

(1) This paragraph does not apply to interests under the trusts of an occupational pension scheme.

(2) This paragraph does not apply to rights or interests which are investments by virtue of any other paragraph of this Part of this Schedule.

PART II

ACTIVITIES CONSTITUTING INVESTMENT BUSINESS

Modifications etc. (not altering text)

C238 Sch. 1 Pt. II modified (1.1.1996) by S.I. 1995/3271, **art. 5**

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services Act 1986 (Repealed) is up to date with all changes known to be in force on or before 14 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)*

Dealing in investments

12 Buying, selling, subscribing for or underwriting investments or offering or agreeing to do so, either as principal or as an agent.

[[F216]*Notes*

(1) This paragraph does not apply to a person by reason of his accepting, or offering or agreeing to accept, whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has made, granted or provided or which he or his principal has offered or agreed to make, grant or provide.

(2) The references in (1) above to a person accepting, or offering or agreeing to accept, an instrument include references to a person becoming, or offering or agreeing to become, a party to an instrument otherwise than as a debtor or a surety.**]**

Textual Amendments
F216 Notes inserted by S.I. 1988/803, **art. 2**

Arranging deals in investments

13 Making, or offering or agreeing to make—

(a) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment; or

(b) arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

Notes

(1) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a transaction to which he will himself be a party as principal or which will be entered into by him as agent for one of the parties.

(2) The arrangements in (a) above are arrangements which bring about or would bring about the transaction in question.

[[F217](3) This paragraph does not apply to a person ("the relevant person") who is either a money-lending company within the meaning of section 338 of the Companies Act 1985 or a body corporate incorporated under the law of, or of any part of, the United Kingdom relating to building societies or a person whose ordinary business includes the making of loans or the giving of guarantees in connection with loans by reason of the relevant person making, or offering or agreeing to make, arrangements with a view to a person ("the authorised person") who is either authorised under section 22 or 23 of this Act or who is authorised under section 31 of this Act and carries on insurance business which is investment business selling an investment which falls within paragraph 10 above or, so far as relevant to that paragraph, paragraph 11 above if the arrangements are either—

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(a) that the authorised person or a person on his behalf will introduce persons to whom the authorised person has sold or proposes to sell an investment of the kind described above, or will advise such persons to approach, the relevant person with a view to the relevant person lending money on the security of that investment; or

(b) that the authorised person gives an assurance to the relevant person as to the amount which will or may be received by the relevant person, should that person lend money to a person to whom the authorised person has sold or proposes to sell an investment of the kind described above, on the surrender or maturity of that investment if it is taken as security for the loan.**]**

[[F218](4) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a person accepting, whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has made, granted or provided or which he or his principal has offered or agreed to make, grant or provide.

(5) Arrangements do not fall within (b) above by reason of their having as their purpose the provision of finance to enable a person to buy, sell, subscribe for or underwrite investments.

(6) This paragraph does not apply to arrangements for the introduction of persons to another person if—

(a) the person to whom the introduction is made is an authorised or exempted person or is a person whose ordinary business involves him in engaging in activities which fall within this Part of this Schedule or would do apart from the provisions of Part III or Part IV and who is not unlawfully carrying on investment business in the United Kingdom; and

(b) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion either—

(i) in relation to investments generally; or

(ii) in relation to any class of investments if the transaction or advice is or is to be with respect to an investment within that class.

(7) The references in (4) above to a person accepting an instrument include references to a person becoming a party to an instrument otherwise than as a debtor or a surety.**]**

Textual Amendments

F217 Note added by S.I. 1988/318, **art. 2**

F218 Notes added by S.I. 1988/803, **art. 3**

VALID FROM 01/06/1997

[*Custody of Investments****]***

[[F219]13A(1) Safeguarding and administering or arranging for the safeguarding and administration of assets belonging to another where—

(a) those assets consist of or include investments; or

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(b) the arrangements for their safeguarding and administration are such that those assets may consist of or include investments and the arrangements have at any time been held out as being arrangements under which investments would be safeguarded and administered.

(2) Offering or agreeing to safeguard and administer, or to arrange for the safeguarding and administration of, assets belonging to another where the circumstances fall within sub-paragraph (1)(a) or (b) above.

Notes

(1) This paragraph does not apply to a person by reason of his safeguarding and administering assets, or offering or agreeing to do so, under arrangements—

(a) under which another person ("the primary custodian"), who is permitted to provide a service falling within this paragraph, undertakes to the person to whom the assets belong a responsibility in respect of the assets which is no less onerous than the responsibility which the primary custodian would undertake to that person if the primary custodian were safeguarding and administering the assets himself, and

(b) which are operated by the primary custodian in the course of carrying on in the United Kingdom investment business falling within this paragraph.

(2) None of the following activities constitutes the administration of assets—

(a) providing information as to the number of units or the value of any assets safeguarded;

(b) converting currency; and

(c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the direction of the person to whom the investment belongs.

(3) For the purposes of this paragraph it is immaterial that the assets safeguarded and administered—

(a) constitute units of a security, title to which is recorded on the relevant register of securities as being held in uncertificated form; or

(b) may be transferred to another person, subject to a commitment by the person safeguarding and administering them, or arranging for their safeguarding and administration, that they will be replaced by equivalent assets at some future date or when so requested by the person to whom they belong.

(4) This paragraph does not apply to arrangements for the introduction of persons to another person if—

(a) the person to whom the introduction is made is permitted to provide a service falling within this paragraph; and

(b) the introduction is made with a view to the provision in the United Kingdom of a service falling within this paragraph or the making of arrangements operated in the United Kingdom for the provision of a service falling within this paragraph by a person who is not connected with the person by whom the introduction is made.

For the purposes of this Note, the person making the introduction shall be regarded as connected with the other person if he is either a body corporate in the same group as that other person or remunerated by that other person.

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(5) For the purposes of Notes (1) and (4) above, a person is permitted to provide a service falling within this paragraph if—

(a) he is an authorised person who may provide that service—

(i) without contravening any rules that apply to him under section 48 of this Act; or

(ii) by virtue of his membership of a recognised self-regulating organisation or his certification by a recognised professional body; or

(b) he is an exempted person as respects any investment business which consists of or includes that service; or

(c) he is entitled to carry on investment business in the United Kingdom which consists of or includes that service pursuant either to regulation 5 of the Banking Coordination (Second Council Directive) Regulations 1992 [F220] or to regulation 5 of the Investment Services Regulations 1995 [F221].**]**

Textual Amendments

F219 Sch. 1 para. 13A inserted (1.6.1997) by S.I. 1996/2958, **art. 3**

F220 S.I. 1992/3218.

F221 S.I. 1995/3275.

Managing investments

14 Managing, or offering or agreeing to manage, assets belonging to another person if—

(a) those assets consist of or include investments; or

(b) the arrangements for their management are such that those assets may consist of or include investments at the discretion of the person managing or offering or agreeing to manage them and either they have at any time since the date of the coming into force of section 3 of this Act done so or the arrangements have at any time (whether before or after that date) been held out as arrangements under which they would do so.

Investment advice

15 Giving, or offering or agreeing to give, to persons in their capacity as investors or potential investors advice on the merits of their purchasing, selling, subscribing for or underwriting an investment, or exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.

Establishing etc. collective investment schemes

16 Establishing, operating or winding up a collective investment scheme, including acting as trustee of an authorised unit trust scheme **[**[F222]or as depositary or sole director of an investment company with variable capital.**]**.

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F222 Words in Sch. 1 para. 16 inserted (6.1.1997) by S.I. 1996/2958, **art. 2**

[F223 Sending dematerialised instructions etc]

Textual Amendments

F223 Sch. 1 para. 16A and the preceding cross-heading added (15.7.1996) by S.I. 1996/1322, **art. 2(1)**

F224 16A Sending on behalf of another person dematerialised instructions relating to an investment by means of a relevant system in respect of which an Operator is approved under the Uncertificated Securities Regulations 1995 F225, or offering or agreeing to do so, or causing on behalf of another person such instructions to be sent by such means or offering or agreeing to do so.

Notes

(1) This paragraph does not apply to a person by reason of his sending, or causing the sending of, instructions on behalf of—

(a) a participating issuer or settlement bank acting in its capacity as such; or

(b) an offeror making a takeover offer,

or by reason of his offering or agreeing to do so.

(2) For the purposes of this paragraph a person shall be taken to cause, or to offer or agree to cause, the sending of a dematerialised instruction only if he is a system-participant.

(3) In this paragraph—

"dematerialised instruction", "participating issuer", "relevant system", "settlement bank", "system-participant" and "Operator" have the meanings given by regulation 3 of the Uncertificated Securities Regulations 1995; and

"offeror" and "takeover offer" have the meanings given by section 428 of the Companies Act 1985 F226.

Textual Amendments

F224 Sch. 1 para. 16A and the preceding cross-heading added (15.7.1996) by S.I. 1996/1322, **art. 2(1)**

F225 S.I. 1995/3272.

F226 1985 c.6.

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services Act 1986 (Repealed) is up to date with all changes known to be in force on or before 14 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)*

PART III

EXCLUDED ACTIVITIES

Modifications etc. (not altering text)
C239 SCh. 1 Pt. III modified (1.1.1996) by S.,I. 1995/3271, arts. 5

Dealings as principal

17 (1) Paragraph 12 above applies to a transaction which is or is to be entered into by a person as principal only if—
(a) he holds himself out as willing to enter into transactions of that kind at prices determined by him generally and continuously rather than in respect of each particular transaction; or
(b) he holds himself out as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
(c) he regularly solicits members of the public for the purpose of inducing them to enter as principals or agents into transactions to which that paragraph applies and the transaction is or is to be entered into as a result of his having solicited members of the public in that manner.

(2) In sub-paragraph (1) above "buying" and "selling" means buying and selling by transactions to which paragraph 12 above applies and "members of the public", in relation to the person soliciting them ("the relevant person"), means any other persons except—
(a) authorised persons, exempted persons, or persons holding a permission under paragraph 23 below;
(b) members of the same group as the relevant person;
(c) persons who are, or propose to become, participators with the relevant person in a joint enterprise;
(d) any person who is solicited by the relevant person with a view to—
(i) the acquisition by the relevant person of 20 per cent. or more of the voting shares in a body corporate (that is to say, shares carrying not less than that percentage of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the body); or
(ii) if the relevant person (either alone or with other members of the same group as himself) holds 20 per cent. or more of the voting shares in a body corporate, the acquisition by him of further shares in the body or the disposal by him of shares in that body to the person solicited or to a member of the same group as that person; or
(iii) if the person solicited (either alone or with other members of the same group as himself) holds 20 per cent. or more of the voting shares in a body corporate, the disposal by the relevant person of further shares in that body to the person solicited or to a member of the same group as that person;

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(e) any person whose head office is outside the United Kingdom, who is solicited by an approach made or directed to him at a place outside the United Kingdom and whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part or Part IV.

[[F227](3) Sub-paragraph (1) above applies only—

(a) if the investment to which the transaction relates or will relate falls within any of paragraphs 1 to 6 above or, so far as relevant to any of those paragraphs, paragraph 11 above; or

(b) if the transaction is the assignment (or, in Scotland, the assignation) of an investment falling within paragraph 10 above or is the assignment (or, in Scotland, the assignation) of an investment falling within paragraph 11 above which confers rights to or interests in an investment falling within paragraph 10 above.**]**

(4) Paragraph 12 above does not apply to **[**[F228]any transaction . . . [F229] which relates or is to relate to an investment which falls within paragraph 10 above or, so far as relevant to that paragraph, paragraph 11 above nor does it apply to a transaction which relates or is to relate to an investment which falls within any of paragraphs 7 to 9 above or, so far as relevant to any of those paragraphs, paragraph 11 above being a transaction which, in either case,**]** is or is to be entered into by a person as principal if he is not an authorised person and the transaction is or is to be entered into by him—

(a) with or through an authorised person, an exempted person or a person holding a permission under paragraph 23 below; or

(b) through an office outside the United Kingdom, maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business is such as is mentioned in sub-paragraph (2)(e) above.

Textual Amendments

F227 Sch. 1 para. 17(3) substituted by S.I. 1988/318, **art. 3(1)**

F228 Words substituted by S.I. 1988/318, **art. 3(2)**

F229 Words repealed by S.I. 1990/349, **art. 3**

Modifications etc. (not altering text)

C240 Sch. 1 para. 17 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 44(1)**.
Sch. 1 para. 17 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 42(1)**
Sch. 1 paras. 17-19 restricted (1.1.1996) by S.I. 1995/3271, **art. 6(1)**
Sch. 1 para. 17-19 restricted (1.1.1997) by S.I. 1997/2996, **art. 2(1)**

Groups and joint enterprises

18 (1) Paragraph 12 above does not apply to any transaction which is or is to be entered into by a person as principal with another person if—

(a) they are bodies corporate in the same group; or

(b) they are, or propose to become, participators in a joint enterprise and the transaction is or is to be entered into for the purposes of, or in connection with, that enterprise.

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(2) Paragraph 12 above does not apply to any transaction which is or is to be entered into by any person as agent for another person in the circumstances mentioned in sub-paragraph (1)(a) or (b) above if—

(a) where the investment falls within any of paragraphs 2 to 6 above or, so far as relevant to any of those paragraphs, paragraph 11 above, the agent does not—

(i) hold himself out (otherwise than to other bodies corporate in the same group or persons who are or propose to become participators with him in a joint enterprise) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or

(ii) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which paragraph 12 above applies;

and the transaction is not or is not to be entered into as a result of his having solicited members of the public in that manner;

(b) where the investment is not as mentioned in paragraph (a) above—

(i) the agent enters into the transaction with or through an authorised person, an exempted person or a person holding a permission under paragraph 23 below; or

(ii) the transaction is effected through an office outside the United Kingdom, maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part or Part IV.

(3) Paragraph 13 above does not apply to arrangements which a person makes or offers or agrees to make if—

(a) that person is a body corporate and the arrangements are with a view to another body corporate in the same group entering into a transaction of the kind mentioned in that paragraph; or

(b) that person is or proposes to become a participator in a joint enterprise and the arrangements are with a view to another person who is or proposes to become a participator in the enterprise entering into such a transaction for the purposes of or in connection with that enterprise.

(4) Paragraph 14 above does not apply to a person by reason of his managing or offering or agreeing to manage the investments of another person if—

(a) they are bodies corporate in the same group; or

(b) they are, or propose to become, participators in a joint enterprise and the investments are or are to be managed for the purposes of, or in connection with, that enterprise.

(5) Paragraph 15 above does not apply to advice given by a person to another person if—

(a) they are bodies corporate in the same group; or

(b) they are, or propose to become, participators in a joint enterprise and the advice is given for the purposes of, or in connection with, that enterprise.

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[[F230](5A) Paragraph 16A does not apply to a body corporate by reason of its sending, or causing the sending of, dematerialised instructions relating to an investment or offering or agreeing to do so if—

(a) the person on whose behalf the instructions are, or are to be, sent or caused to be sent is a body corporate in the same group; and

(b) the investment to which the instructions relate, or will relate, is one in respect of which a body corporate in the same group is registered as the holder on the appropriate register of securities, or will be so registered as a result of the instructions.

(5B) In sub-paragraph (5A) "register of securities" has the meaning given by regulation 3 of the Uncertificated Securities Regulations 1995.**]**

(6) The definitions in paragraph 17(2) above shall apply also for the purposes of sub-paragraph (2)(a) above except that the relevant person referred to in paragraph 17(2)(d) shall be the person for whom the agent is acting.

Textual Amendments

F230 Sch. 1 para. 18(5A)(5B) inserted (15.7.1996) by S.I. 1996/1322, **art. 2(2)**

Modifications etc. (not altering text)

C241 Sch. 1 para. 18 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 44(2)**.
Sch. 1 paras. 17-19 restricted (1.1.1996) by S.I. 1995/3271, **art. 6(1)**
Sch. 1 paras. 17-19 restricted (1.1.1997) by S.I. 1996/2996, **art. 2(1)**
Sch. 1 para. 18 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 42(2)**

Sale of goods and supply of services

19 (1) **[**[F231]Subject to sub-paragraph (9) below**]** this paragraph has effect where a person ("the supplier") sells or offers or agrees to sell goods to another person ("the customer") or supplies or offers or agrees to supply him with services and the supplier's main business is to supply goods or services and not to engage in activities falling within Part II of this Schedule.

(2) Paragraph 12 above does not apply to any transaction which is or is to be entered into by the supplier as principal if it is or is to be entered into by him with the customer for the purposes of or in connection with the sale or supply or a related sale or supply (that is to say, a sale or supply to the customer otherwise than by the supplier but for or in connection with the same purpose as the first-mentioned sale or supply).

(3) Paragraph 12 above does not apply to any transaction which is or is to be entered into by the supplier as agent for the customer if it is or is to be entered into for the purposes of or in connection with the sale or supply or a related sale or supply and—

(a) where the investment falls within any of paragraphs 1 to **[**[F232]5**]** above or, so far as relevant to any of those paragraphs, paragraph 11 above, the supplier does not—

(i) hold himself out (otherwise than to the customer) as engaging in the business of buying investments with a view to selling them and

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those investments are or include investments of the kind to which the transaction relates; or

(ii) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which paragraph 12 above applies;

and the transaction is not or is not to be entered into as a result of his having solicited members of the public in that manner;

(b) where the investment is not as mentioned in paragraph (a) above, the supplier enters into the transaction—

(i) with or through an authorised person, an exempted person or a person holding a permission under paragraph 23 below; or

(ii) through an office outside the United Kingdom, maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part or Part IV.

(4) Paragraph 13 above does not apply to arrangements which the supplier makes or offers or agrees to make with a view to the customer entering into a transaction for the purposes of or in connection with the sale or supply or a related sale or supply.

(5) Paragraph 14 above does not apply to the supplier by reason of his managing or offering or agreeing to manage the investments of the customer if they are or are to be managed for the purposes of or in connection with the sale or supply or a related sale or supply.

(6) Paragraph 15 above does not apply to advice given by the supplier to the customer for the purposes of or in connection with the sale or supply or a related sale or supply or to a person with whom the customer proposes to enter into a transaction for the purposes of or in connection with the sale or supply or a related sale or supply.

(7) Where the supplier is a body corporate and a member of a group sub-paragraphs (2) to (6) above shall apply to any other member of the group as they apply to the supplier; and where the customer is a body corporate and a member of a group references in those sub-paragraphs to the customer include references to any other member of the group.

(8) The definitions in paragraph 17(2) above shall apply also for the purposes of sub-paragraph (3)(a) above.

[[F233](9) This paragraph does not have effect where either—

(a) the customer is an individual; or

(b) the transaction in question is the purchase or sale of an investment which falls within paragraph 6 or 10 above or, so far as relevant to either of those paragraphs, paragraph 11 above; or

(c) the investments which the supplier manages or offers or agrees to manage consist of investments falling within paragraph 6 or 10 above or, so far as relevant to either of those paragraphs, paragraph 11 above;

or

(d) the advice which the supplier gives is advice on an investment falling within the paragraph 6 or 10 above or, so far as relevant to either of those paragraphs, paragraph 11 above.**]**

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Textual Amendments

F231 Words inserted by S.I. 1988/496, **art. 3(a)**

F232 Figure substituted by S.I. 1990/1493, **art. 3**

F233 Sch. 1 para. 19(9) inserted by S.I. 1988/496, **art. 3(b)**

Modifications etc. (not altering text)

C242 Sch. 1 paras. 17-19 restricted (1.1.1996) by S.I. 1995/3271, **art. 6(1)**
Sch. 1 paras. 17-19 restricted (1.1.1997) by S.I. 1996/2996, **art. 2(1)**

Employees' share schemes

20 (1) Paragraphs 12 and 13 above do not apply to anything done by a body corporate, a body corporate connected with it or a relevant trustee for the purpose of enabling or facilitating transactions in shares in or debentures of the first-mentioned body between or for the benefit of any of the persons mentioned in sub-paragraph (2) below or the holding of such shares or debentures by or for the benefit of any such persons.

(2) The persons referred to in sub-paragraph (1) above are—

(a) the bona fide employees or former employees of the body corporate or of another body corporate in the same group; or

(b) the wives, husbands, widows, widowers, or children or step-children under the age of eighteen of such employees or former employees.

(3) In this paragraph "a relevant trustee" means a person holding shares in or debentures of a body corporate as trustee in pursuance of arrangements made for the purpose mentioned in sub-paragraph (1) above by, or by a body corporate connected with, that body corporate.

(4) In this paragraph "shares" and "debentures" include any investment falling within paragraph 1 or 2 above and also include any investment falling within paragraph 4 or 5 above so far as relating to those paragraphs or any investment falling within paragraph 11 above so far as relating to paragraph 1, 2, 4 or 5.

(5) For the purposes of this paragraph a body corporate is connected with another body corporate if—

(a) they are in the same group; or

(b) one is entitled, either alone or with any other body corporate in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other body corporate or of its holding company.

Trustees and personal representatives

22 (1) Paragraph 12 above does not apply to a person by reason of his buying, selling or subscribing for an investment or offering or agreeing to do so if—

(a) the investment is or, as the case may be, is to be held by him as bare trustee or, in Scotland, as nominee for another person;

(b) he is acting on that person's instructions; and

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(c) he does not hold himself out as providing a service of buying and selling investments.

(2) Paragraph 13 above does not apply to anything done by a person as trustee or personal representative with a view to—

(a) a fellow trustee or personal representative and himself engaging in their capacity as such in an activity falling within paragraph 12 above; or

(b) a beneficiary under the trust, will or intestacy engaging in any such activity,

unless that person is remunerated for what he does in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(3) Paragraph 14 above does not apply to anything done by a person as trustee or personal representative unless he holds himself out as offering investment management services or is remunerated for providing such services in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(4) Paragraph 15 above does not apply to advice given by a person as trustee or personal representative to—

(a) a fellow trustee or personal representative for the purposes of the trust or estate; or

(b) a beneficiary under the trust, will or intestacy concerning his interest in the trust fund or estate,

unless that person is remunerated for doing so in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

[[F238](4A) Paragraph 16A does not apply to a person by reason of his sending, or causing the sending of, dematerialised instructions relating to an investment held by him as trustee or as personal representative, or by reason of his offering or agreeing to do so.**]**

(5) Sub-paragraph (1) above has effect to the exclusion of paragraph 17 above as respects any transaction in respect of which the conditions in sub-paragraph (1)(a) and (b) are satisfied.

Textual Amendments

F238 Sch. 1 para. 22(4A) added (15.7.1996) by S.I. 1996/1322, **art. 2(3)**

Dealings in course of non-investment business

23 (1) Paragraph 12 above does not apply to anything done by a person—

(a) as principal;

(b) if that person is a body corporate in a group, as agent for another member of the group; or

(c) as agent for a person who is or proposes to become a participator with him in a joint enterprise and for the purposes of or in connection with that enterprise,

if it is done in accordance with the terms and conditions of a permission granted to him by the Secretary of State under this paragraph.

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(2) Any application for permission under this paragraph shall be accompanied or supported by such information as the Secretary of State may require and shall not be regarded as duly made unless accompanied by the prescribed fee.

(3) The Secretary of State may grant a permission under this paragraph if it appears to him—

(a) that the applicant's main business, or if he is a member of a group the main business of the group, does not consist of activities for which a person is required to be authorised under this Act;

(b) that the applicant's business is likely to involve such activities which fall within paragraph 12 above; and

(c) that, having regard to the nature of the applicant's main business and, if he is a member of a group, the main business of the group taken as a whole, the manner in which, the persons with whom and the purposes for which the applicant proposes to engage in activities that would require him to be an authorised person and to any other relevant matters, it is inappropriate to require him to be subject to regulation as an authorised person.

(4) Any permission under this paragraph shall be granted by a notice in writing; and the Secretary of State may by a further notice in writing withdraw any such permission if for any reason it appears to him that it is not appropriate for it to continue in force.

(5) The Secretary of State may make regulations requiring persons holding permissions under this paragraph to furnish him with information for the purpose of enabling him to determine whether those permissions should continue in force; and such regulations may, in particular, require such persons—

(a) to give him notice forthwith of the occurrence of such events as are specified in the regulations and such information in respect of those events as is so specified;

(b) to furnish him at such times or in respect of such periods as are specified in the regulations with such information as is so specified.

(6) Section 61 of this Act shall have effect in relation to a contravention of any condition imposed by a permission under this paragraph as it has effect in relation to any such contravention as is mentioned in subsection (1)(a) of that section.

(7) Section 104 of this Act shall apply to a person holding a permission under this paragraph as if he were authorised to carry on investment business as there mentioned; and sections 105 and 106 of this Act shall have effect as if anything done by him in accordance with such permission constituted the carrying on of investment business.

Modifications etc. (not altering text)
C244 SCh. 1 para. 23 modified (1.1.1996) by S.I. 1995/3271, **art. 6(2)**

*Advice given **[**[F239]or arrangements made**]** in course of profession or non-investment business*

Textual Amendments
F239 Words inserted by S.I. 1988/803, **art. 4(1)**

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
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24 (1) Paragraph 15 above does not apply to advice—

(a) which is given in the course of the carrying on of any profession or of a business not otherwise constituting investment business; and

(b) the giving of which is a necessary part of other advice or services given in the course of carrying on that profession or business.

[[F240](2) Paragraph 13 above does not apply to arrangements—

(a) which are made in the course of the carrying on of any profession or of a business not otherwise constituting investment business; and

(b) the making of which is a necessary part of other services provided in the course of carrying on that profession or business.

(3) Advice shall not be regarded as falling within sub-paragraph (1)(b) above and the making of arrangements shall not be regarded as falling within sub-paragraph (2)(b) above if the giving of the advice or the making of the arrangements is remunerated separately from the other advice or services.**]**

Textual Amendments

F240 Sch. 1 para. 24(2)(3) substituted for paragraph 24(2) by S.I. 1988/803, **art. 4(2)**

VALID FROM 01/06/1997

[*Custody of group pension funds by certain insurance companies* ***]***

[F241]24A(1) Paragraph 13A above does not apply to anything done by a relevant insurance company in relation to the investments of any pension fund which is established solely for the benefit of the officers or employees and their dependants of that company or of any other body corporate in the same group as that company.

(2) In sub-paragraph (1) above "relevant insurance company" means an insurance company to which Part II of the Insurance Companies Act 1982 [F242] applies but to which section 22 of this Act does not apply.

Textual Amendments

F241 Sch. 1 para. 24A inserted (1.6.1997) by S.I. 1996/2958, **art. 9**

F242 1982 c.50.

Newspapers

25 (1) Paragraph 15 above does not apply to advice given in a newspaper, journal, magazine or other periodical publication if the principal purpose of the publication, taken as a whole and including any advertisements contained in it, is not to lead persons to invest in any particular investment.

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(2) The Secretary of State may, on the application of the proprietor of any periodical publication, certify that it is of the nature described in sub-paragraph (1) above and revoke any such certificate if he considers that it is no longer justified.

(3) A certificate given under sub-paragraph (2) above and not revoked shall be conclusive evidence of the matters certified.

[F243 Advice given in sound, television or cable programmes]

Textual Amendments

F243 Sch. 1 para. 25A added by S.I. 1988/318, **art. 5** (which art. 5 was repealed by S.I. 1990/349, **art. 8(a)**) and substituted by S.I. 1990/349, **art. 5**

Advice given in television, sound or teletext services

[F244 25A (1) Paragraph 15 above does not apply to any advice given in any programme included, or made for inclusion, in—

(a) any television broadcasting service or other television programme service (within the meaning of Part I of the Broadcasting Act 1990) F245; or

(b) any sound broadcasting service or licensable sound programme service (within the meaning of Part III of that Act); or

(c) any teletext service.

(2) For the purposes of this paragraph, “programme", in relation to a service mentioned in sub-paragraph (1) above, includes an advertisement and any other item included in the service.]

Textual Amendments

F244 Sch. 1 para. 25A substituted (1.6.1992) by 1992/273, art. 2(1).

F245 1990 c.42.

International Securities Self-regulating organisations

[F246 25B (1) An activity within paragraph 13 above engaged in for the purposes of carrying out the functions of a body or association which is approved under this paragraph as an international securities self-regulating organisation, whether by the organisation or by any person acting on its behalf, shall not constitute the carrying on of investment business in the United Kingdom for the purposes of Chapter II of Part I of this Act.

(2) In this paragraph—

“International securities business” means the business of buying, selling, subscribing for or underwriting investments (or offering or agreeing to do so, either as principal or agent) which fall within any of the paragraphs in Part I above other than paragraph 10 and, so far as relevant to paragraph 10, paragraph 11 and which, by their nature, and the manner in which the business is conducted, may be expected normally to be bought or dealt in by persons sufficiently expert to understand any risks involved, where either the transaction is international or each of the parties may be expected to be indifferent to the location of the other, and, for the purposes of this definition, the

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fact that the investments may ultimately be bought otherwise than in the course of international securities business by persons not so expert shall be disregarded; and

"international securities self-regulating organisation" means a body corporate or unincorporated association which

(a) does not have its head office in the United Kingdom;

(b) is not eligible for recognition under section 37 or section 39 of this Act on the ground that (whether or not it has applied, and whether or not it would be eligible on other grounds) it is unable to satisfy the requirements of section 40(2)(a) or (c) of this Act;

(c) has a membership composed of persons falling within any of the following categories, that is to say, authorised persons, exempted persons, persons holding a permission under paragraph 23 above and persons whose head offices are outside the United Kingdom and whose ordinary business is such as is mentioned in paragraph 17(2)(e) above; and

(d) which facilitates and regulates the activity of its members in the conduct of international securities business.

(3) The Secretary of State may approve as an international securities self-regulating organisation any body or association appearing to him to fall within sub-paragraph (2) above if, having regard to such matters affecting international trade, overseas earnings and the balance of payments or otherwise as he considers relevant, it appears to him that to do so would be desirable and not result in any undue risk to investors.

(4) Any approval under this paragraph shall be given by notice in writing; and the Secretary of State may by a further notice in writing withdraw any such approval if for any reason it appears to him that it is not appropriate for it to continue in force.**]**

Textual Amendments

F246 Sch. 1 para. 25B inserted by S.I. 1988/318, **art. 6**.

PART IV

ADDITIONAL EXCLUSIONS FOR PERSONS WITHOUT PERMANENT PLACE OF BUSINESS IN UNITED KINGDOM

Transactions with or through authorised or exempted persons

26 (1) Paragraph 12 above does not apply to any transaction by a person not falling within section 1(3)(a) of this Act ("an overseas person") with or through—

(a) an authorised person; or

(b) an exempted person acting in the course of business in respect of which he is exempt.

