Financial Services and Markets Act 2000

2000 CHAPTER 8

PART I

THE REGULATOR

1 The Financial Services Authority.

(1) The body corporate known as the Financial Services Authority ("the Authority") is to have the functions conferred on it by or under this Act.

(2) The Authority must comply with the requirements as to its constitution set out in Schedule 1.

(3) Schedule 1 also makes provision about the status of the Authority and the exercise of certain of its functions.

Modifications etc. (not altering text)
C1 S. 1(3) extended (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), 8, **Sch. 2 para. 2**

The Authority's general duties

2 The Authority's general duties.

(1) In discharging its general functions the Authority must, so far as is reasonably possible, act in a way—

(a) which is compatible with the regulatory objectives; and

(b) which the Authority considers most appropriate for the purpose of meeting those objectives.

(2) The regulatory objectives are—

(a) market confidence;

(b) public awareness;

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(c) the protection of consumers; and

(d) the reduction of financial crime.

(3) In discharging its general functions the Authority must have regard to—

(a) the need to use its resources in the most efficient and economic way;

(b) the responsibilities of those who manage the affairs of authorised persons;

(c) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;

(d) the desirability of facilitating innovation in connection with regulated activities;

(e) the international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom;

(f) the need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions;

(g) the desirability of facilitating competition between those who are subject to any form of regulation by the Authority.

(4) The Authority's general functions are—

(a) its function of making rules under this Act (considered as a whole);

(b) its function of preparing and issuing codes under this Act (considered as a whole);

(c) its functions in relation to the giving of general guidance (considered as a whole); and

(d) its function of determining the general policy and principles by reference to which it performs particular functions.

(5) "General guidance" has the meaning given in section 158(5).

Modifications etc. (not altering text)

C2 S. 2(4)(a) restricted (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), Sch. 2 paras. 9, **11**

C3 S. 2(4)(c) restricted (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), **Sch. 2 paras. 13-16**

The regulatory objectives

3 Market confidence.

(1) The market confidence objective is: maintaining confidence in the financial system.

(2) "The financial system" means the financial system operating in the United Kingdom and includes—

(a) financial markets and exchanges;

(b) regulated activities; and

(c) other activities connected with financial markets and exchanges.

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VALID FROM 08/04/2010

[F1[F1 3A Financial stability

(1) The financial stability objective is: contributing to the protection and enhancement of the stability of the UK financial system.

(2) In considering that objective the Authority must have regard to—

(a) the economic and fiscal consequences for the United Kingdom of instability of the UK financial system;

(b) the effects (if any) on the growth of the economy of the United Kingdom of anything done for the purpose of meeting that objective; and

(c) the impact (if any) on the stability of the UK financial system of events or circumstances outside the United Kingdom (as well as in the United Kingdom).

(3) The Authority must, consulting the Treasury, determine and review its strategy in relation to the financial stability objective.**]]**

Textual Amendments

F1 S. 3A inserted (8.4.2010) by Financial Services Act 2010 (c. 28), **ss. 1(3)**, 26(1)(a)

4 Public awareness.

(1) The public awareness objective is: promoting public understanding of the financial system.

(2) It includes, in particular—

(a) promoting awareness of the benefits and risks associated with different kinds of investment or other financial dealing; and

(b) the provision of appropriate information and advice.

(3) "The financial system" has the same meaning as in section 3.

Modifications etc. (not altering text)

C4 S. 4 modified (temp. from 8.4.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(1)(g)(l), **Sch. 2 para. 3**

5 The protection of consumers.

(1) The protection of consumers objective is: securing the appropriate degree of protection for consumers.

(2) In considering what degree of protection may be appropriate, the Authority must have regard to—

(a) the differing degrees of risk involved in different kinds of investment or other transaction;

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(b) the differing degrees of experience and expertise that different consumers may have in relation to different kinds of regulated activity;

(c) the needs that consumers may have for advice and accurate information; and

(d) the general principle that consumers should take responsibility for their decisions.

(3) "Consumers" means persons—

(a) who are consumers for the purposes of section 138; or

(b) who, in relation to regulated activities carried on otherwise than by authorised persons, would be consumers for those purposes if the activities were carried on by authorised persons.

Modifications etc. (not altering text)

C5 S. 5(3) modified (18.6.2001) by S.I. 2001/1821, **arts. 1(1)**, 3(4)

6 The reduction of financial crime.

(1) The reduction of financial crime objective is: reducing the extent to which it is possible for a business carried on—

(a) by a regulated person, or

(b) in contravention of the general prohibition,

to be used for a purpose connected with financial crime.

(2) In considering that objective the Authority must, in particular, have regard to the desirability of—

(a) regulated persons being aware of the risk of their businesses being used in connection with the commission of financial crime;

(b) regulated persons taking appropriate measures (in relation to their administration and employment practices, the conduct of transactions by them and otherwise) to prevent financial crime, facilitate its detection and monitor its incidence;

(c) regulated persons devoting adequate resources to the matters mentioned in paragraph (b).

(3) "Financial crime" includes any offence involving—

(a) fraud or dishonesty;

(b) misconduct in, or misuse of information relating to, a financial market; or

(c) handling the proceeds of crime.

(4) "Offence" includes an act or omission which would be an offence if it had taken place in the United Kingdom.

(5) "Regulated person" means an authorised person, a recognised investment exchange or a recognised clearing house.

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VALID FROM 08/04/2010

[F2 Enhancing public understanding of financial matters etc

Textual Amendments

F2 S. 6A and preceding cross-heading inserted (8.4.2010) by Financial Services Act 2010 (c. 28), **ss. 2(5)**, 26(1)(b)

6A Enhancing public understanding of financial matters etc

(1) The Authority must establish a body corporate ("the consumer financial education body") whose function ("the consumer financial education function") is to enhance—

(a) the understanding and knowledge of members of the public of financial matters (including the UK financial system); and

(b) the ability of members of the public to manage their own financial affairs.

(2) The consumer financial education function includes, in particular—

(a) promoting awareness of the benefits of financial planning;

(b) promoting awareness of the financial advantages and disadvantages in relation to the supply of particular kinds of goods or services;

(c) promoting awareness of the benefits and risks associated with different kinds of financial dealing (which includes informing the Authority and other bodies of those benefits and risks);

(d) the publication of educational materials or the carrying out of other educational activities; and

(e) the provision of information and advice to members of the public.

(3) Schedule 1A makes further provision about the consumer financial education body.**]**

Corporate governance

7 Duty of Authority to follow principles of good governance.

In managing its affairs, the Authority must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

Arrangements for consulting practitioners and consumers

8 The Authority's general duty to consult.

The Authority must make and maintain effective arrangements for consulting practitioners and consumers on the extent to which its general policies and practices are consistent with its general duties under section 2.

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Modifications etc. (not altering text)
C6 S. 8 excluded (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), 8, **Sch. 2 para. 5**

9 The Practitioner Panel.

(1) Arrangements under section 8 must include the establishment and maintenance of a panel of persons (to be known as "the Practitioner Panel") to represent the interests of practitioners.

(2) The Authority must appoint one of the members of the Practitioner Panel to be its chairman.

(3) The Treasury's approval is required for the appointment or dismissal of the chairman.

(4) The Authority must have regard to any representations made to it by the Practitioner Panel.

(5) The Authority must appoint to the Practitioner Panel such—
(a) individuals who are authorised persons,
(b) persons representing authorised persons,
(c) persons representing recognised investment exchanges, and
(d) persons representing recognised clearing houses,
as it considers appropriate.

10 The Consumer Panel.

(1) Arrangements under section 8 must include the establishment and maintenance of a panel of persons (to be known as "the Consumer Panel") to represent the interests of consumers.

(2) The Authority must appoint one of the members of the Consumer Panel to be its chairman.

(3) The Treasury's approval is required for the appointment or dismissal of the chairman.

(4) The Authority must have regard to any representations made to it by the Consumer Panel.

(5) The Authority must appoint to the Consumer Panel such consumers, or persons representing the interests of consumers, as it considers appropriate.

(6) The Authority must secure that the membership of the Consumer Panel is such as to give a fair degree of representation to those who are using, or are or may be contemplating using, services otherwise than in connection with businesses carried on by them.

(7) "Consumers" means persons, other than authorised persons—
(a) who are consumers for the purposes of section 138; or
(b) who, in relation to regulated activities carried on otherwise than by authorised persons, would be consumers for those purposes if the activities were carried on by authorised persons.

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Modifications etc. (not altering text)
C7 S. 10(7) modified (18.6.2001) by S.I. 2001/1821, **arts. 1(1)**, 3(4)

11 Duty to consider representations by the Panels.

(1) This section applies to a representation made, in accordance with arrangements made under section 8, by the Practitioner Panel or by the Consumer Panel.

(2) The Authority must consider the representation.

(3) If the Authority disagrees with a view expressed, or proposal made, in the representation, it must give the Panel a statement in writing of its reasons for disagreeing.

Reviews

12 Reviews.

(1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the Authority has used its resources in discharging its functions.

(2) A review may be limited by the Treasury to such functions of the Authority (however described) as the Treasury may specify in appointing the person to conduct it.

(3) A review is not to be concerned with the merits of the Authority's general policy or principles in pursuing regulatory objectives or in exercising functions under Part VI.

(4) On completion of a review, the person conducting it must make a written report to the Treasury—
(a) setting out the result of the review; and
(b) making such recommendations (if any) as he considers appropriate.

(5) A copy of the report must be—
(a) laid before each House of Parliament; and
(b) published in such manner as the Treasury consider appropriate.

(6) Any expenses reasonably incurred in the conduct of a review are to be met by the Treasury out of money provided by Parliament.

(7) "Independent" means appearing to the Treasury to be independent of the Authority.

Modifications etc. (not altering text)
C8 S. 12 modified (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), 8, **Sch. 2 para. 6**

13 Right to obtain documents and information.

(1) A person conducting a review under section 12—
(a) has a right of access at any reasonable time to all such documents as he may reasonably require for purposes of the review; and

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(b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.

(2) Subsection (1) applies only to documents in the custody or under the control of the Authority.

(3) An obligation imposed on a person as a result of the exercise of powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the [M1]Court of Session Act 1988.

Marginal Citations
M1 1988 c. 36.

Inquiries

14 Cases in which the Treasury may arrange independent inquiries.

(1) This section applies in two cases.

(2) The first is where it appears to the Treasury that—
(a) events have occurred in relation to—
(i) a collective investment scheme, or
(ii) a person who is, or was at the time of the events, carrying on a regulated activity (whether or not as an authorised person),
which posed or could have posed a grave risk to the financial system or caused or risked causing significant damage to the interests of consumers; and
(b) those events might not have occurred, or the risk or damage might have been reduced, but for a serious failure in—
(i) the system established by this Act **[**[F3], or by any previous statutory provision,**]** for the regulation of such schemes or of such persons and their activities; or
(ii) the operation of that system.

(3) The second is where it appears to the Treasury that—
(a) events have occurred in relation to listed securities or an issuer of listed securities which caused or could have caused significant damage to holders of listed securities; and
(b) those events might not have occurred but for a serious failure **[**[F4] in—
(i) the regulatory system established by Part 6 or by any previous statutory provision concerned with the official listing of securities; or
(ii) the operation of that system.**]**

(4) If the Treasury consider that it is in the public interest that there should be an independent inquiry into the events and the circumstances surrounding them, they may arrange for an inquiry to be held under section 15.

(5) "Consumers" means persons—
(a) who are consumers for the purposes of section 138; or

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(b) who, in relation to regulated activities carried on otherwise than by authorised persons, would be consumers for those purposes if the activities were carried on by authorised persons.

[F5(5A) "Event" does not include any event occurring before 1st December 2001 (but no such limitation applies to the reference in subsection (4) to surrounding circumstances).**]**

(6) "The financial system" has the same meaning as in section 3.

(7) "Listed securities" means anything which has been admitted to the official list under Part VI.

Textual Amendments

F3 Words in s. 14(2)(b)(i) inserted (7.6.2005) by Inquiries Act 2005 (c. 12), **ss. 46(2)**, 51(1) (with ss. 44, 50); S.I. 2005/1432, **art. 2**

F4 Words in s. 14(3)(b) substituted (7.6.2005) by Inquiries Act 2005 (c. 12), **ss. 46(3)**, 51(1) (with ss. 44, 50); S.I. 2005/1432, **art. 2**

F5 S. 14(5A) inserted (7.6.2005) by Inquiries Act 2005 (c. 12), **s. 46(4)**, 51(1) (with ss. 44, 50); S.I. 2005/1432, **art. 2**

Modifications etc. (not altering text)

C9 S. 14(5) modified (18.6.2001) by S.I. 2001/1821, **arts. 1(1)**, 3(4)

15 Power to appoint person to hold an inquiry.

(1) If the Treasury decide to arrange for an inquiry to be held under this section, they may appoint such person as they consider appropriate to hold the inquiry.

(2) The Treasury may, by a direction to the appointed person, control—

(a) the scope of the inquiry;
(b) the period during which the inquiry is to be held;
(c) the conduct of the inquiry; and
(d) the making of reports.

(3) A direction may, in particular—

(a) confine the inquiry to particular matters;
(b) extend the inquiry to additional matters;
(c) require the appointed person to discontinue the inquiry or to take only such steps as are specified in the direction;
(d) require the appointed person to make such interim reports as are so specified.

16 Powers of appointed person and procedure.

(1) The person appointed to hold an inquiry under section 15 may—

(a) obtain such information from such persons and in such manner as he thinks fit;
(b) make such inquiries as he thinks fit; and
(c) determine the procedure to be followed in connection with the inquiry.

(2) The appointed person may require any person who, in his opinion, is able to provide any information, or produce any document, which is relevant to the inquiry to provide any such information or produce any such document.

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(3) For the purposes of an inquiry, the appointed person has the same powers as the court in respect of the attendance and examination of witnesses (including the examination of witnesses abroad) and in respect of the production of documents.

(4) "Court" means—

(a) the High Court; or

(b) in Scotland, the Court of Session.

17 Conclusion of inquiry.

(1) On completion of an inquiry under section 15, the person holding the inquiry must make a written report to the Treasury—

(a) setting out the result of the inquiry; and

(b) making such recommendations (if any) as he considers appropriate.

(2) The Treasury may publish the whole, or any part, of the report and may do so in such manner as they consider appropriate.

(3) Subsection (4) applies if the Treasury propose to publish a report but consider that it contains material—

(a) which relates to the affairs of a particular person whose interests would, in the opinion of the Treasury, be seriously prejudiced by publication of the material; or

(b) the disclosure of which would be incompatible with an international obligation of the United Kingdom.

(4) The Treasury must ensure that the material is removed before publication.

(5) The Treasury must lay before each House of Parliament a copy of any report or part of a report published under subsection (2).

(6) Any expenses reasonably incurred in holding an inquiry are to be met by the Treasury out of money provided by Parliament.

18 Obstruction and contempt.

(1) If a person ("A")—

(a) fails to comply with a requirement imposed on him by a person holding an inquiry under section 15, or

(b) otherwise obstructs such an inquiry,

the person holding the inquiry may certify the matter to the High Court (or, in Scotland, the Court of Session).

(2) The court may enquire into the matter.

(3) If, after hearing—

(a) any witnesses who may be produced against or on behalf of A, and

(b) any statement made by or on behalf of A,

the court is satisfied that A would have been in contempt of court if the inquiry had been proceedings before the court, it may deal with him as if he were in contempt.

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PART II

REGULATED AND PROHIBITED ACTIVITIES

The general prohibition

19 The general prohibition.

(1) No person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is—

(a) an authorised person; or

(b) an exempt person.

(2) The prohibition is referred to in this Act as the general prohibition.

Requirement for permission

20 Authorised persons acting without permission.

(1) If an authorised person carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission—

(a) given to him by the Authority under Part IV, or

(b) resulting from any other provision of this Act,

he is to be taken to have contravened a requirement imposed on him by the Authority under this Act.

(2) The contravention does not—

(a) make a person guilty of an offence;

(b) make any transaction void or unenforceable; or

(c) (subject to subsection (3)) give rise to any right of action for breach of statutory duty.

(3) In prescribed cases the contravention is 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.

Modifications etc. (not altering text)

C10 S. 20 excluded (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 62(1)-(4); S.I. 2001/3538, **art. 2(1)**
S. 20 applied (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 62(5); S.I. 2001/3538, **art. 2(1)**
S. 20 modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 2**

C11 S. 20 modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 2**

C12 S. 20 modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 2**

C13 S. 20 modified (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(3), 7, **Sch. para. 2**

C14 S. 20 modified (30.6.2008 for certain purposes, otherwise 1.1.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **7(1)(2)**

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C15 S. 20 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 2}

Commencement Information

I1 S. 20 wholly in force at 1.12.2001; s. 20 not in force at Royal Assent see s. 431(2); s. 20(3) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 20 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Financial promotion

21 Restrictions on financial promotion.

(1) A person ("A") must not, in the course of business, communicate an invitation or inducement to engage in investment activity.

(2) But subsection (1) does not apply if—

(a) A is an authorised person; or

(b) the content of the communication is approved for the purposes of this section by an authorised person.

(3) In the case of a communication originating outside the United Kingdom, subsection (1) applies only if the communication is capable of having an effect in the United Kingdom.

(4) The Treasury may by order specify circumstances in which a person is to be regarded for the purposes of subsection (1) as—

(a) acting in the course of business;

(b) not acting in the course of business.

(5) The Treasury may by order specify circumstances (which may include compliance with financial promotion rules) in which subsection (1) does not apply.

(6) An order under subsection (5) may, in particular, provide that subsection (1) does not apply in relation to communications—

(a) of a specified description;

(b) originating in a specified country or territory outside the United Kingdom;

(c) originating in a country or territory which falls within a specified description of country or territory outside the United Kingdom; or

(d) originating outside the United Kingdom.

(7) The Treasury may by order repeal subsection (3).

(8) "Engaging in investment activity" means—

(a) entering or offering to enter into an agreement the making or performance of which by either party constitutes a controlled activity; or

(b) exercising any rights conferred by a controlled investment to acquire, dispose of, underwrite or convert a controlled investment.

(9) An activity is a controlled activity if—

(a) it is an activity of a specified kind or one which falls within a specified class of activity; and

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(b) it relates to an investment of a specified kind, or to one which falls within a specified class of investment.

(10) An investment is a controlled investment if it is an investment of a specified kind or one which falls within a specified class of investment.

(11) Schedule 2 (except paragraph 26) applies for the purposes of subsections (9) and (10) with references to section 22 being read as references to each of those subsections.

(12) Nothing in Schedule 2, as applied by subsection (11), limits the powers conferred by subsection (9) or (10).

(13) "Communicate" includes causing a communication to be made.

(14) "Investment" includes any asset, right or interest.

(15) "Specified" means specified in an order made by the Treasury.

Modifications etc. (not altering text)

C16 S. 21(1) modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 6**

C17 S. 21(1) modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 6**

C18 S. 21(1) modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 6**

C19 S. 21(1) modified (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(3), 7, **Sch. para. 6**

C20 S. 21(1) excluded (3.7.2002) by Welsh Development Agency Act 1975 (c. 70), **Sch. 1 para. 21** (as substituted) by The Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002 (S.I. 2002/1555), **arts. 1**, 6

C21 S. 21(2) modified (30.6.2008 for certain purposes, otherwise 1.1.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **8(1)(3)**

C22 S. 21(2) modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 3}

Commencement Information

I2 S. 21 wholly in force at 1.12.2001; s. 21 not in force at Royal Assent see s. 431(2); s. 21 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 21 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Regulated activities

22 The classes of activity and categories of investment.

(1) An activity is a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and—

(a) relates to an investment of a specified kind; or

(b) in the case of an activity of a kind which is also specified for the purposes of this paragraph, is carried on in relation to property of any kind.

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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) Schedule 2 makes provision supplementing this section.

(3) Nothing in Schedule 2 limits the powers conferred by subsection (1).

(4) "Investment" includes any asset, right or interest.

(5) "Specified" means specified in an order made by the Treasury.

Modifications etc. (not altering text)

C23 S. 22 applied (1.9.2002) by 1974 c. 39, **s. 16(6E)(a)** (as inserted (1.9.2002) by 2001/544, arts. 2(2)(b), 90(2))

Offences

23 Contravention of the general prohibition.

(1) A person who contravenes the general prohibition is guilty of an offence and liable—

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

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

(2) In this Act "an authorisation offence" means an offence under this section.

(3) In proceedings for an authorisation offence it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

24 False claims to be authorised or exempt.

(1) A person who is neither an authorised person nor, in relation to the regulated activity in question, an exempt person is guilty of an offence if he—

(a) describes himself (in whatever terms) as an authorised person;

(b) describes himself (in whatever terms) as an exempt person in relation to the regulated activity; or

(c) behaves, or otherwise holds himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is—

(i) an authorised person; or

(ii) an exempt person in relation to the regulated activity.

(2) In proceedings for an offence under this section it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.

(4) But where the conduct constituting the offence involved or included the public display of any material, the maximum fine for the offence is level 5 on the standard scale multiplied by the number of days for which the display continued.

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

25 Contravention of section 21.

(1) A person who contravenes section 21(1) is guilty of an offence and liable—

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

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

(2) In proceedings for an offence under this section it is a defence for the accused to show—

(a) that he believed on reasonable grounds that the content of the communication was prepared, or approved for the purposes of section 21, by an authorised person; or

(b) that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Modifications etc. (not altering text)

C24 S. 25(2)(a) modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 6**

C25 S. 25(2)(a) modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 6**

C26 S. 25(2)(a) modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 6**

Enforceability of agreements

26 Agreements made by unauthorised persons.

(1) An agreement made by a person in the course of carrying on a regulated activity in contravention of the general prohibition is unenforceable against the other party.

(2) The other party is entitled to recover—

(a) any money or other property paid or transferred by him under the agreement; and

(b) compensation for any loss sustained by him as a result of having parted with it.

(3) "Agreement" means an agreement—

(a) made after this section comes into force; and

(b) the making or performance of which constitutes, or is part of, the regulated activity in question.

(4) This section does not apply if the regulated activity is accepting deposits.

Modifications etc. (not altering text)

C27 S. 26(1)(2) applied (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 5(1)(4) (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 26(1)(2) applied (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 5(1); S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

27 Agreements made through unauthorised persons.

(1) An agreement made by an authorised person ("the provider")—

(a) in the course of carrying on a regulated activity (not in contravention of the general prohibition), but

(b) in consequence of something said or done by another person ("the third party") in the course of a regulated activity carried on by the third party in contravention of the general prohibition,

is unenforceable against the other party.

(2) The other party is entitled to recover—

(a) any money or other property paid or transferred by him under the agreement; and

(b) compensation for any loss sustained by him as a result of having parted with it.

(3) "Agreement" means an agreement—

(a) made after this section comes into force; and

(b) the making or performance of which constitutes, or is part of, the regulated activity in question carried on by the provider.

(4) This section does not apply if the regulated activity is accepting deposits.

Modifications etc. (not altering text)

C28 S. 27(1)(2) applied (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 5(2)(5) (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 27(1)(2) applied (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 5(2); S.I. 2001/3538, **art. 2(1)**

28 Agreements made unenforceable by section 26 or 27.

(1) This section applies to an agreement which is unenforceable because of section 26 or 27.

(2) The amount of compensation recoverable as a result of that section is—

(a) the amount agreed by the parties; or

(b) on the application of either party, the amount determined by the court.

(3) If the court is satisfied that it is just and equitable in the circumstances of the case, it may allow—

(a) the agreement to be enforced; or

(b) money and property paid or transferred under the agreement to be retained.

(4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the court must—

(a) if the case arises as a result of section 26, have regard to the issue mentioned in subsection (5); or

(b) if the case arises as a result of section 27, have regard to the issue mentioned in subsection (6).

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

(5) The issue is whether the person carrying on the regulated activity concerned reasonably believed that he was not contravening the general prohibition by making the agreement.

(6) The issue is whether the provider knew that the third party was (in carrying on the regulated activity) contravening the general prohibition.

(7) If the person against whom the agreement is unenforceable—

(a) elects not to perform the agreement, or

(b) as a result of this section, recovers money paid or other property transferred by him under the agreement,

he must repay any money and return any other property received by him under the agreement.

(8) If property transferred under the agreement has passed to a third party, a reference in section 26 or 27 or this section to that property is to be read as a reference to its value at the time of its transfer under the agreement.

(9) The commission of an authorisation offence does not make the agreement concerned illegal or invalid to any greater extent than is provided by section 26 or 27.

Modifications etc. (not altering text)

C29 S. 28 applied (with modifications) (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 5(6) (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 28 applied (with modifications) (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 5(6); S.I. 2001/3538, **art. 2(1)**

29 Accepting deposits in breach of general prohibition.

(1) This section applies to an agreement between a person ("the depositor") and another person ("the deposit-taker") made in the course of the carrying on by the deposit-taker of accepting deposits in contravention of the general prohibition.

(2) If the depositor is not entitled under the agreement to recover without delay any money deposited by him, he may apply to the court for an order directing the deposit-taker to return the money to him.

(3) The court need not make such an order if it is satisfied that it would not be just and equitable for the money deposited to be returned, having regard to the issue mentioned in subsection (4).

(4) The issue is whether the deposit-taker reasonably believed that he was not contravening the general prohibition by making the agreement.

(5) "Agreement" means an agreement—

(a) made after this section comes into force; and

(b) the making or performance of which constitutes, or is part of, accepting deposits.

30 Enforceability of agreements resulting from unlawful communications.

(1) In this section—

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

"unlawful communication" means a communication in relation to which there has been a contravention of section 21(1);

"controlled agreement" means an agreement the making or performance of which by either party constitutes a controlled activity for the purposes of that section; and

"controlled investment" has the same meaning as in section 21.

(2) If in consequence of an unlawful communication a person enters as a customer into a controlled agreement, it is unenforceable against him and he is entitled to recover—

(a) any money or other property paid or transferred by him under the agreement; and

(b) compensation for any loss sustained by him as a result of having parted with it.

(3) If in consequence of an unlawful communication a person exercises any rights conferred by a controlled investment, no obligation to which he is subject as a result of exercising them is enforceable against him and he is entitled to recover—

(a) any money or other property paid or transferred by him under the obligation; and

(b) compensation for any loss sustained by him as a result of having parted with it.

(4) But the court may allow—

(a) the agreement or obligation to be enforced, or

(b) money or property paid or transferred under the agreement or obligation to be retained,

if it is satisfied that it is just and equitable in the circumstances of the case.

(5) In considering whether to allow the agreement or obligation to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the court must have regard to the issues mentioned in subsections (6) and (7).

(6) If the applicant made the unlawful communication, the issue is whether he reasonably believed that he was not making such a communication.

(7) If the applicant did not make the unlawful communication, the issue is whether he knew that the agreement was entered into in consequence of such a communication.

(8) "Applicant" means the person seeking to enforce the agreement or obligation or retain the money or property paid or transferred.

(9) Any reference to making a communication includes causing a communication to be made.

(10) The amount of compensation recoverable as a result of subsection (2) or (3) is—

(a) the amount agreed between the parties; or

(b) on the application of either party, the amount determined by the court.

(11) If a person elects not to perform an agreement or an obligation which (by virtue of subsection (2) or (3)) is unenforceable against him, he must repay any money and return any other property received by him under the agreement.

(12) If (by virtue of subsection (2) or (3)) a person recovers money paid or property transferred by him under an agreement or obligation, he must repay any money and return any other property received by him as a result of exercising the rights in question.

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(13) If any property required to be returned under this section has passed to a third party, references to that property are to be read as references to its value at the time of its receipt by the person required to return it.

PART III

AUTHORISATION AND EXEMPTION

Authorisation

31 Authorised persons.

(1) The following persons are authorised for the purposes of this Act—

(a) a person who has a Part IV permission to carry on one or more regulated activities;

(b) an EEA firm qualifying for authorisation under Schedule 3;

(c) a Treaty firm qualifying for authorisation under Schedule 4;

(d) a person who is otherwise authorised by a provision of, or made under, this Act.

(2) In this Act "authorised person" means a person who is authorised for the purposes of this Act.

Commencement Information

I3 S. 31 wholly in force at 1.12.2001; s. 31 not in force at Royal Assent see s. 431(2); s. 31(1)(b) in force for specified purposes at 25.2.2001 by S.I. 2001/516, art. 2(c), **Sch. Pt. 3**; s. 31(1)(b) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 31(1)(c) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 31 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

32 Partnerships and unincorporated associations.

(1) If a firm is authorised—

(a) it is authorised to carry on the regulated activities concerned in the name of the firm; and

(b) its authorisation is not affected by any change in its membership.

(2) If an authorised firm is dissolved, its authorisation continues to have effect in relation to any firm which succeeds to the business of the dissolved firm.

(3) For the purposes of this section, a firm is to be regarded as succeeding to the business of another firm only if—

(a) the members of the resulting firm are substantially the same as those of the former firm; and

(b) succession is to the whole or substantially the whole of the business of the former firm.

(4) "Firm" means—

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(a) a partnership; or
(b) an unincorporated association of persons.

(5) "Partnership" does not include a partnership which is constituted under the law of any place outside the United Kingdom and is a body corporate.

Ending of authorisation

33 Withdrawal of authorisation by the Authority.

(1) This section applies if—
(a) an authorised person's Part IV permission is cancelled; and
(b) as a result, there is no regulated activity for which he has permission.

(2) The Authority must give a direction withdrawing that person's status as an authorised person.

34 EEA firms.

(1) An EEA firm ceases to qualify for authorisation under Part II of Schedule 3 if it ceases to be an EEA firm as a result of—
(a) having its EEA authorisation withdrawn; or
(b) ceasing to have an EEA right in circumstances in which EEA authorisation is not required.

(2) At the request of an EEA firm, the Authority may give a direction cancelling its authorisation under Part II of Schedule 3.

(3) If an EEA firm has a Part IV permission, it does not cease to be an authorised person merely because it ceases to qualify for authorisation under Part II of Schedule 3.

Modifications etc. (not altering text)
C30 S. 34(2) modified (1.12.2001) by S.I. 2001/2511, **regs. 1(1)**, 8; S.I. 2001/3538, **art. 2(1)**

35 Treaty firms.

(1) A Treaty firm ceases to qualify for authorisation under Schedule 4 if its home State authorisation is withdrawn.

(2) At the request of a Treaty firm, the Authority may give a direction cancelling its Schedule 4 authorisation.

(3) If a Treaty firm has a Part IV permission, it does not cease to be an authorised person merely because it ceases to qualify for authorisation under Schedule 4.

36 Persons authorised as a result of paragraph 1(1) of Schedule 5.

(1) At the request of a person authorised as a result of paragraph 1(1) of Schedule 5, the Authority may give a direction cancelling his authorisation as such a person.

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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(2) If a person authorised as a result of paragraph 1(1) of Schedule 5 has a Part IV permission, he does not cease to be an authorised person merely because he ceases to be a person so authorised.

Exercise of EEA rights by UK firms

37 Exercise of EEA rights by UK firms.

Part III of Schedule 3 makes provision in relation to the exercise outside the United Kingdom of EEA rights by UK firms.

Commencement Information

I4 S. 37 wholly in force at 1.12.2001; s. 37 not in force at Royal Assent see s. 431(2); s. 37 in force for specified purposes at 25.2.2001 by S.I. 2001/516, art. 2(c), **Sch. Pt. 3**; s. 37 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 37 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2, **Sch. Pt. 2**; s. 37 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Exemption

38 Exemption orders.

(1) The Treasury may by order ("an exemption order") provide for—

(a) specified persons, or

(b) persons falling within a specified class,

to be exempt from the general prohibition.

(2) But a person cannot be an exempt person as a result of an exemption order if he has a Part IV permission.

(3) An exemption order may provide for an exemption to have effect—

(a) in respect of all regulated activities;

(b) in respect of one or more specified regulated activities;

(c) only in specified circumstances;

(d) only in relation to specified functions;

(e) subject to conditions.

(4) "Specified" means specified by the exemption order.

Modifications etc. (not altering text)

C31 S. 38(2) modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 3**

C32 S. 38(2) modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 3**

C33 S. 38(2) modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 3**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

C34 S. 38(2) modified (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(3), 7, **Sch. para. 3(a)**

C35 S. 38(2) modified (30.6.2008 for certain purposes, otherwise 1.1.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **7(1)(3)**

C36 S. 38(2) modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 3}

39 Exemption of appointed representatives.

(1) If a person (other than an authorised person)—

(a) is a party to a contract with an authorised person ("his principal") which—

(i) permits or requires him to carry on business of a prescribed description, and

(ii) complies with such requirements as may be prescribed, and

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

he is exempt from the general prohibition in relation to any regulated activity comprised in the carrying on of that business for which his principal has accepted responsibility.

(2) A person who is exempt as a result of subsection (1) is referred to in this Act as an appointed representative.

(3) The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility.

(4) In determining whether an authorised person has complied with a provision contained in or made under this Act, anything which a relevant person has done or omitted as respects business for which the authorised person has accepted responsibility is to be treated as having been done or omitted by the authorised person.

(5) "Relevant person" means a person who at the material time is or was an appointed representative by virtue of being a party to a contract with the authorised person.

(6) Nothing in subsection (4) is to 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 an offence, unless in all the circumstances it is reasonable for them to be attributed to him.

Modifications etc. (not altering text)

C37 S. 39(2) modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 7**

C38 S. 39(2) modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 7**

C39 S. 39(2) modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 7**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

Commencement Information

I5 S. 39 wholly in force at 1.12.2001; s. 39 not in force at Royal Assent see s. 431(2); s. 39(1) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 39 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 01/04/2007

[F6[F6 39A Certain tied agents operating outside United Kingdom

(1) This section applies to an authorised person whose relevant office is in the United Kingdom if—

(a) he is a party to a contract with a person (other than an authorised person) who is established—

(i) in the United Kingdom, or

(ii) in an EEA State which does not permit investment firms authorised by the competent authority of the State to appoint tied agents; and

(b) the contract is a relevant contract.

(2) A contract is a "relevant contract" if it satisfies conditions A to C.

(3) Condition A is that the contract permits or requires the person mentioned in subsection (1)(a) (the "agent") to carry on investment services business.

(4) Condition B is that either—

(a) it is a condition of the contract that such business may only be carried on by the agent in an EEA State other than the United Kingdom; or

(b) in a case not falling within paragraph (a), the Authority is satisfied that no such business is, or is likely to be, carried on by the agent in the United Kingdom.

(5) Condition C is that the business is of a description that, if carried on in the United Kingdom, would be prescribed for the purposes of section 39(1)(a)(i).

(6) An authorised person to whom this section applies who—

(a) enters into or continues to perform a relevant contract with an agent which does not comply with the applicable requirements,

(b) enters into or continues to perform a relevant contract without accepting or having accepted responsibility in writing for the agent's activities in carrying on investment services business,

(c) enters into a relevant contract with an agent who is not entered on the record maintained by the Authority by virtue of section 347(1)(ha), or

(d) continues to perform a relevant contract with an agent when he knows or ought to know that the agent is not entered on that record,

is to be taken for the purposes of this Act to have contravened a requirement imposed on him by or under this Act.

(7) The "applicable requirements" are the requirements prescribed for the purposes of subsection (1)(a)(ii) of section 39 which have effect in the case of a person to whom subsection (1A) of that section applies.

(8) A person carries on "investment services business" if—

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

(a) his business includes providing services or carrying on activities of the kind mentioned in Article 4.1.25 of the markets in financial instruments directive, and

(b) as a result of providing such services or carrying on such activities he is a tied agent.

(9) In this section—

"competent authority" has the meaning given in Article 4.1.22 of the markets in financial instruments directive;

"relevant office" means—

(a) in relation to a body corporate, its registered office or, if it has no registered office, its head office, and

(b) in relation to a person other than a body corporate, the person's head office.**]]**

Textual Amendments

F6 S. 39A inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(5), **Sch. 5 para. 3**

PART IV

PERMISSION TO CARRY ON REGULATED ACTIVITIES

Modifications etc. (not altering text)

C40 Pt. IV (ss. 40-55) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 3-24; S.I. 2001/3538, **art. 2(1)**
Pt. IV (ss. 40-55) extended (with modifications) (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 35(5)(a); S.I. 2001/3538, **art. 2(1)**
Pt. IV (ss. 40-50) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 107(2) (with art. 23(2))
Pt. IV (ss. 40-55) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 114(3)(a), 121(3), 128(3)(a) (with art. 23(2))

C41 Pt. 4 applied (with modifications) (6.4.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2004 (S.I. 2004/2737), **art. 4**

Application for permission

40 Application for permission.

(1) An application for permission to carry on one or more regulated activities may be made to the Authority by—

(a) an individual;

(b) a body corporate;

(c) a partnership; or

(d) an unincorporated association.

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(2) An authorised person may not apply for permission under this section if he has a permission—

(a) given to him by the Authority under this Part, or

(b) having effect as if so given,

which is in force.

(3) An EEA firm may not apply for permission under this section to carry on a regulated activity which it is, or would be, entitled to carry on in exercise of an EEA right, whether through a United Kingdom branch or by providing services in the United Kingdom.

(4) A permission given by the Authority under this Part or having effect as if so given is referred to in this Act as "a Part IV permission".

Modifications etc. (not altering text)

C42 S. 40 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 3, 98 (with art. 23(2))

C43 S. 40 applied (with modifications) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **arts. 3**, 4

C44 S. 40(2) excluded (10.8.2001) by S.I. 2001/2636, **arts. 1(2)(a)**, 63(3)
S. 40(2) modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 3**

C45 S. 40(2) modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 3**

C46 S. 40(2) modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 3**

C47 S. 40(2) modified (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(3), 7, **Sch. para. 3(b)**

C48 S. 40(2) modified (30.6.2008 for certain purposes, otherwise 1.1.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **7(1)(3)**

C49 S. 40(2) modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), arts. 1(2), 34, **Sch. paras. 1**, **3**

C50 S. 40(2) excluded (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 5(3)**

C51 S. 40(3) excluded (1.12.2001) by S.I. 2001/2511, **regs. 1(1)**, 9(5); S.I. 2001/3538, **art. 2(1)**

41 The threshold conditions.

(1) "The threshold conditions", in relation to a regulated activity, means the conditions set out in Schedule 6.

(2) In giving or varying permission, or imposing or varying any requirement, under this Part the Authority must ensure that the person concerned will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which he has or will have permission.

(3) But the duty imposed by subsection (2) does not prevent the Authority, having due regard to that duty, from taking such steps as it considers are necessary, in relation

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to a particular authorised person, in order to secure its regulatory objective of the protection of consumers.

Modifications etc. (not altering text)

C52 S. 41 modified (3.9.2001) by S.I. 2001/2507, **arts. 1(1)**, 3(1); S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**
S. 41 applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 10(3)(b), 15(2), 18(4)(b), 29(4)(b) (with art. 23(2))

Commencement Information

I6 S. 41 wholly in force at 3.9.2001; s. 41 not in force at Royal Assent see s. 431(2); s. 40(1) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 41(2)(3) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**

Permission

42 Giving permission.

(1) "The applicant" means an applicant for permission under section 40.

(2) The Authority may give permission for the applicant to carry on the regulated activity or activities to which his application relates or such of them as may be specified in the permission.

(3) If the applicant—

(a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 39(1) or an order made under section 38(1), but

(b) has applied for permission in relation to another regulated activity,

the application is to be treated as relating to all the regulated activities which, if permission is given, he will carry on.

(4) If the applicant—

(a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 285(2) or (3), but

(b) has applied for permission in relation to another regulated activity,

the application is to be treated as relating only to that other regulated activity.

(5) If the applicant—

(a) is a person to whom, in relation to a particular regulated activity, the general prohibition does not apply as a result of Part XIX, but

(b) has applied for permission in relation to another regulated activity,

the application is to be treated as relating only to that other regulated activity.

(6) If it gives permission, the Authority must specify the permitted regulated activity or activities, described in such manner as the Authority considers appropriate.

(7) The Authority may—

(a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;

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(b) specify a narrower or wider description of regulated activity than that to which the application relates;

(c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates.

Modifications etc. (not altering text)

C53 S. 42 modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 3**

C54 S. 42 modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 3**

C55 S. 42 modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 3**

C56 S. 42 modified (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(3), 7, **Sch. para. 3(c)** (subject to Sch. para. 7)

C57 S. 42 modified (30.6.2008 for certain purposes, otherwise 1.1.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **7(1)(3)** (subject to art. 8(4))

C58 S. 42 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 3} (subject to Sch. para. 7)

C59 S. 42(3)(4)(5) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(4); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I7 S. 42 wholly in force at 1.12.2001; s. 42 not in force at Royal Assent see s. 431(2); s. 42 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 42 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

43 Imposition of requirements.

(1) A Part IV permission may include such requirements as the Authority considers appropriate.

(2) A requirement may, in particular, be imposed—

(a) so as to require the person concerned to take specified action; or

(b) so as to require him to refrain from taking specified action.

(3) A requirement may extend to activities which are not regulated activities.

(4) A requirement may be imposed by reference to the person's relationship with—

(a) his group; or

(b) other members of his group.

(5) A requirement expires at the end of such period as the Authority may specify in the permission.

(6) But subsection (5) does not affect the Authority's powers under section 44 or 45.

Modifications etc. (not altering text)

C60 S. 43 modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 3**
S. 43 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 34-54; S.I. 2001/3538, **art. 2(1)**

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S. 43 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 4(2)(3) (with art. 23(2))
S. 43 extended (1.12.2001) by S.I. 2001/3647, art. 4, **Sch. 2 para. 4(2)**

C61 S. 43 modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 3**

C62 S. 43 modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 3**

C63 S. 43 modified (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(3), 7, **Sch. para. 3(d)**

C64 S. 43 modified (30.6.2008 for certain purposes, otherwise 1.1.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **7(1)(3)**

C65 S. 43 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 3}

C66 S. 43(5)(6) excluded (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 54(1); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I8 S. 43 wholly in force at 1.12.2001; s. 43 not in force at Royal Assent see s. 431(2); s. 43 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 43 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Variation and cancellation of Part IV permission

44 Variation etc. at request of authorised person.

(1) The Authority may, on the application of an authorised person with a Part IV permission, vary the permission by—

(a) adding a regulated activity to those for which it gives permission;

(b) removing a regulated activity from those for which it gives permission;

(c) varying the description of a regulated activity for which it gives permission;

(d) cancelling a requirement imposed under section 43; or

(e) varying such a requirement.

(2) The Authority may, on the application of an authorised person with a Part IV permission, cancel the permission.

(3) The Authority may refuse an application under this section if it appears to it—

(a) that the interests of consumers, or potential consumers, would be adversely affected if the application were to be granted; and

(b) that it is desirable in the interests of consumers, or potential consumers, for the application to be refused.

(4) If, as a result of a variation of a Part IV permission under this section, there are no longer any regulated activities for which the authorised person concerned has permission, the Authority must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

(5) The Authority's power to vary a Part IV permission under this section extends to including any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40.

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Modifications etc. (not altering text)

C67 S. 44 modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 3**
S. 44 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 46(3); S.I. 2001/3538, **art. 2(1)**
S. 44 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 3, 4(1)(3), 8, 28(2) (with art. 23(2))
S. 44 amended (temp. from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(3); S.I. 2001/3538, **art. 2(1)**

C68 Ss. 44, 45 (except s. 45(1)(b)) modified (temp. from 8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**

C69 S. 44(1) modified (10.8.2004) by The Financial Conglomerates and Other Financial Groups Regulations 2004 (S.I. 2004/1862), **reg. 15**

C70 S. 44(1)(4)(5) modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 3**

C71 S. 44(1)(4)(5) modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 3**

C72 S. 44(1)(4)(5) modified (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(3), 7, **Sch. para. 3(e)**

C73 S. 44(1)(4)(5) modified (30.6.2008 for certain purposes, otherwise 1.1.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **7(1)(3)**

C74 S. 44(1)(4)(5) modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 3}

Commencement Information

I9 S. 44 wholly in force at 1.12.2001; s. 44 not in force at Royal Assent see s. 431(2); s. 44 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 44 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

45 Variation etc. on the Authority's own initiative.

(1) The Authority may exercise its power under this section in relation to an authorised person if it appears to it that—

(a) he is failing, or is likely to fail, to satisfy the threshold conditions;

(b) he has failed, during a period of at least 12 months, to carry on a regulated activity for which he has a Part IV permission; or

(c) it is desirable to exercise that power in order to protect the interests of consumers or potential consumers.

(2) The Authority's power under this section is the power to vary a Part IV permission in any of the ways mentioned in section 44(1) or to cancel it.

(3) If, as a result of a variation of a Part IV permission under this section, there are no longer any regulated activities for which the authorised person concerned has permission, the Authority must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

(4) The Authority's power to vary a Part IV permission under this section extends to including any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40.

