



Financial Services Act 1986

1986 CHAPTER 60

PART VII

INSIDER DEALING

173 Information obtained in official capacity: public bodies

- (1) In section 2 of the Company Securities (Insider Dealing) Act 1985 (abuse of information obtained by Crown servants in official capacity) for the word " Crown " wherever it occurs there shall be substituted the word " public ".
- (2) At the end of that section there shall be added—
 - “(4) ' Public servant * means—
 - (a) a Crown servant;
 - (b) a member, officer or servant of a designated agency, competent authority or transferee body (within the meaning of the Financial Services Act 1986);
 - (c) an officer or servant of a recognised self-regulating organisation, recognised investment exchange or recognised clearing house (within the meaning of that Act);
 - (d) any person declared by an order for the time being in force under subsection (5) to be a public servant for the purposes of this section.
 - (5) If it appears to the Secretary of State that the members, officers or employees of or persons otherwise connected with any body appearing to him to exercise public functions may have access to unpublished price sensitive information relating to securities, he may by order declare that those persons are to be public servants for the purposes of this section.
 - (6) The power to make an order under subsection (5) shall be exercisable by statutory instrument and an instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

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174 Market makers, off-market dealers etc.

- (1) In subsection (1) of section 3 of the Company Securities (Insider Dealing) Act 1985 (actions not prohibited by sections 1 and 2 of that Act) at the end of paragraph (c) there shall be inserted the words “; or
- (d) doing any particular thing in relation to any particular securities if the information—
- (i) was obtained by him in the course of a business of a market maker in those securities in which he was engaged or employed, and
- (ii) was of a description which it would be reasonable to expect him to obtain in the ordinary course of that business,
- and he does that thing in good faith in the course of that business.”.
- (2) At the end of that subsection there shall be inserted—
- “Market maker ' means a person (whether an individual, partnership or company) who—
- (a) holds himself out at all normal times in compliance with the rules of a recognised stock exchange as willing to buy and sell securities at prices specified by him; and
- (b) is recognised as doing so by that recognised stock exchange.”.
- (3) The existing provisions of section 4 of that Act (off-market deals in advertised securities) shall become subsection (1) of that section and after that subsection there shall be inserted—
- “(2) In its application by virtue of this section the definition of "market maker" in section 3(1) shall have effect as if the references to a recognised stock exchange were references to a recognised investment exchange (other than an overseas investment exchange) within the meaning of the Financial Services Act 1986.”.
- (4) In section 13 of that Act
- (a) in subsection (1) (which defines dealing in securities and provides that references to dealing on a recognised stock exchange include dealing through an investment exchange) the words from " and references " onwards shall be omitted ; and
- (b) for subsection (3) (definition of off-market dealer) there shall be substituted—
- “(3) ' Off-market dealer' means a person who is an authorised person within the meaning of the Financial Services Act 1986.”.

175 Price stabilisation

For section 6 of the Company Securities (Insider Dealing) Act 1985 (international bonds) there shall be substituted—

“6 Price stabilisation.

- (1) No provision of section 1, 2, 4 or 5 prohibits an individual from doing anything for the purpose of stabilising the price of securities if it is done in conformity with rules made under section 48 of the Financial Services Act 1986 and—

- (a) in respect of securities which fall within any of paragraphs 1 to 5 of Schedule 1 to that Act and are specified by the rules ; and
 - (b) during such period before or after the issue of those securities as is specified by the rules.
- (2) Any order under subsection (8) of section 48 of that Act shall apply also in relation to subsection (1) of this section.”.

176 Contracts for differences by reference to securities

After subsection (1) of section 13 of the Company Securities (Insider Dealing) Act 1985 (definition of dealing in securities), there shall be inserted—

“(1A) For the purposes of this Act a person who (whether as principal or agent) buys or sells or agrees to buy or sell investments within paragraph 9 of Schedule 1 to the Financial Services Act 1986 (contracts for differences etc.) where the purpose or pretended purpose mentioned in that paragraph is to secure a profit or avoid a loss wholly or partly by reference to fluctuations in the value or price of securities shall be treated as if he were dealing in those securities.”.

177 Investigations into insider dealing

- (1) If it appears to the Secretary of State that there are circumstances suggesting that there may have been a contravention of section 1, 2, 4 or 5 of the Company Securities (Insider Dealing) Act 1985, he may appoint one or more competent inspectors to carry out such investigations as are requisite to establish whether or not any such contravention has occurred 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.
- (3) If the inspectors consider that any person is or may be able to give information concerning any such contravention they may require that person—
 - (a) to produce to them any documents in his possession or under his control relating to the company in relation to whose securities the contravention is suspected to have occurred or to its securities ;
 - (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 contravention, 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.
- (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

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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.

- (8) Nothing in this section shall require a person carrying on the business of banking to disclose any information or produce any document relating to the affairs of a customer unless—
- (a) the customer is a person who the inspectors have reason to believe may be able to give information concerning a suspected contravention ; and
 - (b) the Secretary of State is satisfied that the disclosure or production is necessary for the purposes of the investigation.
- (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 references to its production include references to producing a copy of the information in legible form.

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 contravention has occurred,
- 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;

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- (d) prohibiting him from entering into transactions of a specified kind or entering into them except in specified circumstances or to a specified extent;
 - (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 contravention or suspected contravention 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,

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he shall serve a copy of the notice on that agency, organisation or body.

- (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 Secretary of State may from time to time impose.