(2) Paragraph 13 above does not apply if—

(a) the arrangements are made by an overseas person with, or the offer or agreement to make them is made by him to or with, an authorised person or an exempted person and, in the case of an exempted person, the arrangements

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are with a view to his entering into a transaction in respect of which he is exempt; or

(b) the transactions with a view to which the arrangements are made are, as respects transactions in the United Kingdom, confined to transactions by authorised persons and transactions by exempted persons in respect of which they are exempt.

Modifications etc. (not altering text)

C245 Sch. 1 para. 26 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 44(3)**.
Sch. 1 para. 26 (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 42(3)**

Unsolicited or legitimately solicited transactions etc. with or for other persons

27 (1) Paragraph 12 above does not apply to any transaction entered into by an overseas person as principal with, or as agent for, a person in the United Kingdom, paragraphs 13,14 and 15 above do not apply to any offer made by an overseas person to or agreement made by him with a person in the United Kingdom and paragraph 15 above does not apply to any advice given by an overseas person to a person in the United Kingdom if the transaction, offer, agreement or advice is the result of—

(a) an approach made to the overseas person by or on behalf of the person in the United Kingdom which either has not been in any way solicited by the overseas person or has been solicited by him in a way which has not contravened section 56 or 57 of this Act; or

(b) an approach made by the overseas person which has not contravened either of those sections.

(2) Where the transaction is entered into by the overseas person as agent for a person in the United Kingdom, sub-paragraph (1) above applies only if—

(a) the other party is outside the United Kingdom; or

(b) the other party is in the United Kingdom and the transaction is the result of such an approach by the other party as is mentioned in sub-paragraph (1)(a) above or of such an approach as is mentioned in sub-paragraph (1)(b) above.

[[F247](3) Paragraph 16A does not apply to any offer made by an overseas person to or agreement made by him with a person in the United Kingdom if the offer or agreement is the result of—

(a) an approach made to the overseas person by or on behalf of the person in the United Kingdom which either has not been in any way solicited by the overseas person, or has been solicited by him in a way which has not contravened section 56 or 57 of this Act; or

(b) an approach made by the overseas person which has not contravened either of those sections.**]**

Textual Amendments

F247 Sch. 1 para. 27(3) added (15.7.1996) by S.I. 1996/1322, **art. 2(4)**

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PART V

INTERPRETATION

28 (1) In this Schedule—

(a) "property" includes currency of the United Kingdom or any other country or territory;

(b) references to an instrument include references to any record whether or not in the form of a document;

(c) references to an offer include references to an invitation to treat;

(d) references to buying and selling include references to any acquisition or disposal for valuable consideration.

(2) In sub-paragraph (1)(d) above "disposal" includes—

(a) in the case of an investment consisting of rights under a contract or other arrangements, assuming the corresponding liabilities under the contract or arrangements;

(b) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;

(c) in the case of an investment consisting of rights under a contract, surrendering, assigning or converting those rights.

(3) A company shall not by reason of issuing its own shares or share warrants, and a person shall not by reason of issuing his own debentures or debenture warrants, be regarded for the purposes of this Schedule as disposing of them or, by reason of anything done for the purpose of issuing them, be regarded as making arrangements with a view to a person subscribing for or otherwise acquiring them or underwriting them.

(4) In sub-paragraph (3) above "company" has the same meaning as in paragraph 1 above, "shares" and "debentures" include any investments falling within paragraph 1 or 2 above and "share warrants" and "debenture warrants" means any investment which falls within paragraph 4 above and relates to shares in the company concerned or, as the case may be, to debentures issued by the person concerned.

29 For the purposes of this Schedule a transaction is entered into through a person if he enters into it as agent or arranges for it to be entered into by another person as principal or agent.

[F248 30 (1) For the purposes of this Schedule a group shall be treated as including any body corporate in which a member of the group holds a qualifying capital interest.

(2) A qualifying capital interest means an interest in relevant shares of the body corporate which the member holds on a long-term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest.

(3) Relevant shares means shares comprised in the equity share capital of the body corporate of a class carrying rights to vote in all circumstances at general meetings of the body.

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(4) A holding of 20 per cent or more of the nominal value of the relevant shares of a body corporate shall be presumed to be a qualifying capital interest unless the contrary is shown.

(5) In this paragraph "equity share capital" has the same meaning as in the Companies Act 1985 and the Companies (Northern Ireland) Order 1986.**]**

Textual Amendments

F248 Sch. 1 para. 30 substituted by Companies Act 1989 (c. 40, SIF 27), s. 23, **Sch. 10 para. 36(3)**

31 In this Schedule "a joint enterprise" means an enterprise into which two or more persons ("the participators") enter for commercial reasons related to a business or businesses (other than investment business) carried on by them; and where a participator is a body corporate and a member of a group each other member of the group shall also be regarded as a participator in the enterprise.

32 Where a person is an exempted person as respects only part of the investment business carried on by him anything done by him in carrying on that part shall be disregarded in determining whether any paragraph of Part III or IV of this Schedule applies to anything done by him in the course of business in respect of which he is not exempt.

33 In determining for the purposes of this Schedule whether anything constitutes an investment or the carrying on of investment business section 18 of the [M78]Gaming Act 1845, section 1 of the [M79]Gaming Act 1892, any corresponding provision in force in Northern Ireland and any rule of the law of Scotland whereby a contract by way of gaming or wagering is not legally enforceable shall be disregarded.

Marginal Citations

M78 1845 c. 109.

M79 1892 c. 9.

[[F249]34(1) For the purposes of this Schedule arrangements are not a collective investment scheme if—

(a) the property to which the arrangements relate (other than cash awaiting investment) consists of shares;

(b) they constitute a complying fund;

(c) each participant is the owner of a part of the property to which the arrangements relate and, to the extent that his part of that property–

(i) comprises relevant shares of a class which are admitted to the Official List of any member State or to dealings on a recognised investment exchange, he is entitled to withdraw it at any time after the end of the period of five years beginning with the date on which the shares in question were issued;

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(ii) comprises relevant shares which do not fall within sub-paragraph (i) above, he is entitled to withdraw it at any time after the end of the period of two years beginning with the date upon which the period referred to in sub-paragraph (i) above expired;

(iii) comprises any other shares, he is entitled to withdraw it at any time after the end of the period of six months beginning with the date upon which the shares in question ceased to be relevant shares; and

(iv) comprises cash which the operator has not agreed (conditionally or unconditionally) to apply in subscribing for shares, he is entitled to withdraw it at any time; and

(d) the arrangements would meet the conditions described in section 75(5)(c) of this Act were it not for the fact that the operator is entitled to exercise all or any of the rights conferred by shares included in the property to which the arrangements relate.

(2) For the purposes of this paragraph–

(a) "shares" means investments falling within paragraph 1 of this Schedule;

(b) shares shall be regarded as being relevant shares if and so long as they are shares in respect of which neither–

(i) a claim for relief made in accordance with section 306 of the Income and Corporation Taxes Act 1988 has been disallowed; nor

(ii) an assessment has been made pursuant to section 307 of that Act withdrawing or refusing relief by reason of the body corporate in which the shares are held having ceased to be a body corporate which is a qualifying company for the purposes of section 293 of that Act; and

(c) arrangements shall be regarded as constituting a complying fund if they provide that–

(i) the operator will, so far as practicable, make investments each of which, subject to each participant's individual circumstances, qualify for relief by virtue of Chapter III of Part VII of the Income and Corporation Taxes Act 1988; and

(ii) the minimum subscription to the arrangements made by each participant must be not less than £2,000.**]**

Textual Amendments

F249 Sch. 1 paras. 34, 35 inserted by S.I. 1990/349, **art. 7**

[[F250]35 For the purposes of this Schedule the following are not collective investment schemes–

(a) arrangements where the entire contribution of each participant is a deposit within the meaning of section 5 of the Banking Act 1987 or a sum of a kind described in subsection (3) of that section;

(b) arrangements under which the rights or interests of the participants are represented by the following–

(i) investments falling within paragraph 2 of this Schedule which are issued by a single body corporate which is not an open-ended investment company or which are issued by a single issuer which is

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not a body corporate and are guaranteed by the government of the United Kingdom, of Northern Ireland, or of any country or territory outside the United Kingdom; or

(ii) investments falling within sub-paragraph (i) above which are convertible into or exchangeable for investments falling within paragraph 1 of this Schedule provided that those latter investments are issued by the same person as issued the investments falling within sub-paragraph (i) above or are issued by a single other issuer; or

(iii) investments falling within paragraph 3 of this Schedule issued by the same government, local authority or public authority; or

(iv) investments falling within paragraph 4 of this Schedule which are issued otherwise than by an open-ended investment company and which confer rights in respect of investments, issued by the same issuer, falling within paragraph 1 of this Schedule or within sub-paragraph (i), (ii) or (iii) above;

(c) arrangements which would fall within paragraph (b) above were it not for the fact that the rights or interests of a participant ("the counterparty") whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from Part III or IV are or include rights or interests under a swap arrangement, that is to say, an arrangement the purpose of which is to facilitate the making of payments to participants whether in a particular amount or currency or at a particular time or rate of interest or all or any combination of those things, being an arrangement under which–

(i) the counterparty is entitled to receive amounts (whether representing principal or interest) payable in respect of any property subject to the scheme or sums determined by reference to such amounts; and

(ii) the counterparty makes payments (whether or not of the same amount and whether or not in the same currency as those referred to in sub-paragraph (i) above) which are calculated in accordance with an agreed formula by reference to the amounts or sums referred to in sub-paragraph (i) above;

(d) arrangements under which the rights or interests of participants are rights to or interests in money held in a common account in circumstances in which the money so held is held on the understanding that an amount representing the contribution of each participant is to be applied either in making payments to him or in satisfaction of sums owed by him or in the acquisition of property or the provision of services for him;

(e) arrangements under which the rights and interests of participants are rights and interests in a fund which is a trust fund within the meaning of section 42(1) of the Landlord and Tenant Act 1987.

[arrangements where—

F251(f) (i) each of the participants is a bona fide employee or former employee (or the wife, husband, widow, widower, or child (including, in Northern Ireland, adopted child) or step-child under the age of eighteen of such an employee or former employee) of any of the following bodies corporate, that is to say, The National Grid Company plc, Electricity Association Services Limited or any other body corporate in the same group as either of them

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[[F252]being arrangements which are**]** operated by any of those bodies corporate; and

(ii) the property to which the arrangements relate consists of shares or debentures (as defined in paragraph 20(4) above) in or of a body corporate which is an electricity successor company for the purposes of Part II of the Electricity Act 1989 or a body corporate which would be regarded as connected with such an electricity successor company for the purposes of paragraph 20 above.

and for the purposes of this paragraph references to former employees shall have the same meaning as in the Financial Services Act 1986 (Electricity Industry Exemptions) Order 1990.**]]**

Textual Amendments

F250 Sch. 1 paras. 34, 35 inserted by S.I. 1990/349, **art. 7**

F251 Para. 35(f) added by S.I. 1990/1493, **art. 2**

F252 Words in Sch. 1 para. 35(f)(i) substituted by S.I. 1991/1516, **art. 2**.

[[F253]36(1) For the purposes of this Schedule, arrangements are not a collective investment scheme if they are operated by a body corporate, a body corporate connected with it or a relevant trustee, for the purpose of enabling or facilitating transactions in shares in or debentures of the first-mentioned body between or for the benefit of any of the persons mentioned in sub-paragraph (2) below or the holding of such shares or debentures by or for the benefit of any such persons.

(2) The persons referred to in sub-paragraph (1) above are—

(a) the bona fide employees or former employees of the body corporate or of another body corporate in the same group; or

(b) the wives, husbands, widows, widowers, or children or step-children under the age of eighteen of such employees or former employees.

(3) In this paragraph, “a relevant trustee" means a person holding shares in or debentures of a body corporate as trustee in pursuance of arrangements mentioned in sub-paragraph (1) above which were made by, or by a body corporate connected with, that body corporate.

(4) In this paragraph “shares" and “debentures" include any investment falling within paragraph 1 or 2 above and also include any investment falling within paragraph 4 or 5 above so far as relating to those paragraphs or any investment falling within paragraph 11 above so far as relating to paragraphs 1, 2, 4 or 5.

(5) For the purposes of this paragraph a body corporate is connected with another body corporate if—

(a) they are in the same group; or

(b) one is entitled, either alone or with any other body corporate in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other body corporate or its holding company..**]**

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Textual Amendments

F253 Sch. 1 para. 36 inserted (1.1.1997) by S.I. 1996/2996, **art. 3(2)**

[F254 37 For the purposes of this Schedule, arrangements are not a collective investment scheme if—

(a) the purpose of the arrangements is that participants should receive, by way of reward, payments or other benefits in respect of the introduction by any person of other persons who become participants;

(b) the arrangements are such that the payments or other benefits referred to in paragraph (a) above are to be wholly or mainly funded out of the contributions of other participants; and

(c) the only reason why the arrangements have either or both of the characteristics mentioned in section 75(3) of this Act is because, pending their being used to fund those payments or other benefits, contributions of participants are managed as a whole by or on behalf of the operator of the scheme.]

Textual Amendments

F254 Sch. 1 para. 37 inserted (6.2.1997) by S.I. 1997/32, **art. 2(2)**

VALID FROM 01/05/2001

[F255 38 For the purpose of this Schedule, arrangements are not prevented from being a collective investment scheme merely because they constitute a limited liability partnership.]

Textual Amendments

F255 Sch. 1 para. 38 inserted (1.5.2001) by S.I. 2001/1421, **art. 2(4)**

SCHEDULE 2

Section 10.

REQUIREMENTS FOR RECOGNITION OF SELF-REGULATING ORGANISATION

Members to be fit and proper persons

1 (1) The rules and practices of the organisation must be such as to secure that its members are fit and proper persons to carry on investment business of the kind with which the organisation is concerned.

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(2) Where the organisation is concerned with investment business of different kinds its rules and practices must be such as to secure that a member carrying on investment business of any of those kinds is a fit and proper person to carry on investment business of that kind.

(3) The matters which may be taken into account under the rules in determining whether a person is a fit and proper person must include those that the Secretary of State may take into account under section 27 above.

(4) This paragraph does not apply to a person who is not an authorised person by virtue of being a member of the organisation.

Modifications etc. (not altering text)
C246 Sch. 2 para. 1 extended (1.1.1996) by S.I. 1995/3275, **reg. 21(2)**

Admission, expulsion and discipline

2 The rules and practices of the organisation relating to—
(a) the admission and expulsion of members; and
(b) the discipline it exercises over its members,
must be fair and reasonable and include adequate provision for appeals.

Modifications etc. (not altering text)
C247 Sch. 2 para. 2 amended (1.1.1993) by S.I. 1992/3218, **reg. 48(2)**.
Sch. 2 para. 2 amended (1.7.1994) by S.I. 1994/1696, **reg. 56(1)**
Sch. 2 para. 2 appl.(mods) (18.7.1996) by S.I. 1996/1669, **reg. 9(4)**
Sch. 2 para. 2 extended (1.1.1996) by S.I. 1995/3275, **reg. 21(5)**
Sch. 2 para. 2 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7**, para. 43(1)
Sch. 2 para. 2 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 45(1)**.

Safeguards for investors

3 **[**[F256](1) The organisation must have rules governing the carrying on of investment business by its members which, together with the statements of principle, rules, regulations and codes of practice to which its members are subject under Chapter V of Part I of this Act, are such as to afford an adequate level of protection for investors.

(2) In determining in any case whether an adequate level of protection is afforded for investors of any description, regard shall be had to the nature of the investment business carried on by members of the organisation, the kinds of investors involved and the effectiveness of the organisation's arrangements for enforcing compliance.**]**

(3) The organisation must, so far as practicable, have powers for purposes corresponding to those of Chapter VI of Part I of this Act.

(4) The rules of the organisation must enable it to prevent a member resigning from the organisation if the organisation considers that any matter affecting him should

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be investigated as a preliminary to a decision on the question whether he should be expelled or otherwise disciplined or if it considers that it is desirable that a prohibition or requirement should be imposed on him under the powers mentioned in sub-paragraph (3) above or that any prohibition or requirement imposed on him under those powers should continue in force.

Textual Amendments

F256 Sch. 2 para. 3(1)(2) substituted by Companies Act 1989 (c. 40, SIF 27), **s. 203(1)**

Modifications etc. (not altering text)

C248 Sch. 2 para. 3 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 45(2)**.
SCh. 2 para. 3 amended (1.7.1994) by S.I. 1994/1696, **reg. 56(2)**
Sch. 2 para. 3 extended (1.1. 1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 43(2)(3)**

C249 Sch. 2 para. 3(3) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 45(3)(a)**.

[F257 Taking account of costs of compliance]

Textual Amendments

F257 Sch. 2 para. 3A inserted (with saving) by Companies Act 1989 (c. 40, SIF 27), **s. 204(1)(2)(3)**

3A The organisation must have satisfactory arrangements for taking account, in framing its rules, of the cost to those to whom the rules would apply of complying with those rules and any other controls to which they are subject.

Monitoring and enforcement

4 (1) The organisation must have adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and with any **[**F258statement of principle, rules, regulations or codes of practice**]** to which its members are subject under Chapter V of Part I of this Act in respect of investment business of a kind regulated by the organisation.

(2) The arrangements for monitoring may make provision for that function to be performed on behalf of the organisation (and without affecting its responsibility) by any other body or person who is able and willing to perform it.

Textual Amendments

F258 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 20**

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The governing body

5 (1) The arrangements of the o2rganisation with respect to the appointment, removal from office and functions of the persons responsible for making or enforcing the rules of the organisation must be such as to secure a proper balance—

(a) between the interests of the different members of the organisation; and

(b) between the interests of the organisation or its members and the interests of the public.

(2) The arrangements shall not be regarded as satisfying the requirements of this paragraph unless the persons responsible for those matters include a number of persons independent of the organisation and its members sufficient to secure the balance referred to in sub-paragraph (1)(b) above.

Investigation of complaints

6 (1) The organisation must have effective arrangements for the investigation of complaints against the organisation or its members.

(2) The arrangements may make provision for the whole or part of that function to be performed by and to be the responsibility of a body or person independent of the organisation.

Promotion and maintenance of standards

7 The organisation must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of investment business and to co-operate, by the sharing of information and otherwise, with the Secretary of State and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.

Modifications etc. (not altering text)

C250 Sch. 2 para. 7 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 45(4)**.
Sch. 2 para. 7 amended (1.7.1994) by S.I. 1994/1696, **reg. 56(4)**
Sch. 2 para. 7 extended (1.1.1996) by S,I. 1995/3275, reg. 32, Sch. 7 para. 43(4)

SCHEDULE 3

Section 18.

REQUIREMENTS FOR RECOGNITION OF PROFESSIONAL BODY

Modifications etc. (not altering text)

C251 Sch. 3 continued (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 20(1); S.I. 2001/3538, **art. 2(1)** (which S.I. was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23)

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Sch. 3 continued (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 20(1); S.I. 2001/3538, **art. 2(1)**

Statutory status

1 The body must—

(a) regulate the practice of a profession in the exercise of statutory powers; or

(b) be recognised (otherwise than under this Act) for a statutory purpose by a Minister of the Crown or by, or by the head of, a Northern Ireland department; or

(c) be specified in a provision contained in or made under an enactment as a body whose members are qualified to exercise functions or hold offices specified in that provision.

Certification

2 (1) The body must have rules, practices and arrangements for securing that no person can be certified by the body for the purposes of Part I of this Act unless the following conditions are satisfied.

(2) The certified person must be either—

(a) an individual who is a member of the body; or

(b) a person managed and controlled by one or more individuals each of whom is a member of a recognised professional body and at least one of whom is a member of the certifying body.

(3) Where the certified person is an individual his main business must be the practice of the profession regulated by the certifying body and he must be practising that profession otherwise than in partnership; and where the certified person is not an individual that person's main business must be the practice of the profession or professions regulated by the recognised professional body or bodies of which the individual or individuals mentioned in sub-paragraph (2)(b) above are members.

(4) In the application of sub-paragraphs (2) and (3) above to a certificate which is to be or has been issued to a partnership constituted under the law of England and Wales or Northern Ireland or the law of any other country or territory under which a partnership is not a legal person, references to the certified person shall be construed as references to the partnership.

Modifications etc. (not altering text)

C252 Sch. 3 para. 2 extended (with modifications) (1.1.1996) by S.I. 1995/3275, **reg. 31**

Safeguards for investors

[F259 3 (1) The body must have rules regulating the carrying on of investment business by persons certified by it which, together with the statements of principle, rules,

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regulations and codes of practice to which those persons are subject under Chapter V of Part I of this Act, afford an adequate level of protection for investors.

(2) In determining in any case whether an adequate level of protection is afforded for investors of any description, regard shall be had to the nature of the investment business carried on by persons certified by the body, the kinds of investors involved and the effectiveness of the body's arrangements for enforcing compliance.**]**

Textual Amendments

F259 Sch. 3 para. 3 substituted by Companies Act 1989 (c. 40, SIF 27), **s. 203(2)**

[F260 Taking account of costs of compliance]

Textual Amendments

F260 Sch. 3 para. 3A inserted (with saving) by Companies Act 1989 (c. 40, SIF 27), **s. 204(1)(2)(3)**

3A The body must have satisfactory arrangements for taking account, in framing its rules, of the cost to those to whom the rules would apply of complying with those rules and any other controls to which they are subject.

Monitoring and enforcement

4 (1) The body must have adequate arrangements and resources for the effective monitoring of the continued compliance by persons certified by it with the conditions mentioned in paragraph 2 above and rules, practices and arrangements for the withdrawal or suspension of certification (subject to appropriate transitional provisions) in the event of any of those conditions ceasing to be satisfied.

(2) The body must have adequate arrangements and resources for the effective monitoring and enforcement of compliance by persons certified by it with the rules of the body relating to the carrying on of investment business and with any **[**F261statements of principle, rules, regulations or codes of practice**]** to which those persons are subject under Chapter V of Part I of this Act in respect of business of a kind regulated by the body.

(3) The arrangements for enforcement must include provision for the withdrawal or suspension of certification and may include provision for disciplining members of the body who manage or control a certified person.

(4) The arrangements for enforcement may make provision for the whole or part of that function to be performed by and to be the responsibility of a body or person independent of the professional body.

(5) The arrangements for enforcement must be such as to secure a proper balance between the interests of persons certified by the body and the interests of the public; and the arrangements shall not be regarded as satisfying that requirement unless the persons responsible for enforcement include a sufficient number of persons who are independent of the body and its members and of persons certified by it.

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(6) The arrangements for monitoring may make provision for that function to be performed on behalf of the body (and without affecting its responsibility) by any other body or person who is able and willing to perform it.

Textual Amendments

F261 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 21**

Investigation of complaints

5 (1) The body must have effective arrangements for the investigation of complaints relating to—

(a) the carrying on by persons certified by it of investment business in respect of which they are subject to its rules; and

(b) its regulation of investment business.

(2) Paragraph 4(4) above applies also to arrangements made pursuant to this paragraph.

Promotion and maintenance of standards

6 The body must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of investment business and to co-operate, by the sharing of information and otherwise, with the Secretary of State and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.

SCHEDULE 4

Sections 36 and 37.

REQUIREMENTS FOR RECOGNITION OF INVESTMENT EXCHANGE

Modifications etc. (not altering text)

C253 Sch. 4 modified (1.3.1994) by S.I. 1994/188, **reg. 4(a)**

Financial resources

1 The exchange must have financial resources sufficient for the proper performance of its functions.

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Safeguards for investors

2 (1) The rules and practices of the exchange must ensure that business conducted by means of its facilities is conducted in an orderly manner and so as to afford proper protection to investors.

(2) The exchange must—

(a) limit dealings on the exchange to investments in which there is a proper market; and

(b) where relevant, require issuers of investments dealt in on the exchange to comply with such obligations as will, so far as possible, afford to persons dealing in the investments proper information for determining their current value.

(3) In the case of securities to which Part IV of this Act applies compliance by The Stock Exchange with the provisions of that Part shall be treated as compliance by it with sub-paragraph (2) above.

(4) The exchange must either have its own arrangements for ensuring the performance of transactions effected on the exchange or ensure their performance by means of services provided under clearing arrangements made by it with a recognised clearing house.

(5) The exchange must either itself have or secure the provision on its behalf of satisfactory arrangements for recording the transactions effected on the exchange.

(6) Sub-paragraphs (2), (4) and (5) above are without prejudice to the generality of sub-paragraph (1) above.

Monitoring and enforcement

3 (1) The exchange must have adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and any clearing arrangements made by it.

(2) The arrangements for monitoring may make provision for that function to be performed on behalf of the exchange (and without affecting its responsibility) by any other body or person who is able and willing to perform it.

Investigation of complaints

4 The exchange must have effective arrangements for the investigation of complaints in respect of business transacted by means of its facilities.

Promotion and maintenance of standards

5 The exchange must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of investment business and to co-operate, by the sharing of information and otherwise, with the Secretary of State

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Changes to legislation: *Financial Services Act 1986 (Repealed) is up to date with all changes known to be in force on or before 14 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)*

and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.

[F262 Supplementary]

Textual Amendments
F262 Sch. 4 para. 6 inserted (*retrospectively*) by Companies Act 1989 (c. 40, SIF 27), **s. 205(1)(2)**

6 (1) The provisions of this Schedule relate to an exchange only so far as it provides facilities for the carrying on of investment business; and nothing in this Schedule shall be construed as requiring an exchange to limit dealings on the exchange to dealings in investments.

(2) The references in this Schedule, and elsewhere in this Act, to ensuring the performance of transactions on an exchange are to providing satisfactory procedures (including default procedures) for the settlement of transactions on the exchange.

SCHEDULE 5

Section 43.

LISTED MONEY MARKET INSTITUTIONS

Modifications etc. (not altering text)
C254 Sch. 5 amended by S.I. 1990/696, **art. 2**

PART I

TRANSACTIONS NOT SUBJECT TO MONETARY LIMIT

1 This Part of this Schedule applies to any transaction entered into by the listed institution as principal (or as agent for another listed institution) with another listed institution or the Bank of England (whether acting as principal or agent) if the transaction falls within paragraph 2 or 3 below.

2 (1) A transaction falls within this paragraph if it is in respect of an investment specified in sub-paragraph (2) below and—

(a) in the case of an investment within any of paragraphs (a) to (d) of that sub-paragraph, the transaction is not regulated by the rules of a recognised investment exchange; and

(b) in the case of any other investment specified in that sub-paragraph, the transaction is not made on such an exchange or expressed to be as so made.

(2) The investments referred to above are—

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[[F263](a) a debenture or other instrument falling within paragraph 2 of Schedule 1 to this Act which is issued on terms requiring repayment not later than five years from the date of issue;**]**

(c) loan stock, or any other instrument, falling within paragraph 3 of Schedule 1 to this Act which is issued on terms requiring repayment not later than one year or, if issued by a local authority in the United Kingdom, five years from the date of issue;

(d) a warrant or other instrument falling within paragraph 4 of Schedule 1 to this Act which entitles the holder to subscribe for an investment within **[**[F264]paragraph (a) or (c)**]** above;

(e) any certificate or other instrument falling within paragraph 5 or 11 of Schedule 1 to this Act and relating to an investment within **[**[F264]paragraph (a) or (c)**]** above;

(f) an option falling within paragraph 7 of Schedule 1 to this Act and relating to—

(i) an investment within **[**[F264]paragraph (a) or (c)**]**above;

(ii) currency of the United Kingdom or of any other country or territory; or

(iii) gold or silver;

(g) rights under a contract falling within paragraph 8 of Schedule 1 to this Act for the sale of—

(i) an investment within **[**[F264]paragraph (a) or (c)**]** above;

(ii) currency of the United Kingdom or of any other country or territory; or

(iii) gold or silver;

(h) rights under a contract falling within paragraph 9 of Schedule 1 to this Act by reference to fluctuations in—

(i) the value or price of any investment falling within any of the foregoing paragraphs; or

(ii) currency of the United Kingdom or of any other country or territory; or

(iii) the rate of interest on loans in any such currency or any index of such rates;

(i) an option to acquire or dispose of an investment within paragraph (f), (g) or (h) above.

Textual Amendments

F263 Sch. 5 para. 2(2)(a) substituted (3.4.1997) for Sch. 5 para. 2(2)(a)(b) by S.I. 1996/816, **art. 2(a)**

F264 Words in Sch. 5 para. 2(2)(d)(e)(f)(i)and(g)(i) substituted (3.4.1997) by S.I. 1996/816, **art. 2(b)**

Modifications etc. (not altering text)

C255 Sch. 5 Pt. I para. 2(2) amended (1.1.1993) by S.I. 1992/3218, reg. 82(1), **Sch. 10 Pt. I para. 23**.

3 (1) A transaction falls within this paragraph if it is a transaction by which one of the parties agrees to sell or transfer an investment falling within paragraph 2 or 3 of Schedule 1 to this Act and by the same or a collateral agreement that party agrees, or

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acquires an option, to buy back or re-acquire that investment or an equivalent amount of a similar investment within twelve months of the sale or transfer.

(2) For the purposes of this paragraph investments shall be regarded as similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights.

PART II

TRANSACTIONS SUBJECT TO MONETARY LIMIT

4 (1) This Part of this Schedule applies to any transaction entered into by the listed institution—

(a) as principal (or as agent for another listed institution) with an unlisted person (whether acting as principal or agent);

(b) as agent for an unlisted person with a listed institution or the Bank of England (whether acting as principal or agent); or

(c) as agent for an unlisted person with another unlisted person (whether acting as principal or agent),

if the transaction falls within paragraph 2 or 3 above and the conditions in paragraph 5 or, as the case may be, paragraph 7 below are satisfied.

(2) In this Part of this Schedule and in Part III below "unlisted person" means a person who is neither a listed institution nor the Bank of England.

5 (1) In the case of a transaction falling within paragraph 2 above the conditions referred to above are as follows but subject to paragraph 6 below.

(2) The consideration for a transaction in respect of an investment falling within **[**[F265]paragraph (2)(a), (c) or (e) above**]** must be not less than £100,000.

(3) The consideration payable on subscription in the case of an investment falling within paragraph 2(2)(d) must not be less than £500,000.

(4) The value or price of the property in respect of which an option within paragraph 2(2)(f) above is granted must not be less than £500,000.

(5) The price payable under a contract within paragraph 2(2)(g) above must be not less than £500,000.