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(5) The Authority's power under this section is referred to in this Part as its own-initiative power.

Modifications etc. (not altering text)

C75 S. 45 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(3); S.I. 2001/3538, **art. 2(1)**
S. 45 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, **arts. 1**, 11

C76 Ss. 44, 45 (except s. 45(1)(b)) modified (temp. from 8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**

C77 S. 45(1)(b) excluded (temp. from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(3); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I10 S. 45 wholly in force at 1.12.2001; s. 45 not in force at Royal Assent see s. 431(2); s. 45 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 45 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

46 Variation of permission on acquisition of control.

(1) This section applies if it appears to the Authority that—

(a) a person has acquired control over a UK authorised person who has a Part IV permission; but

(b) there are no grounds for exercising its own-initiative power.

(2) If it appears to the Authority that the likely effect of the acquisition of control on the authorised person, or on any of its activities, is uncertain the Authority may vary the authorised person's permission by—

(a) imposing a requirement of a kind that could be imposed under section 43 on giving permission; or

(b) varying a requirement included in the authorised person's permission under that section.

(3) Any reference to a person having acquired control is to be read in accordance with Part XII.

Modifications etc. (not altering text)

C78 S. 46 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(3); S.I. 2001/3538, **art. 2(1)**
S. 46 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, **arts. 1**, 11

C79 Ss. 46, 47, 48, 49, 50, 51(2) modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**

C80 S. 46 applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 8**

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Commencement Information

I11 S. 46 wholly in force at 1.12.2001; s. 46 not in force at Royal Assent see s. 431(2); s. 46 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 46 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

47 Exercise of power in support of overseas regulator.

(1) The Authority's own-initiative power may be exercised in respect of an authorised person at the request of, or for the purpose of assisting, a regulator who is—

(a) outside the United Kingdom; and

(b) of a prescribed kind.

(2) Subsection (1) applies whether or not the Authority has powers which are exercisable in relation to the authorised person by virtue of any provision of Part XIII.

(3) If a request to the Authority for the exercise of its own-initiative power has been made by a regulator who is—

(a) outside the United Kingdom,

(b) of a prescribed kind, and

(c) acting in pursuance of provisions of a prescribed kind,

the Authority must, in deciding whether or not to exercise that power in response to the request, consider whether it is necessary to do so in order to comply with a Community obligation.

(4) In deciding in any case in which the Authority does not consider that the exercise of its own-initiative power is necessary in order to comply with a Community obligation, it may take into account in particular—

(a) whether in the country or territory of the regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;

(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 Authority may decide not to exercise its own-initiative power, in response to a request, unless the regulator concerned undertakes to make such contribution towards the cost of its exercise as the Authority considers appropriate.

(6) Subsection (5) does not apply if the Authority decides that it is necessary for it to exercise its own-initiative power in order to comply with a Community obligation.

(7) In subsections (4) and (5) "request" means a request of a kind mentioned in subsection (1).

Modifications etc. (not altering text)

C81 S. 47 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(3); S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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S. 47 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, **arts. 1**, 11

C82 Ss. 46, 47, 48, 49, 50, 51(2) modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**

Commencement Information

I12 S. 47 wholly in force at 1.12.2001; s. 47 not in force at Royal Assent see s. 431(2); s. 47(1)(3) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 47 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 47 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

48 Prohibitions and restrictions.

(1) This section applies if the Authority—

(a) on giving a person a Part IV permission, imposes an assets requirement on him; or

(b) varies an authorised person's Part IV permission so as to alter an assets requirement imposed on him or impose such a requirement on him.

(2) A person on whom an assets requirement is imposed is referred to in this section as "A".

(3) "Assets requirement" means a requirement under section 43—

(a) prohibiting the disposal of, or other dealing with, any of A's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings; or

(b) that all or any of A's assets, or all or any assets belonging to consumers but held by A or to his order, must be transferred to and held by a trustee approved by the Authority.

(4) If the Authority—

(a) imposes a requirement of the kind mentioned in subsection (3)(a), and

(b) gives notice of the requirement to any institution with whom A keeps an account,

the notice has the effects mentioned in subsection (5).

(5) Those effects are that—

(a) the institution does not act in breach of any contract with A if, having been instructed by A (or on his behalf) to transfer any sum or otherwise make any payment out of A's account, it refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the requirement; and

(b) if the institution complies with such an instruction, it is liable to pay to the Authority an amount equal to the amount transferred from, or otherwise paid out of, A's account in contravention of the requirement.

(6) If the Authority imposes a requirement of the kind mentioned in subsection (3)(b), no assets held by a person as trustee in accordance with the requirement may, while the requirement is in force, be released or dealt with except with the consent of the Authority.

(7) If, while a requirement of the kind mentioned in subsection (3)(b) is in force, A creates a charge over any assets of his held in accordance with the requirement, the charge is

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(to the extent that it confers security over the assets) void against the liquidator and any of A's creditors.

(8) Assets held by a person as trustee ("T") are to be taken to be held by T in accordance with a requirement mentioned in subsection (3)(b) only if—

(a) A has given T written notice that those assets are to be held by T in accordance with the requirement; or

(b) they are assets into which assets to which paragraph (a) applies have been transposed by T on the instructions of A.

(9) A person who contravenes subsection (6) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) "Charge" includes a mortgage (or in Scotland a security over property).

(11) Subsections (6) and (8) do not affect any equitable interest or remedy in favour of a person who is a beneficiary of a trust as a result of a requirement of the kind mentioned in subsection (3)(b).

Modifications etc. (not altering text)

C83 S. 48 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(3); S.I. 2001/3538, **art. 2(1)**
S. 48 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, **arts. 1**, 11

C84 Ss. 46, 47, 48, 49, 50, 51(2) modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**

C85 S. 48 applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 8**

C86 S. 48(3)(a) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 48(2); S.I. 2001/3538, **art. 2(1)**

C87 S. 48(4)-(11) applied (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 41(3); S.I. 2001/3538, **art. 2(1)**

C88 S. 48(4)-(7)(9)-(11) applied (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 34(2), 35(4); S.I. 2001/3538, **art. 2(1)**

C89 S. 48(4)(5) applied (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 48(2); S.I. 2001/3538, **art. 2(1)**

C90 S. 48(4)(b) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 42(4), 48(4); S.I. 2001/3538, **art. 2(1)**

C91 S. 48(6) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 36(5); S.I. 2001/3538, **art. 2(1)**

C92 S. 48(8) excluded (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 34(2), 35(4); S.I. 2001/3538, **art. 2(1)**
S. 48(8) modified (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 41(5); S.I. 2001/3538, **art. 2(1)**

Connected persons

49 Persons connected with an applicant.

(1) In considering—

(a) an application for a Part IV permission, or

(b) whether to vary or cancel a Part IV permission,

the Authority may have regard to any person appearing to it to be, or likely to be, in a relationship with the applicant or person given permission which is relevant.

(2) Before—

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(a) giving permission in response to an application made by a person who is connected with an EEA firm **[**F7(other than an EEA firm falling within paragraph 5(e) of Schedule 3 (insurance and reinsurance intermediaries))**]**, or

(b) cancelling or varying any permission given by the Authority to such a person,

the Authority must consult the firm's home state regulator.

[F8(2A) But subsection (2) does not apply to the extent that the permission relates to—

(a) an insurance mediation activity (within the meaning given by paragraph 2(5) of Schedule 6); or

(b) a regulated activity involving a regulated mortgage contract.**]**

(3) A person ("A") is connected with an EEA firm if—

(a) A is a subsidiary undertaking of the firm; or

(b) A is a subsidiary undertaking of a parent undertaking of the firm.

Textual Amendments

F7 Words in s. 49(2)(a) inserted (31.10.2004 for certain purposes, otherwise 14.1.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), **art. 20(2)**

F8 S. 49(2A) inserted by S.I. 2001/1544, art. 97 (as inserted (15.7.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2004 (S.I. 2004/1610), **art. 3**)

Modifications etc. (not altering text)

C93 Ss. 46, 47, 48, 49, 50, 51(2) modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**

C94 S. 49(2) excluded (10.8.2004) by The Financial Conglomerates and Other Financial Groups Regulations 2004 (S.I. 2004/1862), **reg. 3(2)**

Additional permissions

50 Authority's duty to consider other permissions etc.

(1) "Additional Part IV permission" means a Part IV permission which is in force in relation to an EEA firm, a Treaty firm or a person authorised as a result of paragraph 1(1) of Schedule 5.

(2) If the Authority is considering whether, and if so how, to exercise its own-initiative power under this Part in relation to an additional Part IV permission, it must take into account—

(a) the home State authorisation of the authorised person concerned;

(b) any relevant directive; and

(c) relevant provisions of the Treaty.

Modifications etc. (not altering text)

C95 S. 50 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(3); S.I. 2001/3538, **art. 2(1)**
S. 50 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, **arts. 1**, 11

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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C96 Ss. 46, 47, 48, 49, 50, 51(2) modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**

Procedure

51 Applications under this Part.

(1) An application for a Part IV permission must—

(a) contain a statement of the regulated activity or regulated activities which the applicant proposes to carry on and for which he wishes to have permission; and

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

(2) An application for the variation of a Part IV permission must contain a statement—

(a) of the desired variation; and

(b) of the regulated activity or regulated activities which the applicant proposes to carry on if his permission is varied.

(3) Any application under this Part must—

(a) be made in such manner as the Authority may direct; and

(b) contain, or be accompanied by, such other information as the Authority may reasonably require.

(4) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(6) The Authority may require an applicant to provide information which he is required to provide under this section in such form, or to verify it in such a way, as the Authority may direct.

Modifications etc. (not altering text)

C97 S. 51 (except s. 51(1)) applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 8**

C98 S. 51(1)(b) applied (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9D(a) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

C99 Ss. 46, 47, 48, 49, 50, 51(2) modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**

C100 S. 51(3)-(6) applied (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9D(a) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

C101 S. 51(4) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 26(6) (with art. 23(2))

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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C102 S. 51(3)-(6) applied (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9D(a) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

C103 S. 51(3)-(6) applied (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9D(a) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

C104 S. 51(3)-(6) applied (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9D(a) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

Commencement Information

I13 S. 51 wholly in force at 3.9.2001; s. 51 not in force at Royal Assent see s. 431(2); s. 51(3) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 51 in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**

52 Determination of applications.

(1) An application under this Part must be determined by the Authority before the end of the period of six months beginning with the date on which it received the completed application.

(2) The Authority may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it received the application.

(3) The applicant may withdraw his application, by giving the Authority written notice, at any time before the Authority determines it.

(4) If the Authority grants an application for, or for variation of, a Part IV permission, it must give the applicant written notice.

(5) The notice must state the date from which the permission, or the variation, has effect.

(6) If the Authority proposes—

(a) to give a Part IV permission but to exercise its power under section 42(7)(a) or (b) or 43(1), or

(b) to vary a Part IV permission on the application of an authorised person but to exercise its power under any of those provisions (as a result of section 44(5)),

it must give the applicant a warning notice.

(7) If the Authority proposes to refuse an application made under this Part, it must (unless subsection (8) applies) give the applicant a warning notice.

(8) This subsection applies if it appears to the Authority that—

(a) the applicant is an EEA firm; and

(b) the application is made with a view to carrying on a regulated activity in a manner in which the applicant is, or would be, entitled to carry on that activity in the exercise of an EEA right whether through a United Kingdom branch or by providing services in the United Kingdom.

(9) If the Authority decides—

(a) to give a Part IV permission but to exercise its power under section 42(7)(a) or (b) or 43(1),

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(b) to vary a Part IV permission on the application of an authorised person but to exercise its power under any of those provisions (as a result of section 44(5)), or

(c) to refuse an application under this Part,

it must give the applicant a decision notice.

Modifications etc. (not altering text)

C105 S. 52 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(3); S.I. 2001/3538, **art. 2(1)**
S. 52 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, **arts. 1**, 11
S. 52 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 9 (with art. 23(2))

C106 Ss. 52, 53, 54, 55 modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**

C107 S. 52 (except subsections (6)(8)(9)(a)(b)) applied (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9D(b) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

C108 S. 52 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 3}

C109 S. 52 applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 8**

C110 S. 52(1)(2) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 26(6) (with art. 23(2))

C111 S. 52(1) excluded (1.1.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(2), **27(2)**

C112 S. 52(1) excluded (1.1.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(2), **23(2)**, **25(2)**

C113 S. 52(2) restricted (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 26(4)(5) (with art. 23(2))

C114 S. 52(9) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 110(2), 115(2), 122(2), 129 (with art. 23(2))

C115 S. 52(9)(c) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 5(3)(4) (with art. 23(2))

53 Exercise of own-initiative power: procedure.

(1) This section applies to an exercise of the Authority's own-initiative power to vary an authorised person's Part IV permission.

(2) A variation takes effect—

(a) immediately, if the notice given under subsection (4) states that that is the case;

(b) on such date as may be specified in the notice; or

(c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(3) A variation may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the variation to take effect immediately (or on that date).

(4) If the Authority proposes to vary the Part IV permission, or varies it with immediate effect, it must give the authorised person written notice.

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(5) The notice must—

(a) give details of the variation;

(b) state the Authority's reasons for the variation and for its determination as to when the variation takes effect;

(c) inform the authorised person that he may make representations to the Authority within such period as may be specified in the notice (whether or not he has referred the matter to the Tribunal);

(d) inform him of when the variation takes effect; and

(e) inform him of his right to refer the matter to the Tribunal.

(6) The Authority may extend the period allowed under the notice for making representations.

(7) If, having considered any representations made by the authorised person, the Authority decides—

(a) to vary the permission in the way proposed, or

(b) if the permission has been varied, not to rescind the variation,

it must give him written notice.

(8) If, having considered any representations made by the authorised person, the Authority decides—

(a) not to vary the permission in the way proposed,

(b) to vary the permission in a different way, or

(c) to rescind a variation which has effect,

it must give him written notice.

(9) A notice given under subsection (7) must inform the authorised person of his right to refer the matter to the Tribunal.

(10) A notice under subsection (8)(b) must comply with subsection (5).

(11) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(12) For the purposes of subsection (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

Modifications etc. (not altering text)

C116 S. 53 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(3); S.I. 2001/3538, **art. 2(1)**
S. 53 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, **arts. 1**, 11
S. 53 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 61(1), 110(1), 115(1), 122(1), 129 (with art. 23(2))

C117 Ss. 52, 53, 54, 55 modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**

C118 S. 53 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 3}

C119 S. 53 applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 8**

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C120 S. 53(2)(c) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 15(3), 18(5), 29(5) (with art. 23(2))
C121 S. 53(4) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 10, 14, 18(1)(a), 29, 30-34 (with art. 23(2))
S. 53(4) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 72(2) (with art. 23(2))
C122 S. 53(8) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 16(1) (with art. 23(2))

Commencement Information
I14 S. 53 wholly in force at 1.12.2001; s. 53 not in force at Royal Assent see s. 431(2); s. 53 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 53 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

54 Cancellation of Part IV permission: procedure.

(1) If the Authority proposes to cancel an authorised person's Part IV permission otherwise than at his request, it must give him a warning notice.

(2) If the Authority decides to cancel an authorised person's Part IV permission otherwise than at his request, it must give him a decision notice.

Modifications etc. (not altering text)
C123 S. 54 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(3); S.I. 2001/3538, **art. 2(1)**
S. 54 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, **arts. 1**, 11
S. 54 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 61(1), 110(1), 115(1), 122(1), 129 (with art. 23(2))
C124 Ss. 52, 53, 54, 55 modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**
C125 S. 54 applied (with modifications) (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9E(3) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)
C126 S. 54 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 3}
C127 S. 54 applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 8**
C128 S. 54(2) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 71(2) (with art. 23(2))

Commencement Information
I15 S. 54 wholly in force at 1.12.2001; s. 54 not in force at Royal Assent see s. 431(2); s. 54 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 54 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

References to the Tribunal

55 Right to refer matters to the Tribunal.

(1) An applicant who is aggrieved by the determination of an application made under this Part may refer the matter to the Tribunal.

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(2) An authorised person who is aggrieved by the exercise of the Authority's own-initiative power may refer the matter to the Tribunal.

Modifications etc. (not altering text)

C129 S. 55 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(3); S.I. 2001/3538, **art. 2(1)**
S. 55 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, **s. 85(4C)** (as inserted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(1), Sch. 5 Pt. I para. 95 (with art. 13(3), **Sch. 5**)); S.I. 2001/3538, **art. 2(1)**
S. 55 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, **s. 93(6B)** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(1), Sch. 5 Pt. II para. 177(d) (with art. 13(3), **Sch. 5**)); S.I. 2001/3538, **art. 2(1)**
S. 55 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, **arts. 1**, 11
S. 55 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 61(1), 110(1), 115(1), 122(1), 129 (with art. 23(2))

C130 Ss. 52, 53, 54, 55 modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**

C131 S. 55 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 3}

C132 S. 55 applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 8**

C133 S. 55(1) applied (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9D(c) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

C134 S. 55(2) applied (with modifications) (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9E(3) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

PART V

PERFORMANCE OF REGULATED ACTIVITIES

Modifications etc. (not altering text)

C135 Pt. V (ss. 56-71) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 114(3)(a), 128(3)(a) (with art. 23(2))

Prohibition orders

56 Prohibition orders.

(1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

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(2) The Authority may make an order ("a prohibition order") prohibiting the individual from performing a specified function, any function falling within a specified description or any function.

(3) A prohibition order may relate to—

(a) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;

(b) authorised persons generally or any person within a specified class of authorised person.

(4) An individual who performs or agrees to perform a function in breach of a prohibition order is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In proceedings for an offence under subsection (4) it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(6) An authorised person must take reasonable care to ensure that no function of his, in relation to the carrying on of a regulated activity, is performed by a person who is prohibited from performing that function by a prohibition order.

(7) The Authority may, on the application of the individual named in a prohibition order, vary or revoke it.

(8) This section applies to the performance of functions in relation to a regulated activity carried on by—

(a) a person who is an exempt person in relation to that activity, and

(b) a person to whom, as a result of Part XX, the general prohibition does not apply in relation to that activity,

as it applies to the performance of functions in relation to a regulated activity carried on by an authorised person.

(9) "Specified" means specified in the prohibition order.

Modifications etc. (not altering text)

C136 S. 56 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(3); S.I. 2001/3538, **art. 2(1)**
S. 56 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, **arts. 1**, 11
S. 56 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 79(1); S.I. 2001/3538, **art. 2(1)**

C137 Ss. 56, 60 modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**

C138 Ss. 56-58 applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 8**

C139 S. 56(7) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 55(5) (with art. 23(2))

C140 S. 56(8) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(4); S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

Commencement Information

I16 S. 56 wholly in force at 1.12.2001; s. 56 not in force at Royal Assent see s. 431(2); s. 56 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 56 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

57 Prohibition orders: procedure and right to refer to Tribunal.

(1) If the Authority proposes to make a prohibition order it must give the individual concerned a warning notice.

(2) The warning notice must set out the terms of the prohibition.

(3) If the Authority decides to make a prohibition order it must give the individual concerned a decision notice.

(4) The decision notice must—

(a) name the individual to whom the prohibition order applies;

(b) set out the terms of the order; and

(c) be given to the individual named in the order.

(5) A person against whom a decision to make a prohibition order is made may refer the matter to the Tribunal.

Modifications etc. (not altering text)

C141 S. 57 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 110(3) (with art. 23(2))

C142 Ss. 56-58 applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 8**

C143 S. 57(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 55(1) (with art. 23(2))

Commencement Information

I17 S. 57 wholly in force at 1.12.2001; s. 57 not in force at Royal Assent see s. 431(2); s. 57 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 57 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

58 Applications relating to prohibitions: procedure and right to refer to Tribunal.

(1) This section applies to an application for the variation or revocation of a prohibition order.

(2) If the Authority decides to grant the application, it must give the applicant written notice of its decision.

(3) If the Authority proposes to refuse the application, it must give the applicant a warning notice.

(4) If the Authority decides to refuse the application, it must give the applicant a decision notice.

(5) If the Authority gives the applicant a decision notice, he may refer the matter to the Tribunal.

Status: *Point in time view as at 01/07/2005. 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)

C144 S. 58 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 110(3) (with art. 23(2))

C145 Ss. 56-58 applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 8**

Commencement Information

I18 S. 58 wholly in force at 1.12.2001; s. 58 not in force at Royal Assent see s. 431(2); s. 58 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 58 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Approval

59 Approval for particular arrangements.

(1) An authorised person ("A") must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by A in relation to the carrying on by A of a regulated activity, unless the Authority approves the performance by that person of the controlled function to which the arrangement relates.

(2) An authorised person ("A") must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by a contractor of A in relation to the carrying on by A of a regulated activity, unless the Authority approves the performance by that person of the controlled function to which the arrangement relates.

(3) "Controlled function" means a function of a description specified in rules.

(4) The Authority may specify a description of function under subsection (3) only if, in relation to the carrying on of a regulated activity by an authorised person, it is satisfied that the first, second or third condition is met.

(5) The first condition is that the function is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the authorised person's affairs, so far as relating to the regulated activity.

(6) The second condition is that the function will involve the person performing it in dealing with customers of the authorised person in a manner substantially connected with the carrying on of the regulated activity.

(7) The third condition is that the function will involve the person performing it in dealing with property of customers of the authorised person in a manner substantially connected with the carrying on of the regulated activity.

(8) Neither subsection (1) nor subsection (2) applies to an arrangement which allows a person to perform a function if the question of whether he is a fit and proper person to perform the function is reserved under any of the single market directives to an authority in a country or territory outside the United Kingdom.

(9) In determining whether the first condition is met, the Authority may take into account the likely consequences of a failure to discharge that function properly.

(10) "Arrangement"—

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(a) means any kind of arrangement for the performance of a function of A which is entered into by A or any contractor of his with another person; and

(b) includes, in particular, that other person's appointment to an office, his becoming a partner or his employment (whether under a contract of service or otherwise).

(11) "Customer", in relation to an authorised person, means a person who is using, or who is or may be contemplating using, any of the services provided by the authorised person.

Modifications etc. (not altering text)

C146 S. 59 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 74(2), 76(2); S.I. 2001/3538, **art. 2(1)**
S. 59 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 49(1) (with art. 23(2))

C147 S. 59 modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), **art. 15(1)**

C148 S. 59 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 3}

C149 S. 59 modified (1.1.2010) by The Northern Rock plc Transfer Order 2009 (S.I. 2009/3226), arts. 1(2)(b), **10**

C150 S. 59(1) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 75(2); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I19 S. 59 wholly in force at 1.12.2001; s. 59 not in force at Royal Assent see s. 431(2); s. 59 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 59 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 59 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

60 Applications for approval.

(1) An application for the Authority's approval under section 59 may be made by the authorised person concerned.

(2) The application must—

(a) be made in such manner as the Authority may direct; and

(b) contain, or be accompanied by, such information as the Authority may reasonably require.

(3) At any time after receiving the application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) The Authority may require an applicant to present information which he is required to give under this section in such form, or to verify it in such a way, as the Authority may direct.

(5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(6) "The authorised person concerned" includes a person who has applied for permission under Part IV and will be the authorised person concerned if permission is given.

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Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

Modifications etc. (not altering text)

C151 S. 60 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(3); S.I. 2001/3538, **art. 2(1)**
S. 60 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, **arts. 1**, 11
S. 60: "the authorised person concerned" extended (1.12.2001) by S.I. 2001/2511, **regs. 1(1)**, 10; S.I. 2001/3538, **art. 2(1)**
S. 60 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 50(1), 51(1), 53(1) (with art. 23(2))

C152 Ss. 56, 60 modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**

C153 S. 60 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 3}

C154 Ss. 60-63 applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 8**

C155 S. 60(3) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 50(5) (with art. 23(2))

Commencement Information

I20 S. 60 wholly in force at 1.12.2001; s. 60 not in force at Royal Assent see s. 431(2); s. 60(2)(4) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 60 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 60 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

61 Determination of applications.

(1) The Authority may grant an application made under section 60 only if it is satisfied that the person in respect of whom the application is made ("the candidate") is a fit and proper person to perform the function to which the application relates.

(2) In deciding that question, the Authority may have regard (among other things) to whether the candidate, or any person who may perform a function on his behalf—

(a) has obtained a qualification,

(b) has undergone, or is undergoing, training, or

(c) possesses a level of competence,

required by general rules in relation to persons performing functions of the kind to which the application relates.

(3) The Authority must, before the end of the period of three months beginning with the date on which it receives an application made under section 60 ("the period for consideration"), determine whether—

(a) to grant the application; or

(b) to give a warning notice under section 62(2).

(4) If the Authority imposes a requirement under section 60(3), the period for consideration stops running on the day on which the requirement is imposed but starts running again—

(a) on the day on which the required information is received by the Authority; or

(b) if the information is not provided on a single day, on the last of the days on which it is received by the Authority.

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(5) A person who makes an application under section 60 may withdraw his application by giving written notice to the Authority at any time before the Authority determines it, but only with the consent of—

(a) the candidate; and

(b) the person by whom the candidate is to be retained to perform the function concerned, if not the applicant.

Modifications etc. (not altering text)

C156 S. 61 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 3}

C157 Ss. 60-63 applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 8**

C158 S. 61(3) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 49(3), 53(2) (with art. 23(2))

C159 S. 61(3) excluded (1.1.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(2), **28(2)**

C160 S. 61(3) excluded (1.1.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(2), **24(2)**, **26(2)**

Commencement Information

I21 S. 61 wholly in force at 1.12.2001; s. 61 not in force at Royal Assent see s. 431(2); s. 61 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 61 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

62 Applications for approval: procedure and right to refer to Tribunal.

(1) If the Authority decides to grant an application made under section 60 ("an application"), it must give written notice of its decision to each of the interested parties.

(2) If the Authority proposes to refuse an application, it must give a warning notice to each of the interested parties.

(3) If the Authority decides to refuse an application, it must give a decision notice to each of the interested parties.

(4) If the Authority decides to refuse an application, each of the interested parties may refer the matter to the Tribunal.

(5) "The interested parties", in relation to an application, are—

(a) the applicant;

(b) the person in respect of whom the application is made ("A"); and

(c) the person by whom A's services are to be retained, if not the applicant.

Modifications etc. (not altering text)

C161 S. 62 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 3}

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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C162 Ss. 60-63 applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 8**

Commencement Information

I22 S. 62 wholly in force at 1.12.2001; s. 62 not in force at Royal Assent see s. 431(2); s. 62 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 62 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

63 Withdrawal of approval.

(1) The Authority may withdraw an approval given under section 59 if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.

(2) When considering whether to withdraw its approval, the Authority may take into account any matter which it could take into account if it were considering an application made under section 60 in respect of the performance of the function to which the approval relates.

(3) If the Authority proposes to withdraw its approval, it must give each of the interested parties a warning notice.

(4) If the Authority decides to withdraw its approval, it must give each of the interested parties a decision notice.

(5) If the Authority decides to withdraw its approval, each of the interested parties may refer the matter to the Tribunal.

(6) "The interested parties", in relation to an approval, are—

(a) the person on whose application it was given ("A");

(b) the person in respect of whom it was given ("B"); and

(c) the person by whom B's services are retained, if not A.

Modifications etc. (not altering text)

C163 S. 63 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), arts. 1(2), 34, **Sch. paras. 1**, **3**

C164 Ss. 60-63 applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 8**

C165 S. 63 applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 6(3)**

C166 S. 63(1)(3)-(6) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 61(2) (with art. 23(2))

C167 S. 63(3) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 52(2) (with art. 23(2))

C168 S. 63(4) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 75(2) (with art. 23(2))

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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Commencement Information

I23 S. 63 wholly in force at 1.12.2001; s. 63 not in force at Royal Assent see s. 431(2); s. 63 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 63 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 08/06/2010

[F9 Performance of controlled functions without approval

Textual Amendments

F9 Ss. 63A-63D and preceding cross-heading inserted (8.6.2010) by Financial Services Act 2010 (c. 28), **ss. 11**, 26(2)(b)

63A Power to impose penalties

(1) If the Authority is satisfied that—

(a) a person ("P") has at any time performed a controlled function without approval, and

(b) at that time P knew, or could reasonably be expected to have known, that P was performing a controlled function without approval,

it may impose a penalty on P of such amount as it considers appropriate.

(2) For the purposes of this section P performs a controlled function without approval at any time if at that time—

(a) P performs a controlled function under an arrangement entered into by an authorised person ("A"), or by a contractor of A, in relation to the carrying on by A of a regulated activity; and

(b) the performance by P of the function was not approved under section 59.

(3) The Authority may not impose a penalty under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person concerned under section 63B(1).

(4) "The limitation period" means the period of three years beginning with the first day on which the Authority knew that the person concerned had performed a controlled function without approval.

(5) For this purpose the Authority is to be treated as knowing that a person has performed a controlled function without approval if it has information from which that can reasonably be inferred.

(6) Any expression which is used both in this section and section 59 has the same meaning in this section as in that section.

63B Procedure and right to refer to Tribunal

(1) If the Authority proposes to impose a penalty on a person under section 63A, it must give the person a warning notice.

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(2) A warning notice must state the amount of the penalty.

(3) If the Authority decides to impose a penalty on a person under section 63A, it must give the person a decision notice.

(4) A decision notice must state the amount of the penalty.

(5) If the Authority decides to impose a penalty on a person under section 63A, the person may refer the matter to the Tribunal.

63C Statement of policy

(1) The Authority must prepare and issue a statement of its policy with respect to—
- (a) the imposition of penalties under section 63A; and
- (b) the amount of penalties under that section.

(2) The Authority's policy in determining whether a penalty should be imposed, and what the amount of a penalty should be, must include having regard to—
- (a) the conduct of the person on whom the penalty is to be imposed;
- (b) the extent to which the person could reasonably be expected to have known that a controlled function was performed without approval;
- (c) the length of the period during which the person performed a controlled function without approval; and
- (d) whether the person on whom the penalty is to be imposed is an individual.

(3) The Authority's policy in determining whether a penalty should be imposed on a person must also include having regard to the appropriateness of taking action against the person instead of, or in addition to, taking action against an authorised person.

(4) A statement issued under this section must include an indication of the circumstances in which the Authority would expect to be satisfied that a person could reasonably be expected to have known that the person was performing a controlled function without approval.

(5) The Authority may at any time alter or replace a statement issued under this section.

(6) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replaced statement.

(7) The Authority must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(8) A statement issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(9) The Authority may charge a reasonable fee for providing a person with a copy of the statement.

(10) In exercising, or deciding whether to exercise, its power under section 63A in the case of any particular person, the Authority must have regard to any statement of policy published under this section and in force at a time when the person concerned performed a controlled function without approval.

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63D Statement of policy: procedure

(1) Before issuing a statement under section 63C, the Authority must publish a draft of the proposed statement in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the Authority within a specified time.

(3) Before issuing the proposed statement, the Authority must have regard to any representations made to it in accordance with subsection (2).

(4) If the Authority issues the proposed statement it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2); and

(b) its response to them.

(5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant, the Authority must (in addition to complying with subsection (4)) publish details of the difference.

(6) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.**]**

Conduct

64 Conduct: statements and codes.

(1) The Authority may issue statements of principle with respect to the conduct expected of approved persons.

(2) If the Authority issues a statement of principle under subsection (1), it must also issue a code of practice for the purpose of helping to determine whether or not a person's conduct complies with the statement of principle.

(3) A code issued under subsection (2) may specify—

(a) descriptions of conduct which, in the opinion of the Authority, comply with a statement of principle;

(b) descriptions of conduct which, in the opinion of the Authority, do not comply with a statement of principle;

(c) factors which, in the opinion of the Authority, are to be taken into account in determining whether or not a person's conduct complies with a statement of principle.

(4) The Authority may at any time alter or replace a statement or code issued under this section.

(5) If a statement or code is altered or replaced, the altered or replacement statement or code must be issued by the Authority.

(6) A statement or code issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

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(7) A code published under this section and in force at the time when any particular conduct takes place may be relied on so far as it tends to establish whether or not that conduct complies with a statement of principle.

(8) Failure to comply with a statement of principle under this section does not of itself give rise to any right of action by persons affected or affect the validity of any transaction.

(9) A person is not to be taken to have failed to comply with a statement of principle if he shows that, at the time of the alleged failure, it or its associated code of practice had not been published.

(10) The Authority must, without delay, give the Treasury a copy of any statement or code which it publishes under this section.

(11) The power under this section to issue statements of principle and codes of practice—

(a) includes power to make different provision in relation to persons, cases or circumstances of different descriptions; and

(b) is to be treated for the purposes of section 2(4)(a) as part of the Authority's rule-making functions.

(12) The Authority may charge a reasonable fee for providing a person with a copy of a statement or code published under this section.

(13) "Approved person" means a person in relation to whom the Authority has given its approval under section 59.

65 Statements and codes: procedure.

(1) Before issuing a statement or code under section 64, the Authority must publish a draft of it in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by —

(a) a cost benefit analysis; and

(b) notice that representations about the proposal may be made to the Authority within a specified time.

(3) Before issuing the proposed statement or code, the Authority must have regard to any representations made to it in accordance with subsection (2)(b).

(4) If the Authority issues the proposed statement or code it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2)(b); and

(b) its response to them.

(5) If the statement or code differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant—

(a) the Authority must (in addition to complying with subsection (4)) publish details of the difference; and

(b) those details must be accompanied by a cost benefit analysis.

(6) Neither subsection (2)(a) nor subsection (5)(b) applies if the Authority considers—

(a) that, making the appropriate comparison, there will be no increase in costs; or

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(b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.

(7) Subsections (1) to (6) do not apply if the Authority considers that the delay involved in complying with them would prejudice the interests of consumers.

(8) A statement or code must state that it is issued under section 64.

(9) The Authority may charge a reasonable fee for providing a copy of a draft published under subsection (1).

(10) This section also applies to a proposal to alter or replace a statement or code.

(11) "Cost benefit analysis" means an estimate of the costs together with an analysis of the benefits that will arise—

(a) if the proposed statement or code is issued; or

(b) if subsection (5)(b) applies, from the statement or code that has been issued.

(12) "The appropriate comparison" means—

(a) in relation to subsection (2)(a), a comparison between the overall position if the statement or code is issued and the overall position if it is not issued;

(b) in relation to subsection (5)(b), a comparison between the overall position after the issuing of the statement or code and the overall position before it was issued.

Modifications etc. (not altering text)

C169 S. 65 excluded (29.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(a), **4(2)**

C170 S. 65 excluded (30.6.2008 for certain purposes, otherwise 1.1.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **6(2)**

66 Disciplinary powers.

(1) The Authority may take action against a person under this section if—

(a) it appears to the Authority that he is guilty of misconduct; and

(b) the Authority is satisfied that it is appropriate in all the circumstances to take action against him.

(2) A person is guilty of misconduct if, while an approved person—

(a) he has failed to comply with a statement of principle issued under section 64; or

(b) he has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under this Act.

(3) If the Authority is entitled to take action under this section against a person, it may—

(a) impose a penalty on him of such amount as it considers appropriate; or

(b) publish a statement of his misconduct.

(4) The Authority may not take action under this section after the end of the period of two years beginning with the first day on which the Authority knew of the misconduct,

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unless proceedings in respect of it against the person concerned were begun before the end of that period.

(5) For the purposes of subsection (4)—

(a) the Authority is to be treated as knowing of misconduct if it has information from which the misconduct can reasonably be inferred; and

(b) proceedings against a person in respect of misconduct are to be treated as begun when a warning notice is given to him under section 67(1).

(6) "Approved person" has the same meaning as in section 64.

(7) "Relevant authorised person", in relation to an approved person, means the person on whose application approval under section 59 was given.

Modifications etc. (not altering text)

C171 S. 66 modified (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 9 (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 66 modified (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 9; S.I. 2001/3538, **art. 2(1)**

C172 S. 66(3)(a) restricted (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 60(2) (with art. 23(2))

67 Disciplinary measures: procedure and right to refer to Tribunal.

(1) If the Authority proposes to take action against a person under section 66, it must give him a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(4) If the Authority decides to take action against a person under section 66, it must give him a decision notice.

(5) A decision notice about the imposition of a penalty must state the amount of the penalty.

(6) A decision notice about the publication of a statement must set out the terms of the statement.

(7) If the Authority decides to take action against a person under section 66, he may refer the matter to the Tribunal.

Modifications etc. (not altering text)

C173 S. 67 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 61(3), 85(5) (with art. 23(2))

C174 Ss. 66-70 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 1** (with reg. 3)

C175 Ss. 66-70 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. para. 1**

C176 S. 67(4) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 73(2), 74(2) (with art. 23(2))

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68 Publication.

After a statement under section 66 is published, the Authority must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given.

Modifications etc. (not altering text)

C177 Ss. 66-70 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 1** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 155(6)(a) (with **Sch. 2 para. 156**))

C178 Ss. 66-70 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. para. 1**

C179 Ss. 66-70 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(b), 62, **Sch. 3 para. 1** (with art. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(a)**)

69 Statement of policy.

(1) The Authority must prepare and issue a statement of its policy with respect to—

(a) the imposition of penalties under section 66; and

(b) the amount of penalties under that section.

(2) The Authority's policy in determining what the amount of a penalty should be must include having regard to—

(a) the seriousness of the misconduct in question in relation to the nature of the principle or requirement concerned;

(b) the extent to which that misconduct was deliberate or reckless; and

(c) whether the person on whom the penalty is to be imposed is an individual.

(3) The Authority may at any time alter or replace a statement issued under this section.

(4) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replacement statement.

(5) The Authority must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(6) A statement issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(7) The Authority may charge a reasonable fee for providing a person with a copy of the statement.

(8) In exercising, or deciding whether to exercise, its power under section 66 in the case of any particular misconduct, the Authority must have regard to any statement of policy published under this section and in force at the time when the misconduct in question occurred.

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Modifications etc. (not altering text)

C180 Ss. 66-70 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 1** (with reg. 3)

C181 Ss. 66-70 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. para. 1**

C182 S. 69 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 22(1)**

70 Statements of policy: procedure.

(1) Before issuing a statement under section 69, the Authority must publish a draft of the proposed statement in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the Authority within a specified time.

(3) Before issuing the proposed statement, the Authority must have regard to any representations made to it in accordance with subsection (2).

(4) If the Authority issues the proposed statement it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2); and

(b) its response to them.

(5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant, the Authority must (in addition to complying with subsection (4)) publish details of the difference.

(6) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

Modifications etc. (not altering text)

C183 Ss. 66-70 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 1** (with reg. 3)

C184 Ss. 66-70 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. para. 1**

C185 S. 70 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 22(1)**

C186 Ss. 66-70 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(b), 62, **Sch. 3 para. 1** (with art. 3)

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Breach of statutory duty

71 Actions for damages.

(1) A contravention of section 56(6) or 59(1) or (2) is actionable at the suit of a private 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) In prescribed cases, a contravention of that kind which would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) "Private person" has such meaning as may be prescribed.

Commencement Information

I24 S. 71 wholly in force at 1.12.2001; s. 71 not in force at Royal Assent see s. 431(2); s. 71(2)(3) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 71 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

PART VI

OFFICIAL LISTING[F10F11]

Textual Amendments

F10 Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 5**

F11 Ss. 102A-103 substituted for s. 103 (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 11**

Modifications etc. (not altering text)

C187 Pt. 6 (ss. 72-103) applied (with modifications) (1.12.2001) by S.I. 1995/1537, **Sch. 4** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1**, 511)

The competent authority

72 The competent authority.

(1) On the coming into force of this section, the functions conferred on the competent authority by this Part are to be exercised by the Authority.

(2) Schedule 7 modifies this Act in its application to the Authority when it acts as the competent authority.

(3) But provision is made by Schedule 8 allowing some or all of those functions to be transferred by the Treasury so as to be exercisable by another person.

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73 General duty of the competent authority.

(1) In discharging its general functions the competent authority must have regard to—

(a) the need to use its resources in the most efficient and economic way;

(b) the principle that a burden or restriction which is imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to arise from the imposition of that burden or restriction;

[F12(c) the desirability of facilitating innovation in respect of listed securities and in respect of financial instruments which have otherwise been admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made;**]**

(d) the international character of capital markets and the desirability of maintaining the competitive position of the United Kingdom;

(e) the need to minimise the adverse effects on competition of anything done in the discharge of those functions;

[F13(f) the desirability of facilitating competition in relation to listed securities and in relation to financial instruments which have otherwise been admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made.**]**

(2) The competent authority's general functions are—

(a) its function of making rules under this Part (considered as a whole);

(b) its functions in relation to the giving of general guidance in relation to this Part (considered as a whole);

(c) its function of determining the general policy and principles by reference to which it performs particular functions under this Part.

Textual Amendments

F12 S. 73(1)(c) substituted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 4, **Sch. 1 para. 1(2)**

F13 S. 73(1)(f) substituted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 4, **Sch. 1 para. 1(3)**

73A Part 6 Rules

(1) The competent authority may make rules ("Part 6 rules") for the purposes of this Part.

(2) Provisions of Part 6 rules expressed to relate to the official list are referred to in this Part as "listing rules".

(3) Provisions of Part 6 rules expressed to relate to disclosure of information in respect of financial instruments which have been admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made, are referred to in this Part as "disclosure rules".

[F14(4) Provisions of Part 6 rules expressed to relate to transferable securities are referred to in this Part as "prospectus rules".

(5) In relation to prospectus rules, the purposes of this Part include the purposes of the prospectus directive.**]**

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Textual Amendments

F14 S. 73A(4)(5) added (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 1**

The official list

74 The official list.

(1) The competent authority must maintain the official list.

(2) The competent authority may admit to the official list such securities and other things as it considers appropriate.

(3) But—

(a) nothing may be admitted to the official list except in accordance with this Part; and

(b) the Treasury may by order provide that anything which falls within a description or category specified in the order may not be admitted to the official list.

(4) F15 . . . . . .

(5) In the following provisions of this Part—

F16 . . . . . .

"listing" means being included in the official list in accordance with this Part.

Textual Amendments

F15 S. 74(4) repealed (17.3.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(3)(b), 4, **Sch. 1 para. 3**

F16 S. 74(5): definition of "security" omitted (1.7.2005) by virtue of The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 2**

Modifications etc. (not altering text)

C188 S. 74(5) applied (1.12.2001) by S.I. 2001/2957, **arts. 1**, 8(4); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I25 S. 74 wholly in force at 1.12.2001; s. 74 not in force at Royal Assent see s. 431(2); s. 74(4)(5) in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 74 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Listing

75 Applications for listing.

(1) Admission to the official list may be granted only on an application made to the competent authority in such manner as may be required by listing rules.

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(2) No application for listing may be entertained by the competent authority unless it is made by, or with the consent of, the issuer of the securities concerned.

(3) No application for listing may be entertained by the competent authority in respect of securities which are to be issued by a body of a prescribed kind.

(4) The competent authority may not grant an application for listing unless it is satisfied that—

(a) the requirements of listing rules (so far as they apply to the application), and

(b) any other requirements imposed by the authority in relation to the application,

are complied with.

(5) An application for listing may be refused if, for a reason relating to the issuer, the competent authority considers that granting it would be detrimental to the interests of investors.

(6) An application for listing securities which are already officially listed in another EEA State may be refused if the issuer has failed to comply with any obligations to which he is subject as a result of that listing.

Modifications etc. (not altering text)

C189 S. 75(1) extended (1.12.2001) by S.I. 2001/2957, **arts. 1**, 4(2); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I26 S. 75 wholly in force at 1.12.2001; s. 75 not in force at Royal Assent see s. 431(2); s. 75(3) in force for specified purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 75(1) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 75 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

76 Decision on application.

(1) The competent authority must notify the applicant of its decision on an application for listing—

(a) before the end of the period of six months beginning with the date on which the application is received; or

(b) if within that period the authority has required the applicant to provide further information in connection with the application, before the end of the period of six months beginning with the date on which that information is provided.

(2) If the competent authority fails to comply with subsection (1), it is to be taken to have decided to refuse the application.

(3) If the competent authority decides to grant an application for listing, it must give the applicant written notice.

(4) If the competent authority proposes to refuse an application for listing, it must give the applicant a warning notice.

(5) If the competent authority decides to refuse an application for listing, it must give the applicant a decision notice.

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(6) If the competent authority decides to refuse an application for listing, the applicant may refer the matter to the Tribunal.

(7) If securities are admitted to the official list, their admission may not be called in question on the ground that any requirement or condition for their admission has not been complied with.

Modifications etc. (not altering text)
C190 S. 76(1) modified (1.12.2001) by S.I. 2001/2957, **arts. 1**, 4(3); S.I. 2001/3538, **art. 2(1)**

77 Discontinuance and suspension of listing.

(1) The competent authority may, in accordance with listing rules, discontinue the listing of any securities if satisfied that there are special circumstances which preclude normal regular dealings in them.

