



Financial Services Act 1986

1986 CHAPTER 60

PART I

REGULATION OF INVESTMENT BUSINESS

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 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

Status: This is the original version (as it was originally enacted).

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);
 - (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)(f)(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.
- (9) The Secretary of State shall not make a delegation order transferring any function of making rules or regulations to a designated agency unless—
- (a) the agency has furnished him with a copy of the rules and regulations which it proposes to make in the exercise of those functions; and
 - (b) he is satisfied that those rules and regulations will afford investors an adequate level of protection and in the case of such rules and regulations as are mentioned in Schedule 8 to this Act, comply with the principles set out in that Schedule.
- (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.
- (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 rules or regulations made by it, or who are or may be recognised or authorised by it, in the exercise of its functions under a delegation order.

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.

Status: This is the original version (as it was originally enacted).

- (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.
- (5) Where the transferred functions consist of or include any functions of making rules or regulations an order may be made under subsection (2) above if at any time it appears to the Secretary of State that the rules or regulations made by the agency do not satisfy the requirements of section 114(9)(2>) 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 section unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (7) In subsection (2)(b) above—
 - (a) " legislative functions " means functions of making rules or regulations;
 - (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.

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 make 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.

Status: This is the original version (as it was originally enacted).

- (4) Subsection (3) above shall not apply to a designated agency which is a company to which section 227 of the 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 section 227 of that Act include references to the corresponding Northern Ireland provisions.

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

Status: This is the original version (as it was originally enacted).

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.

- (6) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.