(6) The value or price the fluctuation in which, or the amount the fluctuation in the interest on which, is relevant for the purposes of a contract within paragraph 2(2)(h) above must not be less than £500,000.

(7) In the case of an option falling within paragraph 2(2)(i) above the condition in sub-paragraph (4), (5) or (6) above, as the case may be, must be satisfied in respect of the investment to which the option relates.

Textual Amendments

F265 Words in Sch. 5 para. 5(2) substituted (3.4.1997) by S.I. 1997/816, **art. 3**

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
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6 The conditions in paragraph 5 above do not apply to a transaction entered into by the listed institution as mentioned in paragraph (a), (b) or (c) of paragraph 4(1) above if—

(a) the unlisted person mentioned in paragraph (a) or (b) or, as the case may be, each of the unlisted persons mentioned in paragraph (c) has in the previous eighteen months entered into another transaction in respect of an investment specified in paragraph 2(2) above;

(b) those conditions were satisfied in the case of that other transaction; and

(c) that other transaction was entered into by that person (whether acting as principal or agent) with the listed institution (whether acting as principal or agent) or was entered into by that person through the agency of that institution or was entered into by him (whether acting as principal or agent) as a result of arrangements made by that institution.

7 In the case of a transaction falling within paragraph 3 above the condition referred to in paragraph 4 above is that the consideration for the sale or transfer must be not less than £100,000.

8 The monetary limits mentioned in this Part of this Schedule refer to the time when the transaction is entered into; and where the consideration, value, price or amount referred to above is not in sterling it shall be converted at the rate of exchange prevailing at that time.

PART III

TRANSACTIONS ARRANGED BY LISTED INSTITUTIONS

9 Subject to paragraphs 10 and 11 below, this Part of this Schedule applies to any transaction arranged by the listed institution which—

(a) is entered into by another listed institution as principal (or as agent for another listed institution) with another listed institution or the Bank of England (whether acting as principal or agent);

(b) is entered into by another listed institution (whether acting as principal or agent) with an unlisted person (whether acting as principal or agent); or

(c) is entered into between unlisted persons (whether acting as principal or agent),

if the transaction falls within paragraph 2 or 3 above.

10 In the case of a transaction falling within paragraph 2 above paragraph 9(b) and (c) above do not apply unless either the conditions in paragraph 5 above are satisfied or—

(a) the unlisted person mentioned in paragraph (b) or, as the case may be, each of the unlisted persons mentioned in paragraph (c) has in the previous eighteen months entered into another transaction in respect of an investment specified in paragraph 2(2) above;

(b) those conditions were satisfied in the case of that other transaction; and

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(c) that other transaction was entered into by that person (whether acting as principal or agent) with the listed institution making the arrangements (whether acting as principal or agent) or through the agency of that institution or was entered into by that person (whether acting as principal or agent) as a result of arrangements made by that institution.

11 In the case of a transaction falling within paragraph 3 above paragraph 9(b) and (c) above do not apply unless the condition in paragraph 7 above is satisfied.

SCHEDULE 6

Section 96(6).

THE FINANCIAL SERVICES TRIBUNAL

Modifications etc. (not altering text)

C256 It is provided that ss. 96, 97(6), 99-101, Sch. 6 shall continue (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 105**, 108 (with art. 23(2))

C257 Sch. 6 extended (12.2.1992) by S.I. 1992/225, **reg. 103(6)**

Term of office of members

1 (1) **[**[F266]Subject to the following provisions of this paragraph,**]** a person appointed to the panel mentioned in section 96(2) of this Act shall hold and vacate his office in accordance with the terms of his appointment and on ceasing to hold office shall be eligible for re-appointment.

(2) A member of the panel appointed by the Lord Chancellor may resign his office by notice in writing to the Lord Chancellor; and a member of the panel appointed by the Secretary of State may resign his office by notice in writing to the Secretary of State.

[[F267](3) A member of the panel appointed by the Lord Chancellor shall vacate his office on the day on which he attains the age of seventy years; but this sub-paragraph is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of seventy-five years).**]**

Textual Amendments

F266 Words in Sch. 6 para. 1(1) inserted (31.3.1995) by 1993 c. 8, ss. 26, 31(2), **Sch. 6 para.41** (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, **art. 2**

F267 Sch. 6 para. 1(3) added (31.3.1995) by 1993 c. 8, ss. 26, 31(2), **Sch. 6 para.41** (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, **art. 2**

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
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Expenses

2 The Secretary of State shall pay to the persons serving as members of the Tribunal such remuneration and allowances as he may determine and shall defray such other expenses of the Tribunal as he may approve.

Staff

3 The Secretary of State may provide the Tribunal with such officers and servants as he thinks necessary for the proper discharge of its functions.

Procedure

4 (1) The Secretary of State may make rules for regulating the procedure of the Tribunal, including provision for the holding of any proceedings in private, for the awarding of costs (or, in Scotland, expenses) and for the payment of expenses to persons required to attend before the Tribunal.

(2) The Tribunal may appoint counsel or a solicitor to assist it in proceedings before the Tribunal.

Evidence

5 (1) The Tribunal may by summons require any person to attend, at such time and place as is specified in the summons, to give evidence or to produce any document in his custody or under his control which the Tribunal considers it necessary to examine.

(2) The Tribunal may take evidence on oath and for that purpose administer oaths or may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matters in respect of which he is examined.

(3) Any person who without reasonable excuse—

(a) refuses or fails to attend in obedience to a summons issued by the Tribunal or to give evidence; or

(b) alters, suppresses, conceals or destroys or refuses to produce a document which he may be required to produce for the purposes of proceedings before the Tribunal,

shall be guilty of an offence.

(4) A person guilty of an offence under paragraph (a) of sub-paragraph (3) above shall be liable on summary conviction to a fine not exceeding the fifth level on the standard scale; and a person guilty of an offence under paragraph (b) of that sub-paragraph shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

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(5) A person shall not under this paragraph be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session except that a lawyer may be required to furnish the name and address of his client.

(6) Any reference in this paragraph to the production of a document includes a reference to the production of a legible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

Appeals and supervision by Council on Tribunals

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[F268]6

Textual Amendments
F268 Sch. 6 para. 6 repealed (1.10.1992) by Tribunals and Enquiries Act 1992 (c. 53), s. 18(2), **Sch. 4 Pt.I**.

Parliamentary disqualification

7 (1) In Part III of Schedule 1 to the [M80]House of Commons Disqualification Act 1975 (disqualifying offices) there shall be inserted at the appropriate place "Any member of the Financial Services Tribunal in receipt of remuneration".

(2) A corresponding amendment shall be made in Part III of Schedule 1 to the [M81]Northern Ireland Assembly Disqualification Act 1975.

Marginal Citations
M80 1975 c. 24.
M81 1975 c. 25.

SCHEDULE 7

Section 114.

QUALIFICATIONS OF DESIGNATED AGENCY

Constitution

1 (1) The constitution of the agency must provide for it to have—
(a) a chairman; and
(b) a governing body consisting of the chairman and other members;

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and the provisions of the constitution relating to the chairman and the other members of the governing body must comply with the following provisions of this paragraph.

(2) The chairman and other members of the governing body must be persons appointed and liable to removal from office by the **[**[F269]Treasury**]** and the Governor of the Bank of England acting jointly.

(3) The members of the governing body must include—

(a) persons with experience of investment business of a kind relevant to the functions or proposed functions of the agency; and

(b) other persons, including regular users on their own account or on behalf of others of services provided by persons carrying on investment business of any such kind;

and the composition of that body must be such as to secure a proper balance between the interests of persons carrying on investment business and the interests of the public.

Textual Amendments

F269 Words in Sch. 7 para. 1(2) substituted (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para.10**.

Arrangements for discharge of functions

2 (1) The agency's arrangements for the discharge of its functions must comply with the following provisions of this paragraph.

(2) Any **[**[F270]statements of principle, rules, regulations and codes of practice must be issued or made**]** by the governing body of the agency.

(3) Any decision taken in the exercise of other functions must be taken at a level appropriate to the importance of the decision.

(4) In the case of functions to be discharged by the governing body, the members falling respectively within paragraphs (a) and (b) of paragraph 1(3) above must, so far as practicable, have an opportunity to express their opinions.

(5) Subject to sub-paragraphs (2) to (4) above, the arrangements may enable any functions to be discharged by a committee, sub-committee, officer or servant of the agency.

Textual Amendments

F270 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 22**

Modifications etc. (not altering text)

C258 Sch. 7 para. 2 excluded (18.6.2001) by S.I. 2001/1821, **art. 2(1)(a)**

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services Act 1986 (Repealed) is up to date with all changes known to be in force on or before 14 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)*

[F271 Taking account of costs of compliance]

Textual Amendments
F271 Sch. 7 para. 2A inserted (with saving) by Companies Act 1989 (c. 40, SIF 27), **s. 204(4)(5)**

2A (1) The agency must have satisfactory arrangements for taking account, in framing any provisions which it proposes to make in the exercise of its legislative functions, of the cost to those to whom the provisions would apply of complying with those provisions and any other controls to which they are subject.

(2) In this paragraph "legislative functions" means the functions of issuing or making statements of principle, rules, regulations or codes of practice.

Monitoring and enforcement

3 (1) The agency must have a satisfactory system—
(a) for enabling it to determine whether persons regulated by it are complying with the obligations which it is the responsibility of the agency to enforce; and
(b) for the discharge of the agency's responsibility for the enforcement of those obligations.

(2) The system may provide for the functions mentioned in sub-paragraph (1)(a) to be performed on its behalf (and without affecting its responsibility) by any other body or person who is able and willing to perform them.

Investigation of complaints

4 (1) The agency must have effective arrangements for the investigation of complaints arising out of the conduct of investment business by authorised persons or against any recognised self-regulating organisation, professional body, investment exchange or clearing house.

(2) The arrangements must make provision for the investigation of complaints in respect of authorised persons to be carried out in appropriate cases independently of the agency and those persons.

Modifications etc. (not altering text)
C259 Sch. 7 para. 4 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 46(1)**.
Sch. 7 para. 4 extended (with modifications) (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7**, para. 44(1)

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
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Promotion and maintenance of standards

5 The agency must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of investment business and to co-operate, by the sharing of information and otherwise, with the Secretary of State and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.

Modifications etc. (not altering text)

C260 Sch. 7 para. 5 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 46(2)**.
Sch. 7 para. 5 amended (1.7.1994) by S.I. 1994/1696, **reg. 61**
Sch. 7 para. 5 extended (with modifications) (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 44(2)**

Records

6 The agency must have satisfactory arrangements for recording decisions made in the exercise of its functions and for the safe-keeping of those records which ought to be preserved.

SCHEDULE 8

Section 114.

PRINCIPLES APPLICABLE TO DESIGNATED AGENCY'S [F272 LEGISLATIVE PROVISIONS]

Textual Amendments

F272 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(2)**

Modifications etc. (not altering text)

C261 Sch. 8 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.47**.
Sch. 8 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 45**

[F273 Introduction]

Textual Amendments

F273 Sch. 8 paras. 1, 1A with headings substituted for paragraph 1 and the crossheading preceding it by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(3)**

1 (1) In this Schedule "legislative provisions" means the provisions of statements of principle, rules, regulations and codes of practice issued or made under Part I of this Act [F274 and the provisions of regulations made under regulation 6 of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996].

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(2) References in this Schedule to "conduct of business provisions" are to rules made under section 48 of this Act and statements of principle and codes of practice so far as they relate to matters falling within that rule-making power.

(3) References in this Schedule to provisions made for the purposes of a specified section or Chapter are to rules or regulations made under that section or Chapter and statements of principle and codes of practice so far as they relate to matters falling within that power to make rules or regulations.

Textual Amendments
F274 Words in Sch. 8 para. 1(1) inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 Pt. I para. 23**

Standards

1A The conduct of business provisions and the other legislative provisions must promote high standards of integrity and fair dealing in the conduct of investment business.

2 The **[**[F275]conduct of business provisions**]** must make proper provision for requiring an authorised person to act with due skill, care and diligence in providing any service which he provides or holds himself out as willing to provide.

Textual Amendments
F275 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(4)**

3 The **[**[F276]conduct of business provisions**]** must make proper provision for requiring an authorised person to subordinate his own interests to those of his clients and to act fairly between his clients.

Textual Amendments
F276 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(4)**

4 The **[**[F277]conduct of business provisions**]** must make proper provision for requiring an authorised person to ensure that, in anything done by him for the persons with whom he deals, due regard is had to their circumstances.

Textual Amendments
F277 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(4)**

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Disclosure

5 The **[**[F278]conduct of business provisions**]** must make proper provision for the disclosure by an authorised person of interests in, and facts material to, transactions which are entered into by him in the course of carrying on investment business or in respect of which he gives advice in the course of carrying on such business, including information as to any commissions or other inducements received or receivable from a third party in connection with any such transaction.

Textual Amendments
F278 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(4)**

6 The **[**[F279]conduct of business provisions**]** must make proper provision for the disclosure by an authorised person of the capacity in which and the terms on which he enters into any such transaction.

Textual Amendments
F279 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(4)**

7 The **[**[F280]conduct of business provisions**]**, or **[**[F281]those provisions and provisions made for the purposes of**]** section 51 of this Act, must make proper provision for requiring an authorised person who in the course of carrying on investment business enters or offers to enter into a transaction in respect of an investment with any person, or gives any person advice about such a transaction, to give that person such information as to the nature of the investment and the financial implications of the transaction as will enable him to make an informed decision.

Textual Amendments
F280 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(4)**
F281 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(5)**

8 **[**[F282]Provisions made for the purposes of**]** section 48 of this Act regulating action for the 2001purpose of stabilising the price of investments must make proper provision for ensuring that where action is or is to be taken in conformity with the rules adequate arrangements exist for making known that the price of the investments in respect of which the action is or is to be taken (and, where relevant, of any other investments) may be affected by that action and the period during which it may be affected; and where a transaction is or is to be entered into during a period when it is known that the price of the investment to which it relates may be affected by any such action the information referred to in paragraph 7 above includes information to that effect.

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Textual Amendments

F282 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(6)**

Protection

9 The **[**[F283]conduct of business provisions**]** and any **[**[F284]provisions made for the purposes of**]** 200section 55 of this Act must make proper provision for the protection of property for which an authorised person is liable to account to another person.

Textual Amendments

F283 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(4)**

F284 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(7)**

10 **[**[F285]Provisions made for the purposes of**]** sections 53 and 54 of this Act must make the best provision that can reasonably be made **[**[F285]for the purposes of those sections**]**.

Textual Amendments

F285 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(8)**

Records

11 The **[**[F286]conduct of business provisions**]** must require the keeping of proper records and make provision for their inspection in appropriate cases.

Textual Amendments

F286 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(4)**

Classes of investors

12 The **[**[F287]conduct of business provisions**]** and the other **[**[F288]provisions made for the purposes of**]** Chapter V of Part I of this Act must take proper account of the fact that provisions that are appropriate for regulating the conduct of business in relation to some classes of investors may not (by reason of their knowledge, experience or otherwise) be appropriate in relation to others.

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Textual Amendments

F287 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(4)**

F288 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(9)**

SCHEDULE 9

Section 116.

DESIGNATED AGENCIES: STATUS AND EXERCISE OF TRANSFERRED FUNCTIONS

Status

1 (1) A designated agency shall not be regarded as acting on behalf of the Crown and its members, officers and servants shall not be regarded as Crown servants.

(2) In Part III of Schedule 1 to the [M82]House of Commons Disqualification Act 1975 (disqualifying offices) there shall be inserted at the appropriate place—

"Chairman of a designated agency within the meaning of the Financial Services Act 1986 if he is in receipt of remuneration".

(3) An amendment corresponding to that in sub-paragraph (2) above shall be made in Part III of Schedule 1 to the [M83]Northern Ireland Assembly Disqualification Act 1975.

Marginal Citations

M82 1975 c. 24.

M83 1975 c. 25.

Exemption from requirement of "limite"d in name of designated agency

2 (1) A company is exempt from the requirements of the [M84]Companies Act 1985 relating to 200the use of "limited" as part of the company name if—

(a) it is a designated agency; and

(b) its memorandum or articles comply with the requirements specified in paragraph (b) of subsection (3) of section 30 of that Act.

(2) In subsection (4) of that section (statutory declaration of compliance with requirements entitling company to exemption) the reference to the requirements of subsection (3) of that section shall include a reference to the requirements of sub-paragraph (1) above.

(3) In section 31 of that Act (provisions applicable to exempted companies) the reference to a company which is exempt under section 30 of that Act shall include a reference to a company that is exempt under this paragraph and, in relation to such a company, the power conferred by subsection (2) of that section (direction to include "limited" in company name) shall be exercisable on the ground that the company has ceased

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to be a designated agency instead of the ground mentioned in paragraph (a) of that subsection.

(4) In this paragraph references to the said Act of 1985 and sections 30 and 31 of that Act include references to the corresponding provisions in force in Northern Ireland.

Marginal Citations
M84 1985 c. 6.

The Tribunal

3 (1) Where a case is referred to the Tribunal by a designated agency the Tribunal shall send the 2Secretary of State a copy of any report made by it to the agency in respect of that case.

(2) Where the powers which the Tribunal could, apart from any delegation order, require the Secretar of State to exercise are, by virtue of such an order or of an order resuming any function transferred by it, exercisable partly by the Secretary of State and partly by a designated agency or designated agencies the Tribunal may require any of them to exercise such of those powers as are exercisable by them respectively.

Legislative functions

4 (1) A designated agency shall send the Secretary of State a copy of **[**[F289]any statements of principles, rules, regulations, or codes of practice issued or made**]** by it by virtue of functions transferred to it by a delegation order and give him written notice of any amendment or revocation of or addition to any such rules or regulations.

(2) A designated agency shall—

(a) send the Secretary of State a copy of any guidance issued by the agency which is intended to have continuing effect and is issued in writing or other legible form; and

(b) give him written notice of any amendment, revocation of or addition to guidance issued by it;

but notice need not be given of the revocation of guidance other than such as is mentioned in paragraph (a) above or of any amendment or addition which does not result in or consist of such guidance as is there mentioned.

Textual Amendments
F289 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 24(2)**

[[F290]5 Paragraphs 6 to 9 below have effect instead of section 205A of this Act in relation to statements of principle, rules, regulations and codes of practice issued or made by a designated agency in the exercise of powers transferred to it by a delegation order.**]**

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Textual Amendments

F290 Sch. 9 paras. 5, 6 substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 24(3)**

6 Any such power is exercisable by instrument in writing and includes power to make different provision for different cases.

7 The instrument shall specify the provision of this Act **[**[F291]or, as the case may be, the provision of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996,**]**under which it is made.

Textual Amendments

F291 Words in Sch. 9 para. 7 inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 para. 24**

8 (1) Immediately after an instrument **[**[F292]is issued or made**]** it shall be printed and made available to the public with or without payment.

(2) A person shall not be taken to have contravened any **[**[F293]statement of principle, rule, regulation or code of practice**]** if he shows that at the time of the alleged contravention the instrument containing the **[**[F293]statement of principle, rule, regulation or code of practice**]** had not been made available as required by this paragraph.

Textual Amendments

F292 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 24(4)(a)**

F293 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 24(4)(b)**

9 (1) The production of a printed copy of an instrument purporting to be **[**[F294]made or issued by the agency**]** on which is endorsed a certificate signed by an officer of the agency authorised by it for that purpose and stating—

(a) that the instrument was **[**[F294]made or issued by the agency**]**;

(b) that the copy is a true copy of the instrument; and

(c) that on a specified date the instrument was made available to the public as required by paragraph 8 above,

shall be prima facie evidence, or, in Scotland, sufficient evidence of the facts stated in the certificate.

(2) Any certificate purporting to be signed as mentioned in sub-paragraph (1) above shall be deemed to have been duly signed unless the contrary is shown.

(3) Any person wishing in any legal proceedings to cite an instrument made by the agency may require the agency to cause a copy of it to be endorsed with such a certificate as is mentioned in this paragraph.

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Textual Amendments

F294 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 24(5)**

Modifications etc. (not altering text)

C262 By Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 24(5)** it is provided that in paragraph 9 for "made by the agency" (twice) there is substituted "made or issued by the agency"

Fees

10 (1) A designated agency may retain any fees payable to it by virtue of the delegation order.

(2) Any such fees shall be applicable for meeting the expenses of the agency in discharging its functions under the order and for any purposes incidental thereto.

(3) Any fees payable to a designated agency by virtue of a delegation order made before the coming into force of section 3 of this Act may also be applied for repaying the principal of, and paying interest on, any money borrowed by the agency (or by any other person whose liabilities in respect of the money are assumed by the agency) which has been used for the purpose of defraying expenses incurred before the making of the order (whether before or after the passing of this Act) in making preparations for the agency becoming a designated agency.

11 If the function of prescribing the amount of any fee, or of making a scheme under section 112 above, is exercisable by a designated agency it may prescribe or make provision for such fees as will enable it to defray any such expenses as are mentioned in paragraph 10 above.

Consultation

[[F295]12(1) Where a designated agency proposes, in the exercise of powers transferred to it by a delegation order, to issue or make any statements of principle, rules, regulations or codes of practice, it shall publish the proposed instrument in such manner as appears to it best calculated to bring the proposals to the attention of the public, together with a statement that representations about the proposals (and, in particular, representations as to the cost of complying with the proposed provisions) can be made to the agency within a specified time.

(2) Before issuing or making the instrument the agency shall have regard to any representations duly made in accordance with that statement.

(3) The above requirements do not apply—

(a) where the agency considers that the delay involved in complying with them would be prejudicial to the interests of investors;

(b) to the issuing or making of an instrument in the same, or substantially the same, terms as a proposed instrument which was furnished by the agency to the Secretary of State for the purposes of section 114(9) of this Act.**]**

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Textual Amendments

F295 Sch. 9 para. 12 substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 24(6)**

Exchange of information

13 (1) The Secretary of State may communicate to a designated agency any information in his possession of which he could have availed himself for the purpose of exercising any function which by virtue of a delegation order is for the time being exercisable by the agency.

(2) A designated agency may in the exercise of any function which by virtue of a delegation order is for the time being exercisable by it communicate to any other person any information which has been communicated to the agency by the Secretary of State and which the Secretary of State could have communicated to that person in the exercise of that function.

(3) No communication of information under sub-paragraph (1) above shall constitute publication for the purposes of the law of defamation.

Modifications etc. (not altering text)

C263 Sch. 9 para. 13: certain functions of the Secretary of State made exercisable concurrently by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 5, **Sch. 3 para.2**.

SCHEDULE 10

Section 129.

REGULATED INSURANCE COMPANIES

Preliminary

1 In this Part of this Schedule "a regulated insurance company" means any such company as is mentioned in section 129 of this Act.

Authorisations for investment business and insurance business

2 (1) An insurance company to which section 22 of this Act applies shall not be an authorised person except by virtue of that section.

(2) If an insurance company to which Part II of the [M85]Insurance Companies Act 1982 applies but to which section 22 of this Act does not apply becomes an authorised person by virtue of any other provision of this Act it shall be an authorised person only as respects the management of the investments of any pension fund which is established solely for the benefit of the officers or employees and their dependants of that company or of any other body corporate in the same group as that company.

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(3) An insurance company to which section 31 of this Act applies shall not, so long as it is an authorised person by virtue of that section, be an authorised person by virtue of any other provision of this Act.

[[F296](3A) An insurance company–

(a) to which section 31 of this Act applies; and

(b) which has complied with the requirements of section 81B of the Insurance Companies Act 1982 (documents to be furnished to the Secretary of State) in relation to the provision of long term insurance in the United Kingdom,

shall be deemed to have complied with section 32 of this Act in relation to any investment business consisting in the covering of commitments for the time being mentioned in the statement given by it in accordance with subsection (1)(c) of the said section 81B.

(3B) In sub-paragraph (3A) above "commitment" and "provision of long term insurance" have respectively the same meanings as in the Insurance Companies Act 1982.**]**

(4) None of the provisions of Part I of this Act shall be construed as authorising any person to carry on insurance business in any case in which he could not lawfully do so apart from those provisions.

Textual Amendments

F296 Sch. 10 para. 2(3A)(3B) inserted (20.5.1993) by S.I. 1993/174, **reg.7**.

Modifications etc. (not altering text)

C264 Sch. 10 para. 2 amended (1.7.1994) by S.I. 1994/1696, **reg. 63(2)**

Marginal Citations

M85 1982 c. 50.

Recognition of self-regulating organisation with insurance company members

3 (1) In the case of a self-regulating organisation whose members include or may include regulated insurance companies the requirements of Schedule 2 to this Act shall include a requirement that the rules of the organisation must take proper account of Part II of the [M86]Insurance Companies Act 1982 or, as the case may be, of the provisions for corresponding purposes in the law of any member State in which such companies are established.

(2) Where the function of making or revoking a recognition order in respect of such a self-regulating organisation is exercisable by a designated agency it shall not regard that requirement as satisfied unless the Secretary of State has certified that he also regards it as satisfied.

(3) A delegation order—

(a) may reserve to the Secretary of State the function of revoking a recognition order in respect of such a self-regulating organisation as is mentioned in sub-paragraph (1) above on the ground that the requirement there mentioned is not satisfied; and

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(b) shall not transfer to a designated agency the function of revoking any such recognition order on the ground that the organisation has contravened sub-paragraphs (3) or (4) of paragraph 6 below as applied by sub-paragraph (5) of that paragraph.

(4) In the case of such a self-regulating organisation as is mentioned in sub-paragraph (1) above the requirements of Schedule 2 to this Act referred to in section 187(2)(a) of this Act shall include the requirement mentioned in that sub-paragraph.

Marginal Citations
M86 1982 c. 50.

Modification of provisions as to conduct of investment business

4 (1) The rules under section 48 of this Act shall not apply to a regulated insurance company except so far as they make provision as respects the matters mentioned in sub-paragraph (2) below.

(2) The matters referred to in sub-paragraph (1) above are—
(a) procuring proposals for policies the rights under which constitute an investment for the purposes of this Act and advising persons on such policies and the exercise of the rights conferred by them;
(b) managing the investments of pension funds, procuring persons to enter into contracts for the management of such investments and advising persons on such contracts and the exercise of the rights conferred by them;
(c) matters incidental to those mentioned in paragraph (a) and (b) above.

[[F297](2A) Sub-paragraphs (1) and (2) also apply to statements of principle under section 47A and codes of practice under section 63A so far as they relate to matters falling within the rule-making power in section 48.**]**

(3) The rules under section 49 of this Act shall not apply to an insurance company which is an authorised person by virtue of section 31 of this Act.

(4) The rules under sections 53 and 54 of this Act shall not apply to loss arising as a result of a regulated insurance company being unable to meet its liabilities under a contract of insurance.

(5) A direction under section 59 of this Act shall not prohibit the employment of a person by a regulated insurance company except in connection with—
(a) the matters mentioned in sub-paragraph (2) above; or
(b) investment business carried on in connection with or for the purposes of those matters.

(6) The Secretary of State shall not make a delegation order transferring any functions of making rules or regulations under Chapter V of Part I of this Act in relation to a regulated insurance company unless he is satisfied that those rules and regulations will take proper account of Part II of the [M87]Insurance Companies Act 1982 or, as the case may be, of the provisions for corresponding purposes in the law of the member State in which the company is established; and in section 115(5) of this Act the

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reference to the requirements of section 114(9)(b) shall include a reference to the requirements of this sub-paragraph.

Textual Amendments

F297 Sch. 10 para. 4(2A) inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 25(2)**

Marginal Citations

M87 1982 c. 50.

Restriction of provisions as to conduct of insurance business

5 (1) Regulations under section 72 of the Insurance Companies Act 1982 (insurance advertisements) shall not apply to so much of any advertisement issued by an authorised person as relates to a contract of insurance the rights under which constitute an investment for the purposes of this Act.

(2) No requirement imposed under section 74 of that Act (intermediaries in insurance transactions) shall apply in respect of an invitation issued by, or by an appointed representative of, an authorised person in relation to a contract of insurance the rights under which constitute an investment for the purposes of this Act.

(3) Subject to sub-paragraph (4) below, sections 75 to 77 of that Act (right to withdraw from long-term policies) shall not apply to a regulated insurance company in respect of a contract of insurance the rights under which constitute an investment for the purposes of this Act.

(4) Sub-paragraph (3) above does not affect the operation of the said sections 75 to 77 in a case in which the statutory notice required by those sections has been or ought to have been served before the coming into force of that sub-paragraph.

Exercise of powers of intervention etc.

6 (1) The powers conferred by Chapter VI of Part I of this Act shall not be exercisable in relation to a regulated insurance company on the ground specified in section 64(1)(a) of this Act for reasons relating to the ability of the company to meet its liabilities to policy holders or potential policy holders.

(2) The powers conferred by sections 66 and 68 of this Act, and those conferred by section 67 of this Act so far as applicable to assets belonging to the authorised person, shall not be exercisable in relation to a regulated insurance company.

(3) A designated agency shall not in the case of a regulated insurance company impose any prohibition or requirement under section 65 or 67 of this Act, or vary any such prohibition or requirement, unless it has given reasonable notice of its intention to do so to the Secretary of State and informed him—

(a) of the manner in which and the date on or after which it intends to exercise that power; and

(b) in the case of a proposal to impose a prohibition or requirement, on which of the grounds specified in section 64(1) of this Act it proposes to act and

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its reasons for considering that the ground in question exists and that it is necessary to impose the prohibition or requirement.

(4) A designated agency shall not exercise any power to which sub-paragraph (3) above applies if the Secretary of State has before the date specified in accordance with sub-paragraph (3), above served on it a notice in writing directing it not to do so; and the Secretary of State may serve such a notice if he considers it desirable for protecting policy holders or potential policy holders of the company against the risk that it may be unable to meet its liabilities or to fulfil the reasonable expectations of its policy holders or potential policy holders.

(5) Sub-paragraphs (3) and (4) above shall, with the necessary modifications, appl also where a recognised self-regulating organisation proposes to exercise, in the case of a member who is a regulated insurance company, any powers of the organisation for purposes corresponding to those of Chapter VI of Part I of this Act.

(6) The powers conferred by sections 72 and 73 of this Act shall not be exercisable in relation to a regulated insurance company.

Withdrawal of insurance business authorisation

7 (1) At the end of section 11(2)(a) of the [M88]Insurance Companies Act 1982 (withdrawal of authorisation in respect of new business where insurance company has failed to satisfy an obligation to which it is subject by virtue of that Act) there shall be inserted the words "or the Financial Services Act 1986 or, if it is a member of a recognised self-regulating organisation within the meaning of that Act, an obligation to which it is subject by virtue of the rules of that organisation".