(2) The competent authority may, in accordance with listing rules, suspend the listing of any securities.

(3) If securities are suspended under subsection (2) they are to be treated, for the purposes of sections 96 and 99, as still being listed.

(4) This section applies to securities whenever they were admitted to the official list.

(5) If the competent authority discontinues or suspends the listing of any securities, the issuer may refer the matter to the Tribunal.

Modifications etc. (not altering text)
C191 S. 77(2) extended (1.12.2001) by S.I. 2001/2957, **arts. 1**, 8(3); S.I. 2001/3538, **art. 2(1)**

Commencement Information
I27 S. 77 wholly in force at 1.12.2001; s. 77 not in force at Royal Assent see s. 431(2); s. 77(1)(2)(4) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 77 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

78 Discontinuance or suspension: procedure.

(1) A discontinuance or suspension takes effect—
(a) immediately, if the notice under subsection (2) states that that is the case;
(b) in any other case, on such date as may be specified in that notice.

(2) If the competent authority—
(a) proposes to discontinue or suspend the listing of securities, or
(b) discontinues or suspends the listing of securities with immediate effect,
it must give the issuer of the securities written notice.

(3) The notice must—
(a) give details of the discontinuance or suspension;

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(b) state the competent authority's reasons for the discontinuance or suspension and for choosing the date on which it took effect or takes effect;

(c) inform the issuer of the securities that he may make representations to the competent authority within such period as may be specified in the notice (whether or not he has referred the matter to the Tribunal);

(d) inform him of the date on which the discontinuance or suspension took effect or will take effect; and

(e) inform him of his right to refer the matter to the Tribunal.

(4) The competent authority may extend the period within which representations may be made to it.

(5) If, having considered any representations made by the issuer of the securities, the competent authority decides—

(a) to discontinue or suspend the listing of the securities, or

(b) if the discontinuance or suspension has taken effect, not to cancel it,

the competent authority must give the issuer of the securities written notice.

(6) A notice given under subsection (5) must inform the issuer of the securities of his right to refer the matter to the Tribunal.

(7) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(8) If the competent authority decides—

(a) not to discontinue or suspend the listing of the securities, or

(b) if the discontinuance or suspension has taken effect, to cancel it,

the competent authority must give the issuer of the securities written notice.

(9) The effect of cancelling a discontinuance is that the securities concerned are to be readmitted, without more, to the official list.

(10) If the competent authority has suspended the listing of securities and proposes to refuse an application by the issuer of the securities for the cancellation of the suspension, it must give him a warning notice.

(11) The competent authority must, having considered any representations made in response to the warning notice—

(a) if it decides to refuse the application, give the issuer of the securities a decision notice;

(b) if it grants the application, give him written notice of its decision.

(12) If the competent authority decides to refuse an application for the cancellation of the suspension of listed securities, the applicant may refer the matter to the Tribunal.

(13) "Discontinuance" means a discontinuance of listing under section 77(1).

(14) "Suspension" means a suspension of listing under section 77(2).

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VALID FROM 12/07/2007

[F17[F17 78A Discontinuance or suspension at the request of the issuer: procedure

(1) A discontinuance or suspension by the competent authority on the application of the issuer of the securities takes effect—

(a) immediately, if the notice under subsection (2) states that this is the case;

(b) in any other case, on such date as may be specified in that notice.

(2) If the competent authority discontinues or suspends the listing of securities on the application of the issuer of the securities it must give him written notice.

(3) The notice must—

(a) give details of the discontinuance or suspension;

(b) inform the issuer of the securities of the date on which the discontinuance or suspension took effect or will take effect; and

(c) inform the issuer of his right to apply for the cancellation of the suspension.

(4) If the competent authority proposes to refuse an application by the issuer of the securities for the discontinuance or suspension of the listing of the securities, it must give him a warning notice.

(5) The competent authority must, having considered any representations made in response to the warning notice, if it decides to refuse the application, give the issuer of the securities a decision notice.

(6) If the competent authority decides to refuse an application by the issuer of the securities for the discontinuance or suspension of the listing of the securities, the issuer may refer the matter to the Tribunal.

(7) If the competent authority has suspended the listing of securities on the application of the issuer of the securities and proposes to refuse an application by the issuer for the cancellation of the suspension, it must give him a warning notice.

(8) The competent authority must, having considered any representations made in response to the warning notice—

(a) if it decides to refuse the application for the cancellation of the suspension, give the issuer of the securities a decision notice;

(b) if it grants the application, give him written notice of its decision.

(9) If the competent authority decides to refuse an application for the cancellation of the suspension of listed securities, the applicant may refer the matter to the Tribunal.

(10) "Discontinuance" means a discontinuance of listing under section 77(1).

(11) "Suspension" means a suspension of listing under section 77(2).**]]**

Textual Amendments

F17 S. 78A inserted (12.7.2007) by The Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (S.I. 2007/1973), **art. 7**

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Listing particulars

79 Listing particulars and other documents.

(1) Listing rules may provide that securities [F18]. . . of a kind specified in the rules may not be admitted to the official list unless—

(a) listing particulars have been submitted to, and approved by, the competent authority and published; or

(b) in such cases as may be specified by listing rules, such document (other than listing particulars or a prospectus of a kind required by listing rules) as may be so specified has been published.

(2) "Listing particulars" means a document in such form and containing such information as may be specified in listing rules.

(3) For the purposes of this Part, the persons responsible for listing particulars are to be determined in accordance with regulations made by the Treasury.

[[F19](3A) Listing rules made under subsection (1) may not specify securities of a kind for which an approved prospectus is required as a result of section 85.**]**

(4) Nothing in this section affects the competent authority's general power to make listing rules.

Textual Amendments

F18 Words in s. 79(1) repealed (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 3(2)**

F19 S. 79(3A) inserted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 3(3)**

Modifications etc. (not altering text)

C192 S. 79 extended (1.12.2001) by S.I. 2001/2957, **arts. 1**, 6(1)(3); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I28 S. 79 wholly in force at 18.6.2001; s. 79 not in force at Royal Assent see s. 431(2); s. 79(3) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 79 in force so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**

80 General duty of disclosure in listing particulars.

(1) Listing particulars submitted to the competent authority under section 79 must 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 the securities.

(2) That information is required in addition to any information required by—

(a) listing rules, or

(b) the competent authority,

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as a condition of the admission of the securities to the official list.

(3) Subsection (1) applies only to information—

(a) within the knowledge of any person responsible for the listing particulars; or

(b) which it would be reasonable for him to obtain by making enquiries.

(4) In determining what information subsection (1) requires to be included in listing particulars, regard must be had (in particular) to—

(a) the nature of the securities and their issuer;

(b) the nature of the persons likely to consider acquiring them;

(c) the fact that certain matters may reasonably be expected to be within the knowledge of professional advisers of a kind which persons likely to acquire the securities may reasonably be expected to consult; and

(d) any information available to investors or their professional advisers as a result of requirements imposed on the issuer of the securities by a recognised investment exchange, by listing rules or by or under any other enactment.

81 Supplementary listing particulars.

(1) If at any time after the preparation of listing particulars which have been submitted to the competent authority under section 79 and before the commencement of dealings in the securities concerned following their admission to the official list—

(a) there is a significant change affecting any matter contained in those particulars the inclusion of which was required by—

(i) section 80,

(ii) listing rules, or

(iii) the competent authority, or

(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 must, in accordance with listing rules, submit supplementary listing particulars of the change or new matter to the competent authority, for its approval and, if they are approved, publish them.

(2) "Significant" means significant for the purpose of making an informed assessment of the kind mentioned in section 80(1).

(3) If the issuer of the securities is not aware of the change or new matter in question, he is not under a duty to comply with subsection (1) unless he is notified of the change or new matter by a person responsible for the listing particulars.

(4) But it is the duty of any person responsible for those particulars who is aware of such a change or new matter to give notice of it to the issuer.

(5) Subsection (1) applies also as respects matters contained in any supplementary listing particulars previously published under this section in respect of the securities in question.

Modifications etc. (not altering text)

C193 S. 81 modified (1.12.2001) by S.I. 2001/2957, **arts. 1**, 6(1)(3)(4); S.I. 2001/3538, **art. 2(1)**

C194 S. 81(1) extended (1.12.2001) by S.I. 2001/2957, **arts. 1**, 6(1)(3)(4); S.I. 2001/3538, **art. 2(1)**

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Commencement Information

I29 S. 81 wholly in force at 1.12.2001; s. 81 not in force at Royal Assent see s. 431(2); s. 81(1)(5) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 81 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

82 Exemptions from disclosure.

(1) The competent authority may authorise the omission from listing particulars of any information, the inclusion of which would otherwise be required by section 80 or 81, on the ground—

(a) that its disclosure would be contrary to the public interest;

(b) that its disclosure would be seriously detrimental to the issuer; or

(c) in the case of securities of a kind specified in listing rules, that its disclosure is unnecessary for persons of the kind who may be expected normally to buy or deal in securities of that kind.

(2) But—

(a) no authority may be granted under subsection (1)(b) in respect of essential information; and

(b) no authority granted under subsection (1)(b) extends to any such information.

(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 listing particulars for which they are themselves responsible) would be contrary to the public interest.

(4) The competent authority is entitled to act on any such certificate in exercising its powers under subsection (1)(a).

(5) This section does not affect any powers of the competent authority under listing rules made as a result of section 101(2).

(6) "Essential information" means information which a person considering acquiring securities of the kind in question would be likely to need in order not to be misled about any facts which it is essential for him to know in order to make an informed assessment.

(7) "Listing particulars" includes supplementary listing particulars.

Commencement Information

I30 S. 82 wholly in force at 1.12.2001; s. 82 not in force at Royal Assent see s. 431(2); s. 82(1)(5)(7) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 82 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

83 Registration of listing particulars.

F20 . . . . . .

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Textual Amendments

F20 S. 83 repealed (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 4**

[F21 Transferable securities: public offers and admission to trading]

Textual Amendments

F21 Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 5**

[F22 84 Matters which may be dealt with by prospectus rules

(1) Prospectus rules may make provision as to—

(a) the required form and content of a prospectus (including a summary);

(b) the cases in which a summary need not be included in a prospectus;

(c) the languages which may be used in a prospectus (including a summary);

(d) the determination of the persons responsible for a prospectus;

(e) the manner in which applications to the competent authority for the approval of a prospectus are to be made.

(2) Prospectus rules may also make provision as to—

(a) the period of validity of a prospectus;

(b) the disclosure of the maximum price or of the criteria or conditions according to which the final offer price is to be determined, if that information is not contained in a prospectus;

(c) the disclosure of the amount of the transferable securities which are to be offered to the public or of the criteria or conditions according to which that amount is to be determined, if that information is not contained in a prospectus;

(d) the required form and content of other summary documents (including the languages which may be used in such a document);

(e) the ways in which a prospectus that has been approved by the competent authority may be made available to the public;

(f) the disclosure, publication or other communication of such information as the competent authority may reasonably stipulate;

(g) the principles to be observed in relation to advertisements in connection with an offer of transferable securities to the public or admission of transferable securities to trading on a regulated market and the enforcement of those principles;

(h) the suspension of trading in transferable securities where continued trading would be detrimental to the interests of investors;

(i) elections under section 87 or under Article 2.1(m)(iii) of the prospectus directive as applied for the purposes of this Part by section 102C.

(3) Prospectus rules may also make provision as to—

(a) access to the register of investors maintained under section 87R; and

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(b) the supply of information from that register.

(4) Prospectus rules may make provision for the purpose of dealing with matters arising out of or related to any provision of the prospectus directive.

(5) In relation to cases where the home State in relation to an issuer of transferable securities is an EEA State other than the United Kingdom, prospectus rules may make provision for the recognition of elections made in relation to such securities under the law of that State in accordance with Article 1.3 or 2.1(m)(iii) of the prospectus directive.

(6) In relation to a document relating to transferable securities issued by an issuer incorporated in a non-EEA State and drawn up in accordance with the law of that State, prospectus rules may make provision as to the approval of that document as a prospectus.

(7) Nothing in this section affects the competent authority's general power to make prospectus rules.**]**

Textual Amendments

F22 Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 5**

[F23 85 Prohibition of dealing etc. in transferable securities without approved prospectus

(1) It is unlawful for transferable securities to which this subsection applies to be offered to the public in the United Kingdom unless an approved prospectus has been made available to the public before the offer is made.

(2) It is unlawful to request the admission of transferable securities to which this subsection applies to trading on a regulated market situated or operating in the United Kingdom unless an approved prospectus has been made available to the public before the request is made.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable—

(a) on summary conviction, to imprisonment for a term not exceeding 3 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.

(4) A contravention of subsection (1) or (2) is 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.

(5) Subsection (1) applies to all transferable securities other than—

(a) those listed in Schedule 11A;

(b) such other transferable securities as may be specified in prospectus rules.

(6) Subsection (2) applies to all transferable securities other than—

(a) those listed in Part 1 of Schedule 11A;

(b) such other transferable securities as may be specified in prospectus rules.

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(7) "Approved prospectus" means, in relation to transferable securities to which this section applies, a prospectus approved by the competent authority of the home State in relation to the issuer of the securities.**]**

Textual Amendments

F23 Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 5**

[F24 86 Exempt offers to the public

(1) A person does not contravene section 85(1) if—

(a) the offer is made to or directed at qualified investors only;

(b) the offer is made to or directed at fewer than 100 persons, other than qualified investors, per EEA State;

(c) the minimum consideration which may be paid by any person for transferable securities acquired by him pursuant to the offer is at least 50,000 euros (or an equivalent amount);

(d) the transferable securities being offered are denominated in amounts of at least 50,000 euros (or equivalent amounts); or

(e) the total consideration for the transferable securities being offered cannot exceed 100,000 euros (or an equivalent amount).

(2) Where—

(a) a person who is not a qualified investor ("the client") has engaged a qualified investor falling within Article 2.1(e)(i) of the prospectus directive to act as his agent, and

(b) the terms on which the qualified investor is engaged enable him to make decisions concerning the acceptance of offers of transferable securities on the client's behalf without reference to the client,

an offer made to or directed at the qualified investor is not to be regarded for the purposes of subsection (1) as also having been made to or directed at the client.

(3) For the purposes of subsection (1)(b), the making of an offer of transferable securities to—

(a) trustees of a trust,

(b) members of a partnership in their capacity as such, or

(c) two or more persons jointly,

is to be treated as the making of an offer to a single person.

(4) In determining whether subsection (1)(e) is satisfied in relation to an offer ("offer A"), offer A is to be taken together with any other offer of transferable securities of the same class made by the same person which—

(a) was open at any time within the period of 12 months ending with the date on which offer A is first made; and

(b) had previously satisfied subsection (1)(e).

(5) For the purposes of this section, an amount (in relation to an amount denominated in euros) is an "equivalent amount" if it is an amount of equal value denominated wholly or partly in another currency or unit of account.

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(6) The equivalent is to be calculated at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made.

(7) "Qualified investor" means—

(a) an entity falling within Article 2.1(e)(i), (ii) or (iii) of the prospectus directive;

(b) an investor registered on the register maintained by the competent authority under section 87R;

(c) an investor authorised by an EEA State other than the United Kingdom to be considered as a qualified investor for the purposes of the prospectus directive.**]**

Textual Amendments

F24 Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 5**

[F25 87 Election to have prospectus

(1) A person who proposes—

(a) to issue transferable securities to which this section applies,

(b) to offer to the public transferable securities to which this section applies, or

(c) to request the admission to a regulated market of transferable securities to which this section applies,

may elect, in accordance with prospectus rules, to have a prospectus in relation to the securities.

(2) If a person makes such an election, the provisions of this Part and of prospectus rules apply in relation to those transferable securities as if, in relation to an offer of the securities to the public or the admission of the securities to trading on a regulated market, they were transferable securities for which an approved prospectus would be required as a result of section 85.

(3) Listing rules made under section 79 do not apply to securities which are the subject of an election.

(4) The transferable securities to which this section applies are those which fall within any of the following paragraphs of Schedule 11A—

(a) paragraph 2,

(b) paragraph 4,

(c) paragraph 8, or

(d) paragraph 9,

where the United Kingdom is the home State in relation to the issuer of the securities.**]**

Textual Amendments

F25 Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 5**

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Modifications etc. (not altering text)
C195 S. 87 extended (1.12.2001) by S.I. 2001/2957, **arts. 1**, 6(4); S.I. 2001/3538, **art. 2(1)**

[F10 Approval of prospectus

87A Criteria for approval of prospectus by competent authority

(1) The competent authority may not approve a prospectus unless it is satisfied that—
(a) the United Kingdom is the home State in relation to the issuer of the transferable securities to which it relates,
(b) the prospectus contains the necessary information, and
(c) all of the other requirements imposed by or in accordance with this Part or the prospectus directive have been complied with (so far as those requirements apply to a prospectus for the transferable securities in question).

(2) The necessary information is the information necessary to enable investors to make an informed assessment of—
(a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the transferable securities and of any guarantor; and
(b) the rights attaching to the transferable securities.

(3) The necessary information must be presented in a form which is comprehensible and easy to analyse.

(4) The necessary information must be prepared having regard to the particular nature of the transferable securities and their issuer.

(5) The prospectus must include a summary (unless the transferable securities in question are ones in relation to which prospectus rules provide that a summary is not required).

(6) The summary must, briefly and in non-technical language, convey the essential characteristics of, and risks associated with, the issuer, any guarantor and the transferable securities to which the prospectus relates.

(7) Where the prospectus for which approval is sought does not include the final offer price or the amount of transferable securities to be offered to the public, the applicant must inform the competent authority in writing of that information as soon as that element is finalised.

(8) "Prospectus" (except in subsection (5)) includes a supplementary prospectus.

87B Exemptions from disclosure

(1) The competent authority may authorise the omission from a prospectus of any information, the inclusion of which would otherwise be required, on the ground—
(a) that its disclosure would be contrary to the public interest;
(b) that its disclosure would be seriously detrimental to the issuer, provided that the omission would be unlikely to mislead the public with regard to any facts

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or circumstances which are essential for an informed assessment of the kind mentioned in section 87A(2); or

(c) that the information is only of minor importance for a specific offer to the public or admission to trading on a regulated market and unlikely to influence an informed assessment of the kind mentioned in section 87A(2).

(2) The Secretary of State or the Treasury may issue a certificate to the effect that the disclosure of any information would be contrary to the public interest.

(3) The competent authority is entitled to act on any such certificate in exercising its powers under subsection (1)(a).

(4) This section does not affect any powers of the competent authority under prospectus rules.

(5) "Prospectus" includes a supplementary prospectus.

87C Consideration of application for approval

(1) The competent authority must notify the applicant of its decision on an application for approval of a prospectus before the end of the period for consideration.

(2) The period for consideration—

(a) begins with the first working day after the date on which the application is received; but

(b) if the competent authority gives a notice under subsection (4), is to be treated as beginning with the first working day after the date on which the notice is complied with.

(3) The period for consideration is—

(a) except in the case of a new issuer, 10 working days; or

(b) in that case, 20 working days.

(4) The competent authority may by notice in writing require a person who has applied for approval of a prospectus to provide—

(a) specified documents or documents of a specified description, or

(b) specified information or information of a specified description.

(5) No notice under subsection (4) may be given after the end of the period, beginning with the first working day after the date on which the application is received, of—

(a) except in the case of a new issuer, 10 working days; or

(b) in that case, 20 working days.

(6) Subsection (4) applies only to information and documents reasonably required in connection with the exercise by the competent authority of its functions in relation to the application.

(7) The competent authority may require any information provided under this section to be provided in such form as it may reasonably require.

(8) The competent authority may require—

(a) any information provided, whether in a document or otherwise, to be verified in such manner, or

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(b) any document produced to be authenticated in such manner,

as it may reasonably require.

(9) The competent authority must notify the applicant of its decision on an application for approval of a supplementary prospectus before the end of the period of 7 working days beginning with the date on which the application is received; and subsections (4) and (6) to (8) apply to such an application as they apply to an application for approval of a prospectus.

(10) The competent authority's failure to comply with subsection (1) or (9) does not constitute approval of the application in question.

(11) "New issuer" means an issuer of transferable securities which—

(a) does not have transferable securities admitted to trading on any regulated market; and

(b) has not previously offered transferable securities to the public.

87D Procedure for decision on application for approval

(1) If the competent authority approves a prospectus, it must give the applicant written notice.

(2) If the competent authority proposes to refuse to approve a prospectus, it must give the applicant written notice.

(3) The notice must state the competent authority's reasons for the proposed refusal.

(4) If the competent authority decides to refuse to approve a prospectus, it must give the applicant written notice.

(5) The notice must—

(a) give the competent authority's reasons for refusing the application; and

(b) inform the applicant of his right to refer the matter to the Tribunal.

(6) If the competent authority refuses to approve a prospectus, the applicant may refer the matter to the Tribunal.

(7) In this section "prospectus" includes a supplementary prospectus.

Transfer of application for approval of a prospectus

87E Transfer by competent authority of application for approval

(1) The competent authority may transfer an application for the approval of a prospectus or a supplementary prospectus to the competent authority of another EEA State ("the transferee authority").

(2) Before doing so, the competent authority must obtain the agreement of the transferee authority.

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(3) The competent authority must inform the applicant of the transfer within 3 working days beginning with the first working day after the date of the transfer.

(4) On making a transfer under subsection (1), the competent authority ceases to have functions under this Part in relation to the application transferred.

87F Transfer to competent authority of application for approval

(1) Where the competent authority agrees to the transfer to it of an application for the approval of a prospectus made to the competent authority of another EEA State—

(a) the United Kingdom is to be treated for the purposes of this Part as the home State in relation to the issuer of the transferable securities to which the prospectus relates, and

(b) this Part applies to the application as if it had been made to the competent authority but with the modification in subsection (2).

(2) Section 87C applies as if the date of the transfer were the date on which the application was received by the competent authority.

Supplementary prospectus

87G Supplementary prospectus

(1) Subsection (2) applies if, during the relevant period, there arises or is noted a significant new factor, material mistake or inaccuracy relating to the information included in a prospectus approved by the competent authority.

(2) The person on whose application the prospectus was approved must, in accordance with prospectus rules, submit a supplementary prospectus containing details of the new factor, mistake or inaccuracy to the competent authority for its approval.

(3) The relevant period begins when the prospectus is approved and ends—

(a) with the closure of the offer of the transferable securities to which the prospectus relates; or

(b) when trading in those securities on a regulated market begins.

(4) "Significant" means significant for the purposes of making an informed assessment of the kind mentioned in section 87A(2).

(5) Any person responsible for the prospectus who is aware of any new factor, mistake or inaccuracy which may require the submission of a supplementary prospectus in accordance with subsection (2) must give notice of it to—

(a) the issuer of the transferable securities to which the prospectus relates, and

(b) the person on whose application the prospectus was approved.

(6) A supplementary prospectus must provide sufficient information to correct any mistake or inaccuracy which gave rise to the need for it.

(7) Subsection (1) applies also to information contained in any supplementary prospectus published under this section.

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Passporting

87H Prospectus approved in another EEA State

(1) A prospectus approved by the competent authority of an EEA State other than the United Kingdom is not an approved prospectus for the purposes of section 85 unless that authority has provided the competent authority with—

(a) a certificate of approval;

(b) a copy of the prospectus as approved; and

(c) if requested by the competent authority, a translation of the summary of the prospectus.

(2) A document is not a certificate of approval unless it states that the prospectus—

(a) has been drawn up in accordance with the prospectus directive; and

(b) has been approved, in accordance with that directive, by the competent authority providing the certificate.

(3) A document is not a certificate of approval unless it states whether (and, if so, why) the competent authority providing it authorised, in accordance with the prospectus directive, the omission from the prospectus of information which would otherwise have been required to be included.

(4) "Prospectus" includes a supplementary prospectus.

87I Provision of information to host Member State

(1) The competent authority must, if requested to do so, supply the competent authority of a specified EEA State with—

(a) a certificate of approval;

(b) a copy of the specified prospectus (as approved by the competent authority); and

(c) a translation of the summary of the specified prospectus (if the request states that one has been requested by the other competent authority).

(2) Only the following may make a request under this section—

(a) the issuer of the transferable securities to which the specified prospectus relates;

(b) a person who wishes to offer the transferable securities to which the specified prospectus relates to the public in an EEA State other than (or as well as) the United Kingdom;

(c) a person requesting the admission of the transferable securities to which the specified prospectus relates to a regulated market situated or operating in an EEA State other than (or as well as) the United Kingdom.

(3) A certificate of approval must state that the prospectus—

(a) has been drawn up in accordance with this Part and the prospectus directive; and

(b) has been approved, in accordance with those provisions, by the competent authority.

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(4) A certificate of approval must state whether (and, if so, why) the competent authority authorised, in accordance with section 87B, the omission from the prospectus of information which would otherwise have been required to be included.

(5) The competent authority must comply with a request under this section—

(a) if the prospectus has been approved before the request is made, within 3 working days beginning with the date of the request; or

(b) if the request is submitted with an application for the approval of the prospectus, on the first working day after the date on which it approves the prospectus.

(6) "Prospectus" includes a supplementary prospectus.

(7) "Specified" means specified in a request made for the purposes of this section.

Transferable securities: powers of competent authority

87J Requirements imposed as condition of approval

(1) As a condition of approving a prospectus, the competent authority may by notice in writing—

(a) require the inclusion in the prospectus of such supplementary information necessary for investor protection as the competent authority may specify;

(b) require a person controlling, or controlled by, the applicant to provide specified information or documents;

(c) require an auditor or manager of the applicant to provide specified information or documents;

(d) require a financial intermediary commissioned to assist either in carrying out the offer to the public of the transferable securities to which the prospectus relates or in requesting their admission to trading on a regulated market, to provide specified information or documents.

(2) "Specified" means specified in the notice.

(3) "Prospectus" includes a supplementary prospectus.

87K Power to suspend or prohibit offer to the public

(1) This section applies where a person ("the offeror") has made an offer of transferable securities to the public in the United Kingdom ("the offer").

(2) If the competent authority has reasonable grounds for suspecting that an applicable provision has been infringed, it may—

(a) require the offeror to suspend the offer for a period not exceeding 10 working days;

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(b) require a person not to advertise the offer, or to take such steps as the authority may specify to suspend any existing advertisement of the offer, for a period not exceeding 10 working days.

(3) If the competent authority has reasonable grounds for suspecting that it is likely that an applicable provision will be infringed, it may require the offeror to withdraw the offer.

(4) If the competent authority finds that an applicable provision has been infringed, it may require the offeror to withdraw the offer.

(5) "An applicable provision" means—

(a) a provision of this Part,

(b) a provision contained in prospectus rules,

(c) any other provision made in accordance with the prospectus directive,

applicable in relation to the offer.

87L Power to suspend or prohibit admission to trading on a regulated market

(1) This section applies where a person has requested the admission of transferable securities to trading on a regulated market situated or operating in the United Kingdom.

(2) If the competent authority has reasonable grounds for suspecting that an applicable provision has been infringed and the securities have not yet been admitted to trading on the regulated market in question, it may—

(a) require the person requesting admission to suspend the request for a period not exceeding 10 working days;

(b) require a person not to advertise the securities to which it relates, or to take such steps as the authority may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.

(3) If the competent authority has reasonable grounds for suspecting that an applicable provision has been infringed and the securities have been admitted to trading on the regulated market in question, it may—

(a) require the market operator to suspend trading in the securities for a period not exceeding 10 working days;

(b) require a person not to advertise the securities, or to take such steps as the authority may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.

(4) If the competent authority finds that an applicable provision has been infringed, it may require the market operator to prohibit trading in the securities on the regulated market in question.

(5) "An applicable provision" means—

(a) a provision of this Part,

(b) a provision contained in prospectus rules,

(c) any other provision made in accordance with the prospectus directive,

applicable in relation to the admission of the transferable securities to trading on the regulated market in question.

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87M Public censure of issuer

(1) If the competent authority finds that—

(a) an issuer of transferable securities,

(b) a person offering transferable securities to the public, or

(c) a person requesting the admission of transferable securities to trading on a regulated market,

is failing or has failed to comply with his obligations under an applicable provision, it may publish a statement to that effect.

(2) If the competent authority proposes to publish a statement, it must give the person a warning notice setting out the terms of the proposed statement.

(3) If, after considering any representations made in response to the warning notice, the competent authority decides to make the proposed statement, it must give the person a decision notice setting out the terms of the statement.

(4) "An applicable provision" means—

(a) a provision of this Part,

(b) a provision contained in prospectus rules,

(c) any other provision made in accordance with the prospectus directive,

applicable to a prospectus in relation to the transferable securities in question.

(5) "Prospectus" includes a supplementary prospectus.

87N Right to refer matters to the Tribunal

(1) A person to whom a decision notice is given under section 87M may refer the matter to the Tribunal.>

(2) A person to whom a notice is given under section 87O may refer the matter to the Tribunal.

87O Procedure under sections 87K and 87L

(1) A requirement under section 87K or 87L takes effect—

(a) immediately, if the notice under subsection (2) states that that is the case;

(b) in any other case, on such date as may be specified in that notice.

(2) If the competent authority—

(a) proposes to exercise the powers in section 87K or 87L in relation to a person, or

(b) exercises any of those powers in relation to a person with immediate effect,

it must give that person written notice.

(3) The notice must—

(a) give details of the competent authority's action or proposed action;

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(b) state the competent authority's reasons for taking the action in question and choosing the date on which it took effect or takes effect;

(c) inform the recipient that he may make representations to the competent authority within such period as may be specified by the notice (whether or not he has referred the matter to the Tribunal);

(d) inform him of the date on which the action took effect or takes effect; and

(e) inform him of his right to refer the matter to the Tribunal.

(4) The competent authority may extend the period within which representations may be made to it.

(5) If, having considered any representations made to it, the competent authority decides to maintain, vary or revoke its earlier decision, it must give written notice to that effect to the person mentioned in subsection (2).

(6) A notice given under subsection (5) must inform that person, where relevant, of his right to refer the matter to the Tribunal.

(7) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(8) If a notice under this section relates to the exercise of the power conferred by section 87L(3), the notice must also be given to the person at whose request the transferable securities were admitted to trading on the regulated market.

87P Exercise of powers at request of competent authority of another EEA State

(1) This section applies if—

(a) the competent authority of an EEA State other than the United Kingdom has approved a prospectus,

(b) the transferable securities to which the prospectus relates have been offered to the public in the United Kingdom or their admission to trading on a regulated market has been requested, and

(c) that competent authority makes a request that the competent authority assist it in the performance of its functions under the law of that State in connection with the prospectus directive.

(2) For the purpose of complying with the request mentioned in subsection (1)(c), the powers conferred by sections 87K and 87L may be exercised as if the prospectus were one which had been approved by the competent authority.

(3) Section 87N does not apply to an exercise of those powers as a result of this section.

(4) Section 87O does apply to such an exercise of those powers but with the omission of subsections (3)(e), (6) and (7).

Rights of investors

87Q Right of investor to withdraw

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(1) Where a person agrees to buy or subscribe for transferable securities in circumstances where the final offer price or the amount of transferable securities to be offered to the public is not included in the prospectus, he may withdraw his acceptance before the end of the withdrawal period.

(2) The withdrawal period—

(a) begins with the investor's acceptance; and

(b) ends at the end of the second working day after the date on which the competent authority is informed of the information in accordance with section 87A(7).

(3) Subsection (1) does not apply if the prospectus contains—

(a) in the case of the amount of transferable securities to be offered to the public, the criteria or conditions (or both) according to which that element will be determined, or

(b) in the case of price, the criteria or conditions (or both) according to which that element will be determined or the maximum price.

(4) Where a supplementary prospectus has been published and, prior to the publication, a person agreed to buy or subscribe for transferable securities to which it relates, he may withdraw his acceptance before the end of the period of 2 working days beginning with the first working day after the date on which the supplementary prospectus was published.

Registered investors

87R Register of investors

(1) The competent authority must establish and maintain, in accordance with this section and prospectus rules, a register of investors for the purposes of section 86.

(2) An individual may not be entered in the register unless—

(a) he is resident in the United Kingdom; and

(b) he meets at least two of the criteria mentioned in Article 2.2 of the prospectus directive.

(3) A company may not be entered in the register unless—

(a) it falls within the meaning of "small and medium-sized enterprises" in Article 2.1 of the prospectus directive; and

(b) its registered office is in the United Kingdom.

(4) A person who does not fall within subsection (2) or (3) may not be entered in the register.**]**

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Sponsors

88 Sponsors.

(1) Listing rules may require a person to make arrangements with a sponsor for the performance by the sponsor of such services in relation to him as may be specified in the rules.

(2) "Sponsor" means a person approved by the competent authority for the purposes of the rules.

(3) Listing rules made by virtue of subsection (1) may—

(a) provide for the competent authority to maintain a list of sponsors;

(b) specify services which must be performed by a sponsor;

(c) impose requirements on a sponsor in relation to the provision of services or specified services;

(d) specify the circumstances in which a person is qualified for being approved as a sponsor.

(4) If the competent authority proposes—

(a) to refuse a person's application for approval as a sponsor, or

(b) to cancel a person's approval as a sponsor,

it must give him a warning notice.

(5) If, after considering any representations made in response to the warning notice, the competent authority decides—

(a) to grant the application for approval, or

(b) not to cancel the approval,

it must give the person concerned, and any person to whom a copy of the warning notice was given, written notice of its decision.

(6) If, after considering any representations made in response to the warning notice, the competent authority decides—

(a) to refuse to grant the application for approval, or

(b) to cancel the approval,

it must give the person concerned a decision notice.

(7) A person to whom a decision notice is given under this section may refer the matter to the Tribunal.

Commencement Information

I31 S. 88 wholly in force at 1.12.2001; s. 88 not in force at Royal Assent see s. 431(2); s. 88(1)-(3) in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 88 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

89 Public censure of sponsor.

(1) Listing rules may make provision for the competent authority, if it considers that a sponsor has contravened a requirement imposed on him by rules made as a result of section 88(3)(c), to publish a statement to that effect.

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(2) If the competent authority proposes to publish a statement it must give the sponsor a warning notice setting out the terms of the proposed statement.

(3) If, after considering any representations made in response to the warning notice, the competent authority decides to make the proposed statement, it must give the sponsor a decision notice setting out the terms of the statement.

(4) A sponsor to whom a decision notice is given under this section may refer the matter to the Tribunal.

Modifications etc. (not altering text)

C196 S. 89(2)-(4) applied (with modifications) (1.12.2001) by S.I. 2001/2957, **arts. 1**, 10(3), 12, 13; S.I. 2001/3538, **art. 2(1)**

Commencement Information

I32 S. 89 wholly in force at 1.12.2001; s. 89 not in force at Royal Assent see s. 431(2); s. 89(1) in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 89 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 08/11/2006

[F26 Transparency obligations

Textual Amendments

F26 Ss. 89A-89G and cross-heading inserted (8.11.2006) by Companies Act 2006 (c. 46), **ss. 1266(1)**, 1300(1)(a) (with s. 1266(2))

89A Transparency rules

(1) The competent authority may make rules for the purposes of the transparency obligations directive.

(2) The rules may include provision for dealing with any matters arising out of or related to any provision of the transparency obligations directive.

(3) The competent authority may also make rules—

(a) for the purpose of ensuring that voteholder information in respect of voting shares traded on a UK market other than a regulated market is made public or notified to the competent authority;

(b) providing for persons who hold comparable instruments (see section 89F(1)(c)) in respect of voting shares to be treated, in the circumstances specified in the rules, as holding some or all of the voting rights in respect of those shares.

(4) Rules under this section may, in particular, make provision—

(a) specifying how the proportion of—

(i) the total voting rights in respect of shares in an issuer, or

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(ii) the total voting rights in respect of a particular class of shares in an issuer,

held by a person is to be determined;

(b) specifying the circumstances in which, for the purposes of any determination of the voting rights held by a person ("P") in respect of voting shares in an issuer, any voting rights held, or treated by virtue of subsection (3)(b) as held, by another person in respect of voting shares in the issuer are to be regarded as held by P;

(c) specifying the nature of the information which must be included in any notification;

(d) about the form of any notification;

(e) requiring any notification to be given within a specified period;

(f) specifying the manner in which any information is to be made public and the period within which it must be made public;

(g) specifying circumstances in which any of the requirements imposed by rules under this section does not apply.

(5) Rules under this section are referred to in this Part as "transparency rules".

(6) Nothing in sections 89B to 89G affects the generality of the power to make rules under this section.

89B Provision of voteholder information

(1) Transparency rules may make provision for voteholder information in respect of voting shares to be notified, in circumstances specified in the rules—

(a) to the issuer, or

(b) to the public,

or to both.

(2) Transparency rules may make provision for voteholder information notified to the issuer to be notified at the same time to the competent authority.

(3) In this Part "voteholder information" in respect of voting shares means information relating to the proportion of voting rights held by a person in respect of the shares.

(4) Transparency rules may require notification of voteholder information relating to a person—

(a) initially, not later than such date as may be specified in the rules for the purposes of the first indent of Article 30.2 of the transparency obligations directive, and

(b) subsequently, in accordance with the following provisions.

(5) Transparency rules under subsection (4)(b) may require notification of voteholder information relating to a person only where there is a notifiable change in the proportion of—

(a) the total voting rights in respect of shares in the issuer, or

(b) the total voting rights in respect of a particular class of share in the issuer,

held by the person.

(6) For this purpose there is a "notifiable change" in the proportion of voting rights held by a person when the proportion changes—

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(a) from being a proportion less than a designated proportion to a proportion equal to or greater than that designated proportion,

(b) from being a proportion equal to a designated proportion to a proportion greater or less than that designated proportion, or

(c) from being a proportion greater than a designated proportion to a proportion equal to or less than that designated proportion.

(7) In subsection (6) "designated" means designated by the rules.

89C Provision of information by issuers of transferable securities

(1) Transparency rules may make provision requiring the issuer of transferable securities, in circumstances specified in the rules—

(a) to make public information to which this section applies, or

(b) to notify to the competent authority information to which this section applies,

or to do both.

(2) In the case of every issuer, this section applies to—

(a) information required by Article 4 of the transparency obligations directive;

(b) information relating to the rights attached to the transferable securities, including information about the terms and conditions of those securities which could indirectly affect those rights; and

(c) information about new loan issues and about any guarantee or security in connection with any such issue.

(3) In the case of an issuer of debt securities, this section also applies to information required by Article 5 of the transparency obligations directive.

(4) In the case of an issuer of shares, this section also applies to—

(a) information required by Article 5 of the transparency obligations directive;

(b) information required by Article 6 of that directive;

(c) voteholder information—

(i) notified to the issuer, or

(ii) relating to the proportion of voting rights held by the issuer in respect of shares in the issuer;

(d) information relating to the issuer's capital; and

(e) information relating to the total number of voting rights in respect of shares or shares of a particular class.

89D Notification of voting rights held by issuer

(1) Transparency rules may require notification of voteholder information relating to the proportion of voting rights held by an issuer in respect of voting shares in the issuer—

(a) initially, not later than such date as may be specified in the rules for the purposes of the second indent of Article 30.2 of the transparency obligations directive, and

(b) subsequently, in accordance with the following provisions.

(2) Transparency rules under subsection (1)(b) may require notification of voteholder information relating to the proportion of voting rights held by an issuer in respect of

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voting shares in the issuer only where there is a notifiable change in the proportion of—

(a) the total voting rights in respect of shares in the issuer, or

(b) the total voting rights in respect of a particular class of share in the issuer,

held by the issuer.

(3) For this purpose there is a "notifiable change" in the proportion of voting rights held by a person when the proportion changes—

(a) from being a proportion less than a designated proportion to a proportion equal to or greater than that designated proportion,

(b) from being a proportion equal to a designated proportion to a proportion greater or less than that designated proportion, or

(c) from being a proportion greater than a designated proportion to a proportion equal to or less than that designated proportion.

(4) In subsection (3) "designated" means designated by the rules.

89E Notification of proposed amendment of issuer's constitution

Transparency rules may make provision requiring an issuer of transferable securities that are admitted to trading on a regulated market to notify a proposed amendment to its constitution—

(a) to the competent authority, and

(b) to the market on which the issuer's securities are admitted,

at times and in circumstances specified in the rules.

89F Transparency rules: interpretation etc

(1) For the purposes of sections 89A to 89G—

(a) the voting rights in respect of any voting shares are the voting rights attached to those shares,

(b) a person is to be regarded as holding the voting rights in respect of the shares—

(i) if, by virtue of those shares, he is a shareholder within the meaning of Article 2.1(e) of the transparency obligations directive;

(ii) if, and to the extent that, he is entitled to acquire, dispose of or exercise those voting rights in one or more of the cases mentioned in Article 10(a) to (h) of the transparency obligations directive;

(iii) if he holds, directly or indirectly, a financial instrument which results in an entitlement to acquire the shares and is an Article 13 instrument, and

(c) a person holds a "comparable instrument" in respect of voting shares if he holds, directly or indirectly, a financial instrument in relation to the shares which has similar economic effects to an Article 13 instrument (whether or not the financial instrument results in an entitlement to acquire the shares).

(2) Transparency rules under section 89A(3)(b) may make different provision for different descriptions of comparable instrument.

(3) For the purposes of sections 89A to 89G two or more persons may, at the same time, each be regarded as holding the same voting rights.

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(4) In those sections—

"Article 13 instrument" means a financial instrument of a type determined by the European Commission under Article 13.2 of the transparency obligations directive;

"UK market" means a market that is situated or operating in the United Kingdom;

"voting shares" means shares of an issuer to which voting rights are attached.

89G Transparency rules: other supplementary provisions

(1) Transparency rules may impose the same obligations on a person who has applied for the admission of transferable securities to trading on a regulated market without the issuer's consent as they impose on an issuer of transferable securities.

(2) Transparency rules that require a person to make information public may include provision authorising the competent authority to make the information public in the event that the person fails to do so.

(3) The competent authority may make public any information notified to the authority in accordance with transparency rules.

(4) Transparency rules may make provision by reference to any provision of any rules made by the Panel on Takeovers and Mergers under Part 28 of the Companies Act 2006.

(5) Sections 89A to 89F and this section are without prejudice to any other power conferred by this Part to make Part 6 rules.**]**

VALID FROM 08/11/2006

[F27Power of competent authority to call for information

Textual Amendments

F27 Ss. 89H-89J and cross-heading inserted (8.11.2006) by Companies Act 2006 (c. 46), **ss. 1267**, 1300(1)(a)

89H Competent authority's power to call for information

(1) The competent authority may by notice in writing given to a person to whom this section applies require him—

(a) to provide specified information or information of a specified description, or

(b) to produce specified documents or documents of a specified description.

(2) This section applies to—

(a) an issuer in respect of whom transparency rules have effect;

(b) a voteholder;

(c) an auditor of—

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(i) an issuer to whom this section applies, or

(ii) a voteholder;

(d) a person who controls a voteholder;

(e) a person controlled by a voteholder;

(f) a director or other similar officer of an issuer to whom this section applies;

(g) a director or other similar officer of a voteholder or, where the affairs of a voteholder are managed by its members, a member of the voteholder.

(3) This section applies only to information and documents reasonably required in connection with the exercise by the competent authority of functions conferred on it by or under sections 89A to 89G (transparency rules).

(4) Information or documents required under this section must be provided or produced—

(a) before the end of such reasonable period as may be specified, and

(b) at such place as may be specified.

(5) If a person claims a lien on a document, its production under this section does not affect the lien.

89I Requirements in connection with call for information

(1) The competent authority may require any information provided under section 89H to be provided in such form as it may reasonably require.

(2) The competent authority may require—

(a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require;

(b) any document produced to be authenticated in such manner as it may reasonably require.

(3) If a document is produced in response to a requirement imposed under section 89H, the competent authority may—

(a) take copies of or extracts from the document; or

(b) require the person producing the document, or any relevant person, to provide an explanation of the document.

(4) In subsection (3)(b) "relevant person", in relation to a person who is required to produce a document, means a person who—

(a) has been or is a director or controller of that person;

(b) has been or is an auditor of that person;

(c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or

(d) has been or is an employee of that person.

(5) If a person who is required under section 89H to produce a document fails to do so, the competent authority may require him to state, to the best of his knowledge and belief, where the document is.

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89J Power to call for information: supplementary provisions

(1) The competent authority may require an issuer to make public any information provided to the authority under section 89H.

(2) If the issuer fails to comply with a requirement under subsection (1), the competent authority may, after seeking representations from the issuer, make the information public.

(3) In sections 89H and 89I (power of competent authority to call for information)—

"control" and "controlled" have the meaning given by subsection (4) below;

"specified" means specified in the notice;

"voteholder" means a person who—

(a) holds voting rights in respect of any voting shares for the purposes of sections 89A to 89G (transparency rules), or

(b) is treated as holding such rights by virtue of rules under section 89A(3)(b).