(2) After subsection (2) of section 13 of that Act (final withdrawal of authorisation) there shall be inserted—

"(2A) The Secretary of State may direct that an insurance company shall cease to be authorised to carry on business which is insurance business by virtue of section 95(c)(ii) of this Act if it appears to him that the company has failed to satisfy an obligation to which it is subject by virtue of the Financial Services Act 1986 or, if it is a member of a recognised self-regulating organisation within the meaning of that Act, an obligation to which it is subject by virtue of the rules of that organisation.

(2B) Subsections (3), (5) and (6) of section 11 and subsections (1) and (5) to (8) of section 12 above shall apply to a direction under subsection (2A) above as they apply to a direction under section 11."

[[F298](3) The disciplinary action which may be taken by virtue of section 47A(3) of this Act (failure to comply with statement of principle) includes—

(a) the withdrawal of authorisation under section 11(2)(a) of the Insurance Companies Act 1982, and

(b) the giving of a direction under section 13(2A) of that Act;

and subsection (6) of section 47A (duty of the Secretary of State as to exercise of powers) has effect accordingly.**]**

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Textual Amendments

F298 Sch. 10 para. 7(3) inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 25(3)**

Marginal Citations

M88 1982 c. 50.

Termination of investment business authorisation of insurer established in other member State

8 (1) Sections 33(1)(b) and 34 of this Act shall not apply to a regulated insurance company.

(2) A direction under section 33(1)(a) of this Act in respect of such an insurance company may provide that the company shall cease to be an authorised person except as respects investment business of a kind specified in the direction and shall not make it unlawful for the company to effect a contract of insurance in pursuance of a subsisting contract of insurance.

(3) Where the Secretary of State proposes to give a direction under section 33(1)(a) of this Act in respect of such an insurance company he shall give it written notice of his intention to do so, giving particulars of the grounds on which he proposes to act and of the rights exercisable under sub-paragraph (4) below.

(4) An insurance company on which a notice is served under sub-paragraph (3) above may within fourteen days after the date of service make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State; and the Secretary of State shall have regard to any representations made in accordance with this sub-paragraph in determining whether to give the direction.

(5) After giving a direction under section 33(1)(a) of this Act in respect of a regulated insurance company the Secretary of State shall inform the company in writing of the reasons for giving the direction.

(6) A delegation order shall not transfer to a designated agency the function of giving a direction under section 33(1)(a) of this Act in respect of a regulated insurance company.

Modifications etc. (not altering text)

C265 Sch. 10 para. 8(2)-(5): Certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 6**

Powers of Tribunal

9 In the case of a regulated insurance company the provisions mentioned in section 98(4) of this Act shall include sections 11 and 13(2A) of the [M89]Insurance Companies Act 1982 but where the Tribunal reports that the appropriate decision would be to take action under either of those sections or under section 33(1)(a) of

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this Act the Secretary of State shall take the report into consideration but shall not be bound to act upon it.

Marginal Citations
M89 1982 c. 50.

Consultation with designated agencies

10 (1) Where any functions under this Act are for the time being exercisable by a designated agency in relation to regulated insurance companies the Secretary of State shall, before issuing an authorisation under section 3 of the [M90]Insurance Companies Act 1982 to an applicant who proposes to carry on in the United Kingdom insurance business which is investment business—

(a) seek the advice of the designated agency with respect to any matters which are relevant to those functions of the agency and relate to the applicant, his proposed business or persons who will be associated with him in, or in connection with, that business; and

(b) take into account any advice on those matters given to him by the agency before the end of the period within which the application is required to be decided.

(2) The Secretary of State may for the purpose of obtaining the advice of a designated agency under sub-paragraph (1) above furnish it with any information obtained by him in connection with the application.

(3) If a designated agency by which any functions under this Act are for the time being exercisable in relation to regulated insurance companies has reasonable grounds for believing that any such insurance company has failed to comply with an obligation to which it is subject by virtue of this Act it shall forthwith give notice of that fact to the Secretary of State so that he can take it into consideration in deciding whether to give a direction in respect of the company under section 11 or 13(2A) of the said Act of 1982 or section 33 of this Act.

(4) A notice under sub-paragraph (3) above shall contain particulars of the obligation in question and of the agency's reasons for considering that the company has failed to satisfy that obligation.

(5) A designated agency need not give a notice under sub-paragraph (3) above in respect of any matter unless it considers that that matter (either alone or in conjunction with other matters) would justify the withdrawal of authorisation under section 28 of this Act in the case of a person to whom that section applies.

Marginal Citations
M90 1982 c. 50.

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SCHEDULE 11

Section 140.

FRIENDLY SOCIETIES

Modifications etc. (not altering text)

C266 Sch. 11 amended (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40) s. 98, Sch. 18 Pt. II para. 10; S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

PART I

PRELIMINARY

1 In this Schedule—

"a regulated friendly society" means a society which is an authorised person by virtue of section 23 of this Act as respects such investment business as is mentioned in that section;

"regulated business", in relation to a regulated friendly society, means investment business as respects which the society is authorised by virtue of that section;

"a self-regulating organisation for friendly societies" means a self-regulating organisation which is permitted under its rules to admit regulated friendly societies as members and to regulate the carrying on by such societies of regulated business;

"a recognised self-regulating organisation for friendly societies" means a body declared by **[**[F299]a recognition order**]** for the time being in force to be a recognised self-regulating organisation for friendly societies for the purposes of this Schedule;

"a member society" means a regulated friendly society which is a member of **[**[F300]a**]** recognised self-regulating organisation for friendly societies and is subject to its rules in carrying on all its regulated business [F301]. . .

[[F302]"the Commission" means the "Friendly Societies Commission" and;

"recognition order" means—

(a) an order made by the Chief Registrar of friendly societies or the Registrar of Friendly Societies for Northern Ireland before Schedule 18 to the Friendly Societies Act 1992 came into force; or

(b) an order made by the Commission after that Schedule came into force**]**

Textual Amendments

F299 Words in Sch. 11 para. 1 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 11(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F300 Words in Sch. 11 para. 1 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 11(2)(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

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F301 Words in Sch. 11 para. 1 omitted (1.2.1993 for specified purposes) and repealed (28.4.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), ss. 98, 120, Sch. 18 Pt. II para. 11(2)(b), **Sch. 22 Pt.I** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/1186, art. 2(1), **Sch. 1A**ppendix; S.I. 1993/2213, art. 2(1), **Sch. 5A**ppendix.

F302 Definition in Sch. 11 para. 1 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 11(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

PART II

SELF-REGULATING ORGANISATIONS FOR FRIENDLY SOCIETIES

Recognition

2 (1) A self-regulating organisation for friendly societies may apply to **[**[F303]the Commission**]** for an order declaring it to be a recognised self-regulating organisation for friendly societies for the purposes of this Schedule.

(2) An application under sub-paragraph (1) above—

(a) shall be made in such manner as **[**[F303]the Commission**]** may direct; and

(b) shall be accompanied by such information as **[**[F303]the Commission**]** may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it **[**[F303]the Commission**]** may require the applicant to furnish additional information.

(4) The directions and requirements given or imposed under sub-paragraphs (2) and (3) above may differ as between different applications.

(5) Any information to be furnished to **[**[F303]the Commission**]** under this paragraph shall, if **[**[F304]the Commission**]** so requires, be in such form or verified in such manner as **[**[F304]the Commission**]** may specify.

(6) Every application shall be accompanied by a copy of the applicant's rules and of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form.

Textual Amendments

F303 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F304 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Modifications etc. (not altering text)

C267 Sch. 11 para. 2 amended (14.6.2000) by 2000 c. 8, ss. 431(1), 432(2), **Sch. 21 para. 2(1)**

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3 (1) If, on an application duly made in accordance with paragraph 2 above and after being furnished with all such information as **[**[F305]the Commission**]** may require under that paragraph, it appears to **[**[F306]the Commission**]** from that information and having regard to any other information in **[**[F307]the Commission's**]** possession that the requirements mentioned in paragraph 4 below are satisfied as respects that organisation, **[**[F305]the Commission**]** may, with the consent of the Secretary of State and subject to sub-paragraph (2) below, make **[**[F307]a recognition order in respect of the organisation declaring the applicant to be a recognised self-regulating organisation for friendly societies**]**

(2) Where **[**[F306]the Commission**]** proposes to grant an application for a recognition order **[**[F305]the Commission**]** shall send to the Secretary of State a copy of the application together with a copy of the rules and any guidance accompanying the application and the Secretary of State shall not consent to the making of the recognition order unless he is satisfied that the rules and guidance of which copies have been sent to him under this sub-paragraph **[**[F308], together with any statements of principle, rules, regulations or codes of practice to which members of the organisation would be subject by virtue of this Schedule,**]** do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition or, if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.

(3) Section 122 of this Act shall apply in relation to the decision whether to consent to the making of a recognition order under this paragraph as it applies to the decisions mentioned in subsection (1) of that section.

(4) Subsections (1) and (2) of section 128 of this Act shall apply for the purposes of this paragraph as if the powers there mentioned included the power of refusing consent to the making of a recognition order under this paragraph and subsection (5) of that section shall apply for that purpose as if the reference to Chapter XIV of Part I included a reference to this paragraph.

(5) **[**[F306]The Commission**]** may refuse to make a recognition order in respect of an organisation if **[**[F305]the Commission**]** considers that its recognition is unnecessary having regard to the existence of one or more other organisations which are concerned with such investment business as is mentioned in section 23 of this Act and which have been or are likely to be recognised under this paragraph.

(6) Where **[**[F306]the Commission**]** refuses an application for a recognition order **[**[F305]the Commission**]** shall give the applicant a written notice to that effect specifying a requirement which in the opinion of **[**[F306]the Commission**]** is not satisfied, stating that the application is refused on the ground mentioned in sub-paragraph (5) above or stating that the Secretary of State has refused to consent to the making of the order.

(7) A recognition order shall state the date on which it takes effect.

Textual Amendments

F305 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

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F306 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F307 Words in Sch. 11 para. 3(1) substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para.12** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F308 Words inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 27**

Modifications etc. (not altering text)

C268 Sch. 11 para. 3: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, **art. 5(2)**

4 (1) The requirements referred to in paragraph 3 above are that mentioned in sub-paragraph (2) below and those set out in paragraphs 2 to 7 of Schedule 2 to this Act as modified in sub-paragraphs (3) to (5) below.

(2) The rules of the organisation must take proper account of **[**[F309]Parts V and VIII of the Friendly Societies Act 1992.**]**

(3) References in paragraphs 2, 3, 4 and 6 of Schedule 2 to members are to members who are regulated friendly societies.

(4) In paragraph 3 of that Schedule—

(a) in sub-paragraph (1) for the reference to Chapter V of Part I of this Act there shall be substituted a reference to paragraphs 14 to **[**[F310]22D**]** below; and

(b) . . . . . [F311]

(c) in sub-paragraph (3) for the reference to Chapter VI of that Part there shall be substituted a reference to the powers exercisable by **[**[F312]the Commission**]** by virtue of paragraph 23 below.

(5) In paragraph 4 of that Schedule for the reference to Chapter V of Part I of this Act there shall be substituted references to paragraphs 14 to **[**[F313]22D**]** below.

Textual Amendments

F309 Words in Sch. 11 para. 4(2) substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para.13** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 4**; S.I. 1993/3226, art. 2, **Sch.1**.

F310 "22D" substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 28(2)(a)**

F311 Sch. 11 para. 4(b) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 206(1), 212, Sch. 23 Pt. II para. 28(2)(b), **Sch. 24**

F312 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, **art. 2(1) sch.5**.

F313 "22D" substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 28(3)**

Modifications etc. (not altering text)

C269 Sch. 11 para. 4 modified by S.R. 1987/440, **art. 3**

C270 Sch. 11 para. 4: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, **art. 5(2)**

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Revocation of recognition

5 (1) A recognition order may be revoked by a further order made by **[**[F314]the Commission**]** if at any time it appears to **[**[F315]the Commission**]**—

(a) that any requirement mentioned in paragraph 4(1) above is not satisfied in the case of the organisation to which the recognition order relates ("the recognised organisation");

(b) that the recognised organisation has failed to comply with any obligation to which it is subject by virtue of this Act; or

(c) that the continued recognition of the organisation is undesirable having regard to the existence of one or more other organisations which have been or are to be recognised under paragraph 3 above.

(2) Subsections (2) to (9) of section 11 of this Act shall have effect in relation to the revocation of a recognition order under this paragraph as they have effect in relation to the revocation of a recognition order under subsection (1) of that section but with the substitution—

(a) for references to the Secretary of State of references to **[**[F314]the Commission**]**;

(b) for the reference in subsection (3) to members of a reference to members of the organisation which are member societies in relation to it; and

(c) for the reference in subsection (6) to investors of a reference to members of the societies which are member societies in relation to the organisation.

Textual Amendments

F314 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F315 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Modifications etc. (not altering text)

C271 Sch. 11 para. 5 amended (14.6.2000) by 2000 c. 8, ss. 431(1), 432(2), **Sch. 21**, para. 2(3)(a)

Compliance orders

6 (1) If at any time it appears to **[**[F316]the Commission**]**—

(a) that any requirement mentioned in paragraph 3 above is not satisfied in the case of a recognised self-regulating organisation for friendly societies; or

(b) that such an organisation has failed to comply with any obligation to which it is subject by virtue of this Act,

[[F317]the Commission**]** may, instead of revoking the recognition order under paragraph 5 above, make an application to the court under this paragraph.

(2) If on any such application the court decides that the requirement in question is not satisfied or, as the case may be, that the organisation has failed to comply with the obligation in question it may order the organisation concerned to take such steps as

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the court directs for securing that that requirement is satisfied or that that obligation is complied with.

(3) The jurisdiction conferred by this paragraph shall be exercisable by the High Court and the Court of Session.

Textual Amendments

F316 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F317 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Modifications etc. (not altering text)

C272 Sch. 11 para. 6 amended (14.6.2000) by 2000 c. 8, ss. 431(1), 432(2), **Sch. 21 para. 2(3)(b)**

F318 . . . . . .

7

Textual Amendments

F318 Sch. 11 para. 7 repealed by Companies Act 1989 (c. 40, SIF 27), ss. 206(1), 212, Sch. 23 Pt. II para. 29, **Sch. 24**

8 (1) **[**[F319]The Commission**]** or the Secretary of State may make regulations requiring a recognised self-regulating organisation for friendly societies to give **[**[F319]the Commission**]** or, as the case may be, the Secretary of State forthwith notice of the occurrence of such events relating to the organisation or its members as are specified in the regulations and such information in respect of those events as is so specified.

(2) **[**[F319]The Commission**]** or the Secretary of State may make regulations requiring a recognised self-regulating organisation for friendly societies to furnish **[**[F319]the Commission**]** or, as the case may be, the Secretary of State at such times or in respect of such periods as are specified in the regulations with such information relating to the organisation or its members as is so specified.

(3) The notices and information required to be given or furnished under the foregoing provisions of this paragraph shall be such as **[**[F319]the Commission**]** or, as the case may be, the Secretary of State may reasonably require for the exercise of his functions under this Act.

(4) Regulations under the foregoing provisions of this paragraph may require information to be given in a specified form and to be verified in a specified manner.

(5) A notice or information required to be given or furnished under the foregoing provisions of this paragraph shall be given in writing or such other manner as **[**[F319]the Commission**]** or, as the case may be, the Secretary of State may approve.

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(6) Where a recognised self-regulating organisation for friendly societies amends, revokes or adds to its rules or guidance it shall within seven days give **[**[F319]the Commission**]** written notice of the amendment, revocation or addition; but notice need not be given of the revocation of guidance other than such as is mentioned in paragraph 2(6) above or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned.

(7) **[**[F319]The Commission**]** shall send the Secretary of State a copy of any notice given to **[**[F320]the Commission**]** under sub-paragraph (6) above.

(8) Contravention of or of regulations under this paragraph shall not be an offence.

Textual Amendments

F319 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F320 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

9 (1) A recognised self-regulating organisation for friendly societies shall not exercise any powers for purposes corresponding to those of the powers exercisable by **[**[F321]the Commission**]** by virtue of paragraph 23 below in relation to a regulated friendly society unless it has given reasonable notice of its intention to do so to **[**[F321]the Commission**]** and informed **[**[F322]the Commission**]**—

(a) of the manner in which and the date on or after which it intends to exercise the power; and

(b) in the case of a proposal to impose a prohibition or requirement, of the reason why it proposes to act and its reasons for considering that that reason exists and that it is necessary to impose the prohibition or requirement.

(2) A recognised self-regulating organisation for friendly societies shall not exercise any power to which sub-paragraph (1)(a) above applies if before the date given in the notice in pursuance of that sub-paragraph **[**[F321]the Commission**]** has served on it a notice in writing directing it not to do so; and **[**[F321]the Commission**]** may serve such a notice if **[**[F322]the Commission**]** considers it is desirable for protecting members or potential members of the society against the risk that it may be unable to meet its liabilities or to fulfil the reasonable expectations of its members or potential members.

Textual Amendments

F321 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F322 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

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Prevention of restrictive practices

10 (1) The powers conferred by sub-paragraph (2) below shall be exercisable by the Secretary of State if at any time it appears to him that—

(a) any rules made or guidance issued by a recognised self-regulating organisation for friendly societies;

(b) any practices of any such organisation; or

(c) any practices of persons who are members of, or otherwise subject to the rules made by, any such organisation, **[**[F323]together with any statements of principle, rules, regulations or codes of practice to which members of the organisation are subject by virtue of this Schedule,**]**

have, or are intended or likely to have, to a significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is necessary for the protection of investors.

(2) The powers exercisable under this sub-paragraph are to direct **[**[F324]the Commission**]**—

(a) to revoke the recognition order of the organisation;

(b) to direct the organisation to take specified steps for the purpose of securing that **[**[F325]its rules, or the**]**, guidance or practices in question do not have the effect mentioned in sub-paragraph (1) above;

(c) to make alterations in **[**[F326]its rules**]** for that purpose;

and subsections (2) to (5), (7) and (9) of section 11 of this Act, as applied by sub-paragraph (2) of paragraph 5 above, shall have effect in relation to the revocation of a recognition order by virtue of a direction under this sub-paragraph as they have effect in relation to the revocation of such an order under sub-paragraph (1) of that paragraph.

(3) The practices referred to in paragraph (b) of sub-paragraph (1) above are practices of the organisation in its capacity as such; . . . [F327]

[[F328](3A) The practices referred to in paragraph (c) of sub-paragraph (1) above are practices in relation to business in respect of which the persons in question are subject to—

(a) the rules of the organisation, or

(b) statements of principle, rules, regulations or codes of practice to which its members are subject by virtue of this Schedule,

and which are required or contemplated by the rules of the organisation or by those statements, rules, regulations or codes, or by guidance issued by the organisation, or which are otherwise attributable to the conduct of the organisation as such.**]**

(4) Subsections (3) to (8) of section 122 of this Act shall apply for the purposes of this paragraph as if—

(a) the reference to a notice in subsection (3) included a notice received under paragraph 8(7) above or 33(4) below;

(b) the references to rules and guidance in subsection (4) included such rules and guidance as are mentioned in sub-paragraph (1) above;

(c) the reference to practices in subsection (6) included such practices as are mentioned in sub-paragraph (1) above; and

(d) the reference to the Secretary of State's powers in subsection (7) included his powers under sub-paragraph (2) above.

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services Act 1986 (Repealed) is up to date with all changes known to be in force on or before 14 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)*

(6) Section 128 of this Act shall apply for the purposes of this paragraph as if—

(a) the powers referred to in subsection (1) of that section included the powers conferred by sub-paragraph (2)(b) and (c) above;

(b) the references to Chapter XIV of Part I included references to this paragraph; and

(c) the reference to a recognised self-regulating organisation included a reference to a recognised self-regulating organisation for friendly societies.

Textual Amendments

F323 Words inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 30(2)**

F324 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F325 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 30(3)(a)**

F326 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 30(3)(c)**

F327 Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 206(1), 212, Sch. 23 Pt. II para. 30(4), **Sch. 24**

F328 Sch. 11 para. 10(3A) inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 30(4)**

Modifications etc. (not altering text)

C273 Sch. 11 para. 10: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, **art. 5(2)**

Fees

11 (1) An applicant for a recognition order under paragraph 3 above shall pay such fees in respect of his application as may be required by a scheme made and published by **[**[F329]the Commission**]**; and no application for such an order shall be regarded as duly made unless this sub-paragraph is complied with.

(2) Subsections (2) to (4) of section 112 of this Act apply to a scheme under sub-paragraph (1) above as they apply to a scheme under subsection (1) of that section.

(3) Every recognised self-regulating organisation for friendly societies shall pay such periodical fees to **[**[F329]the Commission**]** as **[**[F330]the Commission**]** may by regulations prescribe.

Textual Amendments

F329 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F330 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services Act 1986 (Repealed) is up to date with all changes known to be in force on or before 14 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)*

Application of provisions of this Act

12 (1) Subject to the following provisions of this paragraph, sections 44(7), 102(1)(c), 124, 125, 126, 180(1)(n), 181, 187, 192 and 200(4) of this Act shall apply in relation to recognised self-regulating organisations for friendly societies as they apply in relation to recognised self-regulating organisations.

(2) In its application by virtue of sub-paragraph (1) above section 126(1) of this Act shall have effect as if the reference to section 119(2) were a reference to paragraph 10(1) above.

(3) In its application by virtue of sub-paragraph (1) above subsection (2) of section 187 of this Act shall have effect as if—

(a) the reference in paragraph (a) to paragraphs 1 to 6 of Schedule 2 were to paragraphs 2 to 6 of that Schedule (as they apply by virtue of paragraph 4 above) and to sub-paragraph (2) of paragraph 4 above; and

(b) paragraph (d) referred to the powers of the organisation under paragraph 23(4) below.

(4) A direction under subsection (1) of section 192 of this Act as it applies by virtue of sub-paragraph (1) above shall direct **[**[F331]the Commission**]** to direct the organisation not to take or, as the case may be, to take the action in question; and where the function of making or revoking a recognition order in respect of a self-regulating organisation for friendly societies is exercisable by a transferee body any direction under that subsection as it applies as aforesaid shall be a direction requiring **[**[F331]the Commission**]** to direct the transferee body to give the organisation such a direction as is specified in the direction given by the Secretary of State.

(5) Subsection (5) of that section shall not apply to a direction given to **[**[F331]the Commission**]** by virtue of this paragraph.

Textual Amendments

F331 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

PART III

REGISTRAR'S POWERS IN RELATION TO REGULATED FRIENDLY SOCIETIES

Special provisions for regulated friendly societies

13 **[**[F332]Paragraphs 13A to 25**]** below shall have effect in connection with the exercise of powers for the regulation of regulated friendly societies in relation to regulated business, but nothing in this Part of this Schedule shall affect the exercise of any power conferred by this Act in relation to a regulated friendly society which is an authorised person by virtue of section 25 of this Act to the extent that the power relates to other investment business.

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services Act 1986 (Repealed) is up to date with all changes known to be in force on or before 14 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)*

Textual Amendments

F332 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 31**

Modifications etc. (not altering text)

C274 Sch. 11 para. 13: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, **art. 5(2)**

Conduct of investment business

[[F333]13A(1) **[**[F334]The Commission**]** may issue statements of principle with respect to the conduct expected of regulated friendly societies.

(2) The conduct expected may include compliance with a code or standard issued by another person, as for the time being in force, and may allow for the exercise of discretion by any person pursuant to any such code or standard.

(3) Failure to comply with a statement of principle under this paragraph is a ground for the taking of disciplinary action or the exercise of powers of intervention, but it does not give rise to any right of action by investors or other persons affected or affect the validity of any transaction.

(4) The disciplinary action which may be taken by virtue of sub-paragraph (3) is–

(a) the making of a public statement under paragraph 21, or

(b) the application by **[**[F334]the Commission**]** for an injunction, interdict or other order under paragraph 22(1), or

(c) any action under paragraph 26 or 27 of this Schedule;

and the reference in that sub-paragraph to powers of intervention is to the powers conferred by Chapter VI of Part I of this Act.

(5) Where a statement of principle relates to compliance with a code or standard issued by another person, the statement of principle may provide—

(a) that failure to comply with the code or standard shall be a ground for the taking of disciplinary action, or the exercise of powers of intervention, only in such cases and to such extent as may be specified; and

(b) that no such action shall be taken, or any such power exercised, except at the request of the person by whom the code or standard in question was issued.

(6) **[**[F334]The Commission**]** shall exercise **[**[F335]its**]** powers in such manner as appears to **[**[F336]the Commission**]** appropriate to secure compliance with statements of principle under this paragraph.**]**

Textual Amendments

F333 Sch. 11 para. 13A inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 32** and brought into force by S.I. 1990/354, **art. 3**

F334 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
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F335 Word in Sch. 11 para. 13A(6) substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para.15** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F336 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Modifications etc. (not altering text)

C275 Sch. 11 para. 13A: functions transferred by S.I. 1990/354, **art. 5(1)**

C276 Sch. 11 paras. 13A, 13B: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, **art. 5(2)**

[[F337]13B(1) The relevant regulatory authority may on the application of a regulated friendly society—

(a) modify a statement of principle issued under paragraph 13A so as to adapt it to the circumstances of the society or to any particular kind of business carried on by it, or

(b) dispense the society from compliance with any such statement of principle, generally or in relation to any particular kind of business carried on by it.

(2) The powers conferred by this paragraph shall not be exercised unless it appears to the relevant regulatory authority—

(a) that compliance with the statement of principle in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and

(b) that the exercise of those powers will not result in any undue risk to investors.

(3) The powers conferred by this paragraph may be exercised unconditionally or subject to conditions; and paragraph 13A(3) applies in the case of failure to comply with a condition as in the case of failure to comply with a statement of principle.

(4) The relevant regulatory authority for the purposes of this paragraph is—

(a) in the case of a member society of a recognised self-regulating organisation for friendly societies, in relation to investment business in the carrying on of which it is subject to the rules of the organisation, that organisation;

(b) in any other case, or in relation to other investment business, **[**[F338]the Commission**]**.

(5) The reference in paragraph 4(1) of Schedule 2 as applied by paragraph 4 above (requirements for recognition of self-regulating organisation for friendly societies) to monitoring and enforcement of compliance with statements of principle includes monitoring and enforcement of compliance with conditions imposed by the organisation under this paragraph.**]**

Textual Amendments

F337 Sch. 11 para. 13B inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 32**

F338 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
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Modifications etc. (not altering text)

C277 Sch. 11 paras. 13A, 13B: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, **art. 5(2)**

14 (1) The rules under section 48 of this Act shall not apply to a regulated friendly society but **[**[F339]the Commission**]** may, with the consent of the Secretary of State, make such rules as may be made under that section regulating the conduct of any such society . . . [F340] as respects the matters mentioned in sub-paragraph (2) below.

(2) The matters referred to in sub-paragraph (1) above are—

(a) procuring persons to transact regulated business with it and advising persons as to the exercise of rights conferred by investments acquired from the society in the course of such business;

(b) managing the investment of pension funds, procuring persons to enter into contracts for the management of such investments and advising persons on such contracts and the exercise of the rights conferred by them;

(c) matters incidental to those mentioned in paragraphs (a) and (b) above.

[[F341](2A) Paragraph 22B below has effect as regards the application of rules under this paragraph to member societies in respect of investment business in the carrying on of which they are subject to the rules of a recognised self-regulating organisation for friendly societies.**]**

(3) Section 50 of this Act shall apply in relation to rules under this paragraph as it applies in relation to rules under section 48 except that—

(a) for the reference to the Secretary of State there shall be substituted a reference to **[**[F339]the Commission**]**; . . . [F342]

(b) **[**[F339]the Commission**]** shall not exercise the power under subsection (1) to alter the requirement of rules made under this paragraph without the consent of the Secretary of State **[**[F343]; and**]**

[[F343](c) for the references in subsection (4) to section 63B and a recognised self-regulating organisation there shall be substituted references to paragraph 13B and a recognised self-regulating organisation for friendly societies.**]**

Textual Amendments

F339 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F340 Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 206(1), 212, Sch. 23 Pt. II para. 33(2), **Sch. 24**

F341 Sch. 11 para. 14(2A) inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 33(3)**

F342 Word repealed by Companies Act 1989 (c. 40, SIF 27), ss. 206(1), 212, Sch. 23 Pt. II para. 33(4), **Sch. 24**

F343 Sch. 11 para. 14(3)(c) and "; and" preceding it inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 33(4)**

Modifications etc. (not altering text)

C278 Sch. 11 para. 14: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, **art. 5(2)**

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
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15 (1) The rules under section 51 of this Act shall not apply to any investment agreement which a person has entered or offered to enter into with a regulated friendly society if, as respects the society, entering into the agreement constitutes the carrying on of regulated business but **[**[F344]the Commission**]** may, with the consent of the Secretary of State, make rules for enabling a person who has entered or offered to enter into such an agreement to rescind the agreement or withdraw the offer within such period and in such manner as may be specified in the rules.

(2) Subsection (2) of section 51 of this Act shall apply in relation to rules under this paragraph as it applies in relation to rules under that section but with the substitution for the reference to the Secretary of State of a reference to **[**[F344]the Commission**]**.

Textual Amendments

F344 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

16 (1) Regulations under section 52 of this Act shall not apply to any regulated friendly society but **[**[F345]the Commission**]** may, with the consent of the Secretary of State, make such regulations as may be made under that section imposing requirements on regulated friendly societies other than member societies.

(2) Any notice or information required to be given or furnished under this paragraph shall be given in writing or in such other manner as **[**[F345]the Commission**]** may approve.

Textual Amendments

F345 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

17 (1) Rules under section 53 of this Act shall not apply to any regulated friendly society but **[**[F346]the Commission**]** may, with the consent of the Secretary of State make rules concerning indemnity against any claim in respect of any description of civil liability incurred by a regulated friendly society in connection with any regulated business.

(2) Such rules shall not apply to a member society of a recognised self-regulating organisation for friendly societies unless that organisation has requested that such rules should apply to it; and any such request shall not be capable of being withdrawn after rules giving effect to it have been made but without prejudice to the power of **[**[F346]the Commission**]** to revoke the rules if **[**[F347]the Commission**]** and the Secretary of State think fit.

(3) Subsections (3) and (4) of section 53 of this Act shall apply in relation to such rules as they apply to rules under that section but with the substitution for references to the Secretary of State of references to **[**[F346]the Commission**]**.

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F346 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F347 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

17 (1) Rules under section 53 of this Act shall not apply to any regulated friendly society but the Registrar may, with the consent of the Secretary of State make rules concerning indemnity against any claim in respect of any description of civil liability incurred by a regulated friendly society in connection with any regulated business.

(2) Such rules shall not apply to a member society of a recognised self-regulating organisation for friendly societies unless that organisation has requested that such rules should apply to it; and any such request shall not be capable of being withdrawn after rules giving effect to it have been made but without prejudice to the power of the Registrar to revoke the rules if he and the Secretary of State think fit.

(3) Subsections (3) and (4) of section 53 of this Act shall apply in relation to such rules as they apply to rules under that section but with the substitution for references to the Secretary of State of references to the Registrar.

18 (1) No scheme established by rules under section 54 shall apply in cases where persons who are or have been regulated friendly societies are unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with any regulated business but **[**[F348]the Commission**]** may, with the consent of the Secretary of State, by rules establish a scheme for compensating investors in such cases.

(2) Subject to sub-paragraph (3) below, subsections (2) to (4) and (6) of that section shall apply in relation to such rules as they apply to rules under that section but with the substitution for the references to the Secretary of State, authorised persons, members and a recognised self-regulating organisation of references respectively to **[**[F348]the Commission**]**, regulated friendly societies, member societies and a recognised self-regulating organisation for friendly societies.

(3) Subsection (3) of that section shall have effect with the substitution for the words "the Secretary of State is satisfied" of the words " **[**[F348]the Commission**]** and the Secretary of State are satisfied".

(4) The references in section 179(3)(b) and 180(1)(e) of this Act to the body administering a scheme established under section 54 of this Act shall include the body administering a scheme established under this paragraph.

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services Act 1986 (Repealed) is up to date with all changes known to be in force on or before 14 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)*

Textual Amendments

F348 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

19 (1) Regulations under section 55 of this Act shall not apply to money held by regulated friendly societies but **[**[F349]the Commission**]** may, with the consent of the Secretary of State, make regulations with respect to money held by a regulated friendly society in such circumstances as may be specified in the regulations.

(2) Regulations under this paragraph shall not provide that money held by a regulated friendly society shall be held as mentioned in paragraph (a) of subsection (2) of that section but paragraphs (b) to (f) of that subsection and subsections (3) and (4) of that section shall apply in relation to regulations made under this paragraph as they apply in relation to regulations under that section **[**[F350](but with the substitution for the reference in paragraph (e) of subsection (2) to the Secretary of State of a reference to **[**[F349]the Commission**])]**.

[[F351](3) Paragraph 22B below has effect as regards the application of regulations under this paragraph to member societies in respect of investment business in the carrying on of which they are subject to the rules of a recognised self-regulating organisation for friendly societies.**]**

Textual Amendments

F349 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F350 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 34(2)**

F351 Sch. 11 para. 19(3) inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 34(3)**

Modifications etc. (not altering text)

C279 Sch. 11 para. 19: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, **art. 5(2)**

[[F352]20(1) Regulations under section 56(1) of this Act shall not permit anything to be done by a regulated friendly society but that section shall not apply to anything done by such a society in the course of or in consequence of an unsolicited call which, as respects the society, constitutes the carrying on of regulated business, if it is permitted to be done by the society by regulations made by **[**[F353]the Commission**]** with the consent of the Secretary of State.

(2) Paragraph 22B below has effect as regards the application of regulations under this paragraph to member societies in respect of investment business in the carrying on of which they are subject to the rules of a recognised self-regulating organisation for friendly societies.

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
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(3) As it applies to such persons in respect of such business, the reference in sub-paragraph (1) above to conduct permitted by regulations made by **[**[F353]the Commission**]** with the consent of the Secretary of State shall be construed—

(a) where or to the extent that the regulations do not apply, as a reference to conduct permitted by the rules of the organisation; and

(b) where or to the extent that the regulations do apply but are expressed to have effect subject to the rules of the organisation, as a reference to conduct permitted by the regulations together with the rules of the organisation.**]**

Textual Amendments

F352 Sch. 11 para. 20 substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 35**

F353 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2, **Sch.5**.

Modifications etc. (not altering text)

C280 Sch. 11 para. 20: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, **art. 5(2)**

21 (1) If it appears to **[**[F354]the Commission**]** that a regulated friendly society other than a member society has contravened—

(a) any provision of rules or regulations made under this Schedule or of section 56 or 59 of this Act;

(b) any condition imposed under section 50 of this Act as it applies by virtue of paragraph 14(3) above;

(c) any prohibition or requirement imposed under Chapter VI of Part I of this Act as it applies by virtue of paragraph 23 below; or

(d) any requirement imposed under paragraph 24 below;

[[F355]the Commission**]** may publish a statement to that effect.

(2) Subsections (2) to (5) of section 60 above shall apply in relation to the power under sub-paragraph (1) above as they apply in relation to the power in subsection (1) of that section but with the substitution for the references to the Secretary of State of references to **[**[F354]the Commission**]**.

Textual Amendments

F354 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F355 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Modifications etc. (not altering text)

C281 Sch. 11 paras. 21, 22: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, **art. 5(2)**

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services Act 1986 (Repealed) is up to date with all changes known to be in force on or before 14 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)*

22 (1) If on the application of **[**[F356]the Commission**]** the court is satisfied—

(a) that there is a reasonable likelihood that any regulated friendly society will contravene any provision of—

(i) any prohibition or requirement imposed under Chapter VI of Part I of this Act as it applies by virtue of paragraph 23 below;

(ii) the rules or regulations made under this Schedule;

(iii) any requirement imposed under paragraph 24 below;

(iv) section 47, 56 or 59 of this Act;

(v) the rules of a recognised self-regulating organisation for friendly societies in relation to which it is a member society,

or any condition imposed under section 50 of this Act as it applies by virtue of paragraph 14(3) above;

(b) that any regulated friendly society has contravened any such provision or condition and that there is a reasonable likelihood that the contravention will continue or be repeated; or

(c) that any person has contravened any such provision or condition and that there are steps that could be taken for remedying the contravention,

the court may grant an injunction restraining the contravention or, in Scotland, an interdict prohibiting the contravention or, as the case may be, make an order requiring the society and any other person who appears to the court to have been knowingly concerned in the contravention to take steps to remedy it.

(2) No application shall be made by **[**[F356]the Commission**]** under sub-paragraph (1) above in respect of any such rules as are mentioned in paragraph (a)(v) of that sub-paragraph unless it appears to **[**[F357]the Commission**]** that the organisation is unable or unwilling to take appropriate steps to restrain the contravention or to require the society concerned to take such steps as are mentioned in sub-paragraph (1) above.

(3) Subsections (3) to (9) of section 61 of this Act apply to such a contravention as is mentioned in sub-paragraph (1)(a) above as they apply to such a contravention as is mentioned in subsection (3) of that section, but with the substitution for the references to the Secretary of State of references to **[**[F356]the Commission**]**.

(4) Without prejudice to the preceding provisions of this paragraph—

(a) a contravention of any rules or regulations made under this Schedule;

(b) a contravention of any prohibition or requirement imposed under Chapter VI of Part I of this Act as it applies by virtue of paragraph 23 below;

(c) a contravention of any requirement imposed under paragraph 24 below;

(d) a contravention by a member society of any rules of the recognised self-regulating organisation for friendly societies of which it is a member relating to a matter in respect of which rules or regulations have been or could be made under this Schedule or of any requirement or prohibition imposed by the organisation in the exercise of powers for purposes corresponding to those of the said Chapter VI or paragraph 24;

shall be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty, but no person shall be guilty of an offence by reason of any such contravention and no such contravention shall invalidate any transaction.

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(5) This paragraph is without prejudice to any equitable remedy available in respect of property which by virtue of a requirement under section 67 of this Act as it applies by virtue of paragraph 23 below is subject to a trust.

Textual Amendments

F356 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F357 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Modifications etc. (not altering text)

C282 Sch. 11 paras. 21, 22: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, **art. 5(2)**

C283 Sch. 11 para. 22 saved by S.I. 1991/488, **art. 4**
Sch. 11 para. 22 restricted (1.11.1992) by S.R. 1980/346, Order 93, rule 7 (as inserted by S.R. 1992/399, **rule15**).

[[F358]22A (1) No action in respect of a contravention to which paragraph 22(4) above applies shall lie at the suit of a person other than a private investor, except in such circumstances as may be specified by regulations made by **[**[F359]the Commission**]**.

(2) The meaning of the expression "private investor" for the purposes of sub-paragraph (1) shall be defined by regulations made by **[**[F359]the Commission**]**.

(3) Regulations under sub-paragraph (1) may make different provision with respect to different cases.

(4) **[**[F359]The Commission**]** shall, before making any regulations affecting the right to bring an action in respect of a contravention of any rules or regulations made by a person other than himself, consult that person.**]**

Textual Amendments

F358 Sch. 11 para. 22A inserted by Companies Act 1989 (c. 40, SIF 27), **s. 193(3)**(the insertion being wholly in force at 1.4.1991) by S.I. 1990/354, **art. 3** and 1991/488, art. 2(4)(with art. 4)

F359 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

[[F360]22B (1) **[**[F361]The Commission**]** may in rules and regulations under—

(a) paragraph 14 (conduct of business rules),

(b) paragraph 19 (clients' money regulations), or

(c) paragraph 20 (regulations as to unsolicited calls),

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designate provisions which apply, to such extent as may be specified, to a member society in respect of investment business in the carrying on of which it is subject to the rules of a recognised self-regulating organisation for friendly societies.

(2) It may be provided that the designated rules or regulations have effect, generally or to such extent as may be specified, subject to the rules of the organisation.

(3) A member society which contravenes a rule or regulation applying to it by virtue of this paragraph shall be treated as having contravened the rules of the relevant recognised self-regulating organisation for friendly societies.

(4) It may be provided that, to such extent as may be specified, the designated rules or regulations may not be modified or waived (under paragraph 22C below or section 50) in relation to a member society.

Where such provision is made any modification or waiver previously granted shall cease to have effect, subject to any transitional provision or saving contained in the rules or regulations.

(5) Except as mentioned in sub-paragraph (1), the rules and regulations referred to in that sub-paragraph do not apply to a member society in respect of investment business in the carrying on of which it is subject to the rules of a recognised self-regulating organisation for friendly societies.**]**

Textual Amendments

F360 Sch. 11 para. 22B inserted by Companies Act 1989 (c. 40, SIF 27), **s. 193(3)** (the insertion being wholly in force at 1.4.1991) by S.I. 1990/354, **art. 3** and S.I. 1991/488, **art. 2(4)** (with art. 4).

F361 Words in Sch. 11 para. 22B substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Modifications etc. (not altering text)

C284 Sch. 11 paras. 22B-22D: certain functions conferred by provisions contained in paras. 2-25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, **art. 5(2)**.

C285 Sch. 11 paras. 22B, 22D: functions transferred by S.I. 1990/354, **art. 5(1)**.

[[F362]22C(1) A recognised self-regulating organisation for friendly societies may on the application of a society which is a member of the organisation—

(a) modify a rule or regulation designated under paragraph 22B so as to adapt it to the circumstances of the society or to any particular kind of business carried on by it, or

(b) dispense the society from compliance with any such rule or regulation, generally or in relation to any particular kind of business carried on by it.

(2) The powers conferred by this paragraph shall not be exercised unless it appears to the organisation—

(a) that compliance with the rule or regulation in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and

(b) that the exercise of those powers will not result in any undue risk to investors.

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(3) The powers conferred by this paragraph may be exercised unconditionally or subject to conditions; and paragraph 22B(3) applies in the case of a contravention of a condition as in the case of contravention of a designated rule or regulation.

(4) The reference in paragraph 4(1) of Schedule 2 as applied by paragraph 4 above (requirements for recognition of self-regulating organisation for friendly societies) to monitoring and enforcement of compliance with rules and regulations includes monitoring and enforcement of compliance with conditions imposed by the organisation under this paragraph.**]**

Textual Amendments

F362 Sch. 11 paras. 22B, 22C, 22D inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 36**

Modifications etc. (not altering text)

C286 Sch. 11 paras. 22B–22D: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, **art. 5(2)**

[[F363]22D(1) **[**[F364]The Commission**]** may issue codes of practice with respect to any matters dealt with by statements of principle issued under paragraph 13A or by rules or regulations made under any provision of this Schedule.

(2) In determining whether a society has failed to comply with a statement of principle—

(a) a failure by it to comply with any relevant provision of a code of practice may be relied on as tending to establish failure to comply with the statement of principle, and

(b) compliance by it with the relevant provisions of a code of practice may be relied on as tending to negative any such failure.

(3) A contravention of a code of practice with respect to a matter dealt with by rules or regulations shall not of itself give rise to any liability or invalidate any transaction; but in determining whether a society's conduct amounts to contravention of a rule or regulation—

(a) contravention by it of any relevant provision of a code of practice may be relied on as tending to establish liability, and

(b) compliance by it with the relevant provisions of a code of practice may be relied on as tending to negative liability.

(4) Where by virtue of paragraph 22B (application of designated rules and regulations to member societies) rules or regulations—

(a) do not apply, to any extent, to a member society of a recognised self-regulating organisation for friendly societies, or

(b) apply, to any extent, subject to the rules of the organisation,

a code of practice with respect to a matter dealt with by the rules or regulations may contain provision limiting its application to a corresponding extent.**]**

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Textual Amendments

F363 Sch. 11 paras. 22B, 22C, 22D inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 36**

F364 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Modifications etc. (not altering text)

C287 Sch. 11 paras. 22B–22D: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, **art. 5(2)**

C288 Sch. 11 paras. 22B, 22D: functions transferred by S.I. 1990/354, **art. 5(1)**

Intervention, information and investigations

23 (1) The powers conferred by Chapter VI of Part I of this Act shall not be exercisable in relation to a regulated friendly society or the appointed representative of such a society by the Secretary of State but instead shall be exercisable by **[**[F365]the Commission**]**; and accordingly references in that Chapter to the Secretary of State shall as respects the exercise of powers in relation to a regulated friendly society or such a representative be taken as references to **[**[F365]the Commission**]**.

(2) Section 64 of this Act shall not apply to the exercise of those powers by virtue of sub-paragraph (1) above but those powers shall only be exercisable by **[**[F365]the Commission**]** if it appears to **[**[F366]the Commission**]**—

(a) that the exercise of the powers is desirable in the interests of members or potential members of the regulated friendly society; or

(b) that the society is not a fit person to carry on regulated business of a particular kind or to the extent to which it is carrying it on or proposing to carry it on; or

(c) that the society has contravened any provision of this Act or of any rules or regulations made under it or in purported compliance with any such provision has furnished **[**[F366]the Commission**]** with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act.

(3) For the purposes of sub-paragraph (2)(b) above **[**[F365]the Commission**]** may take into account any matters that could be taken into account in deciding whether to withdraw or suspend an authorisation under Chapter III of Part I of this Act.

(4) The powers conferred by this paragraph shall not be exercisable in relation—

(a) to a member society which is subject to the rules of a recognised self-regulating organisation for friendly societies in carrying on all the investment business carried on by it; or

(b) to an appointed representative of a member society if that member society, and each other member society which is his principal, is subject to the rules of such an organisation in carrying on the investment business in respect of which it has accepted responsibility for his activities;

except that the powers conferred by virtue of section 67(1)(b) of this Act may on any of the grounds mentioned in sub-paragraph (2) above be exercised in relation

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to a member society or appointed representative at the request of the organisation in relation to which the society or, as the case may be, the society which is the representative's principal is a member society.

Textual Amendments

F365 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F366 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

24 (1) **[**[F367]The Commission**]** may by notice in writing require any regulated friendly society (other than a member society) or any self-regulating organisation for friendly societies to furnish **[**[F368]the Commission**]** with such information as **[**[F368]the Commission**]** may reasonably require for the exercise of his functions under this Act.

(2) **[**[F367]The Commission**]** may require any information which **[**[F368]the Commission**]** requires under this paragraph to be furnished within such reasonable time and verified in such manner as **[**[F368]the Commission**]** may specify.

Textual Amendments

F367 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F368 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

25 (1) Where a notice or copy of a notice is served on any person under section 60 or section 70 of this Act as they apply by virtue of paragraph 21(2) or 23 above, Chapter IX of Part I of this Act (other than section 96) shall, subject to sub-paragraph (2) below, have effect—

(a) with the substitution for the references to the Secretary of State of references to **[**[F369]the Commission**]**; and

(b) as if for the references in section 98(4) to sections 28, 33 and 60 of this Act there were substituted references to paragraphs 21, 23, 24, 26 and 27 of this Schedule.

(2) Where the friendly society in question is an authorised person by virtue of section 25 of this Act the provisions mentioned in sub-paragraph (1) above shall have effect as if the references substituted by that sub-paragraph had effect in addition to rather than in substitution for the references for which they are there substituted.

(3) Where the Tribunal reports that the appropriate decision is to take action under paragraph 26 or 27 of this Schedule **[**[F369]the Commission**]** shall take the report into account but shall not be bound to act on it.

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Textual Amendments

F369 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Exercise of powers under enactments relating to friendly societies

26 (1) If it appears to **[**[F370]the Commission**]** that a regulated friendly society which is an authorised person by virtue of section 23 [F371]. . .of this Act—

(a) has contravened any provision of—

(i) this Act or any rules or regulations made under it;

(ii) any requirement imposed under paragraph 24 above;

(iii) the rules of a recognised self-regulating organisation for friendly societies in relation to which it is a member society; or

(b) in purported compliance with any such provision has furnished false, inaccurate or misleading information,

[[F372]the Commission**]** may exercise any of the powers mentioned in sub-paragraph (2) below in relation to that society.

[[F373](2) The powers mentioned in sub-paragraph (1) above are—

(a) in relation to a registered friendly society, those under subsection (1) of section 87 (inspection and winding up of registered friendly societies) and subsections (1) and (2) of section 91 (cancellation and suspension of registration) of the Friendly Societies Act 1974;

(b) in relation to an incorporated friendly society, those under section 22 (winding up by court: grounds and petitioners) of the Friendly Societies Act 1992; and

(c) in relation to a registered friendly society or an incorporated friendly society, those under the following provisions of the Friendly Societies Act 1992, namely, section 36 (imposition of conditions on current authorisation), section 39 (power to direct application for fresh authorisation), section 40 (withdrawal of authorisation in respect of new business), section 51 (power to forbid acceptance of new members), section 52 (application to court), section 62 (power to obtain information and documents etc.), section 65 (investigations on behalf of Commission) and section 66 (inspections and special meetings: general),

and the sections referred to above shall apply in relation to the exercise of those powers by virtue of this paragraph as they apply in relation to their exercise in the circumstances mentioned in those sections**]**

[F374](3) . . . . . .

Textual Amendments

F370 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

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F371 Figure in Sch. 11 para. 26(1) repealed (28.4.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 120, **Sch. 22 Pt.I** (with ss. 7(5), 93(4)); S.I. 1993/1186, art. 2(1), **Sch. 1A**ppendix; S.I. 1993/2213, art. 2(1), **Sch. 5A**ppendix.

F372 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F373 Sch. 11 para. 26(2) substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para.16** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F374 Sch. 11 para. 26(3) repealed (28.4.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 120, **Sch. 22 Pt.I** (with ss. 7(5), 93(4)); S.I. 1993/1186, art. 2(1), **Sch. 1A**ppendix; S.I. 1993/2213, art. 2(1), **Sch. 5A**ppendix.

. . . . . .

[F375]27

Textual Amendments

F375 Sch. 11 para. 27 repealed (28.4.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 120, **Sch. 22 Pt.I** (with ss. 7(5), 93(4)); S.I. 1993/1186, art. 2(1), **Sch. 1A**ppendix; S.I. 1993/2213, art. 2(1), **Sch. 5A**ppendix.

PART IV

TRANSFER OF REGISTRAR'S FUNCTIONS

28 (1) If it appears to **[**[F376]the Commission**]**—

(a) that a body corporate has been established which is able and willing to discharge all or any of the functions to which this paragraph applies; and

(b) that the requirements of Schedule 7 to this Act (as it has effect by virtue of sub-paragraph (3) below) are satisfied in the case of that body,

[[F377]the Commission**]** may, with the consent of the Secretary of State and subject to the following provisions of this paragraph and paragraphs 29 and 30 below, make an order transferring all or any of those functions to that body.

(2) The body to which functions are transferred by the first order made under sub-paragraph (1) above shall be the body known as The Securities and Investments Board Limited if the Secretary of State consents to the making of the order and it appears to **[**[F376]the Commission**]** that that body is able and willing to discharge those functions, that the requirements mentioned in paragraph (b) of that sub-paragraph are satisfied in the case of that body and that **[**[F377]the Commission**]** is not precluded from making the order by the following provisions of this paragraph or paragraph 29 or 30 below.

(3) For the purposes of sub-paragraph (1) above Schedule 7 shall have effect as if—

(a) for references to a designated agency there were substituted references to a transferee body; and

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(b) for the reference to complaints in paragraph 4 there were substituted a reference to complaints arising out of the conduct by regulated friendly societies of regulated business.

(4) An order under sub-paragraph (1) above is in this Act referred to as a transfer order and a body to which functions are transferred by a transfer order is in this Act referred to as a transferee body.

(5) Subject to sub-paragraphs (6) and (8) below, this paragraph applies to the functions of **[**[F376]the Commission**]** under section 113(3) of this Act and paragraph 38 below and any functions conferred on **[**[F377]the Commission**]** by virtue of paragraphs 2 to 25 **[**[F378](except paragraph 22A)**]** above other than the powers under sections 66 and 68 of this Act and, so far as applicable to assets belonging to a regulated friendly society, the power under section 67 of this Act.

(6) If **[**[F376]the Commission**]** transfers **[**[F379]its**]** functions under Chapter VI of Part I of this Act they shall not be exercisable by the transferee body if the only reasons by virtue of which it appears to the body as mentioned in paragraph 23(2) above relate to the sufficiency of the funds of the society to meet existing claims or of the rates of contribution to cover benefits assured.

(7) Any function may be transferred by an order under this paragraph either wholly or in part and a function may be transferred in respect of all societies or only in respect of such societies as are specified in the order.

(8) A transfer order—

(a) may reserve to **[**[F376]the Commission**]** the function of revoking a recognition order in respect of a self-regulating organisation for friendly societies on the ground that the requirement mentioned in paragraph 4(2) above is not satisfied; and

(b) shall not transfer to a transferee body the function of revoking any such recognition order on the ground that the organisation has contravened the provisions of paragraph 9 above.

(9) No transfer order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

Textual Amendments

F376 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F377 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F378 Words in Sch. 11 para. 28 inserted (1.4.1991) by Companies Act 1989 (c. 40, SIF 27), **s. 193(4)**; S.I. 1991/488, **art. 2(4)**(with art. 4)

F379 Word in Sch. 11 para. 28(6) substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para.17** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

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Modifications etc. (not altering text)

C289 Sch. 11 para. 28: power to transfer functions exercised, and certain functions transferred, by S.R. 1987/228, **arts. 2**, 3

[[F380]29(1) **[**[F381]The Commission**]** shall not make a transfer order transferring any legislative functions to a transferee body unless—

(a) the body has furnished **[**[F382]the Commission**]** and the Secretary of State with a copy of the instruments **[**[F383]the body**]** proposes to issue or make in the exercise of those functions, and

(b) **[**[F383]the Commission and the Secretary of State**]** are both satisfied that those instruments will—

(i) afford investors an adequate level of protection,

(ii) in the case of provisions corresponding to those mentioned in Schedule 8 to this Act, comply with the principles set out in that Schedule, and

(iii) take proper account of the supervision of friendly societies by **[**[F381]the Commission**]** under the enactments relating to friendly societies.

(2) In this paragraph "legislative functions" means the functions of issuing or making statements of principle, rules, regulations or codes of practice.**]**

Textual Amendments

F380 Sch. 11 para. 29 substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 37**

F381 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F382 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F383 Words in Sch. 11 para. 29(1)(a)(b) substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para.18** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

30 (1) **[**[F384]The Commission**]** shall also before making a transfer order transferring any functions to a transferee body require it to furnish **[**[F385]the Commission**]** and the Secretary of State with a copy of any guidance intended to have continuing effect which it proposes to issue in writing or other legible form and they may take such guidance into account in determining whether they are satisfied as mentioned in paragraph 29(b) above.

(2) In this Act references to guidance issued by a transferee body are references to guidance issued or any recommendation made by it which is issued or made to regulated friendly societies or self-regulating organisations for friendly societies generally or to any class of regulated friendly societies or self-regulating organisations for friendly societies, being societies which are or may be subject to **[**[F386]statements of principle, rules, regulations or codes of practice issued or made**]**

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by it or organisations which are or may be recognised by it in the exercise of its functions under a transfer order.

Textual Amendments

F384 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F385 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F386 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 38**

31 (1) Subject to the provisions of this paragraph, sections 115, 116, 117(3) to (5) and 118 of this Act shall apply in relation to the transfer of functions under paragraph 28 above as they apply in relation to the transfer of functions under section 114 of this Act.

(2) Subject to sub-paragraphs (5) and (6)(b) below, for references in those provisions to the Secretary of State, a designated agency and a delegation order there shall be substituted respectively references to **[**[F387]the Commission**]**, a transferee body and a transfer order.

(3) **[**[F387]The Commission**]** may not exercise the powers conferred by subsections (1) and (2) of section 115 except with the consent of the Secretary of State.

(4) In subsection (3) of section 115 for the reference to Schedule 7 to this Act there shall be substituted a reference to that Schedule as it has effect by virtue of paragraph 28(3) above and in subsection (5) of that section for the reference to section 114(9)(b) of this Act there shall be substituted a reference to paragraph 29(b) above.

(5) Section 118(3)(b) shall have effect as if the reference to any provision applying to the Secretary of State were a reference to any provision applying to the Secretary of State or **[**[F387]the Commission**]**.

(6) In Schedule 9 to this Act—

(a) paragraph 1(2) and (3) shall be omitted;

(b) paragraph 4 shall have effect as if the references to the Secretary of State were references to the Secretary of State and **[**[F387]the Commission**]**;

(c) paragraph 5 shall have effect **[**[F388]as if the reference to section 205A were a reference to paragraph 45(1) and (3) below**]**;

(d) paragraph 12(3) shall have effect as if the reference to section 114(9) were a reference to paragraph 29 above.

(7) The power mentioned in paragraph 2(3) of Schedule 9 to this Act shall not be exercisable on the ground that the company has ceased to be a designated agency or, as the case may be, a transferee body if the company remains a transferee body or, as the case may be, a designated agency.

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Textual Amendments

F387 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F388 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 39**

[F389 31A (1) Where any functions under this Act are for the time being exercisable by a transferee body the Commission shall, before issuing an authorisation under section 32 of the Friendly Societies Act 1992 to a friendly society which is carrying on or proposes to carry on in the United Kingdom insurance business or non-insurance business which is investment business—

(a) seek the advice of the transferee body with respect to any matters which are relevant to those functions of the body and relate to the society, its proposed business or persons who are or will be, within the meaning of the Friendly Societies Act 1992, members of the committee of management or other officers of the society; and

(b) take into account any advice on those matters given to the Commission by the transferee body before the application is decided.

(2) In sub-paragraph (1) above—

(a) "insurance business" has the meaning given by section 117(1) of the Friendly Societies Act 1992; and

(b) "non-insurance business" has the meaning given by section 119(1) of that Act.

(3) The Commission may for the purpose of obtaining the advice of a transferee body under sub-paragraph (1) above furnish it with any information obtained by the Commission in connection with the application.]

Textual Amendments

F389 Sch. 11 para. 31A inserted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para.19** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

32 A transferee body shall at least once in each year for which the transfer order is in force make a report to [F390 the Commission] on the discharge of the functions transferred to it by the order and on such other matters as the order may require and [F390 the Commission] shall send a copy of each report received by [F391 the Commission] under this paragraph to the Secretary of State who shall lay copies of the report before Parliament.

Textual Amendments

F390 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

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F391 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

33 (1) This paragraph applies where the function of making or revoking a recognition order in respect of a self-regulating organisation for friendly societies is exercisable by a transferee body.

(2) Paragraph 3(2) above shall have effect as if the first reference to the Secretary of State included a reference to **[**[F392]the Commission**]**.

(3) The transferee body shall not regard the requirement mentioned in paragraph 4(2) as satisfied unless **[**[F392]the Commission**]** has certified that **[**[F393]the Commission**]** also regards it as satisfied.

(4) A transferee body shall send **[**[F392]the Commission**]** and the Secretary of State a copy of any notice received by it under paragraph 8(6) above.

(5) Where the Secretary of State exercises any of the powers conferred by paragraph 10(2) above in relation to an organisation **[**[F392]the Commission**]** shall direct the transferee body to take the appropriate action in relation to that organisation and such a direction shall, on the application of **[**[F392]the Commission**]**, be enforceable by mandamus or, in Scotland, by an order for specific performance under section 91 of the [M91]Court of Session Act 1868.

Textual Amendments

F392 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F393 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

Marginal Citations

M91 1868 c. 100.

[[F394]34(1) A transferee body to which **[**[F395]the Commission**]** has transferred any legislative functions may exercise those functions without the consent of the Secretary of State.

(2) In this paragraph "legislative functions" means the functions of issuing or making statements of principle, rules, regulations or codes of practice.**]**

Textual Amendments

F394 Sch. 11 para. 34 substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 40**

F395 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

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35 (1) A transferee body shall not impose any prohibition or requirement under section 65 or 67 of this Act on a regulated friendly society or vary any such prohibition or requirement unless it has given reasonable notice of its intention to do so to **[**[F396]the Commission**]** and informed **[**[F397]the Commission**]**—

(a) of the manner in which and the date on or after which it intends to exercise the power; and

(b) in the case of a proposal to impose a prohibition or requirement, on which of the grounds specified in paragraph 23(2) above it proposes to act and its reasons for considering that the ground in question exists and that it is necessary to impose the prohibition or requirement.

(2) A transferee body shall not exercise any power to which sub-paragraph (1) above applies if before the date given in the notice in pursuance of sub-paragraph (1)(a) above **[**[F396]the Commission**]** has served on it a notice in writing directing it not to do so; and **[**[F396]the Commission**]** may serve such a notice if **[**[F397]the Commission**]** considers it is desirable for protecting members or potential members of the regulated friendly society against the risk that it may be unable to meet its liabilities or to fulfil the reasonable expectations of its members or potential members.