(4) For the purposes of those sections a person ("A") controls another person ("B") if—

(a) A holds a majority of the voting rights in B,

(b) A is a member of B and has the right to appoint or remove a majority of the members of the board of directors (or, if there is no such board, the equivalent management body) of B,

(c) A is a member of B and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in B, or

(d) A has the right to exercise, or actually exercises, dominant influence or control over B.

(5) For the purposes of subsection (4)(b)—

(a) any rights of a person controlled by A, and

(b) any rights of a person acting on behalf of A or a person controlled by A,

are treated as held by A.**]**

VALID FROM 08/11/2006

[*F28**Powers exercisable in case of infringement of transparency obligation*

Textual Amendments

F28 Ss. 89K-89N and cross-heading inserted (8.11.2006) by Companies Act 2006 (c. 46), **ss. 1268**, 1300(1)(a)

89K Public censure of issuer

(1) If the competent authority finds that an issuer of securities admitted to trading on a regulated market is failing or has failed to comply with an applicable transparency obligation, it may publish a statement to that effect.

(2) If the competent authority proposes to publish a statement, it must give the issuer a warning notice setting out the terms of the proposed statement.

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(3) If, after considering any representations made in response to the warning notice, the competent authority decides to make the proposed statement, it must give the issuer a decision notice setting out the terms of the statement.

(4) A notice under this section must inform the issuer of his right to refer the matter to the Tribunal (see section 89N) and give an indication of the procedure on such a reference.

(5) In this section "transparency obligation" means an obligation under—

(a) a provision of transparency rules, or

(b) any other provision made in accordance with the transparency obligations directive.

(6) In relation to an issuer whose home State is a member State other than the United Kingdom, any reference to an applicable transparency obligation must be read subject to section 100A(2).

89L Power to suspend or prohibit trading of securities

(1) This section applies to securities admitted to trading on a regulated market.

(2) If the competent authority has reasonable grounds for suspecting that an applicable transparency obligation has been infringed by an issuer, it may—

(a) suspend trading in the securities for a period not exceeding 10 days,

(b) prohibit trading in the securities, or

(c) make a request to the operator of the market on which the issuer's securities are traded—

(i) to suspend trading in the securities for a period not exceeding 10 days, or

(ii) to prohibit trading in the securities.

(3) If the competent authority has reasonable grounds for suspecting that a provision required by the transparency obligations directive has been infringed by a voteholder of an issuer, it may—

(a) prohibit trading in the securities, or

(b) make a request to the operator of the market on which the issuer's securities are traded to prohibit trading in the securities.

(4) If the competent authority finds that an applicable transparency obligation has been infringed, it may require the market operator to prohibit trading in the securities.

(5) In this section "transparency obligation" means an obligation under—

(a) a provision contained in transparency rules, or

(b) any other provision made in accordance with the transparency obligations directive.

(6) In relation to an issuer whose home State is a member State other than the United Kingdom, any reference to an applicable transparency obligation must be read subject to section 100A(2).

89M Procedure under section 89L

(1) A requirement under section 89L takes effect—

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(a) immediately, if the notice under subsection (2) states that that is the case;
(b) in any other case, on such date as may be specified in the notice.

(2) If the competent authority—
(a) proposes to exercise the powers in section 89L in relation to a person, or
(b) exercises any of those powers in relation to a person with immediate effect,
it must give that person written notice.

(3) The notice must—
(a) give details of the competent authority's action or proposed action;
(b) state the competent authority's reasons for taking the action in question and choosing the date on which it took effect or takes effect;
(c) inform the recipient that he may make representations to the competent authority within such period as may be specified by the notice (whether or not he had referred the matter to the Tribunal);
(d) inform him of the date on which the action took effect or takes effect;
(e) inform him of his right to refer the matter to the Tribunal (see section 89N) and give an indication of the procedure on such a reference.

(4) The competent authority may extend the period within which representations may be made to it.

(5) If, having considered any representations made to it, the competent authority decides to maintain, vary or revoke its earlier decision, it must give written notice to that effect to the person mentioned in subsection (2).

89N Right to refer matters to the Tribunal

A person—
(a) to whom a decision notice is given under section 89K (public censure), or
(b) to whom a notice is given under section 89M (procedure in connection with suspension or prohibition of trading),
may refer the matter to the Tribunal.**]**

VALID FROM 08/11/2006

[F29 Corporate governance]

Textual Amendments
F29 S. 89O and cross-heading inserted (8.11.2006) by Companies Act 2006 (c. 46), **ss. 1269**, 1300(1)(a)

89O Corporate governance rules

(1) The competent authority may make rules ("corporate governance rules")—
(a) for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any Community obligation relating

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to the corporate governance of issuers who have requested or approved admission of their securities to trading on a regulated market;

(b) about corporate governance in relation to such issuers for the purpose of implementing, or dealing with matters arising out of or related to, any Community obligation.

(2) "Corporate governance", in relation to an issuer, includes—

(a) the nature, constitution or functions of the organs of the issuer;

(b) the manner in which organs of the issuer conduct themselves;

(c) the requirements imposed on organs of the issuer;

(d) the relationship between the different organs of the issuer;

(e) the relationship between the organs of the issuer and the members of the issuer or holders of the issuer's securities.

(3) The burdens and restrictions imposed by rules under this section on foreign-traded issuers must not be greater than the burdens and restrictions imposed on UK-traded issuers by—

(a) rules under this section, and

(b) listing rules.

(4) For this purpose—

"foreign-traded issuer" means an issuer who has requested or approved admission of the issuer's securities to trading on a regulated market situated or operating outside the United Kingdom;

"UK-traded issuer" means an issuer who has requested or approved admission of the issuer's securities to trading on a regulated market situated or operating in the United Kingdom.

(5) This section is without prejudice to any other power conferred by this Part to make Part 6 rules.

Compensation

90 [F30Compensation for false or misleading statements or omissions]

(1) Any person responsible for listing particulars is liable to pay compensation to a person who has—

(a) acquired securities to which the particulars apply; and

(b) suffered loss in respect of them as a result of—

(i) any untrue or misleading statement in the particulars; or

(ii) the omission from the particulars of any matter required to be included by section 80 or 81.

(2) Subsection (1) is subject to exemptions provided by Schedule 10.

(3) If listing particulars are required to include information about the absence of a particular matter, the omission from the particulars of that information is to be treated as a statement in the listing particulars that there is no such matter.

(4) Any person who fails to comply with section 81 is liable to pay compensation to any person who has—

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(a) acquired securities of the kind in question; and
(b) suffered loss in respect of them as a result of the failure.

(5) Subsection (4) is subject to exemptions provided by Schedule 10.

(6) This section does not affect any liability which may be incurred apart from this section.

(7) References in this section to the acquisition by a person of securities include references to his contracting to acquire them or any interest in them.

(8) No person shall, by reason of being a promoter of a company or otherwise, incur any liability for failing to disclose information which he would not be required to disclose in listing particulars in respect of a company's securities—
(a) if he were responsible for those particulars; or
(b) if he is responsible for them, which he is entitled to omit by virtue of section 82.

(9) The reference in subsection (8) 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 an agreement.

(10) "Listing particulars", in subsection (1) and Schedule 10, includes supplementary listing particulars.

[F31(11) This section applies in relation to a prospectus as it applies to listing particulars, with the following modifications—
(a) references in this section or in Schedule 10 to listing particulars, supplementary listing particulars or sections 80, 81 or 82 are to be read, respectively, as references to a prospectus, supplementary prospectus and sections 87A, 87G and 87B;
(b) references in Schedule 10 to admission to the official list are to be read as references to admission to trading on a regulated market;
(c) in relation to a prospectus, "securities" means "transferable securities".

(12) A person is not to be subject to civil liability solely on the basis of a summary in a prospectus unless the summary is misleading, inaccurate or inconsistent when read with the rest of the prospectus; and, in this subsection, a summary includes any translation of it.**]**

Textual Amendments

F30 Words in s. 90 title substituted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 6(3)**

F31 S. 90(11)(12) inserted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 6(2)**

Modifications etc. (not altering text)

C197 S. 90 restricted (1.12.2001) by S.I. 2001/2957, **arts. 1**, 7(3); S.I. 2001/3538, **art. 2(1)**

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VALID FROM 01/07/2011

[F32[F32 90ZA Liability for key investor information

(1) A person is not to be subject to civil liability solely on the basis of the key investor information produced in relation to a collective investment scheme or a sub-fund of such a scheme in accordance with rules or other provisions implementing Chapter IX of the UCITS directive, or of any translation of that information, unless the key investor information is misleading, inaccurate or inconsistent with the relevant parts of the prospectus published for that collective investment scheme or sub-fund in accordance with rules made by the Authority under section 248 of this Act.

(2) In this section, a reference to a sub-fund of a collective investment scheme is a reference to a part of the property of the collective investment scheme which forms a separate pool where—

(a) the collective investment scheme provides arrangements for separate pooling of the contributions of the participants and the profits and income out of which payments are made to them; and

(b) the participants are entitled to exchange rights in one pool for rights in another.**]]**

Textual Amendments

F32 S. 90ZA inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(3)**

VALID FROM 08/11/2006

90A Compensation for statements in certain publications

(1) The publications to which this section applies are—

(a) any reports and statements published in response to a requirement imposed by a provision implementing Article 4, 5 or 6 of the transparency obligations directive, and

(b) any preliminary statement made in advance of a report or statement to be published in response to a requirement imposed by a provision implementing Article 4 of that directive, to the extent that it contains information that it is intended—

(i) will appear in the report or statement, and

(ii) will be presented in the report or statement in substantially the same form as that in which it is presented in the preliminary statement.

(2) The securities to which this section applies are—

(a) securities that are traded on a regulated market situated or operating in the United Kingdom, and

(b) securities that—

(i) are traded on a regulated market situated or operating outside the United Kingdom, and

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(ii) are issued by an issuer for which the United Kingdom is the home Member State within the meaning of Article 2.1(i) of the transparency obligations directive.

(3) The issuer of securities to which this section applies is liable to pay compensation to a person who has—

(a) acquired such securities issued by it, and

(b) suffered loss in respect of them as a result of—

(i) any untrue or misleading statement in a publication to which this section applies, or

(ii) the omission from any such publication of any matter required to be included in it.

(4) The issuer is so liable only if a person discharging managerial responsibilities within the issuer in relation to the publication—

(a) knew the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading, or

(b) knew the omission to be dishonest concealment of a material fact.

(5) A loss is not regarded as suffered as a result of the statement or omission in the publication unless the person suffering it acquired the relevant securities—

(a) in reliance on the information in the publication, and

(b) at a time when, and in circumstances in which, it was reasonable for him to rely on that information.

(6) Except as mentioned in subsection (8)—

(a) the issuer is not subject to any other liability than that provided for by this section in respect of loss suffered as a result of reliance by any person on—

(i) an untrue or misleading statement in a publication to which this section applies, or

(ii) the omission from any such publication of any matter required to be included in it, and

(b) a person other than the issuer is not subject to any liability, other than to the issuer, in respect of any such loss.

(7) Any reference in subsection (6) to a person being subject to a liability includes a reference to another person being entitled as against him to be granted any civil remedy or to rescind or repudiate an agreement.

(8) This section does not affect—

(a) the powers conferred by section 382 and 384 (powers of the court to make a restitution order and of the Authority to require restitution);

(b) liability for a civil penalty;

(c) liability for a criminal offence.

(9) For the purposes of this section—

(a) the following are persons "discharging managerial responsibilities" in relation to a publication—

(i) any director of the issuer (or person occupying the position of director, by whatever name called),

(ii) in the case of an issuer whose affairs are managed by its members, any member of the issuer,

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(iii) in the case of an issuer that has no persons within sub-paragraph (i) or (ii), any senior executive of the issuer having responsibilities in relation to the publication;

(b) references to the acquisition by a person of securities include his contracting to acquire them or any interest in them.

VALID FROM 08/11/2006

[F33 90B Power to make further provision about liability for published information

(1) The Treasury may by regulations make provision about the liability of issuers of securities traded on a regulated market, and other persons, in respect of information published to holders of securities, to the market or to the public generally.

(2) Regulations under this section may amend any primary or subordinate legislation, including any provision of, or made under, this Act.**]**

Textual Amendments

F33 Ss. 90A, 90B inserted (8.11.2006) by Companies Act 2006 (c. 46), **ss. 1270**, 1300(1)(a)

Penalties

91 [F34 Penalties for breach of Part 6 rules]

[F35 (1) If the competent authority considers that–

(a) in relation to a listed security, an issuer or applicant for listing; or

(b) in relation to a financial instrument–

(i) an issuer who has requested or approved the admission of the instrument to trading on a regulated market,

(ii) a person discharging managerial responsibilities within such an issuer, or

(iii) a person connected to such a person discharging managerial responsibilities, has contravened any provision of the Part 6 rules, it may impose on him a penalty of such amount as it considers appropriate.

[F36 (1A) If the competent authority considers that—

(a) an issuer of transferable securities,

(b) a person offering transferable securities to the public or requesting their admission to trading on a regulated market,

(c) an applicant for the approval of a prospectus in relation to transferable securities,

(d) a person on whom a requirement has been imposed under section 87K or 87L, or

(e) any other person to whom a provision of the prospectus directive applies,

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has contravened a provision of this Part or of prospectus rules, or a provision otherwise made in accordance with the prospectus directive or a requirement imposed on him under such a provision, it may impose on him a penalty of such amount as it considers appropriate.**]**

(2) If, in the case of a contravention **[**F37by a person**]** referred to in subsection (1)(a) **[**F38, (1)(b)(i) or (1A) ("P")**]**, the competent authority considers that **[**F39another person**]** who was at the material time a director of **[**F40P**]** was knowingly concerned in the contravention, it may impose upon him a penalty of such amount as it considers appropriate.**]**

(3) If the competent authority is entitled to impose a penalty on a person under this section in respect of a particular matter it may, instead of imposing a penalty on him in respect of that matter, publish a statement censuring him.

(4) Nothing in this section prevents the competent authority from taking any other steps which it has power to take under this Part.

(5) A penalty under this section is payable to the competent authority.

(6) The competent authority may not take action against a person under this section after the end of the period of two years beginning with the first day on which it knew of the contravention unless proceedings against that person, in respect of the contravention, were begun before the end of that period.

(7) For the purposes of subsection (6)—

(a) the competent authority is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred; and

(b) proceedings against a person in respect of a contravention are to be treated as begun when a warning notice is given to him under section 92.

Textual Amendments

F34 S. 91 heading substituted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 7(4)**

F35 S. 91(1)(2) substituted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 4, **Sch. 1 para. 4**

F36 S. 91(1A) inserted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 7(2)**

F37 Words in s. 91(2) substituted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 7(3)(a)**

F38 Words in s. 91(2) substituted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 7(3)(b)**

F39 Words in s. 91(2) substituted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 7(3)(c)**

F40 Word in s. 91(2) substituted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 7(3)(d)**

Modifications etc. (not altering text)

C198 S. 91(6)(7) applied (with modifications) (1.12.2001) by S.I. 2001/2957, **arts. 1**, 11(4)-(6); S.I. 2001/3538, **art. 2(1)**

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92 Procedure.

(1) If the competent authority proposes to take action against a person under section 91, it must give him a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.

(4) If the competent authority decides to take action against a person under section 91, it must give him a decision notice.

(5) A decision notice about the imposition of a penalty must state the amount of the penalty.

(6) A decision notice about the publication of a statement must set out the terms of the statement.

(7) If the competent authority decides to take action against a person under section 91, he may refer the matter to the Tribunal.

Modifications etc. (not altering text)
C199 S. 92(1)(3)(4)(6)(7) applied (with modifications) (1.12.2001) by S.I. 2001/2957, **arts. 1**, 11(3), 12, 13; S.I. 2001/3538, **art. 2(1)**

93 Statement of policy.

(1) The competent authority must prepare and issue a statement ("its policy statement") of its policy with respect to—

(a) the imposition of penalties under section 91; and

(b) the amount of penalties under that section.

(2) The competent authority's policy in determining what the amount of a penalty should be must include having regard to—

(a) the seriousness of the contravention in question in relation to the nature of the requirement contravened;

(b) the extent to which that contravention was deliberate or reckless; and

(c) whether the person on whom the penalty is to be imposed is an individual.

(3) The competent authority may at any time alter or replace its policy statement.

(4) If its policy statement is altered or replaced, the competent authority must issue the altered or replacement statement.

(5) In exercising, or deciding whether to exercise, its power under section 91 in the case of any particular contravention, the competent authority must have regard to any policy statement published under this section and in force at the time when the contravention in question occurred.

(6) The competent authority must publish a statement issued under this section in the way appearing to the competent authority to be best calculated to bring it to the attention of the public.

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(7) The competent authority may charge a reasonable fee for providing a person with a copy of the statement.

(8) The competent authority must, without delay, give the Treasury a copy of any policy statement which it publishes under this section.

94 Statements of policy: procedure.

(1) Before issuing a statement under section 93, the competent authority must publish a draft of the proposed statement in the way appearing to the competent authority to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the competent authority within a specified time.

(3) Before issuing the proposed statement, the competent authority must have regard to any representations made to it in accordance with subsection (2).

(4) If the competent authority issues the proposed statement it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2); and

(b) its response to them.

(5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the competent authority, significant, the competent authority must (in addition to complying with subsection (4)) publish details of the difference.

(6) The competent authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

Competition

95 Competition scrutiny.

(1) The Treasury may by order provide for—

(a) regulating provisions, and

(b) the practices of the competent authority in exercising its functions under this Part ("practices"),

to be kept under review.

(2) Provision made as a result of subsection (1) must require the person responsible for keeping regulating provisions and practices under review to consider—

(a) whether any regulating provision or practice has a significantly adverse effect on competition; or

(b) whether two or more regulating provisions or practices taken together have, or a particular combination of regulating provisions and practices has, such an effect.

(3) An order under this section may include provision corresponding to that made by any provision of Chapter III of Part X.

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(4) Subsection (3) is not to be read as in any way restricting the power conferred by subsection (1).

(5) Subsections (6) to (8) apply for the purposes of provision made by or under this section.

(6) Regulating provisions or practices have a significantly adverse effect on competition if—

(a) they have, or are intended or likely to have, that effect; or

(b) the effect that they have, or are intended or likely to have, is to require or encourage behaviour which has, or is intended or likely to have, a significantly adverse effect on competition.

(7) If regulating provisions or practices have, or are intended or likely to have, the effect of requiring or encouraging exploitation of the strength of a market position they are to be taken to have, or be intended or be likely to have, an adverse effect on competition.

(8) In determining whether any of the regulating provisions or practices have, or are intended or likely to have, a particular effect, it may be assumed that the persons to whom the provisions concerned are addressed will act in accordance with them.

(9) "Regulating provisions" means—

(a) **[**[F41]Part 6 rules**]**

(b) general guidance given by the competent authority in connection with its functions under this Part.

Textual Amendments

F41 Words in s. 95(9)(a) substituted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 4, **Sch. 1 para. 5**

Miscellaneous[F42]

Textual Amendments

F42 Ss. 96A-96C inserted (17.3.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(3)(b), 4, **Sch. 1 para. 6**

96 Obligations of issuers of listed securities.

(1) Listing rules may—

(a) specify requirements to be complied with by issuers of listed securities; and

(b) make provision with respect to the action that may be taken by the competent authority in the event of non-compliance.

(2) If the rules require an issuer to publish information, they may include provision authorising the competent authority to publish it in the event of his failure to do so.

(3) This section applies whenever the listed securities were admitted to the official list.

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

[F42[F42]96A Disclosure of information requirements

(1) Disclosure rules must include provision specifying the disclosure of information requirements to be complied with by—

(a) issuers who have requested or approved admission of their financial instruments to trading on a regulated market in the United Kingdom;

(b) persons acting on behalf of or for the account of such issuers;

(c) persons discharging managerial responsibilities within an issuer—

(i) who is registered in the United Kingdom and who has requested or approved admission of its shares to trading on a regulated market; or

(ii) who is not registered in the United Kingdom or any other EEA State but who has requested or approved admission of its shares to trading on a regulated market and who is required to file annual information in relation to the shares in the United Kingdom in accordance with Article 10 of the prospectus directive;

(d) persons connected to such persons discharging managerial responsibilities.

(2) The rules must in particular—

(a) require an issuer to publish specified inside information;

(b) require an issuer to publish any significant change concerning information it has already published in accordance with paragraph (a);

(c) allow an issuer to delay the publication of inside information in specified circumstances;

(d) require an issuer (or a person acting on his behalf or for his account) who discloses inside information to a third party to publish that information without delay in specified circumstances;

(e) require an issuer (or person acting on his behalf or for his account) to draw up a list of those persons working for him who have access to inside information relating directly or indirectly to that issuer; and

(f) require persons discharging managerial responsibilities within an issuer falling within subsection (1)(c)(i) or (ii), and persons connected to such persons discharging managerial responsibilities, to disclose transactions conducted on their own account in shares of the issuer, or derivatives or any other financial instrument relating to those shares.

(3) Disclosure rules may make provision with respect to the action that may be taken by the competent authority in respect of non-compliance.**]**

Modifications etc. (not altering text)

C200 S. 96A modified (22.2.2008) by The Northern Rock plc Transfer Order 2008 (S.I. 2008/432), art. 17(1), **Sch. para. 4(a)**

C201 S. 96A modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), art. 13(1)(3), **Sch. 1 para. 4(a)**

C202 S. 96A modified (7.10.2008 at 9.30 a.m.) by The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2644), art. 26, **Sch. 2 para. 4(a)**

C203 S. 96A modified (30.3.2009 at 8.00 a.m.) by The Amendments to Law (Resolution of Dunfermline Building Society) Order 2009 (S.I. 2009/814), art. 7, **Sch. para. 4(a)**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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96B Persons discharging managerial responsibilities and connected persons

(1) For the purposes of this Part, a "person discharging managerial responsibilities within an issuer" means—

(a) a director of an issuer falling within section 96A(1)(c)(i) or (ii); or

(b) a senior executive of such an issuer who—

(i) has regular access to inside information relating, directly or indirectly, to the issuer, and

(ii) has power to make managerial decisions affecting the future development and business prospects of the issuer.

(2) A person "connected" with a person discharging managerial responsibilities within an issuer means—

(a) a "connected person" within the meaning in section 346 of the Companies Act 1985 [F43] (reading that section as if any reference to a director of a company were a reference to a person discharging managerial responsibilities within an issuer);

(b) a relative of a person discharging managerial responsibilities within an issuer, who, on the date of the transaction in question, has shared the same household as that person for at least 12 months;

(c) a body corporate in which—

(i) a person discharging managerial responsibilities within an issuer, or

(ii) any person connected with him by virtue of subsection (a) or (b),

is a director or a senior executive who has the power to make management decisions affecting the future development and business prospects of that body corporate.

Textual Amendments

F43 1985 c. 6.

96C Suspension of trading

(1) The competent authority may, in accordance with disclosure rules, suspend trading in a financial instrument.

(2) If the competent authority does so, the issuer of that financial instrument may refer the matter to the Tribunal.

(3) The provisions relating to suspension of listing of securities in section 78 apply to the suspension of trading in a financial instrument and the references to listing and securities are to be read as references to trading and financial instruments respectively for the purposes of this section.**]**

97 Appointment by competent authority of persons to carry out investigations.

(1) Subsection (2) applies if it appears to the competent authority that there are circumstances suggesting that—

(a) there may have been a **[**[F44]contravention of a provision of this Part or of Part 6 rules or a provision otherwise made in accordance with the prospectus directive**]**;

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[F45(b) a person who was at the material time **[**F46a person mentioned in section 91(1) or (1A) has been knowingly concerned in a contravention of a provision of this Part or of Part 6 rules or a provision otherwise made in accordance with the prospectus directive by that person**]]**

(c) F47 . . . . . .

(d) there may have been a contravention of section 83, 85 **[**F48, 87G**]** or 98.

(2) The competent authority may appoint one or more competent persons to conduct an investigation on its behalf.

(3) Part XI applies to an investigation under subsection (2) as if—

(a) the investigator were appointed under section 167(1);

(b) references to the investigating authority in relation to him were to the competent authority;

(c) references to the offences mentioned in section 168 were to those mentioned in subsection (1)(d);

(d) references to an authorised person were references to the person under investigation.

Textual Amendments

F44 Words in s. 97(1)(a) (which were in part substituted (1.7.2005) by the words "Part 6 rules" by S.I. 2005/381, reg. 1(2), Sch. 1 para. 7(a)) substituted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 8(a)**

F45 S. 97(1)(b) substituted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 4, **Sch. 1 para. 7(b)**

F46 Words in s. 97(1)(b) substituted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 8(b)**

F47 S. 97(1)(c) repealed (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 4, **Sch. 1 para. 7(c)**

F48 Words in s. 97(1)(d) inserted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 8(c)**

98 Advertisements etc. in connection with listing applications.

F49 . . . . . .

Textual Amendments

F49 S. 98 repealed (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 9**

99 Fees.

(1) Listing rules may require the payment of fees to the competent authority in respect of—

(a) applications for listing;

(b) the continued inclusion of securities in the official list;

(c) applications under section 88 for approval as a sponsor; and

(d) continued inclusion of sponsors in the list of sponsors.

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[F50(1A) Disclosure rules may require the payment of fees to the competent authority in respect of the continued admission of financial instruments to trading on a regulated market.**]**

[F51(1B) Prospectus rules may require the payment of fees to the competent authority in respect of—

(a) applications for approval of a prospectus or a supplementary prospectus;

(b) applications for inclusion in the register of investors;

(c) the continued inclusion of investors in that register;

(d) access to that register.**]**

(2) In exercising its powers under subsection (1), the competent authority may set such fees as it considers will (taking account of the income it expects as the competent authority) enable it—

(a) to meet expenses incurred in carrying out its functions under this Part or for any incidental purpose;

(b) to maintain adequate reserves; and

(c) in the case of the Authority, to repay the principal of, and pay any interest on, any money which it has borrowed and which has been used for the purpose of meeting expenses incurred in relation to—

(i) its assumption of functions from the London Stock Exchange Limited in relation to the official list; and

(ii) its assumption of functions under this Part.

(3) In fixing the amount of any fee which is to be payable to the competent authority, no account is to be taken of any sums which it receives, or expects to receive, by way of penalties imposed by it under this Part.

(4) Subsection (2)(c) applies whether expenses were incurred before or after the coming into force of this Part.

(5) Any fee which is owed to the competent authority under any provision made by or under this Part may be recovered as a debt due to it.

Textual Amendments

F50 S. 99(1A) inserted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 4, **Sch. 1 para. 8**

F51 S. 99(1B) inserted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 10**

Modifications etc. (not altering text)

C204 S. 99(2) modified (1.12.2001) by S.I. 2001/3650, **arts. 1(a)**, 25(3)

100 Penalties.

(1) In determining its policy with respect to the amount of penalties to be imposed by it under this Part, the competent authority must take no account of the expenses which it incurs, or expects to incur, in discharging its functions under this Part.

(2) The competent authority must prepare and operate a scheme for ensuring that the amounts paid to it by way of penalties imposed under this Part are applied for the benefit of issuers of securities admitted to the official list **[**F52, and issuers who have

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requested or approved the admission of financial instruments to trading on a regulated market.**]**

(3) The scheme may, in particular, make different provision with respect to different classes of issuer.

(4) Up to date details of the scheme must be set out in a document ("the scheme details").

(5) The scheme details must be published by the competent authority in the way appearing to it to be best calculated to bring them to the attention of the public.

(6) Before making the scheme, the competent authority must publish a draft of the proposed scheme in the way appearing to it to be best calculated to bring it to the attention of the public.

(7) The draft must be accompanied by notice that representations about the proposals may be made to the competent authority within a specified time.

(8) Before making the scheme, the competent authority must have regard to any representations made to it under subsection (7).

(9) If the competent authority makes the proposed scheme, it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (7); and

(b) its response to them.

(10) If the scheme differs from the draft published under subsection (6) in a way which is, in the opinion of the competent authority, significant the competent authority must (in addition to complying with subsection (9)) publish details of the difference.

(11) The competent authority must, without delay, give the Treasury a copy of any scheme details published by it.

(12) The competent authority may charge a reasonable fee for providing a person with a copy of—

(a) a draft published under subsection (6);

(b) scheme details.

(13) Subsections (6) to (10) and (12) apply also to a proposal to alter or replace the scheme.

Textual Amendments

F52 Words in s. 100(2) inserted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 4, **Sch. 1 para. 9**

VALID FROM 08/11/2006

[F53[100A Exercise of powers where UK is host member state

(1) This section applies to the exercise by the competent authority of any power under this Part exercisable in case of infringement of—

(a) a provision of prospectus rules or any other provision made in accordance with the prospectus directive, or

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(b) a provision of transparency rules or any other provision made in accordance with the transparency obligations directive,

in relation to an issuer whose home State is a member State other than the United Kingdom.

(2) The competent authority may act in such a case only in respect of the infringement of a provision required by the relevant directive.

Any reference to an applicable provision or applicable transparency obligation shall be read accordingly.

(3) If the authority finds that there has been such an infringement, it must give a notice to that effect to the competent authority of the person's home State requesting it—

(a) to take all appropriate measures for the purpose of ensuring that the person remedies the situation that has given rise to the notice, and

(b) to inform the authority of the measures it proposes to take or has taken or the reasons for not taking such measures.

(4) The authority may not act further unless satisfied—

(a) that the competent authority of the person's home State has failed or refused to take measures for the purpose mentioned in subsection (3)(a), or

(b) that the measures taken by that authority have proved inadequate for that purpose.

This does not affect exercise of the powers under section 87K(2), 87L(2) or (3) or 89L(2) or (3) (powers to protect market).

(5) If the authority is so satisfied, it must, after informing the competent authority of the person's home State, take all appropriate measures to protect investors.

(6) In such a case the authority must inform the Commission of the measures at the earliest opportunity.**]]**

Textual Amendments

F53 S. 100A inserted (8.11.2006) by Companies Act 2006 (c. 46), **ss. 1271**, 1300(1)(a)

101 Listing rules: general provisions.

(1) **[**F54Part 6 rules**]** may make different provision for different cases.

(2) **[**F54Part 6 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) **[**F54Part 6 rules**]** must be made by an instrument in writing.

(4) Immediately after an instrument containing **[**F54Part 6 rules**]** is made, it must be printed and made available to the public with or without payment.

(5) A person is not to be taken to have contravened **[**F55any Part 6 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).

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(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),

is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.

(7) A certificate purporting to be signed as mentioned in subsection (6) is to be treated as having been properly signed unless the contrary is shown.

(8) A person who wishes in any legal proceedings to rely on a rule-making instrument may require the Authority to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (6).

Textual Amendments

F54 Words in s. 101(1)-(4) substituted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 4, **Sch. 1 para. 10(a)**

F55 Words in s. 101(5) substituted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 4, **Sch. 1 para. 10(b)**

102 Exemption from liability in damages.

(1) Neither the competent authority nor any person who is, or is acting as, a member, officer or member of staff of the competent authority is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the authority's functions.

(2) Subsection (1) does not apply—

(a) if the act or omission is shown to have been in bad faith; or

(b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the [M2]Human Rights Act 1998.

Marginal Citations

M2 1998 c. 42.

[F11 Interpretative provisions

102A Meaning of "securities" etc.

(1) This section applies for the purposes of this Part.

(2) "Securities" means (except in section 74(2) and the expression "transferable securities") anything which has been, or may be, admitted to the official list.

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(3) "Transferable securities" means anything which is a transferable security for the purposes of the investment services directive, other than money-market instruments for the purposes of that directive which have a maturity of less than 12 months.

(4) "Financial instrument" has the meaning given in Article 1.3 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation.

(5) "Non-equity transferable securities" means all transferable securities that are not equity securities; and for this purpose "equity securities" has the meaning given in Article 2.1(b) of the prospectus directive.

(6) "Issuer"—

(a) in relation to an offer of transferable securities to the public or admission of transferable securities to trading on a regulated market for which an approved prospectus is required as a result of section 85, means a legal person who issues or proposes to issue the transferable securities in question,

(b) in relation to anything else which is or may be admitted to the official list, has such meaning as may be prescribed by the Treasury, and

(c) in any other case, means a person who issues financial instruments.

102B Meaning of "offer of transferable securities to the public" etc.

(1) For the purposes of this Part there is an offer of transferable securities to the public if there is a communication to any person which presents sufficient information on—

(a) the transferable securities to be offered, and

(b) the terms on which they are offered,

to enable an investor to decide to buy or subscribe for the securities in question.

(2) For the purposes of this Part, to the extent that an offer of transferable securities is made to a person in the United Kingdom it is an offer of transferable securities to the public in the United Kingdom.

(3) The communication may be made—

(a) in any form;

(b) by any means.

(4) Subsection (1) includes the placing of securities through a financial intermediary.

(5) Subsection (1) does not include a communication in connection with trading on—

(a) a regulated market;

(b) a multilateral trading facility; or

(c) a market prescribed by an order under section 130A(3).

(6) "Multilateral trading facility" means a multilateral system, operated by an investment firm (within the meaning of Article 1.2 of the investment services directive) or a market operator, which brings together multiple third-party buying and selling interests in financial instruments in accordance with non-discretionary rules so as to result in a contract.

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102C Meaning of "home State" in relation to transferable securities

In this Part, in relation to an issuer of transferable securities, the "home-State" is the EEA State which is the "home Member State" for the purposes of the prospectus directive (which is to be determined in accordance with Article 2.1(m) of that directive).**]**

[X1]103 Interpretation of this Part

(1) In this Part, save where the context otherwise requires—

"disclosure rules" has the meaning given in section 73A;

"inside information" has the meaning given in section 118C;

"listed securities" means anything which has been admitted to the official list;

"listing" has the meaning given in section 74(5);

"listing particulars" has the meaning given in section 79(2);

"listing rules" has the meaning given in section 73A;

"market operator" means a person who manages or operates the business of a regulated market;

"offer of transferable securities to the public" has the meaning given in section 102B;

"the official list" means the list maintained by the competent authority as that list has effect for the time being;

"Part 6 rules" has the meaning given in section 73A;

"the prospectus directive" means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading;

"prospectus rules" has the meaning given in section 73A;

"regulated market" has the meaning given in Article 1.13 of the investment services directive;

"supplementary prospectus" has the meaning given in section 87G;

"working day" means any day other that a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom.

(2) In relation to any function conferred on the competent authority by this Part, any reference in this Part to the competent authority is to be read as a reference to the person by whom that function is for the time being exercisable.

(3) If, as a result of an order under Schedule 8, different functions conferred on the competent authority by this Part are exercisable by different persons, the powers conferred by section 91 are exercisable by such person as may be determined in accordance with the provisions of the order.

Editorial Information

X1 The insertion of the new heading "Interpretative provisions" in Pt. VI on 1.7.2005 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

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PART VII

CONTROL OF BUSINESS TRANSFERS

104 Control of business transfers.

No insurance business transfer scheme or banking business transfer scheme is to have effect unless an order has been made in relation to it under section 111(1).

Modifications etc. (not altering text)
C205 S. 104 applied (1.12.2001) by S.I. 2001/3626, **arts. 1**, 3(a)
S. 104 modified (1.12.2001) by S.I. 2001/3639, **arts. 1(1)**, 7 (with art. 2)

Commencement Information
I33 S. 104 partly in force; s. 104 not in force at Royal Assent see s. 431(2); s. 104 in force for specified purposes at 1.12.2001 by S.I. 2001/3538, **art. 2(1)(2)**

105 Insurance business transfer schemes.

(1) A scheme is an insurance business transfer scheme if it—

(a) satisfies one of the conditions set out in subsection (2);

(b) results in the business transferred being carried on from an establishment of the transferee in an EEA State; and

(c) is not an excluded scheme.

(2) The conditions are that—

(a) the whole or part of the business carried on in one or more member States by a UK authorised person who has permission to effect or carry out contracts of insurance ("the authorised person concerned") is to be transferred to another body ("the transferee");

(b) the whole or part of the business, so far as it consists of reinsurance, carried on in the United Kingdom through an establishment there by an EEA firm qualifying for authorisation under Schedule 3 which has permission to effect or carry out contracts of insurance ("the authorised person concerned") is to be transferred to another body ("the transferee");

(c) the whole or part of the business carried on in the United Kingdom by an authorised person who is neither a UK authorised person nor an EEA firm but who has permission to effect or carry out contracts of insurance ("the authorised person concerned") is to be transferred to another body ("the transferee").

(3) A scheme is an excluded scheme for the purposes of this section if it falls within any of the following cases:

(Case 1) Where the authorised person concerned is a friendly society.

(Case 2) Where—

(a) the authorised person concerned is a UK authorised person;

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(b) the business to be transferred under the scheme is business which consists of the effecting or carrying out of contracts of reinsurance in one or more EEA States other than the United Kingdom; and

(c) the scheme has been approved by a court in an EEA State other than the United Kingdom or by the host state regulator.

(Case 3) Where—

(a) the authorised person concerned is a UK authorised person;

(b) the business to be transferred under the scheme is carried on in one or more countries or territories (none of which is an EEA State) and does not include policies of insurance (other than reinsurance) against risks arising in an EEA State; and

(c) the scheme has been approved by a court in a country or territory other than an EEA State or by the authority responsible for the supervision of that business in a country or territory in which it is carried on.

(Case 4) Where the business to be transferred under the scheme is the whole of the business of the authorised person concerned and—

(a) consists solely of the effecting or carrying out of contracts of reinsurance, or

(b) all the policyholders are controllers of the firm or of firms within the same group as the firm which is the transferee,

and, in either case, all of the policyholders who will be affected by the transfer have consented to it.

(4) The parties to a scheme which falls within Case 2, 3 or 4 may apply to the court for an order sanctioning the scheme as if it were an insurance business transfer scheme.

(5) Subsection (6) applies if the scheme involves a compromise or arrangement falling within section 427A of the [M3]Companies Act 1985 (or Article 420A of the Companies [M4](Northern Ireland) Order 1986).

(6) Sections 425 to 427 of that Act (or Articles 418 to 420 of that Order) have effect as modified by section 427A of that Act (or Article 420A of that Order) in relation to that compromise or arrangement.

(7) But subsection (6) does not affect the operation of this Part in relation to the scheme.

(8) "UK authorised person" means a body which is an authorised person and which—

(a) is incorporated in the United Kingdom; or

(b) is an unincorporated association formed under the law of any part of the United Kingdom.

(9) "Establishment" means, in relation to a person, his head office or a branch of his.

Marginal Citations

M3 1985 c. 6.

M4 S.I. 1986/1032 (N.I. 6).

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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106 Banking business transfer schemes.

(1) A scheme is a banking business transfer scheme if it—

(a) satisfies one of the conditions set out in subsection (2);

(b) is one under which the whole or part of the business to be transferred includes the accepting of deposits; and

(c) is not an excluded scheme.

(2) The conditions are that—

(a) the whole or part of the business carried on by a UK authorised person who has permission to accept deposits ("the authorised person concerned") is to be transferred to another body ("the transferee");

(b) the whole or part of the business carried on in the United Kingdom by an authorised person who is not a UK authorised person but who has permission to accept deposits ("the authorised person concerned") is to be transferred to another body which will carry it on in the United Kingdom ("the transferee").

(3) A scheme is an excluded scheme for the purposes of this section if—

(a) the authorised person concerned is a building society or a credit union; or

(b) the scheme is a compromise or arrangement to which section 427A(1) of the [M5]Companies Act 1985 or Article 420A of the [M6]Companies (Northern Ireland) Order 1986 (mergers and divisions of public companies) applies.

(4) For the purposes of subsection (2)(a) it is immaterial whether or not the business to be transferred is carried on in the United Kingdom.

(5) "UK authorised person" has the same meaning as in section 105.

(6) "Building society" has the meaning given in the [M7]Building Societies Act 1986.

(7) "Credit union" means a credit union within the meaning of—

(a) the [M8]Credit Unions Act 1979;

(b) the [M9]Credit Unions (Northern Ireland) Order 1985.

Marginal Citations

M5 1985 c. 6.
M6 S.I. 1986/1032 (N.I.6).
M7 1986 c. 53.
M8 1979 c. 34.
M9 S.I. 1985/1205 (N.I. 12).

VALID FROM 12/03/2009

[F56] F56 106A Reclaim fund business transfer scheme

(1) A scheme is a reclaim fund business transfer scheme if, under the scheme, the whole or part of the business carried on by a reclaim fund is to be transferred to one or more other reclaim funds.

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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(2) "Reclaim fund" has the meaning given by section 5(1) of the Dormant Bank and Building Society Accounts Act 2008.**]]**

Textual Amendments

F56 S. 106A inserted (12.3.2009) by Dormant Bank and Building Society Accounts Act 2008 (c. 31), ss. 15, 31(1)(2), **Sch. 2 para. 2**; S.I. 2009/490, **art. 2** (with art. 3)

107 Application for order sanctioning transfer scheme.

(1) An application may be made to the court for an order sanctioning an insurance business transfer scheme or a banking business transfer scheme.

(2) An application may be made by—

(a) the authorised person concerned;

(b) the transferee; or

(c) both.

(3) The application must be made—

(a) if the authorised person concerned and the transferee are registered or have their head offices in the same jurisdiction, to the court in that jurisdiction;

(b) if the authorised person concerned and the transferee are registered or have their head offices in different jurisdictions, to the court in either jurisdiction;

(c) if the transferee is not registered in the United Kingdom and does not have his head office there, to the court which has jurisdiction in relation to the authorised person concerned.

(4) "Court" means—

(a) the High Court; or

(b) in Scotland, the Court of Session.

Modifications etc. (not altering text)

C206 S. 107 applied (1.12.2001) by S.I. 2001/3626, **arts. 1**, 3(a)

108 Requirements on applicants.

(1) The Treasury may by regulations impose requirements on applicants under section 107.

(2) The court may not determine an application under that section if the applicant has failed to comply with a prescribed requirement.

(3) The regulations may, in particular, include provision—

(a) as to the persons to whom, and periods within which, notice of an application must be given;

(b) enabling the court to waive a requirement of the regulations in prescribed circumstances.

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Modifications etc. (not altering text)
C207 S. 108 applied (1.12.2001) by S.I. 2001/3626, **arts. 1**, 3(a)(b)

Commencement Information
I34 S. 108 wholly in force at 1.12.2001; s. 108 not in force at Royal Assent see s. 431(2); s. 108 in force for certain purposes at 25.2.2001 by S.I. 2001/516, **art. 2 Sch. Pt. 2**; s. 108 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

109 Scheme reports.

(1) An application under section 107 in respect of an insurance business transfer scheme must be accompanied by a report on the terms of the scheme ("a scheme report").

(2) A scheme report may be made only by a person—

(a) appearing to the Authority to have the skills necessary to enable him to make a proper report; and

(b) nominated or approved for the purpose by the Authority.

(3) A scheme report must be made in a form approved by the Authority.

Modifications etc. (not altering text)
C208 S. 109 applied (1.12.2001) by S.I. 2001/3626, **arts. 1**, 3(a)

110 Right to participate in proceedings.

On an application under section 107, the following are also entitled to be heard—

(a) the Authority, and

(b) any person (including an employee of the authorised person concerned or of the transferee) who alleges that he would be adversely affected by the carrying out of the scheme.

Modifications etc. (not altering text)
C209 S. 110 applied (1.12.2001) by S.I. 2001/3626, **arts. 1**, 3(a)

111 Sanction of the court for business transfer schemes.

(1) This section sets out the conditions which must be satisfied before the court may make an order under this section sanctioning an insurance business transfer scheme or a banking business transfer scheme.

(2) The court must be satisfied that—

(a) the appropriate certificates have been obtained (as to which see Parts I and II of Schedule 12);

(b) the transferee has the authorisation required (if any) to enable the business, or part, which is to be transferred to be carried on in the place to which it is to be transferred (or will have it before the scheme takes effect).

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(3) The court must consider that, in all the circumstances of the case, it is appropriate to sanction the scheme.

Modifications etc. (not altering text)

C210 S. 111 applied (1.12.2001) by S.I. 2001/3626, **arts. 1**, 3(a)

Commencement Information

I35 S. 111 wholly in force at 1.12.2001; s. 111 not in force at Royal Assent see s. 431(2); s. 111(2) in force for specified purposes at 25.2.2001 by S.I. 2001/516, art. 2(c), **Sch. Pt. 3**; s. 111 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

112 Effect of order sanctioning business transfer scheme.

(1) If the court makes an order under section 111(1), it may by that or any subsequent order make such provision (if any) as it thinks fit—

(a) for the transfer to the transferee of the whole or any part of the undertaking concerned and of any property or liabilities of the authorised person concerned;

(b) for the allotment or appropriation by the transferee of any shares, debentures, policies or other similar interests in the transferee which under the scheme are to be allotted or appropriated to or for any other person;

(c) for the continuation by (or against) the transferee of any pending legal proceedings by (or against) the authorised person concerned;

(d) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the scheme is fully and effectively carried out.

(2) An order under subsection (1)(a) may—

(a) transfer property or liabilities whether or not the authorised person concerned otherwise has the capacity to effect the transfer in question;

(b) make provision in relation to property which was held by the authorised person concerned as trustee;

(c) make provision as to future or contingent rights or liabilities of the authorised person concerned, including provision as to the construction of instruments (including wills) under which such rights or liabilities may arise;

(d) make provision as to the consequences of the transfer in relation to any retirement benefits scheme (within the meaning of section 611 of the [M10]Income and Corporation Taxes Act 1988) operated by or on behalf of the authorised person concerned.

(3) If an order under subsection (1) makes provision for the transfer of property or liabilities—

(a) the property is transferred to and vests in, and

(b) the liabilities are transferred to and become liabilities of,

the transferee as a result of the order.

(4) But if any property or liability included in the order is governed by the law of any country or territory outside the United Kingdom, the order may require the authorised person concerned, if the transferee so requires, to take all necessary steps for securing

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that the transfer to the transferee of the property or liability is fully effective under the law of that country or territory.

(5) Property transferred as the result of an order under subsection (1) may, if the court so directs, vest in the transferee free from any charge which is (as a result of the scheme) to cease to have effect.

(6) An order under subsection (1) which makes provision for the transfer of property is to be treated as an instrument of transfer for the purposes of the provisions mentioned in subsection (7) and any other enactment requiring the delivery of an instrument of transfer for the registration of property.

(7) The provisions are—

(a) section 183(1) of the [M11]Companies Act 1985;

(b) Article 193(1) and (2) of the [M12]Companies (Northern Ireland) Order 1986.

(8) If the court makes an order under section 111(1) in relation to an insurance business transfer scheme, it may by that or any subsequent order make such provision (if any) as it thinks fit—

(a) for dealing with the interests of any person who, within such time and in such manner as the court may direct, objects to the scheme;

(b) for the dissolution, without winding up, of the authorised person concerned;

(c) for the reduction, on such terms and subject to such conditions (if any) as it thinks fit, of the benefits payable under—

(i) any description of policy, or

(ii) policies generally,

entered into by the authorised person concerned and transferred as a result of the scheme.

(9) If, in the case of an insurance business transfer scheme, the authorised person concerned is not an EEA firm, it is immaterial for the purposes of subsection (1)(a), (c) or (d) or subsection (2), (3) or (4) that the law applicable to any of the contracts of insurance included in the transfer is the law of an EEA State other than the United Kingdom.

(10) The transferee must, if an insurance or banking business transfer scheme is sanctioned by the court, deposit two office copies of the order made under subsection (1) with the Authority within 10 days of the making of the order.

(11) But the Authority may extend that period.

(12) "Property" includes property, rights and powers of any description.

(13) "Liabilities" includes duties.

(14) "Shares" and "debentures" have the same meaning as in—

(a) the [M13]Companies Act 1985; or

(b) in Northern Ireland, the [M14]Companies (Northern Ireland) Order 1986.

(15) "Charge" includes a mortgage (or, in Scotland, a security over property).

Modifications etc. (not altering text)

C211 S. 112 applied (1.12.2001) by S.I. 2001/3626, **arts. 1**, 3(a)

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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C212 S. 112(1) modified (1.12.2001) by S.I. 2001/3639, **arts. 1(1)**, 4 (with art. 2)

Marginal Citations

M10 1988 c. 1.
M11 1985 c. 6.
M12 S.I. 1986/1032 (N.I. 6).
M13 1985 c. 6.
M14 S.I. 1986/1032 (N.I. 6).

VALID FROM 30/06/2008

[F57[F57112A Rights to terminate etc.

(1) Subsection (2) applies where (apart from that subsection) a person would be entitled, in consequence of anything done or likely to be done by or under this Part in connection with an insurance business transfer scheme or a banking business transfer scheme—

(a) to terminate, modify, acquire or claim an interest or right; or

(b) to treat an interest or right as terminated or modified.

(2) The entitlement—

(a) is not enforceable in relation to that interest or right until after an order has been made under section 112(1) in relation to the scheme; and

(b) is then enforceable in relation to that interest or right only insofar as the order contains provision to that effect.

(3) Nothing in subsection (1) or (2) is to be read as limiting the scope of section 112(1).**]]**

Textual Amendments

F57 S. 112A inserted (30.6.2008) by The Financial Services and Markets Act 2000 (Amendments to Part 7) Regulations 2008 (S.I. 2008/1468), **reg. 2(3)**

113 Appointment of actuary in relation to reduction of benefits.

(1) This section applies if an order has been made under section 111(1).

(2) The court making the order may, on the application of the Authority, appoint an independent actuary—

(a) to investigate the business transferred under the scheme; and

(b) to report to the Authority on any reduction in the benefits payable under policies entered into by the authorised person concerned that, in the opinion of the actuary, ought to be made.

Modifications etc. (not altering text)

C213 S. 113 applied (1.12.2001) by S.I. 2001/3626, **arts. 1**, 3(a)

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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114 Rights of certain policyholders.

(1) This section applies in relation to an insurance business transfer scheme if—

(a) the authorised person concerned is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;

(b) the court has made an order under section 111 in relation to the scheme; and

(c) an EEA State other than the United Kingdom is, as regards any policy included in the transfer which evidences a contract of insurance, the State of the commitment or the EEA State in which the risk is situated ("the EEA State concerned").

(2) The court must direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the EEA State concerned.

(3) A notice under subsection (2) must specify such period as the court may direct as the period during which the policyholder may exercise any right which he has to cancel the policy.

(4) The order or instrument mentioned in subsection (2) does not bind the policyholder if—

(a) the notice required under that subsection is not published; or

(b) the policyholder cancels the policy during the period specified in the notice given under that subsection.

(5) The law of the EEA State concerned governs—

(a) whether the policyholder has a right to cancel the policy; and

(b) the conditions, if any, subject to which any such right may be exercised.

(6) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

Modifications etc. (not altering text)
C214 S. 114 applied (1.12.2001) by S.I. 2001/3626, **arts. 1**, 3(a)

VALID FROM 10/12/2007

[F58[F58114A Notice of transfer of reinsurance contracts

(1) This section applies in relation to an insurance business transfer scheme if—

(a) the authorised person concerned is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;

(b) the court has made an order under section 111 in relation to the scheme; and

(c) an EEA State other than the United Kingdom is, as regards any policy included in the transfer which evidences a contract of reinsurance, the State in which the establishment of the policyholder to which the policy relates is situated at the date when the contract was entered into ("the EEA State concerned").

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(2) The court may direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the EEA State concerned.**]]**

Textual Amendments

F58 S. 114A inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 2(3)**

Business transfers outside the United Kingdom

115 Certificates for purposes of insurance business transfers overseas.

Part III of Schedule 12 makes provision about certificates which the Authority may issue in relation to insurance business transfers taking place outside the United Kingdom.

116 Effect of insurance business transfers authorised in other EEA States.

(1) This section applies if, as a result of an authorised transfer, an EEA firm falling within paragraph 5(d) of Schedule 3 transfers to another body all its rights and obligations under any UK policies.

(2) This section also applies if, as a result of an authorised transfer, a company authorised in an EEA State other than the United Kingdom under **[**F59Article 51 of the life assurance consolidation directive**]**, or Article 23 of the first non-life insurance directive, transfers to another body all its rights and obligations under any UK policies.

(3) If appropriate notice of the execution of an instrument giving effect to the transfer is published, the instrument has the effect in law—

(a) of transferring to the transferee all the transferor's rights and obligations under the UK policies to which the instrument applies, and

(b) if the instrument so provides, of securing the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights and obligations.

(4) No agreement or consent is required before subsection (3) has the effects mentioned.

(5) "Authorised transfer" means—

(a) in subsection (1), a transfer authorised in the home State of the EEA firm in accordance with—

[F60(i) Article 14 of the life assurance consolidation directive; or**]**

(ii) Article 12 of the third non-life directive; and

(b) in subsection (2), a transfer authorised in an EEA State other than the United Kingdom in accordance with—

[F61(i) Article 53 of the life assurance consolidation directive; or**]**

(ii) Article 28a of the first non-life directive.

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(6) "UK policy" means a policy evidencing a contract of insurance (other than a contract of reinsurance) to which the applicable law is the law of any part of the United Kingdom.

(7) "Appropriate notice" means—

(a) if the UK policy evidences a contract of insurance in relation to which an EEA State other than the United Kingdom is the State of the commitment, notice given in accordance with the law of that State;

(b) if the UK policy evidences a contract of insurance where the risk is situated in an EEA State other than the United Kingdom, notice given in accordance with the law of that EEA State;

(c) in any other case, notice given in accordance with the applicable law.

(8) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

Textual Amendments

F59 Words in s. 116(2) substituted (11.1.2005) by The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), **reg. 6(2)(a)**

F60 S. 116(5)(a)(i) substituted (11.1.2005) by The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), **reg. 6(2)(b)**

F61 S. 116(5)(b)(i) substituted (11.1.2005) by The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), **reg. 6(2)(c)**

Modifications

117 Power to modify this Part.

The Treasury may by regulations—

(a) provide for prescribed provisions of this Part to have effect in relation to prescribed cases with such modifications as may be prescribed;

(b) make such amendments to any provision of this Part as they consider appropriate for the more effective operation of that or any other provision of this Part.

PART VIII

PENALTIES FOR MARKET ABUSE

Modifications etc. (not altering text)

C215 Pt. 8 applied (with modifications) (18.6.2012) by (The Recognised Auction Platforms Regulations 2011 (S.I. 2011/2699), **reg. 6**, Sch. 1

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Market abuse

[F62 118 Market abuse.

(1) For the purposes of this Act, market abuse is behaviour (whether by one person alone or by two or more persons jointly or in concert) which—

(a) occurs in relation to—

(i) qualifying investments admitted to trading on a prescribed market,

(ii) qualifying investments in respect of which a request for admission to trading on such a market has been made, or

(iii) in the case of subsection (2) or (3) behaviour, investments which are related investments in relation to such qualifying investments, and

(b) falls within any one or more of the types of behaviour set out in subsections (2) to (8).

(2) The first type of behaviour is where an insider deals, or attempts to deal, in a qualifying investment or related investment on the basis of inside information relating to the investment in question.

(3) The second is where an insider discloses inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties.

(4) The third is where the behaviour (not falling within subsection (2) or (3))—

(a) is based on information which is not generally available to those using the market but which, if available to a regular user of the market, would be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in qualifying investments should be effected, and

(b) is likely to be regarded by a regular user of the market as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.

(5) The fourth is where the behaviour consists of effecting transactions or orders to trade (otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant market) which—

(a) give, or are likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments, or

(b) secure the price of one or more such investments at an abnormal or artificial level.

(6) The fifth is where the behaviour consists of effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance.

(7) The sixth is where the behaviour consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a qualifying investment by a person who knew or could reasonably be expected to have known that the information was false or misleading.

(8) The seventh is where the behaviour (not falling within subsection (5), (6) or (7))—

(a) is likely to give a regular user of the market a false or misleading impression as to the supply of, demand for or price or value of, qualifying investments, or

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(b) would be, or would be likely to be, regarded by a regular user of the market as behaviour that would distort, or would be likely to distort, the market in such an investment,

and the behaviour is likely to be regarded by a regular user of the market as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.

(9) Subsections (4) and (8) and the definition of "regular user" in section 130A(3) cease to have effect on 30 June 2008 and subsection (1)(b) is then to be read as no longer referring to those subsections.**]**

Textual Amendments

F62 Ss. 118-118C substituted (1.7.2005) for s. 118 by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 5, **Sch. 2 para. 1**

118A Supplementary provision about certain behaviour

(1) Behaviour is to be taken into account for the purposes of this Part only if it occurs—

(a) in the United Kingdom, or

(b) in relation to —

(i) qualifying investments which are admitted to trading on a prescribed market situated in, or operating in, the United Kingdom,

(ii) qualifying investments for which a request for admission to trading on such a prescribed market has been made, or

(iii) in the case of section 118(2) and (3), investments which are related investments in relation to such qualifying investments.

(2) For the purposes of subsection (1), as it applies in relation to section 118(4) and (8), a prescribed market accessible electronically in the United Kingdom is to be treated as operating in the United Kingdom.

(3) For the purposes of section 118(4) and (8), the behaviour that is to be regarded as occurring in relation to qualifying investments includes behaviour which—

(a) occurs in relation to anything that is the subject matter, or whose price or value is expressed by reference to the price or value of the qualifying investments, or

(b) occurs in relation to investments (whether or not they are qualifying investments) whose subject matter is the qualifying investments.

(4) For the purposes of section 118(7), the dissemination of information by a person acting in the capacity of a journalist is to be assessed taking into account the codes governing his profession unless he derives, directly or indirectly, any advantage or profits from the dissemination of the information.

(5) Behaviour does not amount to market abuse for the purposes of this Act if—

(a) it conforms with a rule which includes a provision to the effect that behaviour conforming with the rule does not amount to market abuse,

(b) it conforms with the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments, or

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(c) it is done by a person acting on behalf of a public authority in pursuit of monetary policies or policies with respect to exchange rates or the management of public debt or foreign exchange reserves.

(6) Subsections (2) and (3) cease to have effect on 30 June 2008.

[F63 118B Insiders

For the purposes of this Part an insider is any person who has inside information—

(a) as a result of his membership of an administrative, management or supervisory body of an issuer of qualifying investments,

(b) as a result of his holding in the capital of an issuer of qualifying investments,

(c) as a result of having access to the information through the exercise of his employment, profession or duties,

(d) as a result of his criminal activities, or

(e) which he has obtained by other means and which he knows, or could reasonably be expected to know, is inside information.

Textual Amendments

F63 Ss. 118-118C substituted (1.7.2005) for s. 118 by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 5, **Sch. 2 para. 1**

118C Inside information

(1) This section defines "inside information" for the purposes of this Part.

(2) In relation to qualifying investments, or related investments, which are not commodity derivatives, inside information is information of a precise nature which—

(a) is not generally available,

(b) relates, directly or indirectly, to one or more issuers of the qualifying investments or to one or more of the qualifying investments, and

(c) would, if generally available, be likely to have a significant effect on the price of the qualifying investments or on the price of related investments.

(3) In relation to qualifying investments or related investments which are commodity derivatives, inside information is information of a precise nature which—

(a) is not generally available,

(b) relates, directly or indirectly, to one or more such derivatives, and

(c) users of markets on which the derivatives are traded would expect to receive in accordance with any accepted market practices on those markets.

(4) In relation to a person charged with the execution of orders concerning any qualifying investments or related investments, inside information includes information conveyed by a client and related to the client's pending orders which—

(a) is of a precise nature,

(b) is not generally available,

(c) relates, directly or indirectly, to one or more issuers of qualifying investments or to one or more qualifying investments, and

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(d) would, if generally available, be likely to have a significant effect on the price of those qualifying investments or the price of related investments.

(5) Information is precise if it—

(a) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur, and

(b) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of qualifying investments or related investments.

(6) Information would be likely to have a significant effect on price if and only if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions.

(7) For the purposes of subsection (3)(c), users of markets on which investments in commodity derivatives are traded are to be treated as expecting to receive information relating directly or indirectly to one or more such derivatives in accordance with any accepted market practices, which is —

(a) routinely made available to the users of those markets, or

(b) required to be disclosed in accordance with any statutory provision, market rules, or contracts or customs on the relevant underlying commodity market or commodity derivatives market.

(8) Information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded, for the purposes of this Part, as being generally available to them.**]**

Textual Amendments

F63 Ss. 118-118C substituted (1.7.2005) for s. 118 by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 5, **Sch. 2 para. 1**

The code

119 The code.

(1) The Authority must prepare and issue a code containing such provisions as the Authority considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse.

(2) The code may among other things specify—

(a) descriptions of behaviour that, in the opinion of the Authority, amount to market abuse;

(b) descriptions of behaviour that, in the opinion of the Authority, do not amount to market abuse;

(c) factors that, in the opinion of the Authority, are to be taken into account in determining whether or not behaviour amounts to market abuse.

[F64(d) descriptions of behaviour that are accepted market practices in relation to one or more specified markets;

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(e) descriptions of behaviour that are not accepted market practices in relation to one or more specified markets.**]**

[F65(2A) In determining, for the purposes of subsections (2)(d) and (2)(e) or otherwise, what are and what are not accepted market practices, the Authority must have regard to the factors and procedures laid down in Articles 2 and 3 respectively of Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council.**]**

(3) The code may make different provision in relation to persons, cases or circumstances of different descriptions.

(4) The Authority may at any time alter or replace the code.

(5) If the code is altered or replaced, the altered or replacement code must be issued by the Authority.

(6) A code issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(7) The Authority must, without delay, give the Treasury a copy of any code published under this section.

(8) The Authority may charge a reasonable fee for providing a person with a copy of the code.

Textual Amendments

F64 S. 119(2)(d)(e) inserted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 5, **Sch. 2 para. 2(2)**

F65 S. 119(2A) inserted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 5, **Sch. 2 para. 2(3)**

120 Provisions included in the Authority's code by reference to the City Code.

(1) The Authority may include in a code issued by it under section 119 ("the Authority's code") provision to the effect that in its opinion behaviour conforming with the City Code—

(a) does not amount to market abuse;

(b) does not amount to market abuse in specified circumstances; or

(c) does not amount to market abuse if engaged in by a specified description of person.

(2) But the Treasury's approval is required before any such provision may be included in the Authority's code.

(3) If the Authority's code includes provision of a kind authorised by subsection (1), the Authority must keep itself informed of the way in which the Panel on Takeovers and Mergers interprets and administers the relevant provisions of the City Code.

(4) "City Code" means the City Code on Takeovers and Mergers issued by the Panel as it has effect at the time when the behaviour occurs.

(5) "Specified" means specified in the Authority's code.

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121 Codes: procedure.

(1) Before issuing a code under section 119, the Authority must publish a draft of the proposed code in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by—

(a) a cost benefit analysis; and

(b) notice that representations about the proposal may be made to the Authority within a specified time.

(3) Before issuing the proposed code, the Authority must have regard to any representations made to it in accordance with subsection (2)(b).

(4) If the Authority issues the proposed code it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2)(b); and

(b) its response to them.

(5) If the code differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant—

(a) the Authority must (in addition to complying with subsection (4)) publish details of the difference; and

(b) those details must be accompanied by a cost benefit analysis.

(6) Subsections (1) to (5) do not apply if the Authority considers that there is an urgent need to publish the code.

(7) Neither subsection (2)(a) nor subsection (5)(b) applies if the Authority considers—

(a) that, making the appropriate comparison, there will be no increase in costs; or

(b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.

(8) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(9) This section also applies to a proposal to alter or replace a code.

(10) "Cost benefit analysis" means an estimate of the costs together with an analysis of the benefits that will arise—

(a) if the proposed code is issued; or

(b) if subsection (5)(b) applies, from the code that has been issued.

(11) "The appropriate comparison" means—

(a) in relation to subsection (2)(a), a comparison between the overall position if the code is issued and the overall position if it is not issued;

(b) in relation to subsection (5)(b), a comparison between the overall position after the issuing of the code and the overall position before it was issued.

122 Effect of the code.

(1) If a person behaves in a way which is described (in the code in force under section 119 at the time of the behaviour) as behaviour that, in the Authority's opinion, does not

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amount to market abuse that behaviour of his is to be taken, for the purposes of this Act, as not amounting to market abuse.

(2) Otherwise, the code in force under section 119 at the time when particular behaviour occurs may be relied on so far as it indicates whether or not that behaviour should be taken to amount to market abuse.

Power to impose penalties

123 Power to impose penalties in cases of market abuse.

(1) If the Authority is satisfied that a person ("A")—

(a) is or has engaged in market abuse, or

(b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by A, would amount to market abuse,

it may impose on him a penalty of such amount as it considers appropriate.

(2) But the Authority may not impose a penalty on a person if, having considered any representations made to it in response to a warning notice, there are reasonable grounds for it to be satisfied that—

(a) he believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1), or

(b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection.

(3) If the Authority is entitled to impose a penalty on a person under this section it may, instead of imposing a penalty on him, publish a statement to the effect that he has engaged in market abuse.

Statement of policy

124 Statement of policy.

(1) The Authority must prepare and issue a statement of its policy with respect to—

(a) the imposition of penalties under section 123; and

(b) the amount of penalties under that section.

(2) The Authority's policy in determining what the amount of a penalty should be must include having regard to—

(a) whether the behaviour in respect of which the penalty is to be imposed had an adverse effect on the market in question and, if it did, how serious that effect was;

(b) the extent to which that behaviour was deliberate or reckless; and

(c) whether the person on whom the penalty is to be imposed is an individual.

(3) A statement issued under this section must include an indication of the circumstances in which the Authority is to be expected to regard a person as—

(a) having a reasonable belief that his behaviour did not amount to market abuse; or

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(b) having taken reasonable precautions and exercised due diligence to avoid engaging in market abuse.

(4) The Authority may at any time alter or replace a statement issued under this section.

(5) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replacement statement.

(6) In exercising, or deciding whether to exercise, its power under section 123 in the case of any particular behaviour, the Authority must have regard to any statement published under this section and in force at the time when the behaviour concerned occurred.

(7) A statement issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(8) The Authority may charge a reasonable fee for providing a person with a copy of a statement published under this section.

(9) The Authority must, without delay, give the Treasury a copy of any statement which it publishes under this section.

125 Statement of policy: procedure.

(1) Before issuing a statement of policy under section 124, the Authority must publish a draft of the proposed statement in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the Authority within a specified time.

(3) Before issuing the proposed statement, the Authority must have regard to any representations made to it in accordance with subsection (2).

(4) If the Authority issues the proposed statement it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2); and

(b) its response to them.

(5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant, the Authority must (in addition to complying with subsection (4)) publish details of the difference.

(6) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

Procedure

126 Warning notices.

(1) If the Authority proposes to take action against a person under section 123, it must give him a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.

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(3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.

127 Decision notices and right to refer to Tribunal.

(1) If the Authority decides to take action against a person under section 123, it must give him a decision notice.

(2) A decision notice about the imposition of a penalty must state the amount of the penalty.

(3) A decision notice about the publication of a statement must set out the terms of the statement.

(4) If the Authority decides to take action against a person under section 123, that person may refer the matter to the Tribunal.

Miscellaneous

128 Suspension of investigations.

(1) If the Authority considers it desirable or expedient because of the exercise or possible exercise of a power relating to market abuse, it may direct a recognised investment exchange or recognised clearing house—

(a) to terminate, suspend or limit the scope of any inquiry which the exchange or clearing house is conducting under its rules; or

(b) not to conduct an inquiry which the exchange or clearing house proposes to conduct under its rules.

(2) A direction under this section—

(a) must be given to the exchange or clearing house concerned by notice in writing; and

(b) is enforceable, on the application of the Authority, by injunction or, in Scotland, by an order under section 45 of the [M15]Court of Session Act 1988.

(3) The Authority's powers relating to market abuse are its powers—

(a) to impose penalties under section 123; or

(b) to appoint a person to conduct an investigation under section 168 in a case falling within subsection (2)(d) of that section.

Marginal Citations

M15 1988 c. 36.

129 Power of court to impose penalty in cases of market abuse.

(1) The Authority may on an application to the court under section 381 or 383 request the court to consider whether the circumstances are such that a penalty should be imposed on the person to whom the application relates.

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(2) The court may, if it considers it appropriate, make an order requiring the person concerned to pay to the Authority a penalty of such amount as it considers appropriate.

130 Guidance.

(1) The Treasury may from time to time issue written guidance for the purpose of helping relevant authorities to determine the action to be taken in cases where behaviour occurs which is behaviour—

(a) with respect to which the power in section 123 appears to be exercisable; and

(b) which appears to involve the commission of an offence under section 397 of this Act or Part V of the [M16]Criminal Justice Act 1993 (insider dealing).

(2) The Treasury must obtain the consent of the Attorney General and the Secretary of State before issuing any guidance under this section.

(3) In this section "relevant authorities"—

(a) in relation to England and Wales, means the Secretary of State, the Authority, the Director of the Serious Fraud Office and the Director of Public Prosecutions;

(b) in relation to Northern Ireland, means the Secretary of State, the Authority, the Director of the Serious Fraud Office and the Director of Public Prosecutions for Northern Ireland.

(4) Subsections (1) to (3) do not apply to Scotland.

(5) In relation to Scotland, the Lord Advocate may from time to time, after consultation with the Treasury, issue written guidance for the purpose of helping the Authority to determine the action to be taken in cases where behaviour mentioned in subsection (1) occurs.

Marginal Citations

M16 1993 c. 36.

[F66[F66130A Interpretation and supplementary provision

(1) The Treasury may by order specify (whether by name or description)—

(a) the markets which are prescribed markets for the purposes of specified provisions of this Part, and

(b) the investments that are qualifying investments in relation to the prescribed markets.

(2) An order may prescribe different investments or descriptions of investment in relation to different markets or descriptions of market.

(3) In this Part—

"accepted market practices" means practices that are reasonably expected in the financial market or markets in question and are accepted by the Authority or, in the case of a market situated in another EEA State, the competent authority of that EEA State within the meaning of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse),

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"behaviour" includes action or inaction,

"dealing", in relation to an investment, means acquiring or disposing of the investment whether as principal or agent or directly or indirectly, and includes agreeing to acquire or dispose of the investment, and entering into and bringing to an end a contract creating it,

"investment" is to be read with section 22 and Schedule 2,

"regular user", in relation to a particular market, means a reasonable person who regularly deals on that market in investments of the kind in question,

"related investment", in relation to a qualifying investment, means an investment whose price or value depends on the price or value of the qualifying investment.

(4) Any reference in this Act to a person engaged in market abuse is to a person engaged in market abuse either alone or with one or more other persons.**]]**

Textual Amendments

F66 S. 130A inserted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 5, **Sch. 2 para. 3**

131 Effect on transactions.

The imposition of a penalty under this Part does not make any transaction void or unenforceable.

[F67[F67131A Protected Disclosures

(1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).

(2) The first condition is that the information or other matter—

(a) causes the person making the disclosure (the discloser) to know or suspect, or

(b) gives him reasonable grounds for knowing or suspecting, that another person has engaged in market abuse.

(3) The second condition is that the information or other matter disclosed came to the discloser in the course of his trade, profession, business or employment.

(4) The third condition is that the disclosure is made to the Authority or to a nominated officer as soon as is practicable after the information or other matter comes to the discloser.

(5) A disclosure to a nominated officer is a disclosure which is made to a person nominated by the discloser's employer to receive disclosures under this section, and is made in the course of the discloser's employment and in accordance with the procedure established by the employer for the purpose.

(6) For the purposes of this section, references to a person's employer include any body, association or organisation (including a voluntary organisation) in connection with whose activities the person exercises a function (whether or not for gain or reward) and references to employment must be construed accordingly.**]]**

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Textual Amendments

F67 S. 131A inserted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 5, **Sch. 2 para. 4**

VALID FROM 08/06/2010

[F68PART 8A

SHORT SELLING

Textual Amendments

F68 Pt. 8A inserted (8.6.2010) by Financial Services Act 2010 (c. 28), **ss. 8**, 26(2)(b)

Short selling rules

131B Short selling rules

(1) The Authority may make rules prohibiting in specified cases persons from engaging in short selling in relation to relevant financial instruments (or relevant financial instruments of a specified description).

(2) The Authority may make rules requiring—

(a) a person who has engaged in short selling in relation to relevant financial instruments (or relevant financial instruments of a specified description), or

(b) an authorised person of a specified description who has acted on behalf of such a person,

to disclose in specified cases specified information, or information of a specified description, about the short selling.

(3) Rules under subsection (2) may specify the time by which, and the way in which, the disclosure must be made (and may in particular provide for the information to be disclosed to the Authority or published in a specified way).

(4) Rules under subsection (2) may apply in relation to short selling engaged in before the rules are made where the resulting short position is still open when the rules are made.

(5) The reference to a short position being open is to be read in accordance with provision made by the rules.

(6) Rules under this section may apply to short selling wholly outside the United Kingdom by persons outside the United Kingdom, but only in so far as the rules relate to UK financial instruments.

(7) The description of relevant financial instruments that may be specified by the rules includes relevant financial instruments issued by a specified person.

(8) Rules under this section are referred to in this Part as "short selling rules".

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(9) The Authority must, when making short selling rules, have regard to any international agreement as to measures to be taken in respect of short selling.

131C Short selling rules: definitions etc

(1) This section supplements section 131B.

(2) The cases in which a person ("S") engages in short selling in relation to a financial instrument (a "shorted instrument") include any case where—

(a) S enters into a transaction which creates, or relates to, another financial instrument; and

(b) the effect (or one of the effects) of the transaction is to confer a financial advantage on S in the event of a decrease in the price or value of the shorted instrument.

(3) "Financial instrument" has the meaning given by Article 4.1(17) of the markets in financial instruments directive.

(4) "Relevant financial instrument" means a financial instrument that—

(a) is admitted to trading on a regulated market or on any other prescribed market in an EEA State; or

(b) has such other connection with a market in an EEA State as may be specified.

(5) "Specified" means specified by short selling rules.

(6) "UK financial instrument" means a financial instrument that is admitted to trading on a market in the United Kingdom.

(7) In the case of a financial instrument that is admitted to trading on—

(a) a market in the United Kingdom or another EEA State, and

(b) one or more markets in a country or territory, or countries or territories, anywhere else in the world,

short selling rules may apply in relation to trading on both or all markets.

(8) In any case where—

(a) a financial instrument ("instrument A") is admitted to trading on a market in the United Kingdom or another EEA State,

(b) another financial instrument ("instrument B") is admitted to trading on one or more markets in a country or territory, or countries or territories, anywhere else in the world, and

(c) the price or value of instrument A depends on the price or value of instrument B (or vice versa),

short selling rules may apply in relation to trading on both or all markets.

(9) In subsection (4)(a) "regulated market" has the meaning given by Article 4.1(14) of the markets in financial instruments directive.

(10) References in this section to a market in a country or territory are to a market situated or operating in the country or territory.

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131D Short selling rules: procedure in urgent cases

(1) The Authority may make short selling rules (and may subsequently amend those rules) without complying with section 155 (consultation in relation to proposed rules) if it considers that it is necessary to do so, in order to—

(a) maintain confidence in the UK financial system; or

(b) protect the stability of the UK financial system.

(2) Any rules made by virtue of subsection (1) ("emergency rules") cease to have effect at the end of the period of three months beginning with the day on which the rules are made ("the relevant day"); but this is subject as follows.

(3) The Authority may direct that emergency rules are to cease to have effect at the end of a period (not exceeding six months beginning with the relevant day) specified in the direction.

(4) A direction under subsection (3) may be made only if, immediately before the end of the period mentioned in subsection (2), the Authority considers that it is necessary to do so, in order to—

(a) maintain confidence in the UK financial system; or

(b) protect the stability of the UK financial system.

(5) Such a direction must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(6) Nothing in subsection (2) or (3) prevents the Authority from revoking emergency rules before the end of the periods referred to there.

Power to require information

131E Power to require information

(1) The Authority may, by notice in writing, require a person ("P")—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

(2) This section applies only to information and documents that the Authority reasonably requires for the purpose of determining whether P, or a person connected with P, has contravened any provision of short selling rules.

(3) Information or documents required under this section must be provided or produced—

(a) before the end of such reasonable period as may be specified; and

(b) at such place as may be specified.

(4) The Authority may require any information provided under this section to be provided in such form as it may reasonably require.

(5) The Authority may require—

(a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require; or

(b) any document produced to be authenticated in such manner as it may reasonably require.

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(6) In this section "specified" means specified in the notice.

(7) For the purposes of this section a person is connected with another person ("P") if the person is or has at any relevant time been—

(a) a member of P's group;

(b) a controller of P;

(c) any other member of a partnership of which P is a member; or

(d) in relation to P, a person mentioned in Part 1 of Schedule 15 (reading references in that Part to the authorised person as references to P).

131F Power to require information: supplementary

(1) If the Authority has power under section 131E to require a person to produce a document but it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.

(2) If a document is produced in response to a requirement imposed under section 131E, the Authority may—

(a) take copies of or extracts from the document; or

(b) require the person producing the document, or any relevant person, to provide an explanation of the document.

(3) In subsection (2)(b) "relevant person", in relation to a person who is required to produce a document, means a person who—

(a) has been or is or is proposed to be a director or controller of that person;

(b) has been or is an auditor of that person;

(c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or

(d) has been or is an employee of that person.

(4) If a person who is required under section 131E to produce a document fails to do so, the Authority may require the person to state, to the best of the person's knowledge and belief, where the document is.

(5) A lawyer may be required under section 131E to provide the name and address of the lawyer's client.

(6) A person ("P") may not be required under section 131E to disclose information or produce a document in respect of which P owes an obligation of confidence by virtue of carrying on the business of banking unless—

(a) P is the person under investigation or a member of that person's group;

(b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person's group; or

(c) the person to whom the obligation of confidence is owed consents to the disclosure or production.

(7) If a person claims a lien on a document, its production under section 131E does not affect the lien.

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Breach of short selling rules etc

131G Power to impose penalty or issue censure

(1) This section applies if the Authority is satisfied that a person has contravened—

(a) any provision of short selling rules; or

(b) any requirement imposed on the person under section 131E or 131F.

(2) The Authority may impose a penalty of such amount as it considers appropriate on—

(a) the person who contravened the provision or requirement; or

(b) any person who was knowingly concerned in the contravention.

(3) It may, instead of imposing a penalty on a person, publish a statement censuring the person.

(4) The Authority may not take action against a person under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person under section 131H.

(5) "The limitation period" means the period of three years beginning with the first day on which the Authority knew of the contravention.

(6) For this purpose the Authority is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.

131H Procedure and right to refer to Tribunal

(1) If the Authority proposes to take action against a person under section 131G, it must give the person a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(4) If the Authority decides to take action against a person under section 131G, it must give the person a decision notice.

(5) A decision notice about the imposition of a penalty must state the amount of the penalty.

(6) A decision notice about the publication of a statement must set out the terms of the statement.

(7) If the Authority decides to take action against a person under section 131G, the person may refer the matter to the Tribunal.

131I Duty on publication of statement

After a statement under section 131G(3) is published, the Authority must send a copy of the statement to—

(a) the person in respect of whom it is made; and

(b) any person to whom a copy of the decision notice was given under section 393(4).

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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131J Imposition of penalties under section 131G: statement of policy

(1) The Authority must prepare and issue a statement of its policy with respect to—

(a) the imposition of penalties under section 131G; and

(b) the amount of penalties under that section.

(2) The Authority's policy in determining what the amount of a penalty should be must include having regard to—

(a) the seriousness of the contravention;

(b) the extent to which the contravention was deliberate or reckless; and

(c) whether the person on whom the penalty is to be imposed is an individual.

(3) The Authority may at any time alter or replace a statement issued under this section.

(4) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replaced statement.

(5) The Authority must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(6) A statement issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(7) The Authority may charge a reasonable fee for providing a person with a copy of the statement.

(8) In exercising, or deciding whether to exercise, a power under section 131G in the case of any particular contravention, the Authority must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.

131K Statement of policy: procedure

(1) Before issuing a statement under section 131J, the Authority must publish a draft of the proposed statement in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the Authority within a specified time.

(3) Before issuing the proposed statement, the Authority must have regard to any representations made to it in accordance with subsection (2).

(4) If the Authority issues the proposed statement it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2); and

(b) its response to them.

(5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant, the Authority must (in addition to complying with subsection (4)) publish details of the difference.

(6) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

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(7) This section also applies to a proposal to alter or replace a statement.**]**

PART IX

HEARINGS AND APPEALS

Modifications etc. (not altering text)

C216 Pt. IX applied (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, **s. 46A(7)** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 148** (with art. 13(1) Sch. 5)); S.I. 2001/3538, **art. 2(1)**
Pt. IX applied (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, **s. 58A(7)** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 75 (with art. 13(3), **Sch. 5**)); S.I. 2001/3538, **art. 2(1)**
Pt. IX applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, **s. 85(4C)(4D)** (as inserted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 95 (with art. 13(3), **Sch. 5**)); S.I. 2001/3538, **art. 2(1)**
Pt. IX applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, **s. 93(6B)(6C)** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 177(d) (with art. 13(3), **Sch. 5**)); S.I. 2001/3538, **art. 2(1)**

C217 Pt. 9 applied (with modifications) (15.12.2007) by The Money Laundering Regulations 2007 (S.I. 2007/2157), reg. 44(4)(8), **Sch. 5 para. 2** (with reg. 44(7)) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 129(g)**)

C218 Pt. 9 applied (with modifications) (15.12.2007) by The Transfer of Funds (Information on the Payer) Regulations 2007 (S.I. 2007/3298), **reg. 13(4)**, Sch. 2 para. 1 (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 131(d)**)

C219 Pt. 9 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 40**

C220 Pt. 9 applied (with modifications) (13.3.2008) by The Northern Rock plc Compensation Scheme Order 2008 (S.I. 2008/718), arts. 1(2), 2, **Sch. paras. 15-19** (as amended (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2), 5(2), **Sch. 3 para. 158(e)-(i)** and (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 139**)

C221 Pt. 9 applied (with modifications) (19.12.2008) by The Bradford & Bingley plc Compensation Scheme Order 2008 (S.I. 2008/3249), arts. 1(2), 2, **Sch. para. 14-18** (as amended (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2), 5(2), **Sch. 3 para. 176(e)-(i)** and (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 152**)

C222 Pt. 9 applied (with modifications) (1.5.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), reg. 1(2)(b)(xiii), 95, **Sch. 5 para. 2** (with reg. 3) (as amended (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2), 5(2), **Sch. 3 para. 189** and (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 155(6)(b)(c)** (with Sch. 2 para. 156))

C223 Pt. 9 applied (with modifications) (30.7.2009) by The Dunfermline Building Society Independent Valuer Order 2009 (S.I. 2009/1810), **arts. 14-18** (as amended (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2), 5(2), **Sch. 3 paras. 195-199** and (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 175**)

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C224 Pt. 9 applied (with modifications) (31.12.2009) by Banking Act 2009 (c. 1), **ss. 202(3)**, 263(1) (with ss. 206, 247); S.I. 2009/3000, **art. 4**, Sch. para. 2 (with art. 2)

C225 Pt. 9 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. paras. 7**, **8**

132 The Financial Services and Markets Tribunal.

(1) For the purposes of this Act, there is to be a tribunal known as the Financial Services and Markets Tribunal (but referred to in this Act as "the Tribunal").

(2) The Tribunal is to have the functions conferred on it by or under this Act.

(3) The Lord Chancellor may by rules make such provision as appears to him to be necessary or expedient in respect of the conduct of proceedings before the Tribunal.

(4) Schedule 13 is to have effect as respects the Tribunal and its proceedings (but does not limit the Lord Chancellor's powers under this section).

Modifications etc. (not altering text)

C226 S. 132 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(4)**

Commencement Information

I36 S. 132 wholly in force at 3.9.2001; s. 132 not in force at Royal Assent see s. 431(2); s. 132(1) in force for specifed purposes at 25.2.2001 by S.I. 2001/516, art. 2(c), **Sch. Pt. 3**; s. 132(3) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. I**; s. 132 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**

133 Proceedings: general provision.

(1) A reference to the Tribunal under this Act must be made before the end of—

(a) the period of 28 days beginning with the date on which the decision notice or supervisory notice in question is given; or

(b) such other period as may be specified in rules made under section 132.

(2) Subject to rules made under section 132, the Tribunal may allow a reference to be made after the end of that period.

(3) On a reference the Tribunal may consider any evidence relating to the subject-matter of the reference, whether or not it was available to the Authority at the material time.

(4) On a reference the Tribunal must determine what (if any) is the appropriate action for the Authority to take in relation to the matter referred to it.

(5) On determining a reference, the Tribunal must remit the matter to the Authority with such directions (if any) as the Tribunal considers appropriate for giving effect to its determination.

(6) In determining a reference made as a result of a decision notice, the Tribunal may not direct the Authority to take action which the Authority would not, as a result of section 388(2), have had power to take when giving the decision notice.

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(7) In determining a reference made as a result of a supervisory notice, the Tribunal may not direct the Authority to take action which would have otherwise required the giving of a decision notice.

(8) The Tribunal may, on determining a reference, make recommendations as to the Authority's regulating provisions or its procedures.

(9) The Authority must not take the action specified in a decision notice—

(a) during the period within which the matter to which the decision notice relates may be referred to the Tribunal; and

(b) if the matter is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.

(10) The Authority must act in accordance with the determination of, and any direction given by, the Tribunal.

(11) An order of the Tribunal may be enforced—

(a) as if it were an order of a county court; or

(b) in Scotland, as if it were an order of the Court of Session.

(12) "Supervisory notice" has the same meaning as in section 395.

Modifications etc. (not altering text)

C227 S. 133 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c)**, 11 (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**
S. 133 applied (with modifications) (10.8.2001) by S.I. 2001/2636, **arts. 1(2)(a)**, 58(6)
S. 133 applied (with modifications) (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 10(6), 11(6) (which was revoked (8.10.2001) by 2001/3083, arts. (2), 23); S.I. 2001/3538, **art. 2(1)**
S. 133 applied (with modifications) (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 10(6), 11(6); S.I. 2001/3538, **art. 2(1)**
S. 133 applied (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 62(2), 79(2) (with art. 23(2))
S. 133 applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 83(3) (with art. 23(2))

C228 S. 133 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(4)**

C229 S. 133 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **11** (with reg. 1(2))

C230 S. 133(6) modified (1.12.2001) by S.I. 2001/2957, **arts. 1**, 12(8); S.I. 2001/3538, **art. 2(1)**

VALID FROM 06/04/2010

[F69[F69133A Proceedings before Tribunal: decision and supervisory notices, etc.

(1) In determining a reference made (whether under this or any other Act) as a result of a decision notice given by the Authority, the Tribunal may not direct the Authority to take action which the Authority would not, as a result of section 388(2), have had power to take when giving the notice.

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(2) In determining a reference made as a result of a supervisory notice given by the Authority, the Tribunal may not direct the Authority to take action which would have otherwise required the giving of a decision notice.

(3) In subsection (2) "supervisory notice" has the same meaning as in section 395.

(4) The Authority must not take the action specified in a decision notice—

(a) during the period within which the matter to which the notice relates may be referred to the Tribunal (whether under this or any other Act); and

(b) if the matter is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.

(5) The Tribunal may, on determining a reference (whether made under this or any other Act) in respect of a decision of the Authority, make recommendations as to the Authority's regulating provisions or its procedures.**]**

Textual Amendments

F69 Ss. 133-133B substituted (6.4.2010) for s. 133 by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2)(e), 5(1), **Sch. 2 para. 45**

VALID FROM 06/04/2010

133B Offences

(1) This section applies in the case of proceedings before the Tribunal in respect of—

(a) a decision of the Authority;

(b) a decision of the Bank of England; or

(c) a decision of a person relating to the assessment of any compensation or consideration under the [M17]Banking (Special Provisions) Act 2008 or the [M18]Banking Act 2009.

(2) A person is guilty of an offence if that person, without reasonable excuse—

(a) refuses or fails—

(i) to attend following the issue of a summons by the Tribunal; or

(ii) 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.

(3) A person guilty of an offence under subsection (2)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A person guilty of an offence under subsection (2)(b) is liable—

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

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.**]**

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Textual Amendments

F69 Ss. 133-133B substituted (6.4.2010) for s. 133 by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2)(e), 5(1), **Sch. 2 para. 45**

Marginal Citations

M17 2008 c. 2.

M18 2009 c. 1.

Legal assistance before the Tribunal

134 Legal assistance scheme.

(1) The Lord Chancellor may by regulations establish a scheme governing the provision of legal assistance in connection with proceedings before the Tribunal.

(2) If the Lord Chancellor establishes a scheme under subsection (1), it must provide that a person is eligible for assistance only if—

(a) he falls within subsection (3); and

(b) he fulfils such other criteria (if any) as may be prescribed as a result of section 135(1)(d).

(3) A person falls within this subsection if he is an individual who has referred a matter to the Tribunal under section 127(4).

(4) In this Part of this Act "the legal assistance scheme" means any scheme in force under subsection (1).

135 Provisions of the legal assistance scheme.

(1) The legal assistance scheme may, in particular, make provision as to—

(a) the kinds of legal assistance that may be provided;

(b) the persons by whom legal assistance may be provided;

(c) the manner in which applications for legal assistance are to be made;

(d) the criteria on which eligibility for legal assistance is to be determined;

(e) the persons or bodies by whom applications are to be determined;

(f) appeals against refusals of applications;

(g) the revocation or variation of decisions;

(h) its administration and the enforcement of its provisions.