Textual Amendments

F396 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F397 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

36 (1) The Secretary of State shall not consent to the making of an order by **[**[F398]the Commission**]** under paragraph 28 above transferring any functions to a transferee body unless he is satisfied that any **[**[F399]statements of principle, rules, regulations, codes of practice**]**, guidance and recommendations of which copies are furnished to him under paragraphs 29(a) and 30(1) above do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition or, if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.

(2) Section 121(2) and (4) and sections 122 to 128 above shall have effect in relation to transferee bodies and transfer orders as they have effect in relation to designated agencies and designation orders but subject to the following modifications.

(3) Those provisions shall have effect as if the powers exercisable under section 121(3) were—

(a) to make an order transferring back to **[**[F398]the Commission**]** all or any of the functions transferred to the transferee body by a transfer order; or

(b) to direct **[**[F398]the Commission**]** to direct the transferee body to take specified steps for the purpose of securing that the **[**[F400]statements of principle, rules,

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regulations, codes of practice**]**, guidance or practices in question do not have the effect mentioned in sub-paragraph (1) above.

(4) No order shall be made by virtue of sub-paragraph (3) above unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

(5) For the decisions referred to in section 122(1) there shall be substituted a reference to the Secretary of State's decision whether he is precluded by sub-paragraph (1) above from giving his consent to the making of a transfer order.

(6) Section 128 shall apply as if—

(a) the powers referred to in subsection (1) of that section included the power conferred by sub-paragraph (3)(b) above; and

(b) the references to Chapter XIV of Part I included references to this paragraph.

Textual Amendments

F398 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F399 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 41**

F400 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 41**

37 (1) If a transferee body has reasonable grounds for believing that any regulated friendly society has failed to comply with an obligation to which it is subject by virtue of this Act it shall forthwith give notice of that fact to **[**[F401]the Commission**]** so that **[**[F402]the Commission**]** can take it into consideration in deciding whether to exercise in relation to the society any of the **[**[F403]relevant powers**]**.

[[F404](1A) In sub-paragraph (1) above "the relevant powers" means those powers specified in paragraph 26(2).**]**

(2) A notice under sub-paragraph (1) above shall contain particulars of the obligation in question and of the transferee body's reasons for considering that the society has failed to satisfy that obligation.

(3) A transferee body need not give a notice under sub-paragraph (1) above in respect of any matter unless it considers that that matter (either alone or in conjunction with other matters) would justify the withdrawal of authorisation under section 28 of this Act in the case of a person to whom that provision applies.

Textual Amendments

F401 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F402 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F403 Words in Sch. 11 para. 37(1) substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 20(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

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F404 Sch. 11 para. 37(1A) inserted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 20(2)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

PART V

MISCELLANEOUS AND SUPPLEMENTAL

38 (1) **[**[F405]The Commission**]** may publish information or give advice, or arrange for the publication of information or the giving of advice, in such form and manner as **[**[F406]the Commission**]** considers appropriate with respect to—

(a) the operation of this Schedule and the **[**[F407]statements of principle, rules, regulations and codes of practice issued or made**]** under it in relation to [[F408]registered] friendly societies, including in particular the rights of their members, the duties of such societies and the steps to be taken for enforcing those rights or complying with those duties;

(b) any matters relating to the functions of **[**[F405]the Commission**]** under this Schedule or any such **[**[F409]statements of principle, rules, regulations or codes of practice**]**;

(c) any other matters about which it appears to **[**[F406]the Commission**]** to be desirable to publish information or give advice for the protection of those members or any class of them.

(2) **[**[F405]The Commission**]** may offer for sale copies of information published under this paragraph and may, if **[**[F406]the Commission**]** thinks fit, make reasonable charges for advice given under this paragraph at any person's request.

(3) This paragraph shall not be construed as authorising the disclosure of restricted information within the meaning of section 179 of this Act in any case in which it could not be disclosed apart from the provisions of this paragraph.

Textual Amendments

F405 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F406 Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para. 10(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

F407 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 42(a)**

F408 Word in Sch. 11 para. 38(1)(a) repealed (28.4.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 120, **Sch. 22 Pt.I** (with ss. 7(5), 93(4)); S.I. 1993/1186, art. 2(1), **Sch. 1A**ppendix; S.I. 1993/2213, art. 2(1), **Sch. 5A**ppendix.

F409 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. II para. 42(b)**

Modifications etc. (not altering text)

C290 Sch. 11 para. 38: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, **art. 5(2)**

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39 In the case of an application for authorisation under section 26 of this Act made by a society which is registered under the [M92]Friendly Societies Act 1974 within the meaning of that Act or is registered or deemed to be registered under the [M93]Friendly Societies Act (Northern Ireland) 1970 ("a registered society"), section 27(3)(c) of this Act shall have effect as if it referred only to any person who is a trustee manager or member of the committee of the society.

Marginal Citations

M92 1974 c. 46.

M93 1970 c. 31 (N.I.).

40 Where the other person mentioned in paragraph (c) of the definition of "connected person" in section 105(9) of this Act is a registered society that paragraph shall have effect with the substitution for the words from "member" onwards of the words "trustee, manager or member of the committee of the society".

[[F410]40A (1) In the case of an application for authorisation under section 26 of this Act made by an incorporated friendly society section 27(3) shall have effect as if the following paragraph were substituted for paragraph (a)—

"(a) to any member of the committee of management or any director or controller of a subsidiary of the society or of a body jointly controlled by the society."

(2) Where the other person mentioned in paragraph (b) of the definition of "connected person" in section 105(9) of this Act is an incorporated friendly society that paragraph shall have effect with the substitution for the words from "director" onwards of the words "member of the committee of management of the society or any director, secretary or controller of a subsidiary of the society or a body jointly controlled by the society."**]**

Textual Amendments

F410 Sch. 11 para. 40A inserted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para.21** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

41 In relation to any such document as is mentioned in subsection (1) of section 204 of this Act which is required or authorised to be given to or served on a registered society—

(a) subsection (3)(c) of that section shall have effect with the substitution for the words from "member" onwards of the words "trustee, manager or member of the committee of the society"; and

(b) subsection (4)(c) of that section shall have effect as if for the words from "member" onwards there were substituted the words "trustee, manager or member of the committee of the society, the office which is its registered office in accordance with its rules".

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42 Rules under paragraphs 14, 15, 17 and 18 above and regulations under paragraphs 16, 19 and 20 above shall apply notwithstanding any provision to the contrary in the rules of any regulated friendly society to which they apply.

. . . . . .

[F411]43

Textual Amendments

F411 Sch. 11 para. 43 repealed (28.4.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 120, **Sch. 22 Pt. I** (with ss. 7(5), 93(4)); S.I. 1993/1186, art. 2(1), **Sch. 1A**ppendix; S.I. 1993/2213, art. 2(1), **Sch. 5A**ppendix.

44 (1) In Part III of Schedule 1 to the [M94]House of Commons Disqualification Act 1975 (disqualifying offices) there shall be inserted at the appropriate place—

> "Chairman of a transferee body within the meaning of Schedule 11 to the Financial Services Act 1986 if he is in receipt of remuneration."

(2) A corresponding amendment shall be made in Part III of Schedule 1 to the [M95]Northern Ireland Assembly Disqualification Act 1975.

Marginal Citations

M94 1975 c. 24.
M95 1975 c. 25.

[[F412]45(1) Any power of the Commission to make regulations, rules or orders which is exercisable by virtue of this Act shall be exercisable by statutory instrument and the Statutory Instruments Act 1946 shall apply to any such power as if the Commission were a Minister of the Crown.

(2) Any regulations, rules or orders made under this Schedule by the Commission may make different provision for different cases.**]**

Textual Amendments

F412 Sch. 11 para. 45 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. II para.22** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

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[F413SCHEDULE 11A

OFFERS OF SECURITIES TO THE PUBLIC IN THE UNITED KINGDOM]

Textual Amendments

F413 Sch. 11A inserted (19.6.1995) by S.I. 1995/1537, reg. 17, Sch. 2 Pt. I para. 3(2), **Sch. 3**

[1 A person offers securities to the public in the United Kingdom if—

(a) to the extent that the offer is made to persons in the United Kingdom, it is made to the public; and

(b) paragraph 2 below does not apply in relation to the offer;

and, for this purpose, an offer which is made to any section of the public, whether selected as members or debenture holders of a body corporate, or as clients of the person making the offer, or in any other manner, is to be regarded as made to the public.]

[2 This paragraph applies in relation to an offer of securities where, to the extent that the offer is made to persons in the United Kingdom—

(a) the condition specified in any one of the paragraphs of sub-paragraph (1) of paragraph 3 below is satisfied in relation to the offer; or

(b) paragraph 4 below applies in relation to the offer.]

[3 (1) The following are the conditions specified in this sub-paragraph—

(a) the securities are offered to persons—

(i) whose ordinary activities involve them in acquiring, holding managing or disposing of investments (as principal or agent) for the purposes of their businesses; or

(ii) who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses;

or are otherwise offered to persons in the context of their trades, professions or occupations;

(b) the securities are offered to no more than fifty persons;

(c) the securities are offered to the members of a club or association (whether or not incorporated) and the members can reasonably be regarded as having a common interest with each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer;

(d) the securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer;

(e) the securities are offered in connection with a bona fide invitation to enter into an underwriting agreement with respect to them;

(f) the securities are offered to a government, local authority or public authority, as defined in paragraph 3 of Schedule 1 to this Act;

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(g) the total consideration payable for the securities cannot exceed ecu 40,000 (or an equivalent amount);

(h) the minimum consideration which may be paid for securities acquired pursuant to the offer is at least ecu 40,000 (or an equivalent amount);

(i) the securities are denominated in amounts of at least ecu 40,000 (or an equivalent amount);

(j) the securities are offered in connection with a takeover offer;

(k) the securities are offered in connection with a merger within the meaning of Council Directive No.78/855/EEC;

(l) the securities are shares and are offered free of charge to any or all of the holders of shares in the issuer;

(m) the securities are shares, or investments falling within paragraph 4 or 5 of Schedule 1 to this Act relating to shares, in a body corporate and are offered in exchange for shares in the same body corporate, and the offer cannot result in any increase in the issued share capital of the body corporate;

(n) the securities are issued by a body corporate and offered—

(i) by the issuer;

(ii) only to qualifying persons; and

(iii) on terms that a contract to acquire any such securities may be entered into only by the qualifying person to whom they were offered or, if the terms of the offer so permit, any qualifying person;

(o) the securities result from the conversion of convertible securities and listing particulars or a prospectus relating to the convertible securities were or was published in the United Kingdom under or by virtue of Part IV of this Act, Part III of the Companies Act 1985 or the Public Offers of Securities Regulations 1995;

(p) the securities are issued by—

(i) a charity within the meaning of section 96(1) of the Charities Act 1993 [F414];

(ii) a housing association within the meaning of section 5(1) of the Housing Act 1985 [F415];

(iii) an industrial or provident society registered in accordance with section 1(2)(b) of the Industrial and Provident Societies Act 1965 [F416]; or

(iv) a non-profit making association or body, recognised by the country or territory in which it is established, with objectives similar to those of a body falling within any of sub-paragraphs (i) to (iii) above;

and the proceeds of the offer will be used for the purposes of the issuer's objectives;

(q) the securities offered are shares which are issued by, or ownership of which entitles the holder to membership of or to obtain the benefit of services provided by,—

(i) a building society incorporated under the law of, or of any part of, the United Kingdom;

(ii) any body incorporated under the law of, or of any part of, the United Kingdom relating to industrial and provident societies or credit unions; or

(iii) a body of a similar nature established in a member State;

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(r) the securities offered are Euro-securities and are not the subject of advertising likely to come to the attention of persons who are not professionally experienced in matters relating to investment;

(s) the securities are of the same class, and were issued at the same time, as securities in respect of which a prospectus has been published under or by virtue of Part IV of this Act, Part III of the Companies Act 1985 or the Public Offers of Securities Regulations 1995;

(t) the securities are investments falling within paragraph 2 of schedule 1 to this Act with a maturity of less than one year from their date of issue;

(u) the securities are investments falling within paragraph 3 of Schedule 1 to this Act;

(v) he securities are not transferable.

(2) For the purposes of this paragraph

"convertible securities" means

(a) securities falling within paragraph 2 of Schedule 1 to this Act which can be converted into, or exchanged for, or which confer rights to acquire, securities; or

(b) ecurities falling within paragraph 4 or 5 of that Schedule (as applied for the purposes of section 142(2) of this Act);

and "conversion" in relation to convertible securities means their conversion into or exchange for, or the exercise of rights conferred by them to acquire, other securities;

"credit institution" means a credit institution as defined in Article 1 of Council Directive No. 77/780/EEC[F417];

"ecu" means the European currency unit as defined in Article 1 of Council Regulation No. 3320/94/EC[F418] or any Council regulation replacing the same, in either case as amended from time to time;

"Euro-securities" means investments which

(a) are to be underwritten and distributed by a syndicate at least two of the members of which have their registered offices in different countries or territories;

(b) are to be offered on a significant scale in one or more countries or territories other than the country or territory on which the issuer has its registered office; and

(c) may be acquired pursuant to the offer only through a credit institution or other financial institution;

"financial institution" means a financial institution as defined in Article 1 of Council Directive No. 89/646/EEC[F419]; and

"shares", except in relation to a takeover offer, means investments which are securities by virtue of falling within paragraph 1 of Schedule 1 to this Act (as applied for the purposes of section 142(3) of this Act).

(3) For the purposes of determining whether the condition specified in paragraph (b) of (g) of sub-paragraph (1) above is satisfied in relation to an offer, the offer shall be taken together with any other offer of the same securities which was

(a) made by the same person;

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(b) open at any time within the period of 12 months ending with the date on which the offer is first made; and

(c) not an offer to the public in the United Kingdom by virtue of that condition being satisfied.

(4) In determining for the purposes of paragraph (d) of sub-paragraph (1) above whether a person is sufficiently knowledgeable to understand the risks involved in accepting an offer of securities, any information supplied by the person making the offer shall be disregarded, apart from information about

(a) the issuer of the securities; or

(b) if the securities confer the right to acquire other securities, the issuer of those other securities.

(5) For the purposes of determining whether the condition specified in paragraph (g), (h) or (i) of sub-paragraph (1) above is satisfied in relation to an offer, an amount, in relation to an amount denominated in ecu, is an "equivalent amount" if it is an amount of equal value, calculated at the latest practicable date before (but in any event not more than 3 days before) the date on which the offer is first made, denominated wholly or partly in another currency or unit of account.

(6) For the purposes of paragraph (j) of sub-paragraph (1) above, "takeover offer" means

(a) an offer which is a takeover offer within the meaning of Part XIIIA of the Companies Act 1985 (or would be such an offer if that Part of that Act applied in relation to any body corporate); or

(b) an offer made to all the holders of shares, or of shares of a particular class, in a body corporate to acquire a specified proportion of those shares ("holders" and "shares" being construed in accordance with that Part);

but in determining for the purposes of paragraph (b) above whether an offer is made to all the holders of shares, or of shares of any class, the offeror, any associate of his (within the meaning of section 430E of that Act) and any person whose shares the offeror or any such associate has contracted to acquire shall not be regarded as holders of the shares.

(7) For the purposes of paragraph (1) of sub-paragraph (1) above, "holders of shares" means the persons who, at the close of business on a date specified in the offer and falling within the period of 28 days ending with the date on which the offer is first made, were the holders of such shares.

(8) For the purposes of paragraph (n) of sub-paragraph (1) above

(a) a person is a "qualifying person", in relation to an issuer, if he is a bona fide employee or former employee of the issuer or of another body corporate in the same group or the wife, husband, widow, widower or child or stepchild under the age of eighteen of such an employee or former employee; and

(b) the definition of "issuer" in section 142(7) applies with the omission of the words from "except that" to the end of the definition.**]**

Textual Amendments

F414 1993 c.10.

F415 1985 c.68.

F416 1965 c.12.

F417 OJ No. L322. 17.12.77, p. 30.

F418 OJ No. L350. 31.12.94, p. 27.

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F419 OJ No. L386. 31.12.89, p. 1. amending Council Directive 77/780/EEC (OJ No. L322. 17.12.77. p. 30).

[4 (1) This paragraph applies in relation to an offer where the condition specified in one relevant paragraph is satisfied in relation to part, but not the whole, of the offer and, in relation to each other part of the offer, the condition specified in a different relevant paragraph is satisfied.

(2) For the purposes of this paragraph, "relevant paragraph" means any of paragraphs (a) to (f), (j) to (m), (o), (p) and (s) of paragraph 3(1) above.**]**

SCHEDULE 12

Section 172.

TAKEOVER OFFERS: PROVISIONS SUBSTITUTED FOR SECTIONS 428, 429 AND 430 OF COMPANIES ACT 1985

"PART XIIIA

TAKEOVER OFFERS

"Takeover offers."

428 (1) In this Part of this Act "a takeover offer" means an offer to acquire all the shares, or all the shares of any class or classes, in a company (other than shares which at the date of the offer are already held by the offeror), being an offer on terms which are the same in relation to all the shares to which the offer relates or, where those shares include shares of different classes, in relation to all the shares of each class.

(2) In subsection (1) "shares" means shares which have been allotted on the date of the offer but a takeover offer may include among the shares to which it relates all or any shares that are subsequently allotted before a date specified in or determined in accordance with the terms of the offer.

(3) The terms offered in relation to any shares shall for the purposes of this section be treated as being the same in relation to all the shares or, as the case may be, all the shares of a class to which the offer relates notwithstanding any variation permitted by subsection (4).

(4) A variation is permitted by this subsection where—

(a) the law of a country or territory outside the United Kingdom precludes an offer of consideration in the form or any of the forms specified in the terms in question or precludes it except after compliance by the offeror with conditions with which he is unable to comply or which he regards as unduly onerous; and

(b) the variation is such that the persons to whom an offer of consideration in that form is precluded are able to receive consideration otherwise than in that form but of substantially equivalent value.

(5) The reference in subsection (1) to shares already held by the offeror includes a reference to shares which he has contracted to acquire but that shall not be construed as including shares which are the subject of a contract binding the holder to accept the offer when

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it is made, being a contract entered into by the holder either for no consideration and under seal or for no consideration other than a promise by the offeror to make the offer.

(6) In the application of subsection (5) to Scotland, the words "and under seal" shall be omitted.

(7) Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, the revision shall not be regarded for the purposes of this Part of this Act as the making of a fresh offer and references in this Part of this Act to the date of the offer shall accordingly be construed as references to the date on which the original offer was made.

(8) In this Part of this Act "the offeror" means, subject to section 430D, the person making a takeover offer and "the company" means the company whose shares are the subject of the offer.

Right of offeror to buy out minority shareholders.

429 (1) If, in a case in which a takeover offer does not relate to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire not less than nine-tenths in value of the shares to which the offer relates he may give notice to the holder of any shares to which the offer relates which the offeror has not acquired or contracted to acquire that he desires to acquire those shares.

(2) If, in a case in which a takeover offer relates to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire not less than nine-tenths in value of the shares of any class to which the offer relates, he may give notice to the holder of any shares of that class which the offeror has not acquired or contracted to acquire that he desires to acquire those shares.

(3) No notice shall be given under subsection (1) or (2) unless the offeror has acquired or contracted to acquire the shares necessary to satisfy the minimum specified in that subsection before the end of the period of four months beginning with the date of the offer; and no such notice shall be given after the end of the period of two months beginning with the date on which he has acquired or contracted to acquire shares which satisfy that minimum.

(4) Any notice under this section shall be given in the prescribed manner; and when the offeror gives the first notice in relation to an offer he shall send a copy of it to the company together with a statutory declaration by him in the prescribed form stating that the conditions for the giving of the notice are satisfied.

(5) Where the offeror is a company (whether or not a company within the meaning of this Act) the statutory declaration shall be signed by a director.

(6) Any person who fails to send a copy of a notice or a statutory declaration as required by subsection (4) or makes such a declaration for the purposes of that subsection knowing it to be false or without having reasonable grounds for believing it to be true shall be liable to imprisonment or a fine, or both, and for continued failure to send the copy or declaration, to a daily default fine.

(7) If any person is charged with an offence for failing to send a copy of a notice as required by subsection (4) it is a defence for him to prove that he took reasonable steps for securing compliance with that subsection.

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(8) Where during the period within which a takeover offer can be accepted the offeror acquires or contracts to acquire any of the shares to which the offer relates but otherwise than by virtue of acceptances of the offer, then, if—

(a) the value of the consideration for which they are acquired or contracted to be acquired ("the acquisition consideration") does not at that time exceed the value of the consideration specified in the terms of the offer; or

(b) those terms are subsequently revised so that when the revision is announced the value of the acquisition consideration, at the time mentioned in paragraph (a) above, no longer exceeds the value of the consideration specified in those terms,

the offeror shall be treated for the purposes of this section as having acquired or contracted to acquire those shares by virtue of acceptances of the offer; but in any other case those shares shall be treated as excluded from those to which the offer relates.

Effect of notice under s. 429.

430 (1) The following provisions shall, subject to section 430C, have effect where a notice is given in respect of any shares under section 429.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer.

(3) Where the terms of an offer are such as to give the holder of any shares a choice of consideration the notice shall give particulars of the choice and state—

(a) that the holder of the shares may within six weeks from the date of the notice indicate his choice by a written communication sent to the offeror at an address specified in the notice; and

(b) which consideration specified in the offer is to be taken as applying in default of his indicating a choice as aforesaid;

and the terms of the offer mentioned in subsection (2) shall be determined accordingly.

(4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with; and if the consideration chosen by the holder of the shares—

(a) is not cash and the offeror is no longer able to provide it; or

(b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration shall be taken to consist of an amount of cash payable by the offeror which at the date of the notice is equivalent to the chosen consideration.

(5) At the end of six weeks from the date of the notice the offeror shall forthwith—

(a) send a copy of the notice to the company; and

(b) pay or transfer to the company the consideration for the shares to which the notice relates.

(6) If the shares to which the notice relates are registered the copy of the notice sent to the company under subsection (5)(a) shall be accompanied by an instrument of transfer executed on behalf of the shareholder by a person appointed by the offeror; and on receipt of that instrument the company shall register the offeror as the holder of those shares.

(7) If the shares to which the notice relates are transferable by the delivery of warrants or other instruments the copy of the notice sent to the company under subsection (5)(a) shall be accompanied by a statement to that effect; and the company shall on receipt

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of the statement issue the offeror with warrants or other instruments in respect of the shares and those already in issue in respect of the shares shall become void.

(8) Where the consideration referred to in paragraph (b) of subsection (5) consists of shares or securities to be allotted by the offeror the reference in that paragraph to the transfer of the consideration shall be construed as a reference to the allotment of the shares or securities to the company.

(9) Any sum received by a company under paragraph (b) of subsection (5) and any other consideration received under that paragraph shall be held by the company on trust for the person entitled to the shares in respect of which the sum or other consideration was received.

(10) Any sum received by a company under paragraph (b) of subsection (5), and any dividend or other sum accruing from any other consideration received by a company under that paragraph, shall be paid into a separate bank account, being an account the balance on which bears interest at an appropriate rate and can be withdrawn by such notice (if any) as is appropriate.

(11) Where after reasonable enquiry made at such intervals as are reasonable the person entitled to any consideration held on trust by virtue of subsection (9) cannot be found and twelve years have elapsed since the consideration was received or the company is wound up the consideration (together with any interest, dividend or other benefit that has accrued from it) shall be paid into court.

(12) In relation to a company registered in Scotland, subsections (13) and (14) shall apply in place of subsection (11).

(13) Where after reasonable enquiry made at such intervals as are reasonable the person entitled to any consideration held on trust by virtue of subsection (9) cannot be found and twelve years have elapsed since the consideration was received or the company is wound up—

(a) the trust shall terminate;

(b) the company or, as the case may be, the liquidator shall sell any consideration other than cash and any benefit other than cash that has accrued from the consideration; and

(c) a sum representing—

(i) the consideration so far as it is cash;

(ii) the proceeds of any sale under paragraph (b) above; and

(iii) any interest, dividend or other benefit that has accrued from the consideration,

shall be deposited in the name of the Accountant of Court in a bank account such as is referred to in subsection (10) and the receipt for the deposit shall be transmitted to the Accountant of Court.

(14) Section 58 of the [M96]Bankruptcy (Scotland) Act 1985 (so far as consistent with this Act) shall apply with any necessary modifications to sums deposited under subsection (13) as that section applies to sums deposited under section 57(1)(a) of that Act.

(15) The expenses of any such enquiry as is mentioned in subsection (11) or (13) may be defrayed out of the money or other property held on trust for the person or persons to whom the enquiry relates.

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Right of minority shareholder to be bought out by offeror.

430A(1) If a takeover offer relates to all the shares in a company and at any time before the end of the period within which the offer can be accepted—

(a) the offeror has by virtue of acceptances of the offer acquired or contracted to acquire some (but not all) of the shares to which the offer relates; and

(b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire, amount to not less than nine-tenths in value of all the shares in the company,

the holder of any shares to which the offer relates who has not accepted the offer may by a written communication addressed to the offeror require him to acquire those shares.

(2) If a takeover offer relates to shares of any class or classes and at any time before the end of the period within which the offer can be accepted—

(a) the offeror has by virtue of acceptances of the offer acquired or contracted to acquire some (but not all) of the shares of any class to which the offer relates; and

(b) those shares, with or without any other shares of that class which he has acquired or contracted to acquire, amount to not less than nine-tenths in value of all the shares of that class,

the holder of any shares of that class who has not accepted the offer may by a written communication addressed to the offeror require him to acquire those shares.

(3) Within one month of the time specified in subsection (1) or, as the case may be, subsection (2) the offeror shall give any shareholder who has not accepted the offer notice in the prescribed manner of the rights that are exercisable by him under that subsection; and if the notice is given before the end of the period mentioned in that subsection it shall state that the offer is still open for acceptance.

(4) A notice under subsection (3) may specify a period for the exercise of the rights conferred by this section and in that event the rights shall not be exercisable after the end of that period; but no such period shall end less than three months after the end of the period within which the offer can be accepted.

(5) Subsection (3) does not apply if the offeror has given the shareholder a notice in respect of the shares in question under section 429.

(6) If the offeror fails to comply with subsection (3) he and, if the offeror is a company, every officer of the company who is in default or to whose neglect the failure is attributable, shall be liable to a fine and, for continued contravention, to a daily default fine.

(7) If an offeror other than a company is charged with an offence for failing to comply with subsection (3) it is a defence for him to prove that he took all reasonable steps for securing compliance with that subsection.

Effect of requirement under s. 430A.

430B(1) The following provisions shall, subject to section 430C, have effect where a shareholder exercises his rights in respect of any shares under section 430A.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed.

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(3) Where the terms of an offer are such as to give the holder of shares a choice of consideration the holder of the shares may indicate his choice when requiring the offeror to acquire them and the notice given to the holder under section 430A(3)—
   (a) shall give particulars of the choice and of the rights conferred by this subsection; and
   (b) may state which consideration specified in the offer is to be taken as applying in default of his indicating a choice;

   and the terms of the offer mentioned in subsection (2) shall be determined accordingly.

(4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with; and if the consideration chosen by the holder of the shares—
   (a) is not cash and the offerer is no longer able to provide it; or
   (b) was to have been provided by a third party who is no longer bound or able to provide it,

   the consideration shall be taken to consist of an amount of cash payable by the offeror which at the date when the holder of the shares requires the offeror to acquire them is equivalent to the chosen consideration.

Applications to the court.

430C (1) Where a notice is given under section 429 to the holder of any shares the court may, on an application made by him within six weeks from the date on which the notice was given—
   (a) order that the offeror shall not be entitled and bound to acquire the shares; or
   (b) specify terms of acquisition different from those of the offer.

(2) If an application to the court under subsection (1) is pending at the end of the period mentioned in subsection (5) of section 430 that subsection shall not have effect until the application has been disposed of.

(3) Where the holder of any shares exercises his rights under section 430A the court may, on an application made by him or the offeror, order that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.

(4) No order for costs or expenses shall be made against a shareholder making an application under subsection (1) or (3) unless the court considers—
   (a) that the application was unnecessary, improper or vexatious; or
   (b) that there has been unreasonable delay in making the application or unreasonable conduct on his part in conducting the proceedings on the application.

(5) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under subsection (1) or (2) of section 429 the court may, on the application of the offeror, make an order authorising him to give notices under that subsection if satisfied—
   (a) that the offeror has after reasonable enquiry been unable to trace one or more of the persons holding shares to which the offer relates;
   (b) that the shares which the offeror has acquired or contracted to acquire by virtue of acceptances of the offer, together with the shares held by the person or persons mentioned in paragraph (a), amount to not less than the minimum specified in that subsection; and

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(c) that the consideration offered is fair and reasonable;

but the court shall not make an order under this subsection unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the offer.

Joint offers.

430D (1) A takeover offer may be made by two or more persons jointly and in that event this Part of this Act has effect with the following modifications.

(2) The conditions for the exercise of the rights conferred by sections 429 and 430A shall be satisfied by the joint offerors acquiring or contracting to acquire the necessary shares jointly (as respects acquisitions by virtue of acceptances of the offer) and either jointly or separately (in other cases); and, subject to the following provisions, the rights and obligations of the offeror under those sections and sections 430 and 430B shall be respectively joint rights and joint and several obligations of the joint offerors.

(3) It shall be a sufficient compliance with any provision of those sections requiring or authorising a notice or other document to be given or sent by or to the joint offerors that it is given or sent by or to any of them; but the statutory declaration required by section 429(4) shall be made by all of them and, in the case of a joint offeror being a company, signed by a director of that company.

(4) In sections 428, 430(8) and 430E references to the offeror shall be construed as references to the joint offerors or any of them.

(5) In section 430(6) and (7) references to the offeror shall be construed as references to the joint offerors or such of them as they may determine.

(6) In sections 430(4)(a) and 430B(4)(a) references to the offeror being no longer able to provide the relevant consideration shall be construed as references to none of the joint offerors being able to do so.

(7) In section 430C references to the offeror shall be construed as references to the joint offerors except that any application under subsection (3) or (5) may be made by any of them and the reference in subsection (5)(a) to the offeror having been unable to trace one or more of the persons holding shares shall be construed as a reference to none of the offerors having been able to do so.

Associates.