(2) Legal assistance under the legal assistance scheme may be provided subject to conditions or restrictions, including conditions as to the making of contributions by the person to whom it is provided.

136 Funding of the legal assistance scheme.

(1) The Authority must pay to the Lord Chancellor such sums at such times as he may, from time to time, determine in respect of the anticipated or actual cost of legal assistance provided in connection with proceedings before the Tribunal under the legal assistance scheme.

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(2) In order to enable it to pay any sum which it is obliged to pay under subsection (1), the Authority must make rules requiring the payment to it by authorised persons or any class of authorised person of specified amounts or amounts calculated in a specified way.

(3) Sums received by the Lord Chancellor under subsection (1) must be paid into the Consolidated Fund.

(4) The Lord Chancellor must, out of money provided by Parliament fund the cost of legal assistance provided in connection with proceedings before the Tribunal under the legal assistance scheme.

(5) Subsection (6) applies if, as respects a period determined by the Lord Chancellor, the amount paid to him under subsection (1) as respects that period exceeds the amount he has expended in that period under subsection (4).

(6) The Lord Chancellor must—

(a) repay, out of money provided by Parliament, the excess to the Authority; or

(b) take the excess into account on the next occasion on which he makes a determination under subsection (1).

(7) The Authority must make provision for any sum repaid to it under subsection (6)(a)—

(a) to be distributed among—

(i) the authorised persons on whom a levy was imposed in the period in question as a result of rules made under subsection (2); or

(ii) such of those persons as it may determine;

(b) to be applied in order to reduce any amounts which those persons, or such of them as it may determine, are or will be liable to pay to the Authority, whether under rules made under subsection (2) or otherwise; or

(c) to be partly so distributed and partly so applied.

(8) If the Authority considers that it is not practicable to deal with any part of a sum repaid to it under subsection (6)(a) in accordance with provision made by it as a result of subsection (7), it may, with the consent the Lord Chancellor, apply or dispose of that part of that sum in such manner as it considers appropriate.

(9) "Specified" means specified in the rules.

Commencement Information

I37 S. 136 wholly in force at 3.9.2001; s. 136 not in force at Royal Assent see s. 431(2); s. 136 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 136 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**

Appeals

137 Appeal on a point of law.

(1) A party to a reference to the Tribunal may with permission appeal—

(a) to the Court of Appeal, or

(b) in Scotland, to the Court of Session,

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on a point of law arising from a decision of the Tribunal disposing of the reference.

(2) "Permission" means permission given by the Tribunal or by the Court of Appeal or (in Scotland) the Court of Session.

(3) If, on an appeal under subsection (1), the court considers that the decision of the Tribunal was wrong in law, it may—

(a) remit the matter to the Tribunal for rehearing and determination by it; or

(b) itself make a determination.

(4) An appeal may not be brought from a decision of the Court of Appeal under subsection (3) except with the leave of—

(a) the Court of Appeal; or

(b) the House of Lords.

(5) An appeal lies, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given on such terms as to costs, expenses or otherwise as the Court of Session or the House of Lords may determine.

(6) Rules made under section 132 may make provision for regulating or prescribing any matters incidental to or consequential on an appeal under this section.

Modifications etc. (not altering text)

C231 S. 137 applied (with modifications) (10.8.2001) by S.I. 2001/2636, **arts. 1(2)(a)**, 58(6)

Commencement Information

I38 S. 137 wholly in force at 3.9.2001; s. 137 not in force at Royal Assent see s. 431(2); s. 137(6) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 137 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**

PART X

RULES AND GUIDANCE

CHAPTER I

RULE-MAKING POWERS

138 General rule-making power.

(1) The Authority may make such rules applying to authorised persons—

(a) with respect to the carrying on by them of regulated activities, or

(b) with respect to the carrying on by them of activities which are not regulated activities,

as appear to it to be necessary or expedient for the purpose of protecting the interests of consumers.

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(2) Rules made under this section are referred to in this Act as the Authority's general rules.

(3) The Authority's power to make general rules is not limited by any other power which it has to make regulating provisions.

(4) The Authority's general rules may make provision applying to authorised persons even though there is no relationship between the authorised persons to whom the rules will apply and the persons whose interests will be protected by the rules.

(5) General rules may contain requirements which take into account, in the case of an authorised person who is a member of a group, any activity of another member of the group.

(6) General rules may not—

(a) make provision prohibiting an EEA firm from carrying on, or holding itself out as carrying on, any activity which it has permission conferred by Part II of Schedule 3 to carry on in the United Kingdom;

(b) make provision, as respects an EEA firm, about any matter responsibility for which is, under any of the single market directives, reserved to the firm's home state regulator.

(7) "Consumers" means persons—

(a) who use, have used, or are or may be contemplating using, any of the services provided by—

(i) authorised persons in carrying on regulated activities; or

(ii) persons acting as appointed representatives;

(b) who have rights or interests which are derived from, or are otherwise attributable to, the use of any such services by other persons; or

(c) who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them.

(8) If an authorised person is carrying on a regulated activity in his capacity as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or are or may be contemplating using services provided by the authorised person in his carrying on of that activity.

(9) For the purposes of subsection (7) a person who deals with an authorised person in the course of the authorised person's carrying on of a regulated activity is to be treated as using services provided by the authorised person in carrying on those activities.

Modifications etc. (not altering text)

C232 S. 138 modified (18.6.2001) by S.I. 2001/1821, **arts. 1(1)**, 3(1)-(3)

C233 S. 138: power to make rules amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **3(1)(4)**

S. 138 extended (with modifications) (2.7.2002) by The Financial Services and Markets Act 2002 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (S.I. 2002/1501), **art. 4**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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C234 S. 138 extended (31.10.2004 for certain purposes, otherwise 14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), **10**

C235 S. 138(4)(5) amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **3(2)**

C236 S. 138(4)(5) amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **3(2)**

C237 S. 138(7)-(9) amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **3(2)**

C238 S. 138(7)(9) modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **3(3)**

C239 S. 138(7)-(9) amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **3(2)**

C240 S. 138(7)-(9) amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **3(2)**

C241 S. 138(7)(9) modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **3(3)**

139 Miscellaneous ancillary matters.

(1) Rules relating to the handling of money held by an authorised person in specified circumstances ("clients' money") may—

(a) make provision which results in that clients' money being held on trust in accordance with the rules;

(b) treat two or more accounts as a single account for specified purposes (which may include the distribution of money held in the accounts);

(c) authorise the retention by the authorised person of interest accruing on the clients' money; and

(d) make provision as to the distribution of such interest which is not to be retained by him.

(2) An institution with which an account is kept in pursuance of rules relating to the handling of clients' money does not incur any liability as constructive trustee if money is wrongfully paid from the account, unless the institution permits the payment—

(a) with knowledge that it is wrongful; or

(b) having deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.

(3) In the application of subsection (1) to Scotland, the reference to money being held on trust is to be read as 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.

(4) Rules may—

(a) confer rights on persons to rescind agreements with, or withdraw offers to, authorised persons within a specified period; and

(b) make provision, in respect of authorised persons and persons exercising those rights, for the restitution of property and the making or recovery of payments where those rights are exercised.

(5) "Rules" means general rules.

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(6) "Specified" means specified in the rules.

VALID FROM 08/06/2010

[F70[F70139A General rules about remuneration

(1) The Authority must exercise its power to make general rules so as to make rules requiring each authorised person (or each authorised person of a specified description) to have, and act in accordance with, a remuneration policy.

(2) A "remuneration policy" is a policy about the remuneration by the authorised person of—

(a) officers,

(b) employees, and

(c) other persons,

of a specified description.

(3) The rules must secure that any remuneration policy that an authorised person is required by the rules to have is consistent with—

(a) the effective management of risks; and

(b) the Implementation Standards.

(4) When making rules about remuneration policies, the Authority must have regard to any other international standards about the remuneration of individuals working in the financial sector (or certain such individuals).

(5) The Treasury may direct the Authority to consider whether the remuneration policies of authorised persons specified in the direction (or of authorised persons of a description so specified) comply with requirements imposed by the rules as to the contents of the policies.

(6) Before giving a direction under subsection (5), the Treasury must consult the Authority.

(7) If the Authority considers that a remuneration policy fails to make provision which complies with the requirements mentioned in subsection (5), the Authority must take such steps as it considers appropriate to deal with the failure.

(8) The steps that the Authority may take include requiring the remuneration policy to be revised.

(9) General rules may—

(a) prohibit persons (or persons of a specified description) from being remunerated in a specified way;

(b) provide that any provision of an agreement that contravenes such a prohibition is void; and

(c) provide for the recovery of any payment made, or other property transferred, in pursuance of a provision that is void by virtue of paragraph (b).

(10) A prohibition may be imposed under subsection (9)(a) only for the purpose of ensuring that the provision of remuneration is consistent with—

(a) the effective management of risks; or

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(b) the Implementation Standards.

(11) A provision that, at the time the rules are made, is contained in an agreement made before that time may not be rendered void under subsection (9)(b) unless it is subsequently amended so as to contravene a prohibition under subsection (9)(a).

(12) In this section—

"the Implementation Standards" means the Implementation Standards for Principles for Sound Compensation Practices, issued by the Financial Stability Board on 25 September 2009; and

"specified" (except in subsection (5)) means specified by the rules.

(13) References to the Implementation Standards or to international standards of a kind mentioned in subsection (4) are to standards that are for the time being in force.**]]**

Textual Amendments

F70 S. 139A inserted (8.6.2010) by Financial Services Act 2010 (c. 28), **ss. 6**, 26(2)(b)

VALID FROM 08/06/2010

[F71[F71139B Rules about recovery plans

(1) The Authority must exercise its power to make general rules so as to make rules requiring each authorised person (or each authorised person of a specified description) to prepare, and keep up-to-date, a recovery plan.

(2) A "recovery plan" is a document containing information within subsection (3) or (4) of a specified description.

(3) Information is within this subsection if it relates to action to be taken to secure that, in the event of specified circumstances affecting the carrying on of the business (or any part of the business) of the authorised person—

(a) the business of the authorised person, or

(b) a specified part of the business of the authorised person,

is capable of being carried on (whether or not by the authorised person and whether or not in the same way as previously).

(4) Information is within this subsection if it would facilitate the carrying on of the business (or any part of the business) of the authorised person by any other person.

(5) The Authority must consider whether each recovery plan makes satisfactory provision in relation to the matters required by the rules to be covered by the plan.

(6) If the Authority considers that a recovery plan fails to make satisfactory provision in relation to any such matter, the Authority must take such steps as it considers appropriate to deal with the failure.

(7) The steps that the Authority may take include requiring the recovery plan to be revised.

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(8) The authorised persons subject to general rules about recovery plans must include authorised persons in relation to whom any power under Part 1 of the Banking Act 2009 (special resolution regime) is exercisable.

(9) Before preparing a draft of general rules about recovery plans having effect in relation to those persons, the Authority must consult—

(a) the Treasury; and

(b) the Bank of England.**]**

Textual Amendments

F71 Ss. 139B-139F inserted (8.6.2010) by Financial Services Act 2010 (c. 28), **ss. 7(1)**, 26(2)(b)

VALID FROM 08/06/2010

139C Rules about resolution plans

(1) The Authority must exercise its power to make general rules so as to make rules requiring each authorised person (or each authorised person of a specified description) to prepare, and keep up-to-date, a resolution plan.

(2) A "resolution plan" is a document containing information within subsection (3) or (4) of a specified description.

(3) Information is within this subsection if it relates to action to be taken in the event of—

(a) circumstances arising in which it is likely that the business (or any part of the business) of the authorised person will fail; or

(b) the failure of the business (or any part of the business) of the authorised person.

(4) Information is within this subsection if it would facilitate anything falling to be done by any person in consequence of that failure.

(5) An example of information within subsection (4) is information that, in the event of that failure, would facilitate —

(a) planning by the Treasury in relation to the possible exercise of any of their powers under Part 1 of the Banking Act 2009; or

(b) planning by the Bank of England in relation to the possible exercise of any of its powers under Part 1, 2 or 3 of that Act.

(6) The Authority must consider whether each resolution plan makes satisfactory provision in relation to the matters required by the rules to be covered by the plan.

(7) If the Authority considers that a resolution plan fails to make satisfactory provision in relation to any such matter, the Authority must take such steps as it considers appropriate to deal with the failure.

(8) The steps that the Authority may take include requiring the resolution plan to be revised.

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(9) The authorised persons subject to general rules about resolution plans must include authorised persons in relation to whom any power under Part 1 of the Banking Act 2009 is exercisable.

(10) Before preparing a draft of general rules about resolution plans having effect in relation to those persons, the Authority must consult—

(a) the Treasury; and

(b) the Bank of England.

Textual Amendments

F71 Ss. 139B-139F inserted (8.6.2010) by Financial Services Act 2010 (c. 28), **ss. 7(1)**, 26(2)(b)

VALID FROM 08/06/2010

139D Sections 139B and 139C: interpretation

(1) In sections 139B and 139C any reference to the taking of action includes the taking of action by—

(a) the authorised person;

(b) any other person in the same group as the authorised person; or

(c) a partnership of which the authorised person is a member.

(2) In subsection (1)(b) the definition of "group" in section 421 applies with the omission of subsection (1)(e) and (f) of that section.

(3) For the purposes of section 139C the cases in which the business (or any part of the business) of the authorised person is to be regarded as having failed include—

(a) the insolvency or bankruptcy of the authorised person;

(b) the authorised person entering into administration; and

(c) a power under Part 1 of the Banking Act 2009 being exercised in relation to the authorised person.

(4) In sections 139B and 139C references to the business of an authorised person include the business of—

(a) any person in the same group as the authorised person; and

(b) a partnership of which the authorised person is a member;

and, accordingly, references in subsection (3)(a) to (c) of this section to the authorised person include any person within paragraph (a) or (b).

(5) In sections 139B and 139C "specified" means specified in general rules.

(6) In this section—

"administration" includes administration under Part 3 of the Banking Act 2009;

"insolvency" includes insolvency under Part 2 of that Act.

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Textual Amendments

F71 Ss. 139B-139F inserted (8.6.2010) by Financial Services Act 2010 (c. 28), **ss. 7(1)**, 26(2)(b)

VALID FROM 08/06/2010

139E Rules about recovery and resolution plans: supplementary provision

(1) General rules about recovery or resolution plans may, in particular—

(a) impose a requirement on authorised persons to collect, and keep up-to-date, information of a description specified in the rules; and

(b) make provision as to the inclusion in the plans of information in respect of the steps to be taken to ensure compliance with that requirement.

(2) If the Authority considers that an authorised person has contravened that requirement, the Authority may require the authorised person to appoint a skilled person to collect or update the information in question.

(3) References in this section to a skilled person are to a person—

(a) nominated or approved by the Authority; and

(b) appearing to the Authority to have the skills necessary to collect or update the information in question.

(4) The skilled person may require any person to provide all such assistance as the skilled person may reasonably require to collect or update the information in question.

(5) A requirement imposed by subsection (4) is enforceable, on the application of the Authority, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(6) A contractual or other requirement imposed on a person ("P") to keep any information in confidence does not apply if—

(a) the information is or may be relevant to anything required to be done as a result of section 139B or 139C or this section;

(b) an authorised person or a skilled person requests or requires P to provide the information for the purpose of securing that those things are done; and

(c) the Authority has approved the making of the request or the imposition of the requirement before it is made or imposed.

(7) An authorised person may provide information (whether received under subsection (6) or otherwise) that would otherwise be subject to a contractual or other requirement to keep in confidence if it is provided for the purposes of anything required to be done as a result of section 139B or 139C or this section.

(8) General rules about recovery or resolution plans may, in particular, make provision about the form of the plans.

(9) When making general rules about recovery or resolution plans, the Authority must have regard to any international standards about documents whose purpose corresponds to the purpose of recovery or resolution plans.

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Textual Amendments

F71 Ss. 139B-139F inserted (8.6.2010) by Financial Services Act 2010 (c. 28), **ss. 7(1)**, 26(2)(b)

VALID FROM 08/06/2010

139F Special provision in relation to resolution plans

(1) In the case of resolution plans required to be prepared by general rules, the Authority must consult—

(a) the Treasury, and

(b) the Bank of England ("the Bank"),

about the adequacy of the plans so far as relating to any matter which may be relevant to the exercise by the Treasury or the Bank of any power under Part 1, 2 or 3 of the Banking Act 2009.

(2) After being consulted under subsection (1)—

(a) the Treasury or the Bank may notify the Authority that, in the opinion of the Treasury or the Bank, a resolution plan fails to make satisfactory provision in relation to any such matter; and

(b) if the Treasury or the Bank give a notification under paragraph (a), the Treasury or the Bank must give reasons for being of that opinion to the Authority.

(3) The Authority must have regard to any notification given under paragraph (a) of subsection (2) before considering whether any resolution plan makes satisfactory provision in relation to any such matter.

(4) If—

(a) a notification is given under that paragraph, but

(b) the Authority is nonetheless of the opinion that the resolution plan makes satisfactory provision in relation to any such matter,

the Authority must give reasons for being of that opinion to the person who gave the notification.**]**

Textual Amendments

F71 Ss. 139B-139F inserted (8.6.2010) by Financial Services Act 2010 (c. 28), **ss. 7(1)**, 26(2)(b)

140 Restriction on managers of [F72certain collective investment schemes].

[F73(1) The Authority may make rules prohibiting an authorised person who has permission to act as—

(a) the manager of an authorised unit trust scheme, or

(b) the management company of an authorised UCITS open-ended investment company, from carrying on a specified activity.**]**

(2) Such rules may specify an activity which is not a regulated activity.

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[F74(3) In this section—

(a) "authorised UCITS open-ended investment company" means an authorised open-ended investment company to which the UCITS directive applies; and

(b) "management company" has the meaning given by Article 1a.2 of the UCITS directive.**]**

Textual Amendments

F72 Words in s. 140 sidenote substituted (13.2.2004) by The Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066), **reg. 5(a)**

F73 S. 140(1) substituted (13.2.2004) by The Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066), **reg. 5(b)**

F74 S. 140(3) inserted (13.2.2004) by The Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066), **reg. 5(c)**

141 Insurance business rules.

(1) The Authority may make rules prohibiting an authorised person who has permission to effect or carry out contracts of insurance from carrying on a specified activity.

(2) Such rules may specify an activity which is not a regulated activity.

(3) The Authority may make rules in relation to contracts entered into by an authorised person in the course of carrying on business which consists of the effecting or carrying out of contracts of long-term insurance.

(4) Such rules may, in particular—

(a) restrict the descriptions of property or indices of the value of property by reference to which the benefits under such contracts may be determined;

(b) make provision, in the interests of the protection of policyholders, for the substitution of one description of property, or index of value, by reference to which the benefits under a contract are to be determined for another such description of property or index.

(5) Rules made under this section are referred to in this Act as insurance business rules.

142 Insurance business: regulations supplementing Authority's rules.

(1) The Treasury may make regulations for the purpose of preventing a person who is not an authorised person but who—

(a) is a parent undertaking of an authorised person who has permission to effect or carry out contracts of insurance, and

(b) falls within a prescribed class,

from doing anything to lessen the effectiveness of asset identification rules.

(2) "Asset identification rules" means rules made by the Authority which require an authorised person who has permission to effect or carry out contracts of insurance to identify assets which belong to him and which are maintained in respect of a particular aspect of his business.

(3) The regulations may, in particular, include provision—

(a) prohibiting the payment of dividends;

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(b) prohibiting the creation of charges;
(c) making charges created in contravention of the regulations void.

(4) The Treasury may by regulations provide that, in prescribed circumstances, charges created in contravention of asset identification rules are void.

(5) A person who contravenes regulations under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) "Charges" includes mortgages (or in Scotland securities over property).

Commencement Information

I39 S. 142 wholly in force at 1.12.2001; s. 142 not in force at Royal Assent see s. 431(2); s. 142(1)-(4)(6) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 142 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

143 Endorsement of codes etc.

(1) The Authority may make rules ("endorsing rules")—
(a) endorsing the City Code on Takeovers and Mergers issued by the Panel on Takeovers and Mergers;
(b) endorsing the Rules Governing Substantial Acquisitions of Shares issued by the Panel.

(2) Endorsement may be—
(a) as respects all authorised persons; or
(b) only as respects a specified kind of authorised person.

(3) At any time when endorsing rules are in force, and if asked to do so by the Panel, the Authority may exercise its powers under Part IV or section 66 as if failure to comply with an endorsed provision was a ground entitling the Authority to exercise those powers.

(4) At any time when endorsing rules are in force and if asked to do so by the Panel, the Authority may exercise its powers under Part XIII, XIV or XXV as if the endorsed provisions were rules applying to the persons in respect of whom they are endorsed.

(5) For the purposes of subsections (3) and (4), a failure to comply with a requirement imposed, or ruling given, under an endorsed provision is to be treated as a failure to comply with the endorsed provision under which that requirement was imposed or ruling was given.

(6) If endorsed provisions are altered, subsections (3) and (4) apply to them as altered, but only if before the alteration the Authority has notified the Panel (and has not withdrawn its notification) that it is satisfied with the Panel's consultation procedures.

(7) "Consultation procedures" means procedures designed to provide an opportunity for persons likely to be affected by alterations to those provisions to make representations about proposed alterations to any of those provisions.

(8) Subsections (1), (2)(d), (4), (5), (6)(a) and (12) of section 155 apply (with the necessary modifications) to a proposal to give notification of the kind mentioned in subsection (6) as they apply to a proposal to make endorsing rules.

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(9) This section applies in relation to particular provisions of the code or rules mentioned in subsection (1) as it applies to the code or the rules.

Commencement Information

I40 S. 143 wholly in force at 1.12.2001; s. 143 not in force at Royal Assent see s. 431(2); s. 143 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 143 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Specific rules

144 Price stabilising rules.

(1) The Authority may make rules ("price stabilising rules") as to—

(a) the circumstances and manner in which,

(b) the conditions subject to which, and

(c) the time when or the period during which,

action may be taken for the purpose of stabilising the price of investments of specified kinds.

(2) Price stabilising rules—

(a) are to be made so as to apply only to authorised persons;

(b) may make different provision in relation to different kinds of investment.

(3) The Authority may make rules which, for the purposes of section 397(5)(b), treat a person who acts or engages in conduct—

(a) for the purpose of stabilising the price of investments, and

(b) in conformity with such provisions corresponding to price stabilising rules and made by a body or authority outside the United Kingdom as may be specified in the rules under this subsection,

as acting, or engaging in that conduct, for that purpose and in conformity with price stabilising rules.

(4) The Treasury may by order impose limitations on the power to make rules under this section.

(5) Such an order may, in particular—

(a) specify the kinds of investment in relation to which price stabilising rules may make provision;

(b) specify the kinds of investment in relation to which rules made under subsection (3) may make provision;

(c) provide for price stabilising rules to make provision for action to be taken for the purpose of stabilising the price of investments only in such circumstances as the order may specify;

(d) provide for price stabilising rules to make provision for action to be taken for that purpose only at such times or during such periods as the order may specify.

(6) If provisions specified in rules made under subsection (3) are altered, the rules continue to apply to those provisions as altered, but only if before the alteration the Authority

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has notified the body or authority concerned (and has not withdrawn its notification) that it is satisfied with its consultation procedures.

(7) "Consultation procedures" has the same meaning as in section 143.

Commencement Information

I41 S. 144 wholly in force at 18.6.2001; s. 144 not in force at Royal Assent see s. 431(2); s. 144(4)(5) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 144 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**

145 Financial promotion rules.

(1) The Authority may make rules applying to authorised persons about the communication by them, or their approval of the communication by others, of invitations or inducements—

(a) to engage in investment activity; or

(b) to participate in a collective investment scheme.

(2) Rules under this section may, in particular, make provision about the form and content of communications.

(3) Subsection (1) applies only to communications which—

(a) if made by a person other than an authorised person, without the approval of an authorised person, would contravene section 21(1);

(b) may be made by an authorised person without contravening section 238(1).

(4) "Engage in investment activity" has the same meaning as in section 21.

(5) The Treasury may by order impose limitations on the power to make rules under this section.

Commencement Information

I42 S. 145 wholly in force at 18.6.2001; s. 145 not in force at Royal Assent see s. 431(2); s. 145(5) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 145 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**

146 Money laundering rules.

The Authority may make rules in relation to the prevention and detection of money laundering in connection with the carrying on of regulated activities by authorised persons.

147 Control of information rules.

(1) The Authority may make rules ("control of information rules") about the disclosure and use of information held by an authorised person ("A").

(2) Control of information rules may—

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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(a) require the withholding of information which A would otherwise have to disclose to a person ("B") for or with whom A does business in the course of carrying on any regulated or other activity;

(b) specify circumstances in which A may withhold information which he would otherwise have to disclose to B;

(c) require A not to use for the benefit of B information A holds which A would otherwise have to use in that way;

(d) specify circumstances in which A may decide not to use for the benefit of B information A holds which A would otherwise have to use in that way.

Modification or waiver

148 Modification or waiver of rules.

(1) This section applies in relation to the following—

(a) auditors and actuaries rules;

(b) control of information rules;

(c) financial promotion rules;

(d) general rules;

(e) insurance business rules;

(f) money laundering rules; and

(g) price stabilising rules.

(2) The Authority may, on the application or with the consent of an authorised person, direct that all or any of the rules to which this section applies—

(a) are not to apply to the authorised person; or

(b) are to apply to him with such modifications as may be specified in the direction.

(3) An application must be made in such manner as the Authority may direct.

(4) The Authority may not give a direction unless it is satisfied that—

(a) compliance by the authorised person with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made; and

(b) the direction would not result in undue risk to persons whose interests the rules are intended to protect.

(5) A direction may be given subject to conditions.

(6) Unless it is satisfied that it is inappropriate or unnecessary to do so, a direction must be published by the Authority in such a way as it thinks most suitable for bringing the direction to the attention of—

(a) those likely to be affected by it; and

(b) others who may be likely to make an application for a similar direction.

(7) In deciding whether it is satisfied as mentioned in subsection (6), the Authority must—

(a) take into account whether the direction relates to a rule contravention of which is actionable in accordance with section 150;

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(b) consider whether its publication would prejudice, to an unreasonable degree, the commercial interests of the authorised person concerned or any other member of his immediate group; and

(c) consider whether its publication would be contrary to an international obligation of the United Kingdom.

(8) For the purposes of paragraphs (b) and (c) of subsection (7), the Authority must consider whether it would be possible to publish the direction without either of the consequences mentioned in those paragraphs by publishing it without disclosing the identity of the authorised person concerned.

(9) The Authority may—

(a) revoke a direction; or

(b) vary it on the application, or with the consent, of the authorised person to whom it relates.

(10) "Direction" means a direction under subsection (2).

(11) "Immediate group", in relation to an authorised person ("A"), means—

(a) A;

(b) a parent undertaking of A;

(c) a subsidiary undertaking of A;

(d) a subsidiary undertaking of a parent undertaking of A;

(e) a parent undertaking of a subsidiary undertaking of A.

Modifications etc. (not altering text)

C242 S. 148 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(3); S.I. 2001/3538, **art. 2(1)**
S. 148 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, **arts. 1**, 11
S. 148 restricted (6.8.2001) by S.I. 2001/2512, **arts. 1(1)**, 5(4)

C243 S. 148 modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**

C244 S. 148 applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(2) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

C245 S. 148: power to make rules amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **3(2)(a)**

C246 S. 148 applied (6.8.2001) by S.I. 2001/2512, **arts. 1(1)**, 7(1)
S. 148 applied (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9H(2) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

C247 S. 148 modified (temp. from 1.1.2004 to 31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), **arts. 1(2)** 26, {29}

C248 S. 148 modified (temp. from 1.1.2004 to 14.1.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), **arts. 1(2)** 22, {27}

C249 S. 148(2) extended (1.12.2001) by S.I. 2001/3647, arts. 1, 4, **Sch. 2 paras. 1-3**

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C250 S. 148(3)-(9)(11) applied (with modifications) (3.9.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/1228, **regs. 1(2)(b)(c)**, 7(3)(4) (with reg. 1(2)(3)); S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; S.I. 2001/3538, **art. 2(1)**

C251 S. 148(3)-(9)(11) applied (with modifications) (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **7(3)(4)** (with reg. 1(2))

Commencement Information

I43 S. 148 wholly in force at 3.9.2001; s. 148 not in force at Royal Assent see s. 431(2); s. 148 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch. s. 148** in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**

Contravention of rules

149 Evidential provisions.

(1) If a particular rule so provides, contravention of the rule does not give rise to any of the consequences provided for by other provisions of this Act.

(2) A rule which so provides must also provide—

(a) that contravention may be relied on as tending to establish contravention of such other rule as may be specified; or

(b) that compliance may be relied on as tending to establish compliance with such other rule as may be specified.

(3) A rule may include the provision mentioned in subsection (1) only if the Authority considers that it is appropriate for it also to include the provision required by subsection (2).

Modifications etc. (not altering text)

C252 S. 149(1) applied (2.7.2002) by The Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (S.I. 2002/1501), **art. 11(1)** (with art. 13)

C253 S. 149(2)(3) applied (with modifications) (2.7.2002) by The Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (S.I. 2002/1501), **art. 11(2)** (with art. 13)

150 Actions for damages.

(1) A contravention by an authorised person of a rule is actionable at the suit of a private 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) If rules so provide, subsection (1) does not apply to contravention of a specified provision of those rules.

(3) In prescribed cases, a contravention of a rule which would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.

(4) In subsections (1) and (3) "rule" does not include—

(a) **[**[F75]Part 6 rules**]**; or

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(b) a rule requiring an authorised person to have or maintain financial resources.

(5) "Private person" has such meaning as may be prescribed.

Textual Amendments

F75 Words in s. 150(4)(a) substituted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), **6**

Modifications etc. (not altering text)

C254 S. 150 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c)**, 25(6) (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**

C255 S. 150: power to make rules amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), reg. 1, **3(2)(a)**

C256 S. 150 applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)
S. 150 applied (2.7.2002) by The Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (S.I. 2002/1501) {art. 11(3)} (with art. 13)

C257 S. 150 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **25(6)** (with reg. 1(2))

Commencement Information

I44 S. 150 wholly in force at 1.12.2001; s. 150 not in force at Royal Assent see s. 431(2); s. 150(3)-(5) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 150 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 150 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

151 Limits on effect of contravening rules.

(1) A person is not guilty of an offence by reason of a contravention of a rule made by the Authority.

(2) No such contravention makes any transaction void or unenforceable.

Procedural provisions

152 Notification of rules to the Treasury.

(1) If the Authority makes any rules, it must give a copy to the Treasury without delay.

(2) If the Authority alters or revokes any rules, it must give written notice to the Treasury without delay.

(3) Notice of an alteration must include details of the alteration.

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Modifications etc. (not altering text)
C258 S. 152 applied (6.8.2001) by S.I. 2001/2512, **arts. 1(1)**, 7(2)

153 Rule-making instruments.

(1) Any power conferred on the Authority to make rules is exercisable in writing.

(2) An instrument by which rules are made by the Authority ("a rule-making instrument") must specify the provision under which the rules are made.

(3) To the extent to which a rule-making instrument does not comply with subsection (2), it is void.

(4) A rule-making instrument must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(5) The Authority may charge a reasonable fee for providing a person with a copy of a rule-making instrument.

(6) A person is not to be taken to have contravened any rule made by the Authority if he shows that at the time of the alleged contravention the rule-making instrument concerned had not been made available in accordance with this section.

Modifications etc. (not altering text)
C259 S. 153 applied (6.8.2001) by S.I. 2001/2512, **arts. 1(1)**, 7(2)

154 Verification of rules.

(1) The production of a printed copy of a rule-making instrument purporting to be made by the Authority—

(a) on which is endorsed a certificate signed by a member of the Authority's staff authorised by it for that purpose, and

(b) which contains the required statements,

is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.

(2) The required statements are—

(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 in accordance with section 153(4).

(3) A certificate purporting to be signed as mentioned in subsection (1) is to be taken to have been properly signed unless the contrary is shown.

(4) A person who wishes in any legal proceedings to rely on a rule-making instrument may require the Authority to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (1).

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Modifications etc. (not altering text)

C260 S. 154 applied (6.8.2001) by S.I. 2001/2512, **arts. 1(1)**, 7(2)
S. 154 excluded (6.8.2001) by S.I. 2001/2512, **arts. 1(1)**, 7(4)
S. 154 excluded (2.7.2002) by The Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (S.I. 2002/1501), **art. 12(1)** (with art. 13)

155 Consultation.

(1) If the Authority proposes to make any rules, it must publish a draft of the proposed rules in the way appearing to it to be best calculated to bring them to the attention of the public.

(2) The draft must be accompanied by—

(a) a cost benefit analysis;

(b) an explanation of the purpose of the proposed rules;

(c) an explanation of the Authority's reasons for believing that making the proposed rules is compatible with its general duties under section 2; and

(d) notice that representations about the proposals may be made to the Authority within a specified time.

(3) In the case of a proposal to make rules under a provision mentioned in subsection (9), the draft must also be accompanied by details of the expected expenditure by reference to which the proposal is made.

(4) Before making the proposed rules, the Authority must have regard to any representations made to it in accordance with subsection (2)(d).

(5) If the Authority makes the proposed rules, it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2)(d); and

(b) its response to them.

(6) If the rules differ from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant—

(a) the Authority must (in addition to complying with subsection (5)) publish details of the difference; and

(b) those details must be accompanied by a cost benefit analysis.

(7) Subsections (1) to (6) do not apply if the Authority considers that the delay involved in complying with them would be prejudicial to the interests of consumers.

(8) Neither subsection (2)(a) nor subsection (6)(b) applies if the Authority considers—

(a) that, making the appropriate comparison, there will be no increase in costs; or

(b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.

(9) Neither subsection (2)(a) nor subsection (6)(b) requires a cost benefit analysis to be carried out in relation to rules made under—

(a) section 136(2);

(b) subsection (1) of section 213 as a result of subsection (4) of that section;

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(c) section 234;
(d) paragraph 17 of Schedule 1.

(10) "Cost benefit analysis" means an estimate of the costs together with an analysis of the benefits that will arise—
(a) if the proposed rules are made; or
(b) if subsection (6) applies, from the rules that have been made.

(11) "The appropriate comparison" means—
(a) in relation to subsection (2)(a), a comparison between the overall position if the rules are made and the overall position if they are not made;
(b) in relation to subsection (6)(b), a comparison between the overall position after the making of the rules and the overall position before they were made.

(12) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

Modifications etc. (not altering text)

C261 S. 155 excluded (6.8.2001) by S.I. 2001/2512, **arts. 1(1)**, 7(3)
S. 155 excluded (31.10.2001) by S.I. 2001/3374, **arts. 1**, 12(2)

C262 S. 155 excluded (15.7.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), art. 12(1) (as inserted by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) (Amendment) Order 2004 (S.I. 2004/1609), **art. 6**

C263 S. 155 excluded (29.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(a), **4(2)**

C264 S. 155 excluded (7.12.2006) by The Compensation Act 2006 (Contribution for Mesothelioma Claims) Regulations 2006 (S.I. 2006/3259), regs. 1(1), **4**

C265 S. 155 excluded (30.6.2008 for certain purposes, 1.1.2009 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **6(2)**

C266 S. 155(1) applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 42(4)(5)**

C267 S. 155(2)(c) restricted (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), 8, Sch. 2 paras. 9, 11(b), 13, **14**

C268 S. 155(2)(d) applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 42(4)(5)**

C269 S. 155(4) applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 42(4)(5)**

C270 S. 155(7) modified (22.2.2008) by The Northern Rock plc Transfer Order 2008 (S.I. 2008/432), **art. 16(1)**

C271 S. 155(7) modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), **art. 38(1)**

C272 S. 155(7) modified (7.10.2008 at 9.30 a.m.) by The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008, (S.I. 2008/2644) {art. 28(1)}

C273 S. 155(7) modified (8.10.2008 at 10.10 a.m.) by The Transfer of Rights and Liabilities to ING Order 2008 (S.I. 2008/2666), **art. 19(1)**

C274 S. 155(7) modified (8.10.2008 at 12.15 p.m.) by The Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2674), **art. 30(1)**

C275 S. 155(7) modified (30.3.2009 at 8.00 a.m.) by The Amendments to Law (Resolution of Dunfermline Building Society) Order 2009 (S.I. 2009/814), **art. 10(1)**

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C276 S. 155(7) modified by Payment Services Regulations 2009 (S.I. 2009/209), Sch. 7 para. 3(1) (as inserted (1.10.2009 for certain purposes, 1.11.2009 otherwise) by The Payment Services (Amendment) Regulations 2009 (S.I. 2009/2475), regs. 1(2)(3), **13**)

C277 S. 155(7) modified (1.1.2010) by The Northern Rock plc Transfer Order 2009 (S.I. 2009/3226), arts. 1(2)(b), **21(1)**

156 General supplementary powers.

(1) Rules made by the Authority may make different provision for different cases and may, in particular, make different provision in respect of different descriptions of authorised person, activity or investment.

(2) Rules made by the Authority may contain such incidental, supplemental, consequential and transitional provision as the Authority considers appropriate.

Modifications etc. (not altering text)

C278 S. 156 applied (6.8.2001) by S.I. 2001/2512, **arts. 1(1)**, 7(2)

C279 S. 156: power to make rules amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **3(2)(a)**

CHAPTER II

GUIDANCE

157 Guidance.

(1) The Authority may give guidance consisting of such information and advice as it considers appropriate—

(a) with respect to the operation of this Act and of any rules made under it;

(b) with respect to any matters relating to functions of the Authority;

(c) for the purpose of meeting the regulatory objectives;

(d) with respect to any other matters about which it appears to the Authority to be desirable to give information or advice.

(2) The Authority may give financial or other assistance to persons giving information or advice of a kind which the Authority could give under this section.

(3) If the Authority proposes to give guidance to regulated persons generally, or to a class of regulated person, in relation to rules to which those persons are subject, subsections (1), (2) and (4) to (10) of section 155 apply to the proposed guidance as they apply to proposed rules.

(4) The Authority may—

(a) publish its guidance;

(b) offer copies of its published guidance for sale at a reasonable price; and

(c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

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(5) In this Chapter, references to guidance given by the Authority include references to any recommendation made by the Authority to persons generally, to regulated persons generally or to any class of regulated person.

(6) "Regulated person" means any—

(a) authorised person;

(b) person who is otherwise subject to rules made by the Authority.

Modifications etc. (not altering text)

C280 S. 157(3) modified (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), 8, **Sch. 2 para. 12**

C281 S. 157(3) excluded (15.7.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), **art. 12(1)** (as inserted by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) (Amendment) Order 2004 (S.I. 2004/1609), {art. 6 }

C282 S. 157(3) excluded (29.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(a), **4(2)**

158 Notification of guidance to the Treasury.

(1) On giving any general guidance, the Authority must give the Treasury a copy of the guidance without delay.

(2) If the Authority alters any of its general guidance, it must give written notice to the Treasury without delay.

(3) The notice must include details of the alteration.

(4) If the Authority revokes any of its general guidance, it must give written notice to the Treasury without delay.

(5) "General guidance" means guidance given by the Authority under section 157 which is—

(a) given to persons generally, to regulated persons generally or to a class of regulated person;

(b) intended to have continuing effect; and

(c) given in writing or other legible form.

(6) "Regulated person" has the same meaning as in section 157.

Modifications etc. (not altering text)

C283 S. 158(5) modified (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), 8, **Sch. 2 para. 12**

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VALID FROM 06/12/2006

[F76[F76158A Guidance on outsourcing by investment firms and credit institutions

(1) Without prejudice to the generality of section 157, the Authority must give guidance in the terms required by Article 15(3) of Commission Directive 2006/73/EC of 10 August 2006 (requirement to publish statement of policy on outsourcing of investment services by investment firms and credit institutions).

(2) Subsections (1), (2)(b) and (d), (4), (5), (6)(a) and (7) of section 155 apply to guidance which the Authority is required to give under this section as they apply to proposed rules.

(3) The Authority must publish its guidance under this section.

(4) The Authority may offer copies of the published guidance for sale at a reasonable price.

(5) Subsections (1) to (4) of section 158 apply to guidance under this section as they apply to general guidance (as defined by section 158(5)).**]]**

Textual Amendments

F76 S. 158A inserted (6.12.2006) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Modification of Powers) Regulations 2006 (S.I. 2006/2975), **reg. 6** (with reg. 15)

CHAPTER III

COMPETITION SCRUTINY

159 Interpretation.

(1) In this Chapter—

[F77"OFT" means the Office of Fair Trading;**]**

"practices", in relation to the Authority, means practices adopted by the Authority in the exercise of functions under this Act;

"regulating provisions" means any—

(a) rules;

(b) general guidance (as defined by section 158(5));

(c) statement issued by the Authority under section 64;

(d) code issued by the Authority under section 64 or 119.

(2) For the purposes of this Chapter, regulating provisions or practices have a significantly adverse effect on competition if—

(a) they have, or are intended or likely to have, that effect; or

(b) the effect that they have, or are intended or likely to have, is to require or encourage behaviour which has, or is intended or likely to have, a significantly adverse effect on competition.

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(3) If regulating provisions or practices have, or are intended or likely to have, the effect of requiring or encouraging exploitation of the strength of a market position they are to be taken, for the purposes of this Chapter, to have an adverse effect on competition.

(4) In determining under this Chapter whether any of the regulating provisions have, or are likely to have, a particular effect, it may be assumed that the persons to whom the provisions concerned are addressed will act in accordance with them.

Textual Amendments

F77 S. 159(1): definition of "OFT" substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(2)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

Modifications etc. (not altering text)

C284 S. 159(1) restricted (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), 8, Sch. 2 paras. 7, 9, 11(c), 13, 14, 15, **17**

160 Reports by [F78OFT].

(1) The **[**F79OFT**]** must keep the regulating provisions and the Authority's practices under review.

(2) If at any time the **[**F79OFT**]** considers that—

(a) a regulating provision or practice has a significantly adverse effect on competition, or

(b) two or more regulating provisions or practices taken together, or a particular combination of regulating provisions and practices, have such an effect,

[F80the OFT**]** must make a report to that effect.

(3) If at any time the **[**F79OFT**]** considers that—

(a) a regulating provision or practice does not have a significantly adverse effect on competition, or

(b) two or more regulating provisions or practices taken together, or a particular combination of regulating provisions and practices, do not have any such effect,

[F80the OFT**]** may make a report to that effect.

(4) A report under subsection (2) must include details of the adverse effect on competition.

(5) If the **[**F79OFT**]** makes a report under subsection (2) **[**F80the OFT**]** must—

(a) send a copy of it to the Treasury, the Competition Commission and the Authority; and

(b) publish it in the way appearing to **[**F81it**]** to be best calculated to bring it to the attention of the public.

(6) If the **[**F79OFT**]** makes a report under subsection (3)—

(a) **[**F80the OFT**]** must send a copy of it to the Treasury, the Competition Commission and the Authority; and

(b) **[**F80the OFT**]** may publish it.

(7) Before publishing a report under this section the **[**F79OFT**]** must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the

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publication of which, in the opinion of the **[**F79OFT**]**, would or might seriously and prejudicially affect his interests.

(8) Before publishing such a report the **[**F79OFT**]** must, so far as practicable, exclude any matter which relates to the affairs of a particular body the publication of which, in the opinion of the **[**F79OFT**]**, would or might seriously and prejudicially affect its interests.

(9) Subsections (7) and (8) do not apply in relation to copies of a report which the **[**F79OFT**]** is required to send under subsection (5)(a) or (6)(a).

(10) For the purposes of the law of defamation, absolute privilege attaches to any report of the **[**F79OFT**]** under this section.

Textual Amendments

F78 Words in s. 160 sidenote substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(3)(b)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F79 Words in s. 160 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(3)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F80 Words in s. 160 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(3)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F81 Word in s. 160 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(3)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

161 Power of [F82OFT] to request information.

(1) For the purpose of investigating any matter with a view to its consideration under section 160, the **[**F82OFT**]** may exercise the powers conferred on **[**F83it**]** by this section.

(2) The **[**F82OFT**]** may by notice in writing require any person to produce to **[**F83it**]** or to a person appointed by **[**F83it**]** for the purpose, at a time and place specified in the notice, any document which—

(a) is specified or described in the notice; and

(b) is a document in that person's custody or under his control.

(3) The **[**F82OFT**]** may by notice in writing—

(a) require any person carrying on any business to provide **[**F83it**]** with such information as may be specified or described in the notice; and

(b) specify the time within which, and the manner and form in which, any such information is to be provided.

(4) A requirement may be imposed under subsection (2) or (3)(a) only in respect of documents or information which relate to any matter relevant to the investigation.

(5) If a person ("the defaulter") refuses, or otherwise fails, to comply with a notice under this section, the **[**F82OFT**]** may certify that fact in writing to the court and the court may enquire into the case.

(6) If, after hearing any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence, the court is satisfied that the defaulter did not have a reasonable excuse for refusing or otherwise failing to comply with the notice, the court may deal with the defaulter as if he were in contempt.

(7) "Court" means—

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(a) the High Court; or
(b) in relation to Scotland, the Court of Session.

Textual Amendments

F82 Words in s. 161 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(4)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F83 Word in s. 161 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(4)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

162 Consideration by Competition Commission.

(1) If the **[**F84OFT**]**—
(a) makes a report under section 160(2), or
(b) asks the Commission to consider a report that **[**F85the OFT**]** has made under section 160(3),
the Commission must investigate the matter.

(2) The Commission must then make its own report on the matter unless it considers that, as a result of a change of circumstances, no useful purpose would be served by a report.

(3) If the Commission decides in accordance with subsection (2) not to make a report, it must make a statement setting out the change of circumstances which resulted in that decision.

(4) A report made under this section must state the Commission's conclusion as to whether—
(a) the regulating provision or practice which is the subject of the report has a significantly adverse effect on competition; or
(b) the regulating provisions or practices, or combination of regulating provisions and practices, which are the subject of the report have such an effect.

(5) A report under this section stating the Commission's conclusion that there is a significantly adverse effect on competition must also—
(a) state whether the Commission considers that that effect is justified; and
(b) if it states that the Commission considers that it is not justified, state its conclusion as to what action, if any, ought to be taken by the Authority.

(6) Subsection (7) applies whenever the Commission is considering, for the purposes of this section, whether a particular adverse effect on competition is justified.

(7) The Commission must ensure, so far as that is reasonably possible, that the conclusion it reaches is compatible with the functions conferred, and obligations imposed, on the Authority by or under this Act.

(8) A report under this section must contain such an account of the Commission's reasons for its conclusions as is expedient, in the opinion of the Commission, for facilitating proper understanding of them.

(9) Schedule 14 supplements this section.

(10) If the Commission makes a report under this section it must send a copy to the Treasury, the Authority and the **[**F86OFT**]**.

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Textual Amendments

F84 Words in s. 162 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(5)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F85 Words in s. 162 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(5)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F86 Words in s. 162 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(5)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

163 Role of the Treasury.

(1) This section applies if the Competition Commission makes a report under section 162(2) which states its conclusion that there is a significantly adverse effect on competition.

(2) If the Commission's conclusion, as stated in the report, is that the adverse effect on competition is not justified, the Treasury must give a direction to the Authority requiring it to take such action as may be specified in the direction.

(3) But subsection (2) does not apply if the Treasury consider—

(a) that, as a result of action taken by the Authority in response to the Commission's report, it is unnecessary for them to give a direction; or

(b) that the exceptional circumstances of the case make it inappropriate or unnecessary for them to do so.

(4) In considering the action to be specified in a direction under subsection (2), the Treasury must have regard to any conclusion of the Commission included in the report because of section 162(5)(b).

(5) Subsection (6) applies if—

(a) the Commission's conclusion, as stated in its report, is that the adverse effect on competition is justified; but

(b) the Treasury consider that the exceptional circumstances of the case require them to act.

(6) The Treasury may give a direction to the Authority requiring it to take such action—

(a) as they consider to be necessary in the light of the exceptional circumstances of the case; and

(b) as may be specified in the direction.

(7) The Authority may not be required as a result of this section to take any action—

(a) that it would not have power to take in the absence of a direction under this section; or

(b) that would otherwise be incompatible with any of the functions conferred, or obligations imposed, on it by or under this Act.

(8) Subsection (9) applies if the Treasury are considering—

(a) whether subsection (2) applies and, if so, what action is to be specified in a direction under that subsection; or

(b) whether to give a direction under subsection (6).

(9) The Treasury must—

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(a) do what they consider appropriate to allow the Authority, and any other person appearing to the Treasury to be affected, an opportunity to make representations; and

(b) have regard to any such representations.

(10) If, in reliance on subsection (3)(a) or (b), the Treasury decline to act under subsection (2), they must make a statement to that effect, giving their reasons.

(11) If the Treasury give a direction under this section they must make a statement giving—

(a) details of the direction; and

(b) if the direction is given under subsection (6), their reasons for giving it.

(12) The Treasury must—

(a) publish any statement made under this section in the way appearing to them best calculated to bring it to the attention of the public; and

(b) lay a copy of it before Parliament.

164 The Competition Act 1998.

(1) The Chapter I prohibition does not apply to an agreement the parties to which consist of or include—

(a) an authorised person, or

(b) a person who is otherwise subject to the Authority's regulating provisions,

to the extent to which the agreement consists of provisions the inclusion of which in the agreement is encouraged by any of the Authority's regulating provisions.

(2) The Chapter I prohibition does not apply to the practices of an authorised person or a person who is otherwise subject to the regulating provisions to the extent to which the practices are encouraged by any of the Authority's regulating provisions.

(3) The Chapter II prohibition does not apply to conduct of—

(a) an authorised person, or

(b) a person who is otherwise subject to the Authority's regulating provisions,

to the extent to which the conduct is encouraged by any of the Authority's regulating provisions.

(4) "The Chapter I prohibition" means the prohibition imposed by section 2(1) of the [M19]Competition Act 1998.

(5) "The Chapter II prohibition" means the prohibition imposed by section 18(1) of that Act.

Marginal Citations

M19 1998 c. 41.

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PART XI

INFORMATION GATHERING AND INVESTIGATIONS

Modifications etc. (not altering text)

C285 Pt. 11 modified (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 18(2) (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
Pt. 11 modified (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 18(2)(4); S.I. 2001/3538, **art. 2(1)**
Pt. 11 extended (with modifications) (1.12.2001) by S.I. 2001/3646, **arts. 1(1)**, 6-9

C286 Pt. 11 applied (with modifications) (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2), 95, **Sch. 5 para. 3** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 155(6)(c) (with **Sch. 2 para. 156**); and (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 24(9)** (with regs. 8, 15))

C287 Pt. 11 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. para. 2**

C288 Pt. 11 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), reg. 62, **Sch. 3 para. 3** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(c)**; and (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (S.I. 2014/366), arts. 1(4), **18(4)(b)**; and (10.1.2020) by The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (S.I. 2019/1511), regs. 1(2), **19** and (31.12.2020) by S.I. 2018/1201, reg. 1(3), Sch. 2 para. 21(3)(a)-(c) (with reg. 4, **Sch. 3 Pt. 1**) (with further transitional provisions in Sch. 3 Pt. 1A as inserted by S.I. 2019/405, regs. 1, **10** and as amended by S.I. 2019/1010, regs. 1(3), **7**; S.I. 2019/1212, regs. 1(2), **7**; and S.I. 2020/56, regs. 1, **8**))

Powers to gather information

165 Authority's power to require information.

(1) The Authority may, by notice in writing given to an authorised person, require him—
(a) to provide specified information or information of a specified description; or
(b) to produce specified documents or documents of a specified description.

(2) The information or documents must be provided or produced—
(a) before the end of such reasonable period as may be specified; and
(b) at such place as may be specified.

(3) An officer who has written authorisation from the Authority to do so may require an authorised person without delay—
(a) to provide the officer with specified information or information of a specified description; or
(b) to produce to him specified documents or documents of a specified description.

(4) This section applies only to information and documents reasonably required in connection with the exercise by the Authority of functions conferred on it by or under this Act.

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(5) The Authority may require any information provided under this section to be provided in such form as it may reasonably require.

(6) The Authority may require—

(a) any information provided, whether in a document or otherwise, to be verified in such manner, or

(b) any document produced to be authenticated in such manner,

as it may reasonably require.

(7) The powers conferred by subsections (1) and (3) may also be exercised to impose requirements on—

(a) a person who is connected with an authorised person;

(b) an operator, trustee or depositary of a scheme recognised under section 270 or 272 who is not an authorised person;

(c) a recognised investment exchange or recognised clearing house.

(8) "Authorised person" includes a person who was at any time an authorised person but who has ceased to be an authorised person.

(9) "Officer" means an officer of the Authority and includes a member of the Authority's staff or an agent of the Authority.

(10) "Specified" means—

(a) in subsections (1) and (2), specified in the notice; and

(b) in subsection (3), specified in the authorisation.

(11) For the purposes of this section, a person is connected with an authorised person ("A") if he is or has at any relevant time been—

(a) a member of A's group;

(b) a controller of A;

(c) any other member of a partnership of which A is a member; or

(d) in relation to A, a person mentioned in Part I of Schedule 15.

Modifications etc. (not altering text)

C289 S. 165 amended (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 15(1) (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 165 amended (*temp.* from 11.8.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 2; S.I. 2001/3538, **art. 2(1)**
S. 165 amended (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 15(1); S.I. 2001/3538, **art. 2(1)**

C290 S. 165 modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 8(1)(3)**

C291 S. 165 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(3)**

C292 S. 165 applied (with modifications) (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 3**

C293 S. 165(1)(2) extended (1.12.2001) by S.I. 2001/3646, **arts. 1(1)**, 2(1)(3)(a)

C294 S. 165(2) applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(6) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

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C295 S. 165(5)(6) extended (1.12.2001) by S.I. 2001/3646, **arts. 1(1)**, 2(3)(b)(c)

C296 S. 165(5) applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(6) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

C297 S. 165(6) applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(6) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

VALID FROM 08/06/2010

[F87[F87165A Authority's power to require information: financial stability

(1) The Authority may, by notice in writing given to a person to whom this section applies, require the person—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

(2) This section applies to—

(a) a person who has a legal or beneficial interest in any of the assets of a relevant investment fund;

(b) a person who is responsible for the management of a relevant investment fund;

(c) a person (a "service provider") who provides any service to an authorised person;

(d) a person prescribed by an order made by the Treasury or any person of a description prescribed by such an order (and see also section 165C);

(e) a person who is connected with a person to whom this section applies as a result of any of the above paragraphs.

(3) This section applies only to information and documents that the Authority considers are, or might be, relevant to the stability of one or more aspects of the UK financial system.

(4) A notice may be given to a service provider, or to a person who is connected with a service provider, only if the Authority considers that—

(a) the service or the way in which it (or any part of it) is provided, or

(b) any failure to provide the service (or any part of it),

poses, or would be likely to pose, a serious threat to the stability of the UK financial system.

(5) Information or documents required under this section must be provided or produced—

(a) before the end of such reasonable period as may be specified; and

(b) at such place as may be specified.

(6) The Authority may require any information provided under this section to be provided in such form as it may reasonably require.

(7) The Authority may require—

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(a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require; or

(b) any document produced to be authenticated in such manner as it may reasonably require.

(8) In this section—

"management" includes any of the activities listed in Annex II to the UCITS directive;

"relevant investment fund" means an investment fund whose assets consist of or include financial instruments which—

(a) are traded in the United Kingdom; or

(b) were issued by a body incorporated in the United Kingdom;

"service" includes facility;

"specified" means specified in the notice.

(9) For the purposes of the definition of "relevant investment fund"—

(a) arrangements may constitute an investment fund even if there is only one person participating in the arrangements; and

(b) the reference to financial instruments has the meaning given by Article 4.1(17) of the markets in financial instruments directive.

(10) For the purposes of this section a person is connected with another person ("A") if the person is or has at any relevant time been—

(a) a member of A's group;

(b) a controller of A;

(c) any other member of a partnership of which A is a member; or

(d) in relation to A, a person mentioned in Part 1 of Schedule 15 (reading references in that Part to the authorised person as references to A).**]**

Textual Amendments

F87 S. 165A-165C inserted (8.6.2010) by Financial Services Act (c. 28), {ss. 18(2)}, 26(2)

VALID FROM 08/06/2010

165B Safeguards etc in relation to exercise of power under section 165A

(1) If the Authority proposes to impose a requirement on a person under section 165A, it must give the person a notice in writing warning the person that the Authority is proposing to impose the requirement.

(2) The notice under subsection (1) must—

(a) give the Authority's reasons for proposing to impose the requirement; and

(b) specify a reasonable period within which the person may make representations to the Authority.

(3) The Authority must then decide, within a reasonable period, whether to impose the requirement.

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(4) Subsections (1) to (3) do not apply in any case where the Authority is satisfied that it is necessary for the information or documents to be provided or produced without delay.

(5) If the Authority imposes a requirement on a person under section 165A, the notice under that section must give the Authority's reasons for imposing the requirement.

(6) The Authority must prepare a statement of its policy with respect to the exercise of the power conferred by section 165A.

(7) The statement requires the approval of the Treasury.

(8) If the Treasury approve the statement, the Authority must publish it.

(9) The power conferred by section 165A may not be exercised before the statement has been published.

Textual Amendments

F87 S. 165A-165C inserted (8.6.2010) by Financial Services Act (c. 28), {ss. 18(2)}, 26(2)

VALID FROM 08/06/2010

165C Orders under section 165A(2)(d)

(1) The Treasury may make an order under section 165A(2)(d) only if they consider that—

(a) the activities carried on by the prescribed person or persons of the prescribed description, or the way in which those activities (or any part of them) are carried on, or

(b) any failure to carry on those activities (or any part of them),

pose, or would be likely to pose, a serious threat to the stability of the UK financial system.

(2) Subject as follows, an order under section 165A(2)(d) may not be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

(3) Subsection (2) does not apply in any case where the Treasury are satisfied that it is necessary to make an order under section 165A(2)(d) without laying a draft for approval.

(4) In that case, the order—

(a) must be laid before Parliament after being made; and

(b) ceases to have effect at the end of the relevant period unless before the end of that period it is approved by a resolution of each House of Parliament.

(5) If an order ceases to have effect as a result of subsection (4)(b) that does not affect—

(a) anything done under it; or

(b) the power to make a new one.

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(6) "Relevant period" means a period of 28 days beginning with the day on which the order is made.

(7) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(8) If a statutory instrument containing an order under section 165A(2)(d) would, apart from this subsection, be treated as a hybrid instrument for the purposes of the Standing Orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.**]**

Textual Amendments

F87 S. 165A-165C inserted (8.6.2010) by Financial Services Act (c. 28), {ss. 18(2)}, 26(2)

166 Reports by skilled persons.

(1) The Authority may, by notice in writing given to a person to whom subsection (2) applies, require him to provide the Authority with a report on any matter about which the Authority has required or could require the provision of information or production of documents under section 165.

(2) This subsection applies to—

(a) an authorised person ("A"),

(b) any other member of A's group,

(c) a partnership of which A is a member, or

(d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c),

who is, or was at the relevant time, carrying on a business.

(3) The Authority may require the report to be in such form as may be specified in the notice.

(4) The person appointed to make a report required by subsection (1) must be a person—

(a) nominated or approved by the Authority; and

(b) appearing to the Authority to have the skills necessary to make a report on the matter concerned.

(5) It is the duty of any person who is providing (or who at any time has provided) services to a person to whom subsection (2) applies in relation to a matter on which a report is required under subsection (1) to give a person appointed to provide such a report all such assistance as the appointed person may reasonably require.

(6) The obligation imposed by subsection (5) is enforceable, on the application of the Authority, by an injunction or, in Scotland, by an order for specific performance under section 45 of the [M20]Court of Session Act 1988.

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Modifications etc. (not altering text)

C298 S. 166 modified (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 16 (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 166 modified (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 16; S.I. 2001/3538, **art. 2(1)**

C299 S. 166 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(3)**

C300 S. 166 applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(7) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

C301 S. 166 applied (with modifications) (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 4**

C302 S. 166(1)(3)(4) extended (1.12.2001) by S.I. 2001/3646, **arts. 1(1)**, 4(1)(3)(4)

Marginal Citations

M20 1988 c. 36.

Appointment of investigators

167 Appointment of persons to carry out general investigations.

(1) If it appears to the Authority or the Secretary of State ("the investigating authority") that there is good reason for doing so, the investigating authority may appoint one or more competent persons to conduct an investigation on its behalf into—

(a) the nature, conduct or state of the business of an authorised person or of an appointed representative;

(b) a particular aspect of that business; or

(c) the ownership or control of an authorised person.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of his investigation, he may also investigate the business of a person who is or has at any relevant time been—

(a) a member of the group of which the person under investigation ("A") is part; or

(b) a partnership of which A is a member.

(3) If a person appointed under subsection (1) decides to investigate the business of any person under subsection (2) he must give that person written notice of his decision.

(4) The power conferred by this section may be exercised in relation to a former authorised person (or appointed representative) but only in relation to—

(a) business carried on at any time when he was an authorised person (or appointed representative); or

(b) the ownership or control of a former authorised person at any time when he was an authorised person.

(5) "Business" includes any part of a business even if it does not consist of carrying on regulated activities.

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Modifications etc. (not altering text)

C303 S. 167 modified (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 17 (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 167 modified (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 17; S.I. 2001/3538, **art. 2(1)**

C304 S. 167 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(3)**

168 Appointment of persons to carry out investigations in particular cases.

(1) Subsection (3) applies if it appears to an investigating authority that there are circumstances suggesting that—

(a) a person may have contravened any regulation made under section 142; or

(b) a person may be guilty of an offence under section 177, 191, 346 or 398(1) or under Schedule 4.

(2) Subsection (3) also applies if it appears to an investigating authority that there are circumstances suggesting that—

(a) an offence under section 24(1) or 397 or under Part V of the [M21]Criminal Justice Act 1993 may have been committed;

(b) there may have been a breach of the general prohibition;

(c) there may have been a contravention of section 21 or 238; or

(d) market abuse may have taken place.

(3) The investigating authority may appoint one or more competent persons to conduct an investigation on its behalf.

(4) Subsection (5) applies if it appears to the Authority that there are circumstances suggesting that—

(a) a person may have contravened section 20;

(b) a person may be guilty of an offence under prescribed regulations relating to money laundering;

(c) an authorised person may have contravened a rule made by the Authority;

(d) an individual may not be a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised or exempt person;

(e) an individual may have performed or agreed to perform a function in breach of a prohibition order;

(f) an authorised or exempt person may have failed to comply with section 56(6);

(g) an authorised person may have failed to comply with section 59(1) or (2);

(h) a person in relation to whom the Authority has given its approval under section 59 may not be a fit and proper person to perform the function to which that approval relates; or

(i) a person may be guilty of misconduct for the purposes of section 66.

(5) The Authority may appoint one or more competent persons to conduct an investigation on its behalf.

(6) "Investigating authority" means the Authority or the Secretary of State.

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Modifications etc. (not altering text)

C305 S. 168 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(3)**

C306 S. 168(3)(5) applied (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 18(1)(3) (which was revoked 8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 168(3)(5) applied (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 18(1)(3); S.I. 2001/3538, **art. 2(1)**

C307 S. 168(4) applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(8) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

C308 S. 168(4)(c) amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(5)**

Commencement Information

I45 S. 168 wholly in force at 3.9.2001; s. 168 not in force at Royal Assent see s. 431(2); s. 168(4)(b) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 168 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**

Marginal Citations

M21 1993 c. 36.

Assistance to overseas regulators

169 Investigations etc. in support of overseas regulator.

(1) At the request of an overseas regulator, the Authority may—

(a) exercise the power conferred by section 165; or

(b) appoint one or more competent persons to investigate any matter.

(2) An investigator has the same powers as an investigator appointed under section 168(3) (as a result of subsection (1) of that section).

(3) If the request has been made by a competent authority in pursuance of any Community obligation the Authority must, in deciding whether or not to exercise its investigative power, consider whether its exercise is necessary to comply with any such obligation.

(4) In deciding whether or not to exercise its investigative power, the Authority may take into account in particular—

(a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;

(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.

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(5) The Authority may decide that it will not exercise its investigative power unless the overseas regulator undertakes to make such contribution towards the cost of its exercise as the Authority considers appropriate.

(6) Subsections (4) and (5) do not apply if the Authority considers that the exercise of its investigative power is necessary to comply with a Community obligation.

(7) If the Authority has appointed an investigator in response to a request from an overseas regulator, it may direct the investigator to permit a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation.

(8) A direction under subsection (7) is not to be given unless the Authority is satisfied that any information obtained by an overseas regulator as a result of the interview will be subject to safeguards equivalent to those contained in Part XXIII.

(9) The Authority must prepare a statement of its policy with respect to the conduct of interviews in relation to which a direction under subsection (7) has been given.

(10) The statement requires the approval of the Treasury.

(11) If the Treasury approve the statement, the Authority must publish it.

(12) No direction may be given under subsection (7) before the statement has been published.

(13) "Overseas regulator" has the same meaning as in section 195.

(14) "Investigative power" means one of the powers mentioned in subsection (1).

(15) "Investigator" means a person appointed under subsection (1)(b).

Commencement Information

I46 S. 169 wholly in force at 3.9.2001; s. 169 not in force at Royal Assent see s. 431(2); s. 169 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 169 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**

VALID FROM 08/06/2010

[F88[F88169A Support of overseas regulator with respect to financial stability

(1) At the request of an overseas regulator, the Authority may exercise a corresponding section 165A power.

(2) An "overseas regulator" means an authority in a country or territory outside the United Kingdom which exercises functions with respect to the stability of the financial system operating in that country or territory.

(3) A "corresponding section 165A power" means a power corresponding to the one conferred by section 165A, but reading references in that section to the stability of the UK financial system as references to the stability of the financial system operating in the country or territory of the overseas regulator.

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(4) The following provisions apply in relation to the exercise of the corresponding section 165A power—

(a) section 165B(1) to (5); and

(b) section 169(3), (4)(a) and (d), (5) and (6).

(5) In this section "the financial system" includes—

(a) financial markets and exchanges;

(b) activities that would be regulated activities if carried on in the United Kingdom; and

(c) other activities connected with financial markets and exchanges.**]]**

Textual Amendments

F88 S. 169A inserted (8.6.2010) by Financial Services Act (c. 28), {ss. 18(3)}, 26(2)

Conduct of investigations

170 Investigations: general.

(1) This section applies if an investigating authority appoints one or more competent persons ("investigators") under section 167 or 168(3) or (5) to conduct an investigation on its behalf.

(2) The investigating authority must give written notice of the appointment of an investigator to the person who is the subject of the investigation ("the person under investigation").

(3) Subsections (2) and (9) do not apply if —

(a) the investigator is appointed as a result of section 168(1) or (4) and the investigating authority believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated; or

(b) the investigator is appointed as a result of subsection (2) of section 168.

(4) A notice under subsection (2) must—

(a) specify the provisions under which, and as a result of which, the investigator was appointed; and

(b) state the reason for his appointment.

(5) Nothing prevents the investigating authority from appointing a person who is a member of its staff as an investigator.

(6) An investigator must make a report of his investigation to the investigating authority.

(7) The investigating authority may, by a direction to an investigator, control—

(a) the scope of the investigation;

(b) the period during which the investigation is to be conducted;

(c) the conduct of the investigation; and

(d) the reporting of the investigation.

(8) A direction may, in particular—

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(a) confine the investigation to particular matters;
(b) extend the investigation to additional matters;
(c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction;
(d) require the investigator to make such interim reports as are so specified.

(9) If there is a change in the scope or conduct of the investigation and, in the opinion of the investigating authority, the person subject to investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.

(10) "Investigating authority", in relation to an investigator, means—
(a) the Authority, if the Authority appointed him;
(b) the Secretary of State, if the Secretary of State appointed him.

Modifications etc. (not altering text)
C309 S. 170(5)-(9) applied (1.12.2001 for E.W.S. and 1.11.2004 for N.I.) by S.I. 2001/1228, regs. 1(2)(c), 30(4) (with 1(2)(3)); S.I. 2001/3538, art. 2(1); S.R. 2004/335, regs. 1(1)(b), **30(4)** (with reg. 1(2))

171 Powers of persons appointed under section 167.

(1) An investigator may require the person who is the subject of the investigation ("the person under investigation") or any person connected with the person under investigation—
(a) to attend before the investigator at a specified time and place and answer questions; or
(b) otherwise to provide such information as the investigator may require.

(2) An investigator may also require any person to produce at a specified time and place any specified documents or documents of a specified description.

(3) A requirement under subsection (1) or (2) may be imposed only so far as the investigator concerned reasonably considers the question, provision of information or production of the document to be relevant to the purposes of the investigation.

(4) For the purposes of this section and section 172, a person is connected with the person under investigation ("A") if he is or has at any relevant time been—
(a) a member of A's group;
(b) a controller of A;
(c) a partnership of which A is a member; or
(d) in relation to A, a person mentioned in Part I or II of Schedule 15.

(5) "Investigator" means a person conducting an investigation under section 167.

(6) "Specified" means specified in a notice in writing.

172 Additional power of persons appointed as a result of section 168(1) or (4).

(1) An investigator has the powers conferred by section 171.

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(2) An investigator may also require a person who is neither the subject of the investigation ("the person under investigation") nor a person connected with the person under investigation—

(a) to attend before the investigator at a specified time and place and answer questions; or

(b) otherwise to provide such information as the investigator may require for the purposes of the investigation.

(3) A requirement may only be imposed under subsection (2) if the investigator is satisfied that the requirement is necessary or expedient for the purposes of the investigation.

(4) "Investigator" means a person appointed as a result of subsection (1) or (4) of section 168.

(5) "Specified" means specified in a notice in writing.

173 Powers of persons appointed as a result of section 168(2).

(1) Subsections (2) to (4) apply if an investigator considers that any person ("A") is or may be able to give information which is or may be relevant to the investigation.

(2) The investigator may require A—

(a) to attend before him at a specified time and place and answer questions; or

(b) otherwise to provide such information as he may require for the purposes of the investigation.

(3) The investigator may also require A to produce at a specified time and place any specified documents or documents of a specified description which appear to the investigator to relate to any matter relevant to the investigation.

(4) The investigator may also otherwise require A to give him all assistance in connection with the investigation which A is reasonably able to give.

(5) "Investigator" means a person appointed under subsection (3) of section 168 (as a result of subsection (2) of that section).

174 Admissibility of statements made to investigators.

(1) A statement made to an investigator by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(2) But in criminal proceedings in which that person is charged with an offence to which this subsection applies or in proceedings in relation to action to be taken against that person under section 123—

(a) no evidence relating to the statement may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution or (as the case may be) the Authority, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Subsection (2) applies to any offence other than one—

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(a) under section 177(4) or 398;
(b) under section 5 of the [M22]Perjury Act 1911 (false statements made otherwise than on oath);
(c) under section 44(2) of the [M23]Criminal Law (Consolidation)(Scotland) Act 1995 (false statements made otherwise than on oath); or
(d) under Article 10 of the [M24]Perjury (Northern Ireland) Order 1979.

(4) "Investigator" means a person appointed under section 167 or 168(3) or (5).

(5) "Information requirement" means a requirement imposed by an investigator under section 171, 172, 173 or 175.

Modifications etc. (not altering text)
C310 S. 174 applied (1.12.2001 for E.W.S. and 1.11.2004 for N.I) by S.I. 2001/1228, regs. 1(2)(c), 30(5) (with reg. 1(2)(3)); S.I. 2001/3538, art. 2(1); S.R. 2004/335, regs. 1(1)(b), **30(5)** (with reg. 1(2))
S. 174 applied (with modifications) (1.12.2001) by S.I. 2001/3646, **arts. 1(1)**, 2(4), 4(5)
C311 S. 174 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 16(4)**

Marginal Citations
M22 1911 c. 6.
M23 1995 c. 39.
M24 S.I. 1979/1714 (N.I. 19).

175 Information and documents: supplemental provisions.

(1) If the Authority or an investigator has power under this Part to require a person to produce a document but it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.

(2) If a document is produced in response to a requirement imposed under this Part, the person to whom it is produced may—
(a) take copies or extracts from the document; or
(b) require the person producing the document, or any relevant person, to provide an explanation of the document.

(3) If a person who is required under this Part to produce a document fails to do so, the Authority or an investigator may require him to state, to the best of his knowledge and belief, where the document is.

(4) A lawyer may be required under this Part to furnish the name and address of his client.

(5) No person may be required under this Part to disclose information or produce a document 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 member of that person's group;
(b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person's group;
(c) the person to whom the obligation of confidence is owed consents to the disclosure or production; or

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(d) the imposing on him of a requirement with respect to such information or document has been specifically authorised by the investigating authority.

(6) If a person claims a lien on a document, its production under this Part does not affect the lien.

(7) "Relevant person", in relation to a person who is required to produce a document, means a person who—

(a) has been or is or is proposed to be a director or controller of that person;

(b) has been or is an auditor of that person;

(c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or

(d) has been or is an employee of that person.

(8) "Investigator" means a person appointed under section 167 or 168(3) or (5).

Modifications etc. (not altering text)

C312 S. 175 applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(9) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

C313 S. 175 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 17**

C314 S. 175(2)-(4)(6) amended (1.12.2001 for E.W.S. and 1.11.2004 for N.I) by S.I. 2001/1228, regs. 1(2)(c), 30(6) (with reg. 1(2)(3)); S.I. 2001/3538, art. 2(1); S.R. 2004/335, regs. 1(1)(b), **30(6)** (with reg. 1(2))

176 Entry of premises under warrant.

(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, the Authority or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.

(2) The first set of conditions is—

(a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it; and

(b) that on the premises specified in the warrant—

(i) there are documents which have been required; or

(ii) there is information which has been required.

(3) The second set of conditions is—

(a) that the premises specified in the warrant are premises of an authorised person or an appointed representative;

(b) that there are on the premises documents or information in relation to which an information requirement could be imposed; and

(c) that if such a requirement were to be imposed—

(i) it would not be complied with; or

(ii) the documents or information to which it related would be removed, tampered with or destroyed.

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(4) The third set of conditions is—

(a) that an offence mentioned in section 168 for which the maximum sentence on conviction on indictment is two years or more has been (or is being) committed by any person;

(b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed;

(c) that an information requirement could be imposed in relation to those documents or information; and

(d) that if such a requirement were to be imposed—

(i) it would not be complied with; or

(ii) the documents or information to which it related would be removed, tampered with or destroyed.

(5) A warrant under this section shall authorise a constable—

(a) to enter the premises specified in the warrant;

(b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this section was issued ("the relevant kind") or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;

(d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and

(e) to use such force as may be reasonably necessary.

(6) In England and Wales, sections 15(5) to (8) and section 16 of the [M25]Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this section.

(7) In Northern Ireland, Articles 17(5) to (8) and 18 of the [M26]Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this section.

(8) Any document of which possession is taken under this section may be retained—

(a) for a period of three months; or

(b) if within that period proceedings to which the document is relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.

(9) In the application of this section to Scotland—

(a) for the references to a justice of the peace substitute references to a justice of the peace or a sheriff; and

(b) for the references to information on oath substitute references to evidence on oath.

(10) "Investigator" means a person appointed under section 167 or 168(3) or (5).

(11) "Information requirement" means a requirement imposed—

(a) by the Authority under section **[**[F89]87C, 87J,**]** 165 or 175; or

(b) by an investigator under section 171, 172, 173 or 175.

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Textual Amendments

F89 Words in s. 176(11)(a) inserted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 12**

Modifications etc. (not altering text)

C315 S. 176 extended (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, **s. 62A** (as inserted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 77 (with art. 13(3), **Sch. 5**)); S.I. 2001/3538, **art. 2(1)**
S. 176 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, **s. 52B** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 151 (with art. 13(3), **Sch. 5**)); S.I. 2001/3538, **art. 2(1)**
S. 176 modified (1.12.2001) by S.I. 1995/1537, **reg. 23(4)** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1**, 509(e))

C316 S. 176 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(3)**
S. 176 applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(9) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

C317 S. 176(1)-(9) applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c)**, 30(7) (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**

C318 S. 176(1)-(8) applied (with modifications) (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **30(7)** (with reg. 1(2))

C319 S. 176(2) extended (1.12.2001) by S.I. 2001/3646, **arts. 1(1)**, 13(2)

C320 S. 176(5): powers of seizure extended (1.4.2003) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), Sch. 1 Pt. I para. 69; S.I. 2003/708, **art. 2(a)(c)(j)**

C321 S. 176(11) restricted (temp. from 11.8.2001 until 1.12.2001) by S.I. 2001/2659, **arts. 1(3)**, 2(3); S.I. 2001/3538, **art. 2(1)**

C322 S. 176(8) applied (with modifications) (1.4.2003) by 2001 c. 16, ss. 57(1)(o)(4), 138(2); S.I. 2003/708, **art. 2(a)**

C323 S. 176(11) restricted (temp. from 8.4.2002 until 2.7.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 8(3)**

Marginal Citations

M25 1984 c. 60.

M26 S.I. 1989/1341 (N.I. 12).

Offences

177 Offences.

(1) If a person other than the investigator ("the defaulter") fails to comply with a requirement imposed on him under this Part the person imposing the requirement may certify that fact in writing to the court.

(2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and in the case of a body corporate, any director or officer) as if he were in contempt **[**F90; and "officer", in

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relation to a limited liability partnership, means a member of the limited liability partnership.**]**.

(3) A person who knows or suspects that an investigation is being or is likely to be conducted under this Part is guilty of an offence if—

(a) he falsifies, conceals, destroys or otherwise disposes of a document which he knows or suspects is or would be relevant to such an investigation, or

(b) he causes or permits the falsification, concealment, destruction or disposal of such a document,

unless he shows that he had no intention of concealing facts disclosed by the documents from the investigator.

(4) A person who, in purported compliance with a requirement imposed on him under this Part—

(a) provides information which he knows to be false or misleading in a material particular, or

(b) recklessly provides information which is false or misleading in a material particular,

is guilty of an offence.

(5) A person guilty of an offence under subsection (3) or (4) is liable—

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

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

(6) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 176 is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.

(7) "Court" means—

(a) the High Court;

(b) in Scotland, the Court of Session.

Textual Amendments

F90 Words in s. 177(2) inserted (6.4.2001 for E.W.S. and 13.9.2004 for N.I.) by S.I. 2001/1090, regs. 1, 9, Sch. 5 para. 21; S.R. 2004/307, reg. 9, **Sch. 4 para. 17**

Modifications etc. (not altering text)

C324 S. 177 applied (1.12.2001 for E.W.S. and 1.11.2004 for N.I) by S.I. 2001/1228, regs. 1(2)(c), 30(6) (with reg. 1(2)(3)); S.I. 2001/3538, art. 2(1); S.R. 2004/335, regs. 1(1)(b), **30(6)** (with reg. 1(2))
S. 177 excluded (1.12.2001) by S.I. 2001/3646, **arts. 1(1)**, 2(5)
S. 177 restricted (1.12.2001) by S.I. 2001/3646, **arts. 1(1)**, 2(7)(a), 4(6)(a), 6(4)(a), 7(4)(a), 8(4)(a), 9(4)(a)

C325 S. 177 applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(9) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)

C326 S. 177 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 24**

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PART XII

CONTROL OVER AUTHORISED PERSONS

Modifications etc. (not altering text)

C327 Pt. 12 modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 114(3)(a) (with art. 23(2))

C328 Pt. 12 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), reg. 62, **Sch. 3 para. 4** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(d)(e)**)

VALID FROM 21/03/2009

I[F91] Enforcement procedures

Textual Amendments

F91 Ss. 178-191G and cross-headings substituted (21.3.2009) for ss. 178-191 and cross-headings by The Financial Services and Markets Act 2000 (Controllers) Regulations 2009 (S.I. 2009/534), reg. 3, **Sch. 1** (with reg. 8)

191A Objection by the Authority

(1) The Authority may object to a person's control over a UK authorised person in any of the circumstances specified in subsection (2).

(2) The circumstances are that the Authority reasonably believes that—

(a) the person acquired or increased control without giving notice under section 178(1) in circumstances where notice was required;

(b) the person is in breach of a condition imposed under section 187; or

(c) there are grounds for objecting to control on the basis of the matters in section 186.

(3) The Authority—

(a) must take into account whether influence exercised by the person is likely to operate to the detriment of the sound and prudent management of the UK authorised person; and

(b) may take into account whether the person has co-operated with any information requests made or requirements imposed by the Authority.

(4) If the Authority proposes to object to a person's control over a UK authorised person, it must give that person a warning notice.

(5) The Authority must consult any appropriate home state regulator before giving a warning notice under this section and, in doing so, must comply with such requirements as to consultation as may be prescribed.

(6) If the Authority decides to object to a person's control over a UK authorised person, it must give that person a decision notice.

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(7) A person to whom the Authority gives a decision notice under this section may refer the matter to the Tribunal.

191B Restriction notices

(1) The Authority may give notice in writing (a "restriction notice") to a person in the following circumstances.

(2) The circumstances are that—

(a) the person has control over a UK authorised person by virtue of holding shares or voting power; and

(b) in relation to the shares or voting power, the Authority has given the person a warning notice or a decision notice under section 189 or 191A or a final notice which confirms a decision notice given under section 189 or 191A.

(3) In a restriction notice, the Authority may direct that shares or voting power to which the notice relates are, until further notice, subject to one or more of the following restrictions—

(a) except by court order, an agreement to transfer or a transfer of any such shares or voting power or, in the case of unissued shares, any agreement to transfer or transfer of the right to be issued with them, is void;

(b) no voting power is to be exercisable;

(c) no further shares are to be issued in pursuance of any right of the holder of any such shares or voting power or in pursuance of any offer made to their holder;

(d) except in a liquidation, no payment is to be made of any sums due from the body corporate on any such shares, whether in respect of capital or otherwise.

(4) A restriction notice takes effect—

(a) immediately; or

(b) on such date as may be specified in the notice.

(5) A restriction notice does not extinguish rights which would be enjoyable but for the notice.

(6) A copy of the restriction notice must be served on—

(a) the UK authorised person in question; and

(b) in the case of shares or voting power held in a parent undertaking of a UK authorised person, the parent undertaking.

(7) A person to whom the Authority gives a restriction notice may refer the matter to the Tribunal.

191C Orders for sale of shares

(1) The court may, on the application of the Authority, order the sale of shares or the disposition of voting power in the following circumstances.

(2) The circumstances are that—

(a) a person has control over a UK authorised person by virtue of holding the shares or voting power; and

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(b) the acquisition or continued holding of the shares or voting power by that person is in contravention of a final notice which confirms a decision notice given under section 189 or section 191A.

(3) Where the court orders the sale of shares or disposition of voting power it may—

(a) if a restriction notice has been given in relation to the shares or voting power, order that the restrictions cease to apply; and

(b) make any further order.

(4) Where the court makes an order under this section, it must take into account the level of holding that the person would have been entitled to acquire, or to continue to hold, without contravening the final notice.

(5) If shares are sold or voting power disposed of in pursuance of an order under this section, any proceeds, less the costs of the sale or disposition, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for payment of a whole or part of the proceeds.

(6) The jurisdiction conferred by this section may be exercised by the High Court and the Court of Session.

VALID FROM 21/03/2009

Notice of reductions of control of UK authorised persons

191D Obligation to notify the Authority: dispositions of control

(1) A person who decides to reduce or cease to have control over a UK authorised person must give the Authority notice in writing before making the disposition.

(2) For the purposes of calculations relating to this section, the holding of shares or voting power by a person ("A1") includes any shares or voting power held by another ("A2") if A1 and A2 are acting in concert.

191E Requirements for notices under section 191D

(1) A notice under section 191D must be in such form, include such information and be accompanied by such documents as the Authority may reasonably require.

(2) The Authority must publish a list of its requirements as to the form, information and accompanying documents for a notice under section 191D.

(3) The Authority may impose different requirements for different cases and may vary or waive requirements in particular cases.

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VALID FROM 21/03/2009

Offences

191F Offences under this Part

(1) A person who fails to comply with an obligation to notify the Authority under section 178(1) or 191D(1) is guilty of an offence.

(2) A person who gives notice to the Authority under section 178(1) and makes the acquisition to which the notice relates before the expiry date of the assessment period is guilty of an offence unless the Authority has approved the acquisition or given a warning notice under section 189(4)(b)(i).

(3) A person who contravenes an interim condition in a warning notice given under section 189(4)(b)(i) or a condition in a decision notice given under section 189(7) or a final notice which confirms a decision notice under that section is guilty of an offence.

(4) A person who makes an acquisition in contravention of a warning notice given under section 189(4)(b)(ii) or a decision notice given under section 189(7) or a final notice which confirms a decision notice under that section is guilty of an offence.

(5) A person who makes an acquisition after the Authority's approval for the acquisition has ceased to be effective by virtue of section 191 is guilty of an offence.

(6) A person who provides information to the Authority which is false in a material particular is guilty of an offence.

(7) A person who breaches a direction contained in a restriction notice given under section 191B is guilty of an offence.

(8) A person guilty of an offence under subsection (1) to (3) or (5) to (7) is liable—
(a) on summary conviction to a fine not exceeding the statutory maximum; or
(b) on conviction on indictment, to a fine.

(9) A person guilty of an offence under subsection (4) is liable—
(a) on summary conviction, to a fine not exceeding the statutory maximum; or
(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

VALID FROM 21/03/2009

Interpretation

191G Interpretation

(1) In this Part—

"acquisition" means the acquisition of control or of an increase in control over a UK authorised person;

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"credit institution" means—

(a) a credit institution authorised under the banking consolidation directive; or

(b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State;

"shares" has the same meaning as in section 422;

"UK authorised person" means an authorised person who—

(a) is a body incorporated in, or an unincorporated association formed under the law of, any part of the United Kingdom; and

(b) is not a person authorised as a result of paragraph 1 of Schedule 5; and

"voting power" has the same meaning as in section 422.

(2) For the purposes of this Part, a "working day" is a day other than—

(a) a Saturday or a Sunday; or

(b) a day which is a bank holiday in England and Wales under the [M27]Banking and Financial Dealings Act 1971.**]**

Marginal Citations

M27 1971 c.80.

Notice of control

[X2]178 Obligation to notify the Authority.

(1) If a step which a person proposes to take would result in his acquiring—

(a) control over a UK authorised person,

(b) an additional kind of control over a UK authorised person, or

(c) an increase in a relevant kind of control which he already has over a UK authorised person,

he must notify the Authority of his proposal.

(2) A person who, without himself taking any such step, acquires any such control or additional or increased control must notify the Authority before the end of the period of 14 days beginning with the day on which he first becomes aware that he has acquired it.

(3) A person who is under the duty to notify the Authority imposed by subsection (1) must also give notice to the Authority on acquiring, or increasing, the control in question.

(4) In this Part "UK authorised person" means an authorised person who—

(a) is a body incorporated in, or an unincorporated association formed under the law of, any part of the United Kingdom; and

(b) is not a person authorised as a result of paragraph 1 of Schedule 5.

(5) A notice under subsection (1) or (2) is referred to in this Part as "a notice of control".

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Editorial Information

X2 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Modifications etc. (not altering text)

C329 S. 178 excluded (1.12.2001) by S.I. 2001/2638, **arts. 1**, 2(1)(b); S.I. 2001/3538, **art. 2(1)**
S. 178 excluded (1.12.2001) by S.I. 2001/3338, **arts. 1**, 2(1)(4); S.I. 2001/3538, **art. 2(1)**
S. 178 extended (1.12.2001) by S.I. 2001/2637, **arts. 1**, 5(2); S.I. 2001/3538, **art. 2(1)**

C330 S. 178(1) extended (1.12.2001) by S.I. 2001/2637, **arts. 1**, 3(1)(d); S.I. 2001/3538,. art. 2(1)

Acquiring, increasing and reducing control

[X3]179 Acquiring control.

(1) For the purposes of this Part, a person ("the acquirer") acquires control over a UK authorised person ("A") on first falling within any of the cases in subsection (2).

(2) The cases are where the acquirer—

(a) holds 10% or more of the shares in A;

(b) is able to exercise significant influence over the management of A by virtue of his shareholding in A;

(c) holds 10% or more of the shares in a parent undertaking ("P") of A;

(d) is able to exercise significant influence over the management of P by virtue of his shareholding in P;

(e) is entitled to exercise, or control the exercise of, 10% or more of the voting power in A;

(f) is able to exercise significant influence over the management of A by virtue of his voting power in A;

(g) is entitled to exercise, or control the exercise of, 10% or more of the voting power in P; or

(h) is able to exercise significant influence over the management of P by virtue of his voting power in P.

(3) In subsection (2) "the acquirer" means—

(a) the acquirer;

(b) any of the acquirer's associates; or

(c) the acquirer and any of his associates.

(4) For the purposes of this Part, each of the following is to be regarded as a kind of control—

(a) control arising as a result of the holding of shares in A;

(b) control arising as a result of the holding of shares in P;

(c) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in A;

(d) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in P.

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(5) For the purposes of this section and sections 180 and 181, "associate", "shares" and "voting power" have the same meaning as in section 422.

Editorial Information

X3 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

[X4]180 Increasing control.