430E (1) The requirement in section 428(1) that a takeover offer must extend to all the shares, or all the shares of any class or classes, in a company shall be regarded as satisfied notwithstanding that the offer does not extend to shares which associates of the offeror hold or have contracted to acquire; but, subject to subsection (2), shares which any such associate holds or has contracted to acquire, whether at the time when the offer is made or subsequently, shall be disregarded for the purposes of any reference in this Part of this Act to the shares to which a takeover offer relates.

(2) Where during the period within which a takeover offer can be accepted any associate of the offeror acquires or contracts to acquire any of the shares to which the offer relates, then, if the condition specified in subsection (8)(a) or (b) of section 429 is satisfied as respects those shares they shall be treated for the purposes of that section as shares to which the offer relates.

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(3) In section 430A(1)(b) and (2)(b) the reference to shares which the offeror has acquired or contracted to acquire shall include a reference to shares which any associate of his has acquired or contracted to acquire.

(4) In this section "associate", in relation to an offeror means—
- (a) a nominee of the offeror;
- (b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary;
- (c) a body corporate in which the offeror is substantially interested; or
- (d) any person who is, or is a nominee of, a party to an agreement with the offeror for the acquisition of, or of an interest in, the shares which are the subject of the take-over offer, being an agreement which includes provisions imposing obligations or restrictions such as are mentioned in section 204(2)(a).

(5) For the purposes of subsection (4)(b) a company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.

(6) For the purposes of subsection (4)(c) an offeror has a substantial interest in a body corporate if—
- (a) that body or its directors are accustomed to act in accordance with his directions or instructions; or
- (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body.

(7) Subsections (5) and (6) of section 204 shall apply to subsection (4)(d) above as they apply to that section and subsections (3) and (4) of section 203 shall apply for the purposes of subsection (6) above as they apply for the purposes of subsection (2)(b) of that section.

(8) Where the offeror is an individual his associates shall also include his spouse and any minor child or step-child of his.

Convertible securities.

430F (1) For the purposes of this Part of this Act securities of a company shall be treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares; and references to the holder of shares or a shareholder shall be construed accordingly.

(2) Subsection (1) shall not be construed as requiring any securities to be treated—
- (a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe; or
- (b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class."

Marginal Citations

M96 1985 c. 66.

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SCHEDULE 13

Section 182.

DISCLOSURE OF INFORMATION

1 In section 133(2)(a) of the [M97]Fair Trading Act 1973 after the words "the Telecommunications Act 1984" there shall be inserted the words "or Chapter XIV of Part I of the Financial Services Act 1986".

Marginal Citations
M97 1973 c. 41.

2 In section 41(1)(a) of the [M98]Restrictive Trade Practices Act 1976 after the words "the Telecommunications Act 1984" there shall be inserted the words "or Chapter XIV of Part I of the Financial Services Act 1986".

Marginal Citations
M98 1976 c. 34.

F420 . . . . . .

3, 4.

Textual Amendments
F420 Sch. 13 paras. 3, 4 repealed by Banking Act 1987 (c. 22, SIF 10), s. 108(2), **Sch. 7 Pt. I**

5 At the end of section 19(3) of the [M99]Competition Act 1980 there shall be inserted—

"(h) Chapter XIV of Part I of the Financial Services Act 1986".

Marginal Citations
M99 1980 c. 21.

6 For subsections (1) and (2) of section 47A of the [M100]Insurance Companies Act 1982 there shall be substituted—

"(1) Subject to the following provisions of this section, no information relating to the business or other affairs of any person which has been obtained under section 44(2) to (4) above shall be disclosed without the consent of the person from whom the information was obtained and, if different, the person to whom it relates.

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(2) Subsection (1) above shall not preclude the disclosure of information to any person who is a competent authority for the purposes of section 449 of the Companies Act 1985.

(2A) Subsection (1) above shall not preclude the disclosure of information as mentioned in any of the paragraphs except (m) of subsection (1) of section 180 of the Financial Services Act 1986 or in subsection (3) or (4) of that section or as mentioned in section 449(1) of the Companies Act 1985.

(2B) Subsection (1) above shall not preclude the disclosure of any such information as is mentioned in section 180(5) of the Financial Services Act 1986 by any person who by virtue of that section is not precluded by section 179 of that Act from disclosing it."

Marginal Citations
M100 1982 c. 50.

7 After subsection (1) of section 437 of the Companies Act 1985 there shall be inserted—

"(1A) Any persons who have been appointed under section 431 or 432 may at any time and, if the Secretary of State directs them to do so, shall inform him of any matters coming to their knowledge as a result of their investigations.";

and subsection (2) of section 433 of that Act shall be omitted.

8 In section 446 of that Act—

(a) in subsection (3) for the words "to 436" there shall be substituted the words "to 437"; and

(b) subsection (5) shall be omitted.

9 (1) In subsection (1) of section 449 of that Act—

(a) for paragraphs (a) and (b) there shall be substituted—

"(a) with a view to the institution of or otherwise for the purposes of criminal proceedings;".

(b) for paragraph (d) there shall be substituted—

"(d) for the purpose of enabling or assisting the Secretary of State to exercise any of his functions under this Act, the Insider Dealing Act, the Prevention of Fraud (Investments) Act 1958, the Insurance Companies Act 1982, the Insolvency Act 1986, the Company Directors Disqualification Act 1986 or the Financial Services Act 1986.

(dd) for the purpose of enabling or assisting the Department of Economic Development for Northern Ireland to exercise any powers conferred on it by the enactments relating to companies or insolvency or for the purpose of enabling or

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assisting any inspector appointed by it under the enactments relating to companies to discharge his functions";

(c) after paragraph (e) there shall be inserted—

"(f) for the purpose of enabling or assisting the Bank of England to discharge its functions under the Banking Act 1979 or any other functions,

(g) for the purpose of enabling or assisting the Deposit Protection Board to discharge its functions under that Act,

(h) for any purpose mentioned in section 180(1)(b), (e), (h), (n) or (p) of the Financial Services Act 1986,

(i) for the purpose of enabling or assisting the Industrial Assurance Commissioner or the Industrial Assurance Commissioner for Northern Ireland to discharge his functions under the enactments relating to industrial assurance,

(j) for the purpose of enabling or assisting the Insurance Brokers Registration Council to discharge its functions under the Insurance Brokers (Registration) Act 1977,

(k) for the purpose of enabling or assisting an official receiver to discharge his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a body which is for the time being a recognised professional body for the purposes of section 391 of the Insolvency Act 1986 to discharge its functions as such,

(l) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by a solicitor, auditor, accountant, valuer or actuary of his professional duties,

(m) for the purpose of enabling or assisting an authority in a country or territory outside the United Kingdom to exercise corresponding supervisory functions.".

(2) After subsection (1) of that section there shall be inserted—

"(1A) In subsection (1) above "corresponding supervisory functions" means functions corresponding to those of the Secretary of State or the competent authority under the Financial Services Act 1986 or to those of the Secretary of State under the Insurance Companies Act 1982 or to those of the Bank of England under the Banking Act 1979 or any other functions in connection with rules of law corresponding to the provisions of the Insider Dealing Act or Part VII of the Financial Services Act 1986.

(1B) Subject to subsection (1C), subsection (1) shall not preclude publication or disclosure for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this section by the Secretary of State by an order in a statutory instrument to discharge any functions which are specified in the order.

(1C) An order under subsection (1B) designating an authority for the purpose of that subsection may—

(a) impose conditions subject to which the publication or disclosure of any information or document is permitted by that subsection; and

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(b) otherwise restrict the circumstances in which that subsection permits publication or disclosure.

(1D) Subsection (1) shall not preclude the publication or disclosure of any such information as is mentioned in section 180(5) of the Financial Services Act 1986 by any person who by virtue of that section is not precluded by section 179 of that Act from disclosing it."

(3) For subsection (3) of that section (competent authorities) there shall be substituted—

"(3) For the purposes of this section each of the following is a competent authority—

(a) the Secretary of State,

(b) the Department of Economic Development for Northern Ireland and any officer of that Department,

(c) an inspector appointed under this Part by the Secretary of State,

(d) the Treasury and any officer of the Treasury,

(e) the Bank of England and any officer or servant of the Bank,

(f) the Lord Advocate,

(g) the Director of Public Prosecutions, and the Director of Public Prosecutions for Northern Ireland,

(h) any designated agency or transferee body within the meaning of the Financial Services Act 1986 and any officer or servant of such an agency or body,

(i) any person appointed or authorised to exercise any powers under section 94, 106 or 177 of the Financial Services Act 1986 and any officer or servant of such a person,

(j) the body administering a scheme under section 54 of or paragraph 18 of Schedule 11 to that Act and any officer or servant of such a body,

(k) the Chief Registrar of friendly societies and the Registrar of Friendly Societies for Northern Ireland and any officer or servant of either of them,

(l) the Industrial Assurance Commissioner and the Industrial Assurance Commissioner for Northern Ireland and any officer of either of them,

(m) any constable,

(n) any procurator fiscal.

(4) A statutory instrument containing an order under subsection (1B) is subject to annulment in pursuance of a resolution of either House of Parliament.".

10 After section 451 of that Act there shall be inserted—

"**451A Disclosure of information by Secretary of State.**

The Secretary of State may, if he thinks fit, disclose any information obtained under this Part of this Act—

(a) to any person who is a competent authority for the purposes of section 449, or

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(b) in any circumstances in which or for any purpose for which that section does not preclude the disclosure of the information to which it applies."

11 After Article 430(1) of the [M101]Companies (Northern Ireland) Order 1986 there shall be inserted—

"(1A) Any persons who have been appointed under Article 424 or 425 may at any time and, if the Department directs them to do so shall, inform it of any matters coming to their knowledge as a result of their investigation.";

and Article 426(2) of that Order shall be omitted.

Marginal Citations

M101 S.I. 1986/1032. (N.I.6).

12 In Article 439 of that Order—

(a) in paragraph (3) for the words "to 429" there shall be substituted the words "to 430"; and

(b) paragraph (5) shall be omitted.

13 (1) In paragraph (1) of Article 442 of that Order—

(a) for sub-paragraphs (a) and (b) there shall be substituted—

"(a) with a view to the institution of or otherwise for the purposes of criminal proceedings;";

(b) for sub-paragraph (d) there shall be substituted—

"(d) for the purpose of enabling or assisting the Department to exercise any of its functions under this Order, the Insider Dealing Order or the Prevention of Fraud (Investments) Act (Northern Ireland) 1940;

(dd) for the purpose of enabling or assisting the Secretary of State to exercise any functions conferred on him by the enactments relating to companies or insolvency, the Prevention of Fraud (Investments) Act 1958, the Insurance Companies Act 1982, or the Financial Services Act 1986, or for the purpose of enabling or assisting any inspector appointed by him under the enactments relating to companies to discharge his functions";

(c) after sub-paragraph (e) there shall be inserted—

"(f) for the purposes of enabling or assisting the Bank of England to discharge its functions under the Banking Act 1979 or any other functions;

(g) for the purposes of enabling or assisting the Deposit Protection Board to discharge its functions under that Act;

(h) for any purpose mentioned in section 180(1)(b), (e), (h), (n) or (p) of the Financial Services Act 1986;

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(i) for the purpose of enabling or assisting the Industrial Assurance Commissioner for Northern Ireland or the Industrial Assurance Commissioner in Great Britain to discharge his functions under the enactments relating to industrial assurance;

(j) for the purpose of enabling or assisting the Insurance Brokers Registration Council to discharge its functions under the Insurance Brokers (Registration) Act 1977;

(k) for the purpose of enabling or assisting the official assignee to discharge his functions under the enactments relating to companies or bankruptcy;

(l) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by a solicitor, auditor, accountant, valuer or actuary of his professional duties;

(m) for the purpose of enabling or assisting an authority in a country or territory outside the United Kingdom to exercise corresponding supervisory functions.”.

(2) After paragraph (1) of that Article there shall be inserted—

“(1A) In paragraph (1) “corresponding supervisory functions” means functions corresponding to those of the Secretary of State or the competent authority under the Financial Services Act 1986 or to those of the Secretary of State under the Insurance Companies Act 1982 or to those of the Bank of England under the Banking Act 1979 or any other functions in connection with rules of law corresponding to the provisions of the Insider Dealing Order or Part VII of the Financial Services Act 1986.

(1B) Subject to paragraph (1C), paragraph (1) shall not preclude publication or disclosure for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this Article by an order made by the Department to discharge any functions which are specified in the order.

(1C) An order under paragraph (1B) designating an authority for the purpose of that paragraph may—

(a) impose conditions subject to which the publication or disclosure of any information or document is permitted by that paragraph; and

(b) otherwise restrict the circumstances in which that paragraph permits publication or disclosure.

(1D) Paragraph (1) shall not preclude the publication or disclosure of any such information as is mentioned in section 180(5) of the Financial Services Act 1986 by any person who by virtue of that section is not precluded by section 179 of that Act from disclosing it.”

(3) For paragraph (3) of that Article (competent authorities) there shall be substituted—

“(3) For the purposes of this Article each of the following is a competent authority—

(a) the Department and any officer of the Department,

(b) the Secretary of State,

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(c) an inspector appointed under this Part by the Department,

(d) the Department of Finance and Personnel and any officer of that Department;

(e) the Treasury and any officer of the Treasury,

(f) the Bank of England and any officer or servant of the Bank,

(g) the Lord Advocate,

(h) the Director of Public Prosecutions for Northern Ireland and the Director of Public Prosecutions in England and Wales,

(i) any designated agency or transferee body within the meaning of the Financial Services Act 1986 and any officer or servant of such an agency or body,

(j) any person appointed or authorised to exercise any powers under section 94, 106 or 177 of the Financial Services Act 1986 and any officer or servant of such a person,

(k) the body administering a scheme under section 54 of or paragraph 18 of Schedule 11 to that Act and any officer or servant of such a body.

(l) the Registrar of Friendly Societies and the Chief Registrar of friendly societies in Great Britain and any officer or servant of either of them,

(m) the Industrial Assurance Commissioner for Northern Ireland and the Industrial Assurance Commissioner in Great Britain and any officer of either of them,

(n) any constable,

(o) any procurator fiscal.

(4) An order under paragraph (1B) is subject to negative resolution."

14 After Article 444 of that order there shall be inserted—

Disclosure of information by Department

"444A The Department may, if it thinks fit, disclose any information obtained under this Part—

(a) to any person who is a competent authority for the purposes of Article 442, or

(b) in any circumstances in which or for any purpose for which that Article does not preclude the disclosure of the information to which it applies.".

[F421]SCHEDULE 14

Section 189.

RESTRICTION OF REHABILITATION OF OFFENDERS ACT 1974

Textual Amendments

F421 Sch. 14 amended (12.2.1992) by S.I. 1992/225, **reg.115**.

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Modifications etc. (not altering text)
C291 Sch. 14 continued (with modifications) (S.) (*temp.* from 1.12.2001) by S.I. 2001/3640, **art. 4(1)**
C292 Sch. 14 amended (*temp.* from 3.9.2001 until 1.12.2001) by S.I. 2001/2659, **art. 6(2)**

PART I

EXEMPTED PROCEEDINGS

Modifications etc. (not altering text)
C293 Sch. 14 Pt. I continued (1.12 2001) by S.I. 2001/3650, **arts. 1(a)**, 16(1)(a)

1 Any proceedings with respect to a decision or proposed decision of the Secretary of State or a designated agency—
(a) refusing, withdrawing or suspending an authorisation;
(b) refusing an application under section 28(5) of this Act;
(c) giving a direction under section 59 of this Act or refusing an application for consent or for the variation of a consent under that section;
(d) exercising a power under Chapter VI of Part I of this Act or refusing an application for the recission or variation of a prohibition or requirement imposed under that Chapter;
(e) refusing to make or revoking an order declaring a collective investment scheme to be an authorised unit trust scheme or a recognised scheme.

2 Any proceedings with respect to a decision or proposed decision of a recognised self-regulating organisation—
(a) refusing or suspending a person's membership of the organisation;
(b) expelling a member of the organisation;
(c) exercising a power of the organisation for purposes corresponding to those of Chapter VI of Part I of this Act.

3 (1) Any proceedings with respect to a decision or proposed decision of a recognised professional body—
(a) refusing or suspending a person's membership of the body;
(b) expelling a member of the body.

(2) Any proceedings with respect to a decision or proposed decision of a recognised professional body or of any other body or person having functions in respect of the enforcement of the recognised professional body's rules relating to the carrying on of investment business—
(a) exercising a power for purposes corresponding to those of Chapter VI of Part I of this Act;
(b) refusing, suspending or withdrawing a certificate issued for the purposes of Part I of this Act.

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4 Any proceedings with respect to a decision or proposed decision of the competent authority under Part IV of this Act refusing an application for listing or to discontinue or suspend the listing of any securities.

5 Any proceedings with respect to a decision or proposed decision of the **[**[F422]Friendly Societies Commission**]** or a transferee body, exercising a power exercisable by virtue of paragraph 23 of Schedule 11 to this Act or refusing an application for the recission or variation of a prohibition or requirement imposed in the exercise of such a power.

Textual Amendments

F422 Words in Sch. 14 Pt. I para. 5 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. I para. 9(1)(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

6 Any proceedings with respect to a decision or proposed decision of a recognised self-regulating organisation for friendly societies—

(a) refusing or suspending a society's membership of the organisation;

(b) expelling a member of the organisation;

(c) exercising a power of the organisation for purposes corresponding to those for which powers are exercisable by the **[**[F423]Friendly Societies Commission**]** by virtue of paragraph 23 of Schedule 11 to this Act.

Textual Amendments

F423 Words in Sch. 11 Pt. I para. 6 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. I para. 9(2)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

PART II

EXEMPTED QUESTIONS

Person putting question	*Individual to whom question relates*
1. The Secretary of State or a designated agency.	(a) An authorised person. (b) An applicant for authorisation under section 26 of this Act. (c) A person whose authorisation is suspended. (d) The operator or trustee of a recognised scheme or a collective investment scheme in respect of which a notice has been given by the operator under section 87(3) or an

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	application made under section 88 of this Act.
	(e) An individual who is an associate of a person (whether or not an individual) described in paragraph (a), (b), (c) or (d) above.
2. A recognised self-regulating organisation or recognised professional body.	(a) A member of the organisation or body.
	(b) An applicant for membership of the organisation or body.
	(c) A person whose membership of the organisation or body is suspended.
	(d) An individual who is an associate of a person (whether or not an individual) described in paragraph (a), (b) or (c) above.
3. A recognised professional body.	(a) A person certified by the body.
	(b) An applicant for certification by the body.
	(c) A person whose certification by the body is suspended.
	(d) An individual who is an associate of a person (whether or not an individual) described in paragraph (a), (b) or (c) above.
4. A person (whether or not an individual) described in paragraph 1(a), (b), (c) or (d), paragraph 2(a), (b) or (c) or paragraph 3(a), (b) or (c) above.	An individual who is or is seeking to become an associate of the person in column 1.
5. The competent authority or any other person.	An individual from or in respect of whom information is sought in connection with an application for listing under Part IV of this Act.
Person putting question	*Individual to whom question relates*
6. The competent authority.	An individual who is or is seeking to become an associate of the issuer of securities listed under Part IV of this Act and from or in respect of whom information is sought which the issuer of the securities is required to furnish under listing rules.
7. The **[**[F424]Friendly Societies Commission**]** or a transferee body.	An individual who is an associate of a society which is authorised under section 23 of this Act.
8. A recognised self-regulating organisation for friendly societies.	An individual who is an associate of a member or an applicant for membership of the organisation or of a society whose membership of the organisation is suspended.

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Textual Amendments

F424 Words in Sch. 14 Pt. II para. 7 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. I para. 9(1)(b)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

PART III

EXEMPTED ACTIONS

Person taking action	*Exempted action*
1. The Secretary of State, a designated agency, a recognised self-regulating organisation, a recognised professional body, any other body or person mentioned in paragraph 3(2) of Part I of this Schedule or the competent authority.	Any such decision or proposed decision as is mentioned in Part I of this Schedule.
2. A person (whether or not an individual) described in paragraph 1(a), (b), (c) or (d), paragraph 2(a), (b) or (c) or paragraph 3(a), (b) or (c) of Part II of this Schedule.	Dismissing or excluding an individual from being or becoming an associate of the person in column 1.
3. The issuer of securities listed or subject to an application for listing under Part IV of this Act.	Dismissing or excluding an individual from being or becoming an associate of the issuer.
4. The **[**[F425]Friendly Societies Commission**]**, a transferee body or a recognised self-regulating organisation for friendly societies.	Any such decision or proposed decision as is mentioned in Part I of this Schedule.

Textual Amendments

F425 Words in Sch. 14 Pt. III para. 4 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. I para. 9(1)(c)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

PART IV

SUPPLEMENTAL

1 In Part I of this Schedule "proceedings" includes any proceedings within the meaning of section 4 of the [M102]Rehabilitation of Offenders Act 1974.

Marginal Citations

M102 1974 c. 53.

Status: *Point in time view as at 03/04/1997. This version of this Act contains provisions that are not valid for this point in time.*
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2 In Parts II and III of this Schedule—

(a) references to an applicant for authorisation, membership or certification are references to an applicant who has not yet been informed of the decision on his application;

(b) references to an application for listing under Part IV of this Act are references to an application the decision on which has not yet been communicated to the applicant and which is not taken by virtue of section 144(5) of this Act to have been refused.

3 Paragraph 1(d) of Part II of this Schedule and so much of paragraph 1(e) as relates to it—

(a) apply only if the question is put to elicit information for the purpose of determining whether the operator or trustee is a fit and proper person to act as operator or trustee of the scheme in question;

(b) apply in the case of a scheme in respect of which a notice has been given under subsection (3) of section 87 only until the end of the period within which the operator may receive a notification from the Secretary of State under that subsection or, if earlier, the receipt by him of such a notification;

(c) apply in the case of a scheme in respect of which an application has been made under section 88 only until the applicant has been informed of the decision on the application.

SCHEDULE 15

Section 211(3).

TRANSITIONAL PROVISIONS

Interim authorisation

1 (1) If before such day as is appointed for the purposes of this paragraph by an order made by the Secretary of State a person has applied—

(a) for membership of any body which on that day is a recognised self-regulating organisation; or

(b) for authorisation by the Secretary of State,

and the application has not been determined before the day on which section 3 of this Act comes into force, that person shall, subject to sub-paragraphs (2), (3) and (4) below, be treated until the determination of the application as if he had been granted an authorisation by the Secretary of State.

(2) Sub-paragraph (1) above does not apply to a person who immediately before the day on which section 3 of this Act comes into force is prohibited by the [M103]Prevention of Fraud (Investments) Act 1958 (in this Schedule referred to as "the previous Act") from carrying on the business of dealing in securities—

(a) by reason of the refusal or revocation at any time before that day of a licence under that Act; or

(b) by reason of the revocation at any time before that day of an order declaring him to be an exempted dealer.

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(3) If a person who has made any such application as is mentioned in sub-paragraph (1) above has before the day on which section 3 of this Act comes into force been served with a notice under section 6 or 16(3) of the previous Act (proposed refusal or revocation of licence or proposed revocation of exemption order) but the refusal or revocation to which the notice relates has not taken place before that day—

(a) the provisions of that Act with respect to the refusal or revocation of a licence or the revocation of an order under section 16 of that Act shall continue to apply to him until the application mentioned in sub-paragraph (1) above is determined; and

(b) that sub-paragraph shall cease to apply to him if before the determination of the application mentioned in that sub-paragraph his application for a licence under that Act is refused, his licence under that Act is revoked or the order declaring him to be an exempted dealer under that Act is revoked.

(4) Notwithstanding sub-paragraph (1) above section 102(1)(a) of this Act shall not apply to a person entitled to carry on investment business by virtue of that sub-paragraph but the Secretary of State may make available for public inspection the information with respect to the holders of principal's licences mentioned in section 9 of the previous Act, any information in his possession by virtue of section 15(3) or (4) of that Act and the information mentioned in section 16(4) of that Act.

(5) Notwithstanding subsection (2) of section 3 of the previous Act a licence granted under that section before the day on which section 3 of this Act comes into force shall, unless revoked under section 6 of that Act, continue in force until that day.

Modifications etc. (not altering text)

C294 Sch. 15 para. 1(1): 27.2.1988 appointed for the purposes of paragraph 1(1) by S.I. 1987/2157, **art. 2**

Marginal Citations

M103 1958 c. 45.

Return of fees on pending applications

2 Any fee paid in respect of an application under section 3 of the previous Act which is pending on the day on which that Act is repealed shall be repaid to the applicant.

Deposits and undertakings

3 The repeal of section 4 of the previous Act shall not affect the operation of that section in a case where—

(a) a sum deposited in accordance with that section has become payable as provided in subsection (2) of that section before the date on which the repeal takes effect; or

(b) a sum has become payable before that date in pursuance of an undertaking given under subsection (4) of that section,

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but, subject as aforesaid, any sum deposited under that section may be withdrawn by the depositor on application to the Accountant General of the Supreme Court and any undertaking given under that section shall be discharged.

Interim recognition of professional bodies

4 (1) If on an application made under section 17 of this Act it appears to the Secretary of State that any of the requirements of section 18(3) of this Act or paragraphs 2 to 6 of Schedule 3 to this Act are not satisfied he may in accordance with this paragraph make a recognition order under section 18 of this Act (“an interim recognition order") notwithstanding that all or any of those requirements are not satisfied.

(2) The Secretary of State may, subject to sub-paragraphs (3) and (4) below, make an interim recognition order if he is satisfied—

(a) that the applicant proposes to adopt rules and practices and to make arrangements which will satisfy such of the requirements mentioned in sub-paragraph (1) above as are not satisfied;

(b) that it is not practicable for those rules, practices and arrangements to be brought into effect before the date on which section 3 of this Act comes into force but that they will be brought into effect within a reasonable time thereafter; and

(c) that in the meantime the applicant will enforce its existing rules in such a way, and issue such guidance, as will in respect of investment business of any kind carried on by persons certified by it (or by virtue of paragraph 5 below treated as certified by it) afford to investors protection as nearly as may be equivalent to that provided as respects investment business of that kind by the rules and regulations under Chapter V of Part I of this Act.

(3) Where the requirements which are not satisfied consist of or include those mentioned in paragraph 2 of Schedule 3 to this Act an application for an interim recognition order shall be accompanied by—

(a) a list of the persons to whom the applicant proposes to issue certificates for the purposes of Part I of this Act; and

(b) particulars of the criteria adopted for determining the persons included in the list;

and the Secretary of State shall not make the order unless it appears to him that those criteria conform as nearly as may be to the conditions mentioned in that paragraph and that the applicant will, until the requirements of that paragraph are satisfied, have arrangements for securing that no person is certified by it (or by virtue of paragraph 5 below treated as certified by it) except in accordance with those criteria and for the effective monitoring of continued compliance by those persons with those criteria.

(4) Where the requirements which are not satisfied consist of or include that mentioned in paragraph 6 of Schedule 3 to this Act, the Secretary of State shall not make an interim recognition order unless it appears to him that the applicant will, until that requirement is satisfied, take such steps for complying with it as are reasonably practicable.

(5) An application for an interim recognition order shall be accompanied by a copy of the rules and by particulars of the practices and arrangements referred to in sub-paragraph (2)(a) above.

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(6) An interim recognition order shall not be revocable but shall cease to be in force at the end of such period as is specified in it; and that period shall be such as will in the opinion of the Secretary of State allow a reasonable time for the rules, practices and arrangements mentioned in sub-paragraph (5) above to be brought into effect.

(7) The Secretary of State may on the application of the body to which an interim recognition order relates extend the period specified in it if that body satisfies him—

(a) that there are sufficient reasons why the rules, practices and arrangements mentioned in sub-paragraph (5) above cannot be brought into effect by the end of that period; and

(b) that those rules, practices and arrangements, or other rules, practices and arrangements which satisfy the requirements mentioned in sub-paragraph (2)(a) above and of which copies or particulars are furnished to the Secretary of State, will be brought into effect within a reasonable time thereafter;

but not more than one application shall be made by a body under this sub-paragraph.

(8) A recognition order under section 18 of this Act shall cease to be an interim recognition order if before it ceases to be in force—

(a) the rules, practices and arrangements of which copies or particulars were furnished to the Secretary of State under sub-paragraph (5) or (7)(b) above are brought into effect; or

(b) the Secretary of State certifies that other rules, practices and arrangements which have been brought into effect comply with the requirements mentioned in sub-paragraph (1) above.

(9) In this paragraph references to the adoption of rules or the making of arrangements include references to taking such other steps as may be necessary for bringing them into effect.

Interim authorisation by recognised professional bodies

5 (1) If at the time when an interim recognition order is made in respect of a professional body that body is unable to issue certificates for the purposes of this Act, any person who at that time is included in the list furnished by that body to the Secretary of State in accordance with paragraph 4(3)(a) above shall be treated for the purposes of this Act as a person certified by that body.

(2) If at any time while an interim recognition order is in force in respect of a professional body and before the body is able to issue certificates as mentioned in sub-paragraph (1) above the body notifies the Secretary of State that a person not included in that list satisfies the criteria of which particulars were furnished by the body in accordance with paragraph 4(3)(b) above, that person shall, on receipt of the notification by the Secretary of State, be treated for the purposes of this Act as a person certified by that body.

(3) If at any time while an interim recognition order is in force in respect of a professional body it appears to the body—

(a) that a person treated by virtue of sub-paragraph (1) or (2) above as certified by it has ceased (after the expiration of such transitional period, if any, as appears to the body to be appropriate) to satisfy the criteria mentioned in sub-paragraph (2) above; or

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(b) that any such person should for any other reason cease to be treated as certified by it,

it shall forthwith give notice of that fact to the Secretary of State and the person in question shall, on receipt of that notification by the Secretary of State, cease to be treated as certified by that body.

(4) Where by virtue of this paragraph a partnership is treated as certified by a recognised professional body section 15(3) of this Act shall apply as it applies where a certificate has in fact been issued to a partnership.

(5) Where by virtue of this paragraph any persons are treated as certified by a recognised professional body the requirements of paragraph 2 of Schedule 3 to this Act so far as relating to the retention by a person of a certificate issued by that body and the requirements of paragraph 4 of that Schedule shall apply to the body as if the references to persons certified by it included references to persons treated as certified.

Power of recognised professional body to make rules required by this Act.

6 (1) Where a recognised professional body regulates the practice of a profession in the exercise of statutory powers the matters in respect of which rules can be made in the exercise of those powers shall, if they would not otherwise do so, include any matter in respect of which rules are required to be made—

(a) so that the recognition order in respect of that body can cease to be an interim recognition order; or

(b) where the recognition order was not, or has ceased to be, an interim recognition order, so that the body can continue to be a recognised professional body.

(2) Rules made by virtue of this paragraph may in particular make provision for the issue, withdrawal and suspension of certificates for the purposes of this Act and the making of charges in respect of their issue and may accordingly apply to persons who are, or are to be, certified or treated as certified by the body in question whether or not they are persons in relation to whom rules could be made apart from this paragraph.

(3) Rules made by virtue of this paragraph may make different provision for different cases.

(4) The Secretary of State may at the request of a recognised professional body by order extend, modify or exclude any statutory provision relating to the regulation of the conduct, practice, or discipline of members of that body to such extent as he thinks necessary or expedient in consequence of the provisions of this paragraph; and any order made by virtue of this sub-paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)

C295 Sch. 15 para. 6(1)(3) continued (1.12.2001) by S.I. 2001/3083, **art. 20(2)**, S.I. 2001/3538

C296 Sch. 15 para. 6(1)(3) continued (1.12.2001) by S.I.2001/2657, **art. 20(2)**; S.I. 2001/3538, **art. 2(1)** (which S.I. was revoked (8.10.2001) by S.I. 2001/3083, **art. 23**)

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Notice of commencement of business

7 In the case of a person who is carrying on investment business in the United Kingdom on the day on which section 31 of this Act comes into force, section 32 of this Act shall have effect as if it required him to give the notice referred to in that section forthwith.

Advertisements

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F426 8

Textual Amendments

F426 Sch. 15 para. 8 repealed (19.6.1995) by S.I. 1995/1537, reg.17, **Sch. 2**, para. 9

Authorised unit trust schemes

9 (1) Where an order under section 17 of the previous Act (authorisation of unit trust schemes) is in force in respect of a unit trust scheme immediately before the coming into force of Chapter VIII of Part I of this Act the scheme shall be treated as an authorised unit trust scheme under that Part and the order as an order under section 78 of this Act.

(2) In relation to any such authorised unit trust scheme the reference in section 79(1)(a) of this Act to the requirements for the making of the order shall be construed as a reference to the requirements for the making of an order under section 78, but the scheme shall not be regarded as failing to comply with those requirements by reason of the manager or trustee not being an authorised person if he is treated as such a person by virtue of paragraph 1 above.

(3) If before the day on which Chapter VIII of Part I comes into force a notice in respect of a scheme has been served under subsection (2) of section 17 of the previous Act (proposed revocation of authorisation of unit trust scheme) but the revocation has not taken place before that day, the provisions of that subsection shall continue to apply in relation to the scheme and sub-paragraph (1) above shall cease to apply to it if the authorisation is revoked under that subsection.

Recognised collective investment schemes

10 (1) If at any time before the coming into force of section 86 of this Act it appears to the Secretary of State that the law of a member State other than the United Kingdom confers rights on the managers and trustees of authorised unit trust schemes entitling them to carry on in that State on terms equivalent to those of that section—

(a) investment business which consists in operating or acting as trustee in relation to such schemes; and

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(b) any investment business which is carried on by them in connection with or for the purposes of such schemes,

he may by order direct that schemes constituted in that State which satisfy such requirements as are specified in the order shall be recognised schemes for the purposes of this Act.

(2) Subsections (2) to (9) of section 86 of this Act shall have effect in relation to any scheme recognised by virtue of this paragraph; and the references in section 24 and 207(1) of this Act to a scheme recognised under section 86, and in section 76(1) of this Act to a scheme recognised under Chapter VIII of Part I of this Act, shall include references to any scheme recognised by virtue of this paragraph.

(3) In section 86(3)(a) as applied by sub-paragraph (2) above the reference to the rights conferred by any relevant Community instrument shall be construed as a reference to the rights conferred by virtue of an order made under this paragraph.

11 (1) Subsection (7) of section 88 of this Act shall not apply to a scheme which is in existence on the date on which this Act is passed if—

(a) the units under the scheme are included in the Official List of The Stock Exchange and have been so included throughout the period of five years ending on the date on which this paragraph comes into force;

(b) the law of the country or territory in which the scheme is established precludes the participants being entitled or the operator being required as mentioned in that subsection; and

(c) throughout the period of five years ending on the date on which the application is made under that section, units under the scheme have in fact been regularly redeemed as mentioned in that subsection or the operator has in fact regularly ensured that participants were able to sell their units as there mentioned.

(2) The grounds for revoking an order made under section 88 of this Act by virtue of this paragraph shall include the ground that it appears to the Secretary of State that since the making of the order units under the scheme have ceased to be regularly redeemed or the operator has ceased regularly to ensure their sale as mentioned in sub-paragraph (1)(c) above.

Delegation orders

12 (1) A delegation order may transfer a function notwithstanding that the provision conferring it has not yet come into force but no such function shall be exercisable by virtue of the order until the coming into force of that provision.

(2) Sub-paragraph (1) above applies also to a transfer order under paragraph 28(1) of Schedule 11 to this Act.

Disclosure of information

13 In determining for the purposes of section 180(6) of this Act and the enactments amended by paragraphs 3(2), 9(2) and 13(2) of Schedule 13 to this Act whether

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the functions of an authority in a country or territory outside the United Kingdom correspond to functions conferred by any of the provisions of this Act regard shall be had to those provisions whether or not they have already come into force.

Temporary exemptions for friendly societies

14 (1) A [F427]. . . friendly society which transacts no investment business after the date on which section 3 of this Act comes into force except for the purpose of making or carrying out relevant existing members' contracts shall be treated for the purposes of that section as if it were an exempted person under Chapter IV of Part I of this Act.

(2) Subject to sub-paragraph (3) below, for the purposes of this paragraph "relevant existing members' contracts", in relation to any society, means—

(a) contracts made by the society before that date; and

(b) in the case of a small income society—

(i) during the period of three years beginning with that date, tax exempt investment agreements made by it with persons who were members of the society before that date; and

(ii) after the expiry of that period, tax exempt investment agreements made by it with such persons before the expiry of that period.

(3) Paragraph (b) of sub-paragraph (2) above shall not apply to a [F428]. . .friendly society after the expiry of the period of two years beginning with that date unless before the expiry of that period it has by special resolution (within the meaning of the [M104]Friendly Societies Act 1974 [F428]. . .) determined—

(a) to transact no further investment business except for the purpose of carrying out contracts entered into before the expiry of the said period of three years; or

(b) to take such action as is necessary to procure the transfer of its engagements to another such society or a company or the amalgamation of the society with another such society under section 82 of the said Act of 1974 [F428]. . .,

and a copy of that resolution has been registered in accordance with section 86 of the said Act of 1974 [F428]. . ..

(4) For the purpose of sub-paragraph (2) above a society is a small income society if its income in 1985 from members' contributions did not exceed £50,000.

(5) For the purposes of sub-paragraph (2) above an investment agreement is a tax exempt investment agreement if the society by which it is made may obtain exemption from income and corporation tax on the profits from it under section **[**[F429]460(1) or 461(1)**]** of the Income and Corporation Taxes Act **[**[F429]1988**]**.

(6) A society to which sub-paragraph (1) or (2) above applies shall not be an authorised person for the purposes of this Act nor a regulated friendly society for the purposes of the provisions of Schedule 11 to this Act.

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Textual Amendments

F427 Word in Sch. 15 para. 14(1) repealed (28.4.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 120, **Sch. 22 Pt.I** (with ss. 7(5), 93(4)); S.I. 1993/1186, art. 2(1), **Sch. 1A**ppendix; S.I. 1993/2213, art. 2(1), **Sch. 5A**ppendix.

F428 Words in Sch. 15 para. 14(3) repealed (28.4.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 120, **Sch. 22 Pt.I** (with ss. 7(5), 93(4)); S.I. 1993/1186, art. 2(1), **Sch. 1A**ppendix; S.I. 1993/2213, art. 2(1), **Sch. 5A**ppendix.

F429 "460(1) or 461(1)" and "1988" substituted respectively by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 844, Sch. 29 para. 32, **Sch. 30 para. 6(1)**

Marginal Citations

M104 1974 c. 46.

Dealings in course of non-investment business

15 If before the day on which section 3 of this Act comes into force a person has applied for permission under paragraph 23 of Schedule 1 to this Act and the application has not been determined before that day, that person shall, until the determination of the application and subject to his complying with such requirements as the Secretary of State may impose, be treated as if he had been granted a permission under that paragraph.

Northern Ireland

16 The foregoing provisions shall apply to Northern Ireland with the substitution for references to the previous Act or any provision of that Act of references to the [M105]Prevention of Fraud (Investments) Act (Northern Ireland) 1940 and the corresponding provision of that Act.

Marginal Citations

M105 1940 c. 9 (N.I.).

SCHEDULE 16

Section 212(2).

CONSEQUENTIAL AMENDMENTS

. . . . . .

[F430]1

Textual Amendments

F430 Sch. 16 para. 10 repealed (1.8.1993) by 1993 c. 10, ss. 98(2), 99(1), **Sch.7**.

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2 In the [M106]Trustee Investments Act 1961—

(a) in section 11(3) for the words "the Prevention of Fraud (Investments) Act 1958 or the Prevention of Fraud (Investments) Act (Northern Ireland) 1940" there shall be substituted the words "the Financial Services Act 1986";

(b) for paragraph 3 of Part III of Schedule 1 there shall be substituted—

"3 In any units of an authorised unit trust scheme within the meaning of the Financial Services Act 1986";

(c) in paragraph 2(a) of Part IV of Schedule 1 for the words from "a recognised stock exchange" onwards there shall be substituted the words "a recognised investment exchange within the meaning of the Financial Services Act 1986";

(d) in the definition of "securities" in paragraph 4 of Part IV of that Schedule after the word "debentures" there shall be inserted the words "units within paragraph 3 of Part III of this Schedule".

Marginal Citations

M106 1961 c. 62.

3 In section 32 of the Clergy Pensions Measure 1961 No. 3—

(a) for paragraph (t) of subsection (1) there shall be substituted—

"(t) in any units in any authorised unit trust scheme or a recognised scheme within the meaning of the Financial Services Act 1986"; and

(b) in subsection (5)(a) for the words from "a recognised stock exchange" onwards there shall be substituted the words "a recognised investment exchange within the meaning of the Financial Services Act 1986.".

4 In the [M107]Stock Transfer Act 1963—

(a) for paragraph (e) of section 1(4) there shall be substituted—

"(e) units of an authorised unit trust scheme or a recognised scheme within the meaning of the Financial Services Act 1986"; and

(b) in the definition of "securities" in section 4(1) for the words from "unit trust scheme" to "scheme" there shall be substituted the words "collective investment scheme within the meaning of the Financial Services Act 1986".

Marginal Citations

M107 1963 c. 18.

5 In the [M108]Stock Transfer Act (Northern Ireland) 1963—

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(a) for paragraph (e) of section 1(4) there shall be substituted—

"(e) units of an authorised unit trust scheme or a recognised scheme within the meaning of the Financial Services Act 1986"; and

(b) in the definition of "securities" in section 4(1) for the words from "unit trust scheme" to "scheme" there shall be substituted the words "collective investment scheme within the meaning of the Financial Services Act 1986".

Marginal Citations

M108 1963 c. 24 (N.I.).

6 In section 25 of the [M109]Charities Act (Northern Ireland) 1964—

(a) subsection (16) shall be omitted; and

(b) in subsection (17) for the words "Subsections (15) and (16)" there shall be substituted the words "Subsection (15)".

Marginal Citations

M109 1964 c. 33. (N.I.).

7 In the [M110]Local Authorities' Mutual Investment Trust Act 1968—

(a) in section 1(2) for the words "recognised stock exchange within the meaning of the Prevention of Fraud (Investments) Act 1958" there shall be substituted the words "recognised investment exchange within the meaning of the Financial Services Act 1986"; and

(b) in the definition of "unit trust scheme" in section 2 for the words "Prevention of Fraud (Investments) Act 1958" there shall be substituted the words "Financial Services Act 1986".

Marginal Citations

M110 1968 c. 25.

8 In the [M111]Local Government Act 1972—

(a) in section 98(1) for the words from "and" onwards there shall be substituted the words "means—

(a) investments falling within any of paragraphs 1 to 6 of Schedule 1 to the Financial Services Act 1986 or, so far as relevant to any of those paragraphs, paragraph 11 of that Schedule; or

(b) rights (whether actual or contingent) in respect of money lent to, or deposited with, any society registered under the Industrial and Provident Societies Act 1965 or any

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building society within the meaning of the Building Societies Act 1986."; and

(b) for the definition of "securities" in section 146(2) there shall be substituted—

""securities" has the meaning given in section 98(1) above".

Marginal Citations

M111 1972 c. 70.

9 For subsection (1) of section 42 of the [M112]Local Government (Scotland) Act 1973 there shall be substituted—

"(1) In sections 39 and 41 of this Act "securities" means—

(a) investments falling within any of paragraphs 1 to 6 of Schedule 1 to the Financial Services Act 1986 or, so far as relevant to any of those paragraphs, paragraph 11 of that Schedule; or

(b) rights (whether actual or contingent) in respect of money lent to, or deposited with, any society registered under the Industrial and Provident Societies Act 1965 or any building society within the meaning of the Building Societies Act 1986."

Marginal Citations

M112 1973 c. 65.

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[F431]10

Textual Amendments

F431 Sch. 16 para. 10 repealed (6. 1. 1992) by British Technology Group Act 1991 (c. 66), s. 17(2), **Sch. 2P**t. I; S.I. 1991/2721, **art.2**.

[[F432]11 For paragraph 20 of Schedule 1 to the [M113]Scottish Development Agency Act 1975 there shall be substituted—

"20 Section 57 of the Financial Services Act 1986 (restrictions on advertising) shall not apply to any investment advertisement within the meaning of that section which the Agency issue or cause to be issued in the discharge of their functions."**]**

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Textual Amendments

F432 Sch. 16 para. 11 repealed (E.W.S.) by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 38(2), **Sch. 5 Pt. I**

Marginal Citations

M113 1975 c. 69.

12 For paragraph 21 of Schedule 1 to the [M114]Welsh Development Agency Act 1975 there shall be substituted—

"21 Section 57 of the Financial Services Act 1986 (restrictions on advertising) shall not apply to any investment advertisement within the meaning of that section which the Agency issue or cause to be issued in the discharge of their functions.".

Marginal Citations

M114 1975 c. 70.

13 In section 3(5) of the [M115]Aircraft and Shipbuilding Industries Act 1977 the words "Sections 428 to 430 of the Companies Act 1985 and" shall be omitted and for the words "those sections" there shall be substituted the words "that section".

Marginal Citations

M115 1977 c. 3.

14 In paragraph 10(1)(c) of Part II of Schedule 10 to the [M116]Finance Act 1980 for the words "sections 428 to 430" there shall be substituted the words "sections 428 to 430F".

Marginal Citations

M116 1980 c.48.

15 For the definition of "securities" in section 3(6) of the [M117]Licensing (Alcohol Education and Research) Act 1981 there shall be substituted—

""securities" means any investments falling within any of paragraphs 1 to 6 of Schedule 1 to the Financial Services Act 1986 or, so far as relevant to any of those paragraphs, paragraph 11 of that Schedule".

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Marginal Citations
M117 1981 c. 28.

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[F433]16

Textual Amendments
F433 Sch. 16 para. 16 repealed (19.6.1995) by S.I. 1995/1537, reg. 17, **Sch. 2 Pt. II**, para. 5(e)

17 In section 163 of the Companies Act 1985—

(a) for the words "a recognised stock exchange" in each place where they occur there shall be substituted the words "a recognised investment exchange";

(b) for the words "that stock exchange" in subsection (1) there shall be substituted the words "that investment exchange";

(c) in subsection (2) in paragraph (a) for the words "on that stock exchange" there shall be substituted the words "under Part IV of the Financial Services Act 1986" and in paragraph (b) for the words "that stock exchange" in both places where they occur there shall be substituted the words "that investment exchange";

(d) after subsection (3) of that section there shall be inserted—

"(4) In this section "recognised investment exchange" means a recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986."

18 In section 209(1)(c) of the Companies Act 1985 for the words "the Prevention of Fraud (Investments) Act 1958" there shall be substituted the words "the Financial Services Act 1986".

19 In section 265(4)(a) of the [M118]Companies Act 1985 for the words "recognised stock exchange" there shall be substituted the words "recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986".

Marginal Citations
M118 1985 c. 6.

20 In section 329(1) of the Companies Act 1985 for the words "recognised stock exchange", "that stock exchange" and "the stock exchange" there shall be substituted respectively the words "recognised investment exchange other than an overseas

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investment exchange within the meaning of the Financial Services Act 1986", "that investment exchange" and "the investment exchange".

21 For paragraphs (a) to (c) of section 446(4) of the Companies Act 1985 there shall be substituted—

"(a) to any individual who is an authorised person within the meaning of the Financial Services Act 1986;

(b) to any individual who holds a permission granted under paragraph 23 of Schedule 1 to that Act;

(c) to any officer (whether past or present) of a body corporate which is such an authorised person or holds such a permission;

(d) to any partner (whether past or present) in a partnership which is such an authorised person or holds such a permission;

(e) to any member of the governing body or officer (in either case whether past or present) of an unincorporated association which is such an authorised person or holds such a permission".

F434 . . . . . .

22

Textual Amendments

F434 Sch. 16 para. 22 repealed by Companies Act 1989 (c. 40, SIF 27), s. 212, **Sch. 24**

23 In Schedule 4 to the Companies Act 1985—

(a) in paragraph 45 for the words "recognised stock exchange" there shall be substituted the words "recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986"; and

(b) in paragraph 84 for the words from "on a recognised stock exchange" onwards there shall be substituted the words "on a recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986 or on any stock exchange of repute outside Great Britain".

24 In Schedule 9 to the Companies Act 1985 in paragraphs 10(3) and 33 for the words "recognised stock exchange" there shall be substituted the words "recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986".

25 In paragraph 11 of Schedule 13 to the [M119]Companies Act 1985 for paragraph (a) there shall be substituted—

"(a) any unit trust scheme which is an authorised unit trust scheme within the meaning of the Financial Services Act 1986".

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Marginal Citations

M119 1985 c. 6.

26 In Schedule 22 to the Companies Act 1985, in the second column of the entry relating to section 185(4) for the words “stock exchange" there shall be substituted the words “clearing house or".

27 In Schedule 24 to the Companies Act 1985—

(a) in the second column of the entry relating to section 329(3) for the words “stock exchange" there shall be substituted the words “investment exchange"; and

(b) after the entry relating to section 427(5) there shall be inserted—

“429(6)	Offeror failing to send copy of notice or making statutory declaration knowing it to be false, etc.	1. On indictment.	2 years or a fine; or both.	
		2. Summary.	6 months or the statutory maximum; or both.	One-fiftieth of the statutory maximum.
430A(6)	Offeror failing to give notice of rights to minority shareholder.	1. On indictment.	A fine.	One fiftieth of the statutory maximum.
		2. Summary.	The statutory maximum.”	

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[F435]28

Textual Amendments

F435 Sch. 16 para. 28 repealed (1.3.1994) by 1993 c. 36, s. 79(14), **Sch. 6 Pt.I**; S.I. 1994/242, art. 2, **Sch.** Appendix

29 For paragraph (c) of section 10(1) of the [M120]Bankruptcy (Scotland) Act 1985 there shall be substituted—

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"(c) a petition is before a court for the winding up of the debtor under Part IV or V of the Insolvency Act 1986 or section 72 of the Financial Services Act 1986;".

Marginal Citations
M120 1985 c. 66.

30 In section 101 of the [M121]Building Societies Act 1986—

(a) for paragraph (1)(a) there shall be substituted—

"(a) offer for sale or invite subscription for any shares in or debentures of the company or allot or agree to allot any such shares or debentures with a view to their being offered for sale;";

(b) in subsection (1) after the words "the effect of the offer" there shall be inserted the words "the invitation"; and

(c) in subsection (2) for the words "the public" there shall be substituted the words ", invite subscription for,".

Marginal Citations
M121 1986 c. 53.

31 In Article 107 of the [M122]Companies (Northern Ireland) Order 1986—

(a) in paragraph (1) after the word "conditions" there shall be inserted the words "and any conditions which apply in respect of any such payment by virtue of rules made under section 169(2) of the Financial Services Act 1986"

(b) in sub-paragraph (2)(a) for the words from "10 per cent." onwards there shall be substituted the words—

"(i) any limit imposed on it by those rules or, if none is so imposed, 10 per cent. of the price at which the shares are issued; or

(ii) the amount or rate authorised by the articles, whichever is the less".

Marginal Citations
M122 S.I. 1986/1032 (N.I.6)

32 In Article 173 of the Companies (Northern Ireland) Order 1986—

(a) for the words "a recognised stock exchange", in each place where they occur, there shall be substituted the words "a recognised investment exchange";

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(b) for the words "that stock exchange" in paragraph (1) there shall be substituted the words "that investment exchange";

(c) in paragraph (2), in sub-paragraph (a) for the words "on that stock exchange" there shall be substituted the words "under Part IV of the Financial Services Act 1986" and in sub-paragraph (b) for the words "that stock exchange" in both places where they occur there shall be substituted the words "that investment exchange";

(d) after paragraph (3) there shall be inserted—

"(4) In this Article "recognised investment exchange" means a recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986."

33 In Article 217(1)(b) of the Companies (Northern Ireland) Order 1986 for the words "the Prevention of Fraud (Investments) Act (Northern Ireland) 1940 or of the Prevention of Fraud (Investments) Act 1958" there shall be substituted the words "the Financial Services Act 1986".

34 In Article 273(4)(a) of the Companies (Northern Ireland) Order 1986 for the words "recognised stock exchange" there shall be substituted the words "recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986".

35 In Article 337(1) of the Companies (Northern Ireland) Order 1986 for the words "recognised stock exchange", "that stock exchange" and "the stock exchange" there shall be substituted respectively the words "recognised investment exchange", "that investment exchange" and "the investment exchange".

36 For sub-paragraphs (a) to (c) of Article 439(4) of the [M123]Companies (Northern Ireland) Order 1986 there shall be substituted—

"(a) to any individual who is an authorised person within the meaning of the Financial Services Act 1986;

(b) to any individual who holds a permission granted under paragraph 23 of Schedule 1 to that Act;

(c) to an officer (whether past or present) in a body corporate which is such an authorised person or holds such a permission;

(d) to any partner (whether past or present) in a partnership which is such an authorised person or holds such a permission;

(e) to any member of the governing body or officer (in either case whether past or present) of an unincorporated association which is such an authorised person or holds such a permission".

Marginal Citations

M123 S.I. 1986/1032 (N.I.6).

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[F436]37

Textual Amendments

F436 Sch. 16 para. 37 repealed (11.3.1991) by S.I. 1990/1504 (N.I. 10), **art. 113 Sch. 6**; S.R. 1991/26, **art. 10(1)(b)**.

38 In Schedule 4 to the Companies (Northern Ireland) Order 1986—

(a) in paragraph 45 for the words "recognised stock exchange" there shall be substituted the words "recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986"

(b) in paragraph 83 for the words from "on a recognised stock exchange" onwards there shall be substituted the words "on a recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986 or on any stock exchange of repute outside Northern Ireland".

39 In Schedule 9 to the Companies (Northern Ireland) Order 1986, in paragraph 10(3) and 33 for the words "recognised stock exchange" there shall be substituted the words "recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986."

40 In paragraph 11 of Schedule 13 to the Companies (Northern Ireland) Order 1986 for paragraph (a) there shall be substituted—

"(a) any unit trust scheme which is an authorised unit trust scheme within the meaning of the Financial Services Act 1986".

41 In Schedule 21 to the Companies (Northern Ireland) Order 1986 in the second column of the entry relating to Article 195(4) for the words "stock exchange" there shall be substituted the words "clearing house or".

42 In Schedule 23 to the Companies (Northern Ireland) Order 1986 in the second column of the entry relating to Article 337(3) for the words "stock exchange" there shall be substituted the words "investment exchange".

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[F437]43

Textual Amendments

F437 Sch. 16 para. 43 repealed (1.3.1994) by 1993 c. 36, s. 79(14), **Sch. 6 Pt.I**; S.I. 1994/242, art. 2, **Sch.** Appendix

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SCHEDULE 17

Section 212(3)

REPEALS AND REVOCATIONS

Commencement Information

I3 Sch. 17 partly in force; Sch. 17 not in force at Royal Assent see s. 211; Sch. 17 in force for certain purposes at 19.6.1995 by S.I. 1995/1538, **art. 2**; Sch. 17 in force for specified purposes at 10.5.1999 by S.I. 1999/727, **art. 2**

PART I

ENACTMENTS

Chapter	Short title	Extent of repeal
4 & 5 Geo. 6. c. 9 (N.I.).	The Prevention of Fraud (Investments) Act (Northern Ireland) 1940.	The whole Act.
6 & 7 Eliz. 2. c. 45.	The Prevention of Fraud (Investments) Act 1958.	The whole Act.
8 & 9 Eliz. 2 c. 58.	The Charities Act 1960.	Section 22(10).
10 & 11 Eliz. 2. c. 23.	The South Africa Act 1962.	In Schedule 4, the entry relating to the Prevention of Fraud (Investments) Act 1958.
1964 c. 33 (N.I.).	The Charities Act (Northern Ireland) 1964.	Section 25(16).
1965 c. 2.	The Administration of Justice Act 1965.	Section 14(1)(e) and (5)(e).
		In Schedule 1, the entry relating to the Prevention of Fraud (Investments) Act 1958.
1971 c. 62.	The Tribunals and Inquiries Act 1971.	In Part I of Schedule 1, the entry relating to the tribunal constituted under section 6 of the Prevention of Fraud (Investments) Act 1958.
1972 c. 71.	The Criminal Justice Act 1972.	In Schedule 5, the entry relating to the Prevention of Fraud (Investments) Act 1958.
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Part II of Schedule 1 the words “The Tribunal established under the

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		Prevention of Fraud (Investments) Act 1958".
1975 c. 68.	The Industry Act 1975.	In Schedule 1, paragraph 19.
. . . F438	. . . F438	. . . F438
1975 c. 70.	The Welsh Development Agency Act 1975.	In Schedule 1, paragraph 22.
1976 c. 47.	The Stock Exchange (Completion of Bargains) Act 1976.	Section 7(2).
1977 c. 3.	The Aircraft and Shipbuilding Industries Act 1977.	In section 3(5), the words “Sections 428 to 430 of the Companies Act 1985 and".
1978 c. 23.	The Judicature (Northern Ireland) Act 1978.	Section 84(3)(c).
1979 c. 37.	The Banking Act 1979.	Section 20(1) to (3).
		In Schedule 1, paragraph 9.
		In Schedule 6, paragraphs 4 and 5.
1982 c. 50.	The Insurance Companies Act 1982.	Section 73.
		Section 79.
1982 c. 53.	The Administration of Justice Act 1982.	Section 42(8).
1984 c. 2.	The Restrictive Trade Practices (Stock Exchange) Act 1984.	The whole Act.
1985 c. 6.	The Companies Act 1985.	Part III.
		Sections 81 to 83.
		In section 84(1) the words from “This" onwards.
		In section 85(1) the words “83 or".
		Sections 86 and 87.
		In section 97, subsection (2)(b) together with the word “and" immediately preceding it and subsections (3) and (4).
		Section 433(2).
		Section 446(5) and (6).
		In section 449(1)(d), the words “the Prevention of

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		Fraud (Investments) Act 1958".
		In section 693, paragraph (a) and in paragraph (d) the words “in every such prospectus as above-mentioned and".
		Section 709(2) and (3).
		In section 744, the definitions of “recognised stock exchange" and “prospectus issued generally".
		Schedule 3.
		In Schedule 22, the entries relating to Parts III and IV.
		In Schedule 24, the entries relating to sections 56(4), 61, 64(5), 70(1), 78(1), 81(2), 82(5), 86(6), 87(4) and 97(4).
1985 c. 8.	The Company Securities (Insider Dealing) Act 1985.	In section 3(1), the word “or" immediately preceding paragraph (c).
		In section 13, in subsection (1), the words from “and references" onwards and subsection (2).
		Section 15.
1985 c. 9.	The Companies Consolidation (Consequential Provisions) Act 1985.	Section 7.
		In Schedule 2, the entries relating to the Prevention of Fraud (Investments) Act 1958, paragraph 19 of Schedule 1 to the Scottish Development Agency Act 1975, paragraph 22 of Schedule 1 to the Welsh Development Agency Act 1975, the Stock Exchange (Completion of Bargains) Act 1976, section 3(5) of the Aircraft and Shipbuilding Industries Act 1977 and section 20 of the Banking Act 1979.
1986 c. 31.	The Airports Act 1986.	Section 10.

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1986 c. 44.	The Gas Act 1986.	Section 58.
1986 c. 60.	The Financial Services Act 1986.	Section 195.

Textual Amendments

F438 Entry repealed by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 38(2), **Sch. 5 Pt. I**

PART II

INSTRUMENTS

Number	Title	Extent of revocation
S.I. 1977/1254 (6 N.I. 21).	The Stock Exchange (Completion of Bargains) (Northern Ireland) Order 1977.	Article 2(2).
S.I. 1986/1032 (N.I. 6).	The Companies (Northern Ireland) Order 1986.	In Article 2(1), the definitions of “prospectus issued generally" and “recognised stock exchange". Part IV. Articles 91 to 93. In Article 94(1) the words from “This" onwards. In Article 95(1) the words “93 or". Articles 96 and 97. In Article 107, paragraph (2)(b) together with the word “and" immediately preceding it and paragraphs (3) and (4). Article 426(2). Article 439(5) and (6). In Article 442(1)(d), the words “the Prevention of Fraud (Investments) Act (Northern Ireland) 1940". In Article 643(1), sub-paragraph (a) and in sub-paragraph (d) the words “in every such prospectus

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		as is mentioned in sub-paragraph (a) and". Article 658(2) and (3). Schedule 3. In Schedule 21, the entries relating to Parts IV and V. In Schedule 23, the entries relating to Articles 66(4), 71, 74(5), 80(1), 88(1), 91(2), 92(5), 96(6), 97(4) and 107(4).
S.I. 1986/1035 (N.I. 9).	The Companies (Consequential Provisions) (Northern Ireland) Order 1986.	In Schedule 2, the entries relating to the Prevention of Fraud (Investments) Act (Northern Ireland) 1940 and section 20 of the Banking Act 1979.
S.I. 1984/716.	The Stock Exchange (Listing) Regulations 1984.	The whole Regulations.

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