(1) For the purposes of this Part, a controller of a person ("A") who is a UK authorised person increases his control over A if—

(a) the percentage of shares held by the controller in A increases by any of the steps mentioned in subsection (2);

(b) the percentage of shares held by the controller in a parent undertaking ("P") of A increases by any of the steps mentioned in subsection (2);

(c) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in A increases by any of the steps mentioned in subsection (2);

(d) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in P increases by any of the steps mentioned in subsection (2); or

(e) the controller becomes a parent undertaking of A.

(2) The steps are—

(a) from below 10% to 10% or more but less than 20%;

(b) from below 20% to 20% or more but less than 33%;

(c) from below 33% to 33% or more but less than 50%;

(d) from below 50% to 50% or more.

(3) In paragraphs (a) to (d) of subsection (1) "the controller" means—

(a) the controller;

(b) any of the controller's associates; or

(c) the controller and any of his associates.

(4) In the rest of this Part "acquiring control" or "having control" includes—

(a) acquiring or having an additional kind of control; or

(b) acquiring an increase in a relevant kind of control, or having increased control of a relevant kind.

Editorial Information

X4 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

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[X5]181 Reducing control.

(1) For the purposes of this Part, a controller of a person ("A") who is a UK authorised person reduces his control over A if—

(a) the percentage of shares held by the controller in A decreases by any of the steps mentioned in subsection (2),

(b) the percentage of shares held by the controller in a parent undertaking ("P") of A decreases by any of the steps mentioned in subsection (2),

(c) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in A decreases by any of the steps mentioned in subsection (2),

(d) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in P decreases by any of the steps mentioned in subsection (2), or

(e) the controller ceases to be a parent undertaking of A,

unless the controller ceases to have the kind of control concerned over A as a result.

(2) The steps are—

(a) from 50% or more to 33% or more but less than 50%;

(b) from 33% or more to 20% or more but less than 33%;

(c) from 20% or more to 10% or more but less than 20%;

(d) from 10% or more to less than 10%.

(3) In paragraphs (a) to (d) of subsection (1) "the controller" means—

(a) the controller;

(b) any of the controller's associates; or

(c) the controller and any of his associates.

Editorial Information

X5 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Acquiring or increasing control: procedure

[X6]182 Notification.

(1) A notice of control must—

(a) be given to the Authority in writing; and

(b) include such information and be accompanied by such documents as the Authority may reasonably require.

(2) The Authority may require the person giving a notice of control to provide such additional information or documents as it reasonably considers necessary in order to enable it to determine what action it is to take in response to the notice.

(3) Different requirements may be imposed in different circumstances.

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Editorial Information

X6 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Modifications etc. (not altering text)

C331 S. 182(2) extended (1.12.2001) by S.I. 2001/2637, **arts. 1**, 4(1); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I47 S. 182 wholly in force at 1.12.2001; s. 182 not in force at Royal Assent see s. 431(2); s. 182 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 182 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

[X7]183 Duty of Authority in relation to notice of control.

(1) The Authority must, before the end of the period of three months beginning with the date on which it receives a notice of control ("the period for consideration"), determine whether—

(a) to approve of the person concerned having the control to which the notice relates; or

(b) to serve a warning notice under subsection (3) or section 185(3).

(2) Before doing so, the Authority must comply with such requirements as to consultation with competent authorities outside the United Kingdom as may be prescribed.

(3) If the Authority proposes to give the person concerned a notice of objection under section 186(1), it must give him a warning notice.

Editorial Information

X7 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Modifications etc. (not altering text)

C332 S. 183 modified (1.12.2001) by S.I. 2001/2637, **arts. 1**, 4(2); S.I. 2001/3538, **art. 2(1)**
S. 183 modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 50(2), 51(2) (with art. 23(2))

C333 S. 183(3) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 110(4), 115(3) (With art. 23(2))

Commencement Information

I48 S. 183 wholly in force at 1.12.2001; s. 183 not in force at Royal Assent see s. 431(2); s. 183(2) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 183 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

[X8]184 Approval of acquisition of control.

(1) If the Authority decides to approve of the person concerned having the control to which the notice relates it must notify that person of its approval in writing without delay.

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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) If the Authority fails to comply with subsection (1) of section 183 it is to be treated as having given its approval and notified the person concerned at the end of the period fixed by that subsection.

(3) The Authority's approval remains effective only if the person to whom it relates acquires the control in question—

(a) before the end of such period as may be specified in the notice; or

(b) if no period is specified, before the end of the period of one year beginning with the date—

(i) of the notice of approval;

(ii) on which the Authority is treated as having given approval under subsection (2); or

(iii) of a decision on a reference to the Tribunal which results in the person concerned receiving approval.

Editorial Information

X8 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Modifications etc. (not altering text)

C334 S. 184(1) extended (1.12.2001) by S.I. 2001/2637, **arts. 1**, 5(2); S.I. 2001/3538, **art. 2(1)**

C335 S. 184(2) extended (1.12.2001) by S.I. 2001/2637, **arts. 1**, 5(3); S.I. 2001/3538, **art. 2(1)**

C336 S. 184(3) applied (with modifications) (1.12.2001) by S.I. 2001/2637, **arts. 1**, 5(4)(5); S.I. 2001/3538, **art. 2(1)**

[X9]185 Conditions attached to approval.

(1) The Authority's approval under section 184 may be given unconditionally or subject to such conditions as the Authority considers appropriate.

(2) In imposing any conditions, the Authority must have regard to its duty under section 41.

(3) If the Authority proposes to impose conditions on a person it must give him a warning notice.

(4) If the Authority decides to impose conditions on a person it must give him a decision notice.

(5) A person who is subject to a condition imposed under this section may apply to the Authority—

(a) for the condition to be varied; or

(b) for the condition to be cancelled.

(6) The Authority may, on its own initiative, cancel a condition imposed under this section.

(7) If the Authority has given its approval to a person subject to a condition, he may refer to the Tribunal—

(a) the imposition of the condition; or

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(b) the Authority's decision to refuse an application made by him under subsection (5).

Editorial Information

X9 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Modifications etc. (not altering text)

C337 S. 185(1) extended (1.12.2001) by S.I. 2001/2637, **arts. 1**, 10(1); S.I. 2001/3538, **art. 2(1)**

C338 S. 185(3) extended (1.12.2001) by S.I. 2001/2637, **arts. 1**, 9(1)(3); S.I. 2001/3538, **art. 2(1)**
S. 185(3) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**; 110(4), 115(3) (with art. 23)

X10186 Objection to acquisition of control.

(1) On considering a notice of control, the Authority may give a decision notice under this section to the person acquiring control ("the acquirer") unless it is satisfied that the approval requirements are met.

(2) The approval requirements are that—

(a) the acquirer is a fit and proper person to have the control over the authorised person that he has or would have if he acquired the control in question; and

(b) the interests of consumers would not be threatened by the acquirer's control or by his acquiring that control.

(3) In deciding whether the approval requirements are met, the Authority must have regard, in relation to the control that the acquirer—

(a) has over the authorised person concerned ("A"), or

(b) will have over A if the proposal to which the notice of control relates is carried into effect,

to its duty under section 41 in relation to each regulated activity carried on by A.

(4) If the Authority gives a notice under this section but considers that the approval requirements would be met if the person to whom a notice is given were to take, or refrain from taking, a particular step, the notice must identify that step.

(5) A person to whom a notice under this section is given may refer the matter to the Tribunal.

(6) "Consumers" means persons who are consumers for the purposes of section 138.

Editorial Information

X10 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

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Modifications etc. (not altering text)
C339 S. 186(6) modified (18.6.2001) by S.I. 2001/1821, **arts. 1(1)**, 3(5)

[X11]187 Objection to existing control.

(1) If the Authority is not satisfied that the approval requirements are met, it may give a decision notice under this section to a person if he has failed to comply with a duty to notify imposed by section 178.

(2) If the failure relates to subsection (1) or (2) of that section, the Authority may (instead of giving a notice under subsection (1)) approve the acquisition of the control in question by the person concerned as if he had given it a notice of control.

(3) The Authority may also give a decision notice under this section to a person who is a controller of a UK authorised person if the Authority becomes aware of matters as a result of which it is satisfied that—

(a) the approval requirements are not met with respect to the controller; or

(b) a condition imposed under section 185 required that person to do (or refrain from doing) a particular thing and the condition has been breached as a result of his failing to do (or doing) that thing.

(4) A person to whom a notice under this section is given may refer the matter to the Tribunal.

(5) "Approval requirements" has the same meaning as in section 186.

Editorial Information
X11 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Modifications etc. (not altering text)
C340 S. 187(1)(2) extended (1.12.2001) by S.I. 2001/2637, **arts. 1**, 7(1)(d); S.I. 2001/3538, **art. 2(1)**
C341 S. 187(3) explained and modified (1.12.2001) by S.I. 2001/2637, **arts. 1**, 12; S.I. 2001/3538, **art. 2(1)**

[X12]188 Notices of objection under section 187: procedure.

(1) If the Authority proposes to give a notice of objection to a person under section 187, it must give him a warning notice.

(2) Before doing so, the Authority must comply with such requirements as to consultation with competent authorities outside the United Kingdom as may be prescribed.

(3) If the Authority decides to give a warning notice under this section, it must do so before the end of the period of three months beginning—

(a) in the case of a notice to be given under section 187(1), with the date on which it became aware of the failure to comply with the duty in question;

(b) in the case of a notice to be given under section 187(3), with the date on which it became aware of the matters in question.

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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(4) The Authority may require the person concerned to provide such additional information or documents as it considers reasonable.

(5) Different requirements may be imposed in different circumstances.

(6) In this Part "notice of objection" means a notice under section 186 or 187.

Editorial Information

X12 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Modifications etc. (not altering text)

C342 S. 188 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 110(4), 115(3) (with art. 23(2))

C343 S. 188(1) extended (1.12.2001) by S.I. 2001/2637, **arts. 1**, 8(1), 11(1); S.I. 2001/3538, **art. 2(1)**

C344 S. 188(3) applied (with modifications) (1.12.2001) by S.I. 2001/2637, **arts. 1**, 7(2); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I49 S. 188 wholly in force at 1.12.2001; s. 188 not in force at Royal Assent see s. 431(2); s. 188(2) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 188 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Improperly acquired shares

[X13]189 Improperly acquired shares.

(1) The powers conferred by this section are exercisable if a person has acquired, or has continued to hold, any shares in contravention of—

(a) a notice of objection; or

(b) a condition imposed on the Authority's approval.

(2) The Authority may by notice in writing served on the person concerned ("a restriction notice") direct that any such shares which are specified in the notice are, until further notice, subject to one or more of the following restrictions—

(a) a transfer of (or agreement to transfer) those shares, or in the case of unissued shares any transfer of (or agreement to transfer) the right to be issued with them, is void;

(b) no voting rights are to be exercisable in respect of the shares;

(c) no further shares are to be issued in right of them or in pursuance of any offer made to their holder;

(d) except in a liquidation, no payment is to be made of any sums due from the body corporate on the shares, whether in respect of capital or otherwise.

(3) The court may, on the application of the Authority, order the sale of any shares to which this section applies and, if they are for the time being subject to any restriction under subsection (2), that they are to cease to be subject to that restriction.

(4) No order may be made under subsection (3)—

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(a) until the end of the period within which a reference may be made to the Tribunal in respect of the notice of objection; and

(b) if a reference is made, until the matter has been determined or the reference withdrawn.

(5) If an order has been made under subsection (3), the court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) If shares are sold in pursuance of an order under this section, the proceeds of sale, less the costs of the sale, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him.

(7) This section applies—

(a) in the case of an acquirer falling within section 178(1), to all the shares—

(i) in the authorised person which the acquirer has acquired;

(ii) which are held by him or an associate of his; and

(iii) which were not so held immediately before he became a person with control over the authorised person;

(b) in the case of an acquirer falling within section 178(2), to all the shares held by him or an associate of his at the time when he first became aware that he had acquired control over the authorised person; and

(c) to all the shares in an undertaking ("C")—

(i) which are held by the acquirer or an associate of his, and

(ii) which were not so held before he became a person with control in relation to the authorised person,

where C is the undertaking in which shares were acquired by the acquirer (or an associate of his) and, as a result, he became a person with control in relation to that authorised person.

(8) A copy of the restriction notice must be served on—

(a) the authorised person to whose shares it relates; and

(b) if it relates to shares held by an associate of that authorised person, on that associate.

(9) The jurisdiction conferred by this section may be exercised by the High Court and the Court of Session.

Editorial Information

X13 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Modifications etc. (not altering text)

C345 S. 189(2) power extended (1.12.2001) by S.I. 2001/2637, **arts. 1**, 13(4)(5); S.I. 2001/3538, **art. 2(1)**
S. 189(2) extended (1.12.2001) by S.I. 2001/2637, **arts. 1**, 13(2)(5); S.I. 2001/3538, **art. 2(1)**

C346 S. 189(2)(b) extended (1.12.2001) by S.I. 2001/2637, **arts. 1**, 13(1); S.I. 2001/3538, **art. 2(1)**

C347 S. 189(3) applied (with modifications) by S.I. 2001/2637, **arts. 1**, 13(2)(5); S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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Reducing control: procedure

[X14]190 Notification.

(1) If a step which a controller of a UK authorised person proposes to take would result in his—

(a) ceasing to have control of a relevant kind over the authorised person, or

(b) reducing a relevant kind of control over that person,

he must notify the Authority of his proposal.

(2) A controller of a UK authorised person who, without himself taking any such step, ceases to have that control or reduces that control must notify the Authority before the end of the period of 14 days beginning with the day on which he first becomes aware that—

(a) he has ceased to have the control in question; or

(b) he has reduced that control.

(3) A person who is under the duty to notify the Authority imposed by subsection (1) must also give a notice to the Authority—

(a) on ceasing to have the control in question; or

(b) on reducing that control.

(4) A notice under this section must—

(a) be given to the Authority in writing; and

(b) include details of the extent of the control (if any) which the person concerned will retain (or still retains) over the authorised person concerned.

Editorial Information

X14 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Modifications etc. (not altering text)

C348 S. 190 excluded (1.12.2001) by S.I. 2001/2638, **arts. 1**, 2(2)(b); S.I. 2001/3538, **art. 2(1)**
S. 190 excluded (1.12.2001) by S.I. 2001/3338, **arts. 1(1)**, 3; S.I. 2001/3538, **art. 2(1)**

C349 S. 190(1) applied (1.12.2001) by S.I. 2001/2637, **arts. 1**, 15(1); S.I. 2001/3538, **art. 2(1)**

C350 S. 190(2) applied (with modifications) (1.12.2001) by S.I. 2001/2637, **arts. 1**, 15(2)-(4); S.I. 2001/3538, **art. 2(1)**

Offences

[X15]191 Offences under this Part.

(1) A person who fails to comply with the duty to notify the Authority imposed on him by section 178(1) or 190(1) is guilty of an offence.

(2) A person who fails to comply with the duty to notify the Authority imposed on him by section 178(2) or 190(2) is guilty of an offence.

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

(3) If a person who has given a notice of control to the Authority carries out the proposal to which the notice relates, he is guilty of an offence if—

(a) the period of three months beginning with the date on which the Authority received the notice is still running; and

(b) the Authority has not responded to the notice by either giving its approval or giving him a warning notice under section 183(3) or 185(3).

(4) A person to whom the Authority has given a warning notice under section 183(3) is guilty of an offence if he carries out the proposal to which the notice relates before the Authority has decided whether to give him a notice of objection.

(5) A person to whom a notice of objection has been given is guilty of an offence if he acquires the control to which the notice applies at a time when the notice is still in force.

(6) A person guilty of an offence under subsection (1), (2), (3) or (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) A person guilty of an offence under subsection (5) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

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

(8) A person guilty of an offence under subsection (5) is also liable on summary conviction to a fine not exceeding one tenth of the statutory maximum for each day on which the offence has continued.

(9) It is a defence for a person charged with an offence under subsection (1) to show that he had, at the time of the alleged offence, no knowledge of the act or circumstances by virtue of which the duty to notify the Authority arose.

(10) If a person—

(a) was under the duty to notify the Authority imposed by section 178(1) or 190(1) but had no knowledge of the act or circumstances by virtue of which that duty arose, but

(b) subsequently becomes aware of that act or those circumstances,

he must notify the Authority before the end of the period of 14 days beginning with the day on which he first became so aware.

(11) A person who fails to comply with the duty to notify the Authority imposed by subsection (10) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Editorial Information

X15 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Modifications etc. (not altering text)

C351 S. 191(10) applied (with modifications) (1.12.2001) by S.I. 2001/2637, **arts. 1**, 14; S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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Miscellaneous

192 Power to change definitions of control etc.

The Treasury may by order—

(a) provide for exemptions from the obligations to notify imposed by sections 178 and 190;

(b) amend section 179 by varying, or removing, any of the cases in which a person is treated as having control over a UK authorised person or by adding a case;

(c) amend section 180 by varying, or removing, any of the cases in which a person is treated as increasing control over a UK authorised person or by adding a case;

(d) amend section 181 by varying, or removing, any of the cases in which a person is treated as reducing his control over a UK authorised person or by adding a case;

(e) amend section 422 by varying, or removing, any of the cases in which a person is treated as being a controller of a person or by adding a case.

Commencement Information

I50 S. 192 wholly in force at 1.12.2001; s. 192 not in force at Royal Assent see s. 431(2); s. 192(a) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 192 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

PART XIII

INCOMING FIRMS: INTERVENTION BY AUTHORITY

Modifications etc. (not altering text)

C352 Pt. 13 modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 114(3)(a) (with art. 23(2))
Pt. 13 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 32; S.I. 2001/3538, **art. 2(1)**
Pt. 13 extended (5.10.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/3084, **art. 2(7)**; S.I. 2001/3538, **art. 2(1)**
Pt 13 excluded (1.12.2001) by S.I. 2001/3592, **art. 107(2)** (with art. 23(2))

Interpretation

193 Interpretation of this Part.

(1) In this Part—

"additional procedure" means the procedure described in section 199;

"incoming firm" means—

(a) an EEA firm which is exercising, or has exercised, its right to carry on a regulated activity in the United Kingdom in accordance with Schedule 3; or

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(b) a Treaty firm which is exercising, or has exercised, its right to carry on a regulated activity in the United Kingdom in accordance with Schedule 4; and

"power of intervention" means the power conferred on the Authority by section 196.

(2) In relation to an incoming firm which is an EEA firm, expressions used in this Part and in Schedule 3 have the same meaning in this Part as they have in that Schedule.

194 General grounds on which power of intervention is exercisable.

(1) The Authority may exercise its power of intervention in respect of an incoming firm if it appears to it that—

(a) the firm has contravened, or is likely to contravene, a requirement which is imposed on it by or under this Act (in a case where the Authority is responsible for enforcing compliance in the United Kingdom);

(b) the firm has, in purported compliance with any requirement imposed by or under this Act, knowingly or recklessly given the Authority information which is false or misleading in a material particular; or

(c) it is desirable to exercise the power in order to protect the interests of actual or potential customers.

(2) Subsection (3) applies to an incoming EEA firm falling within sub-paragraph (a) or (b) of paragraph 5 of Schedule 3 which is exercising an EEA right to carry on any Consumer Credit Act business in the United Kingdom.

(3) The Authority may exercise its power of intervention in respect of the firm if **[**[F92]the Office of Fair Trading**]** has informed the Authority that—

(a) the firm,

(b) any of the firm's employees, agents or associates (whether past or present), or

(c) if the firm is a body corporate, a controller of the firm or an associate of such a controller,

has done any of the things specified in paragraphs (a) to (d) of section 25(2) of the [M28]Consumer Credit Act 1974.

(4) "Associate", "Consumer Credit Act business" and "controller" have the same meaning as in section 203.

Textual Amendments

F92 Words in s. 194(3) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(6)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

Modifications etc. (not altering text)

C353 S. 194 applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 12(3)(b), 18(4)(b), 21(3) (with art. 23(2))
S. 194 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(5); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I51 S. 194 wholly in force at 1.12.2001; s. 194 not in force at Royal Assent see s. 431(2); s. 194 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 194 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations

M28 1974 c. 39.

VALID FROM 01/04/2007

[F93[F93194A Contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive: Authority primarily responsible for securing compliance

(1) This section applies if—

(a) a relevant EEA firm has a branch in the United Kingdom; and

(b) the Authority ascertains that the firm has contravened, or is contravening, a requirement falling within subsection (3) (in a case to which Article 62.2 of the markets in financial instruments directive applies).

(2) "Relevant EEA firm" means an EEA firm falling within paragraph 5(a) or (b) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the markets in financial instruments directive.

(3) A requirement falls within this subsection if it is imposed on the firm—

(a) by any provision of or made under this Act which implements the markets in financial instruments directive; or

(b) by any directly applicable Community regulation made under that directive.

(4) The Authority must give the firm written notice which—

(a) requires the firm to put an end to the contravention;

(b) states that the Authority's power of intervention will become exercisable in relation to the firm if the firm continues the contravention; and

(c) indicates any requirements that the Authority proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.

(5) The Authority may exercise its power of intervention in respect of the firm if—

(a) a reasonable time has expired since the giving of the notice under subsection (4);

(b) the firm has failed to put an end to the contravention within that time; and

(c) the Authority has informed the firm's home state regulator of its intention to exercise its power of intervention in respect of the firm.

(6) Subsection (5) applies whether or not the Authority's power of intervention is also exercisable as a result of section 194.

(7) If the Authority exercises its power of intervention in respect of a relevant EEA firm by virtue of subsection (5), it must at the earliest opportunity inform the firm's home state regulator and the Commission of—

(a) the fact that the Authority has exercised that power in respect of the firm; and

(b) any requirements it has imposed on the firm in exercise of the power.**]]**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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

F93 S. 194A inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(1), **Sch. 1 para. 2**

195 Exercise of power in support of overseas regulator.

(1) The Authority may exercise its power of intervention in respect of an incoming firm at the request of, or for the purpose of assisting, an overseas regulator.

(2) Subsection (1) applies whether or not the Authority's power of intervention is also exercisable as a result of section 194.

(3) "An overseas regulator" means an authority in a country or territory outside the United Kingdom—

(a) which is a home state regulator; or

(b) which exercises any function of a kind mentioned in subsection (4).

(4) The functions are—

(a) a function corresponding to any function of the Authority under this Act;

(b) a function corresponding to any function exercised by the competent authority under Part VI [F94]. . . ;

(c) a function corresponding to any function exercised by the Secretary of State under the [M29]Companies Act 1985;

(d) a function in connection with —

(i) the investigation of conduct of the kind prohibited by Part V of the [M30]Criminal Justice Act 1993 (insider dealing); or

(ii) the enforcement of rules (whether or not having the force of law) relating to such conduct;

(e) a function prescribed by regulations made for the purposes of this subsection which, in the opinion of the Treasury, relates to companies or financial services.

(5) If—

(a) a request to the Authority for the exercise of its power of intervention has been made by a home state regulator in pursuance of a Community obligation, or

(b) a home state regulator has notified the Authority that an EEA firm's EEA authorisation has been withdrawn,

the Authority must, in deciding whether or not to exercise its power of intervention, consider whether exercising it is necessary in order to comply with a Community obligation.

(6) In deciding in any case in which the Authority does not consider that the exercise of its power of intervention is necessary in order to comply with a Community obligation, it may take into account in particular—

(a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;

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Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

(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.

(7) The Authority may decide not to exercise its power of intervention, in response to a request, unless the regulator concerned undertakes to make such contribution to the cost of its exercise as the Authority considers appropriate.

(8) Subsection (7) does not apply if the Authority decides that it is necessary for it to exercise its power of intervention in order to comply with a Community obligation.

Textual Amendments

F94 Words in s. 195(4)(b) omitted (1.7.2005) by virtue of The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 13**

Modifications etc. (not altering text)

C354 S. 195 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(5); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I52 S. 195 wholly in force at 1.12.2001; s. 195 not in force at Royal Assent see s. 431(2); s. 195 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 195 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Marginal Citations

M29 1985 c. 6.

M30 1993 c. 36.

VALID FROM 01/04/2007

195A Contravention by relevant EEA firm of requirement under markets in financial instruments directive: home state regulator primarily responsible for securing compliance

(1) This section applies if the Authority has clear and demonstrable grounds for believing that a relevant EEA firm has contravened, or is contravening, a requirement falling within subsection (2) (in a case to which Article 62.1 or 62.3 of the markets in financial instruments directive applies).

(2) A requirement falls within this subsection if it is imposed on the firm—

(a) by or under any provision adopted in the firm's home state for the purpose of implementing the markets in financial instruments directive; or

(b) by any directly applicable Community regulation made under that directive.

(3) The Authority must notify the firm's home state regulator of the situation mentioned in subsection (1).

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

(4) The notice under subsection (3) must—

(a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the firm puts an end to the contravention;

(b) state that the Authority's power of intervention is likely to become exercisable in relation to the firm if the firm continues the contravention; and

(c) indicate any requirements that the Authority proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.

(5) The Authority may exercise its power of intervention in respect of the firm if—

(a) a reasonable time has expired since the giving of the notice under subsection (3); and

(b) conditions A to C are satisfied.

(6) Condition A is that—

(a) the firm's home state regulator has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or

(b) any measures taken by the home state regulator have proved inadequate for that purpose.

(7) Condition B is that the firm is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the orderly functioning of the markets.

(8) Condition C is that the Authority has informed the firm's home state regulator of its intention to exercise its power of intervention in respect of the firm.

(9) Subsection (5) applies whether or not the Authority's power of intervention is also exercisable as a result of section 194 or 195.

(10) If the Authority exercises its power of intervention in respect of a relevant EEA firm by virtue of subsection (5), it must at the earliest opportunity inform the Commission of—

(a) the fact that the Authority has exercised that power in respect of the firm; and

(b) any requirements it has imposed on the firm in exercise of the power.

(11) In this section—

"home state", in relation to a relevant EEA firm, means—

(a) in the case of a firm which is a body corporate, the EEA State in which the firm has its registered office or, if it has no registered office, its head office; and

(b) in any other case, the EEA State in which the firm has its head office;

"relevant EEA firm" has the same meaning as in section 194A.

196 The power of intervention.

If the Authority is entitled to exercise its power of intervention in respect of an incoming firm under this Part, it may impose any requirement in relation to the firm which it could impose if—

(a) the firm's permission was a Part IV permission; and

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(b) the Authority was entitled to exercise its power under that Part to vary that permission.

Modifications etc. (not altering text)

C355 S. 196 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(5); S.I. 2001/3538, **art. 2(1)**
S. 196 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 34-54; S.I. 2001/3538, **art. 2(1)**
S. 196 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 4(2) (with art. 23(2))

Commencement Information

I53 S. 196 wholly in force at 1.12.2001; s. 196 not in force at Royal Assent see s. 431(2); s. 196 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 196 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Exercise of power of intervention

197 Procedure on exercise of power of intervention.

(1) A requirement takes effect—

(a) immediately, if the notice given under subsection (3) states that that is the case;

(b) on such date as may be specified in the notice; or

(c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A requirement may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its power of intervention, considers that it is necessary for the requirement to take effect immediately (or on that date).

(3) If the Authority proposes to impose a requirement under section 196 on an incoming firm, or imposes such a requirement with immediate effect, it must give the firm written notice.

(4) The notice must—

(a) give details of the requirement;

(b) inform the firm of when the requirement takes effect;

(c) state the Authority's reasons for imposing the requirement and for its determination as to when the requirement takes effect;

(d) inform the firm that it may make representations to the Authority within such period as may be specified in the notice (whether or not it has referred the matter to the Tribunal); and

(e) inform it of its right to refer the matter to the Tribunal.

(5) The Authority may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by the firm, the Authority decides—

(a) to impose the requirement proposed, or

(b) if it has been imposed, not to rescind the requirement,

it must give it written notice.

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(7) If, having considered any representations made by the firm, the Authority decides—

(a) not to impose the requirement proposed,

(b) to impose a different requirement from that proposed, or

(c) to rescind a requirement which has effect,

it must give it written notice.

(8) A notice given under subsection (6) must inform the firm of its right to refer the matter to the Tribunal.

(9) A notice under subsection (7)(b) must comply with subsection (4).

(10) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

Modifications etc. (not altering text)

C356 S. 197 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(5); S.I. 2001/3538, **art. 2(1)**
S. 197 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 61(4), 110(5), 115(4) (with art. 23(2))

C357 S. 197(1)(c) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 18(5), 21(4) (with art. 23(2))

C358 S. 197(3) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 12(1), 18(1)(a), 20(1) (with art. 23(2))
S. 197(3) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 72(2) (with art. 23(2))

C359 S. 197(7) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 23(1) (with art. 23(2))

Commencement Information

I54 S. 197 wholly in force at 1.12.2001; s. 197 not in force at Royal Assent see s. 431(2); s. 197 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 197 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

198 Power to apply to court for injunction in respect of certain overseas insurance companies.

(1) This section applies if the Authority has received a request made in respect of an incoming EEA firm in accordance with—

(a) Article 20.5 of the first non-life insurance directive; or

[[F95](b) Article 37.5 of the life assurance consolidation directive**]**

(2) The court may, on an application made to it by the Authority with respect to the firm, grant an injunction restraining (or in Scotland an interdict prohibiting) the firm disposing of or otherwise dealing with any of its assets.

(3) If the court grants an injunction, it may by subsequent orders make provision for such incidental, consequential and supplementary matters as it considers necessary to enable the Authority to perform any of its functions under this Act.

(4) "The court" means—

(a) the High Court; or

(b) in Scotland, the Court of Session.

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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

F95 S. 198(1)(b) substituted (11.1.2005) by The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), **reg. 6(3)**

199 Additional procedure for EEA firms in certain cases.

(1) This section applies if it appears to the Authority that its power of intervention is exercisable in relation to an EEA firm exercising EEA rights in the United Kingdom ("an incoming EEA firm") in respect of the contravention of a relevant requirement.

(2) A requirement is relevant if—

(a) it is imposed by the Authority under this Act; and

(b) as respects its contravention, any of the single market directives provides that a procedure of the kind set out in the following provisions of this section is to apply.

(3) The Authority must, in writing, require the firm to remedy the situation.

(4) If the firm fails to comply with the requirement under subsection (3) within a reasonable time, the Authority must give a notice to that effect to the firm's home state regulator requesting it—

(a) to take all appropriate measures for the purpose of ensuring that the firm remedies the situation which has given rise to the notice; and

(b) to inform the Authority of the measures it proposes to take or has taken or the reasons for not taking such measures.

(5) Except as mentioned in subsection (6), the Authority may not exercise its power of intervention unless satisfied—

(a) that the firm's home state regulator has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or

(b) that the measures taken by the home state regulator have proved inadequate for that purpose.

(6) If the Authority decides that it should exercise its power of intervention in respect of the incoming EEA firm as a matter of urgency in order to protect the interests of consumers, it may exercise that power—

(a) before complying with subsections (3) and (4); or

(b) where it has complied with those subsections, before it is satisfied as mentioned in subsection (5).

(7) In such a case the Authority must at the earliest opportunity inform the firm's home state regulator and the Commission.

(8) If—

(a) the Authority has (by virtue of subsection (6)) exercised its power of intervention before complying with subsections (3) and (4) or before it is satisfied as mentioned in subsection (5), and

(b) the Commission decides under any of the single market directives that the Authority must rescind or vary any requirement imposed in the exercise of its power of intervention,

the Authority must in accordance with the decision rescind or vary the requirement.

Status: *Point in time view as at 01/07/2005. 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)

C360 S. 199 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 37, 52(4); S.I. 2001/3538, **art. 2(1)**
S. 199 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 22(6) (with art. 23(2))

C361 S. 199(7) modified (1.12.2001) by S.I. 2001/3084, **arts. 1(1)(b)**, 2(7); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I55 S. 199 wholly in force at 1.12.2001; s. 199 not in force at Royal Assent see s. 431(2); s. 199 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 199 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 01/07/2011

[F96[F96199A Management companies: loss of authorisation

(1) This section applies in relation to an EEA firm falling within paragraph 5(f) of Schedule 3 ("a management company") which is providing services in the United Kingdom in the exercise of an EEA right deriving from the UCITS directive.

(2) If the Authority has been informed by the home state regulator of the management company that it is withdrawing the management company's authorisation, the Authority must exercise its powers under this Act in such manner as it thinks fit to safeguard the interests of investors in a collective investment scheme managed by the management company in the United Kingdom.

(3) Measures taken under subsection (2) may include decisions preventing the management company from initiating any further transactions in the United Kingdom.

(4) In this section "collective investment scheme" has the same meaning as in Part 17 of this Act.**]]**

Textual Amendments

F96 S. 199A inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(10)**

Supplemental

200 Rescission and variation of requirements.

(1) The Authority may rescind or vary a requirement imposed in exercise of its power of intervention on its own initiative or on the application of the person subject to the requirement.

(2) The power of the Authority on its own initiative to rescind a requirement is exercisable by written notice given by the Authority to the person concerned, which takes effect on the date specified in the notice.

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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(3) Section 197 applies to the exercise of the power of the Authority on its own initiative to vary a requirement as it applies to the imposition of a requirement.

(4) If the Authority proposes to refuse an application for the variation or rescission of a requirement, it must give the applicant a warning notice.

(5) If the Authority decides to refuse an application for the variation or rescission of a requirement—

(a) the Authority must give the applicant a decision notice; and

(b) that person may refer the matter to the Tribunal.

Modifications etc. (not altering text)

C362 S. 200 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 4(2) (with art. 23(2))

C363 S. 200(2)-(5) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 61(4), 110(5), 115(4) (with art. 23(2))

C364 S. 200(5)(a) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 7(3)(4) (with art. 23(2))

201 Effect of certain requirements on other persons.

If the Authority, in exercising its power of intervention, imposes on an incoming firm a requirement of a kind mentioned in subsection (3) of section 48, the requirement has the same effect in relation to the firm as it would have in relation to an authorised person if it had been imposed on the authorised person by the Authority acting under section 45.

202 Contravention of requirement imposed under this Part.

(1) Contravention of a requirement imposed by the Authority under this Part does not—

(a) make a person guilty of an offence;

(b) make any transaction void or unenforceable; or

(c) (subject to subsection (2)) give rise to any right of action for breach of statutory duty.

(2) In prescribed cases the contravention is 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.

Commencement Information

I56 S. 202 wholly in force at 3.9.2001; s. 202 not in force at Royal Assent see s. 431(2); s. 202(2) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 202 in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

Powers of [F97 Office of Fair Trading]

Textual Amendments

F97 S. 203: words in cross-heading substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(7)(c)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

203 Power to prohibit the carrying on of Consumer Credit Act business.

(1) If it appears to **[**F98 the Office of Fair Trading ("the OFT")**]**) that subsection (4) has been, or is likely to be, contravened as respects a consumer credit EEA firm, **[**F99it**]** may by written notice given to the firm impose on the firm a consumer credit prohibition.

(2) If it appears to the **[**F100OFT**]** that a restriction imposed under section 204 on an EEA consumer credit firm has not been complied with, **[**F101it**]** may by written notice given to the firm impose a consumer credit prohibition.

(3) "Consumer credit prohibition" means a prohibition on carrying on, or purporting to carry on, in the United Kingdom any Consumer Credit Act business which consists of or includes carrying on one or more listed activities.

(4) This subsection is contravened as respects a firm if—

(a) the firm or any of its employees, agents or associates (whether past or present), or

(b) if the firm is a body corporate, any controller of the firm or an associate of any such controller,

does any of the things specified in paragraphs (a) to (d) of section 25(2) of the M31Consumer Credit Act 1974.

(5) A consumer credit prohibition may be absolute or may be imposed—

(a) for such period,

(b) until the occurrence of such event, or

(c) until such conditions are complied with,

as may be specified in the notice given under subsection (1) or (2).

(6) Any period, event or condition so specified may be varied by the **[**F102OFT**]** on the application of the firm concerned.

(7) A consumer credit prohibition may be withdrawn by written notice served by the **[**F102OFT**]** on the firm concerned, and any such notice takes effect on such date as is specified in the notice.

(8) Schedule 16 has effect as respects consumer credit prohibitions and restrictions under section 204.

(9) A firm contravening a prohibition under this section is guilty of an offence and liable—

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

(b) on conviction on indictment, to a fine.

(10) In this section and section 204—

"a consumer credit EEA firm" means an EEA firm falling within any of paragraphs (a) to (c) of paragraph 5 of Schedule 3 whose EEA authorisation covers any Consumer Credit Act business;

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

"Consumer Credit Act business" means consumer credit business, consumer hire business or ancillary credit business;

"consumer credit business", "consumer hire business" and "ancillary credit business" have the same meaning as in the [M32]Consumer Credit Act 1974;

"listed activity" means an activity listed in **[**[F103]Annex 1 to the banking consolidation directive**]** or the Annex to the investment services directive;

"associate" has the same meaning as in section 25(2) of the [M33]Consumer Credit Act 1974;

"controller" has the meaning given by section 189(1) of that Act.

Textual Amendments

F98 Words in s. 203(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(7)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F99 Word in s. 203(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(7)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F100 Words in s. 203(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(7)(b)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F101 Word in s. 203(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(7)(b)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F102 Words in s. 203(6)(7) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(7)(c)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F103 S. 203(10): words in definition of "listed activity" substituted (22.11.2000) by S.I. 2000/2952, **reg. 8(2)**

Modifications etc. (not altering text)

C365 S. 203(5) modified (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 53(2); S.I. 2001/3538, **art. 2(1)**

Marginal Citations

M31 1974 c. 39.

M32 1974 c. 39.

M33 1974 c. 39.

204 Power to restrict the carrying on of Consumer Credit Act business.

(1) In this section "restriction" means a direction that a consumer credit EEA firm may not carry on in the United Kingdom, otherwise than in accordance with such condition or conditions as may be specified in the direction, any Consumer Credit Act business which—

(a) consists of or includes carrying on any listed activity; and

(b) is specified in the direction.

(2) If it appears to the **[**[F104]OFT**]** that the situation as respects a consumer credit EEA firm is such that the powers conferred by section 203(1) are exercisable, the **[**[F104]OFT**]** may, instead of imposing a prohibition, impose such restriction as appears to **[**[F105]it**]** desirable.

(3) A restriction—

(a) may be withdrawn, or

(b) may be varied with the agreement of the firm concerned,

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by written notice served by the **[**F104OFT**]** on the firm, and any such notice takes effect on such date as is specified in the notice.

(4) A firm contravening a restriction is guilty of an offence and liable—

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

(b) on conviction on indictment, to a fine.

Textual Amendments

F104 Words in s. 204 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(8)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F105 Word in s. 204 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(8)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

Modifications etc. (not altering text)

C366 S. 204 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 53(3); S.I. 2001/3538, **art. 2(1)**

C367 S. 204 applied (with modifications) (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2), **26(1)** (with reg. 3)

C368 S. 204 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), **reg. 31(1)** (with reg. 3)

PART XIV

DISCIPLINARY MEASURES

Modifications etc. (not altering text)

C369 Pt. XIV (ss. 205-211) applied (1.12.2001) by 1951 c. 65, **s. 57(5)** (as substituted (1.12.2001) by S.I. 2001/3647, art. 5, **Sch. 3 Pt. I para. 5(3)**)

205 Public censure.

If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, the Authority may publish a statement to that effect.

Modifications etc. (not altering text)

C370 S. 205 modified (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 6, 7 (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 205 modified (1.12.2001) by S.I. 2001/3083, **arts. 1(1)**, 6, 7; S.I. 2001/3538, **art. 2(1)**
S. 205 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 107(1) (with art. 23(2))

C371 S. 205 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(1)**

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206 Financial penalties.

(1) If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.

(2) The Authority may not in respect of any contravention both require a person to pay a penalty under this section and withdraw his authorisation under section 33.

(3) A penalty under this section is payable to the Authority.

Modifications etc. (not altering text)

C372 S. 206 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 107(1) (with art. 23(2))
S. 206 restricted (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 60(2) (with art. 23(2))
S. 206 modified (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 8 (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 206 modified (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 8; S.I. 2001/3538, **art. 2(1)**

C373 S. 206 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(1)**

VALID FROM 08/06/2010

206A Suspending permission to carry on regulated activities etc

(1) If the Authority considers that an authorised person has contravened a relevant requirement imposed on the person, it may—

(a) suspend, for such period as it considers appropriate, any permission which the person has to carry on a regulated activity; or

(b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the carrying on of a regulated activity by the person as it considers appropriate.

(2) In subsection (1)—

"permission" means any permission that the authorised person has, whether given (or treated as given) by the Authority or conferred by any provision of this Act;

"relevant requirement" means a requirement imposed—

(a) by or under this Act; or

(b) by any directly applicable Community regulation made under the markets in financial instruments directive.

(3) The period for which a suspension or restriction is to have effect may not exceed 12 months.

(4) A suspension may relate only to the carrying on of an activity in specified circumstances.

(5) A restriction may, in particular, be imposed so as to require the person concerned to take, or refrain from taking, specified action.

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(6) The Authority may—

(a) withdraw a suspension or restriction; or

(b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(7) The power under this section may (but need not) be exercised so as to have effect in relation to all the regulated activities that the person concerned carries on.

(8) Any one or more of the powers under—

(a) subsection (1)(a) and (b) of this section, and

(b) sections 205 and 206,

may be exercised in relation to the same contravention.

207 Proposal to take disciplinary measures.

(1) If the Authority proposes—

(a) to publish a statement in respect of an authorised person (under section 205), or

(b) to impose a penalty on an authorised person (under section 206),

it must give the authorised person a warning notice.

(2) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(3) A warning notice about a proposal to impose a penalty, must state the amount of the penalty.

Modifications etc. (not altering text)

C374 S. 207 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 61(5), 110(6) (with art. 23(2))

C375 S. 207 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(1)**

208 Decision notice.

(1) If the Authority decides—

(a) to publish a statement under section 205 (whether or not in the terms proposed), or

(b) to impose a penalty under section 206 (whether or not of the amount proposed),

it must without delay give the authorised person concerned a decision notice.

(2) In the case of a statement, the decision notice must set out the terms of the statement.

(3) In the case of a penalty, the decision notice must state the amount of the penalty.

(4) If the Authority decides to—

(a) publish a statement in respect of an authorised person under section 205, or

(b) impose a penalty on an authorised person under section 206,

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the authorised person may refer the matter to the Tribunal.

Modifications etc. (not altering text)

C376 S. 208 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 61(5), 110(6) (with art. 23(2))

C377 S. 208 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(1)**

C378 S. 208(1)(a)(b) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 68(2), 69(2) (with art. 23(2))

209 Publication.

After a statement under section 205 is published, the Authority must send a copy of it to the authorised person and to any person on whom a copy of the decision notice was given under section 393(4).

Modifications etc. (not altering text)

C379 S. 209 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(1)**

210 Statements of policy.

(1) The Authority must prepare and issue a statement of its policy with respect to—

(a) the imposition of penalties under this Part; and

(b) the amount of penalties under this Part.

(2) The Authority's policy in determining what the amount of a penalty should be must include having regard to—

(a) the seriousness of the contravention in question in relation to the nature of the requirement contravened;

(b) the extent to which that contravention was deliberate or reckless; and

(c) whether the person on whom the penalty is to be imposed is an individual.

(3) The Authority may at any time alter or replace a statement issued under this section.

(4) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replacement statement.

(5) The Authority must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(6) A statement issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(7) In exercising, or deciding whether to exercise, its power under section 206 in the case of any particular contravention, the Authority must have regard to any statement published under this section and in force at the time when the contravention in question occurred.

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(8) The Authority may charge a reasonable fee for providing a person with a copy of the statement.

Modifications etc. (not altering text)

C380 S. 210 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 36**

C381 S. 210 applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2), **86(6)** (with reg. 3)

C382 S. 210 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. para. 3**

C383 S. 210 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 22(2)**

C384 S. 210(7) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 110(6) (with art. 23(2))

211 Statements of policy: procedure.

(1) Before issuing a statement under section 210, the Authority must publish a draft of the proposed statement in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the Authority within a specified time.

(3) Before issuing the proposed statement, the Authority must have regard to any representations made to it in accordance with subsection (2).

(4) If the Authority issues the proposed statement it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2); and

(b) its response to them.

(5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant, the Authority must (in addition to complying with subsection (4)) publish details of the difference.

(6) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

Modifications etc. (not altering text)

C385 S. 211 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 36**

C386 S. 211 applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2), **86(6)** (with reg. 3)

C387 S. 211 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. para. 3**

C388 S. 211 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 22(2)**

C389 S. 211 applied (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), **reg. 53(6)** (with reg. 3)

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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PART XV

THE FINANCIAL SERVICES COMPENSATION SCHEME

Modifications etc. (not altering text)

C390 Pt. XV (ss. 212-224) excluded (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9J (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4**)
Pt. XV (ss. 212-224) modified (2.7.2002) by The Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (S.I. 2002/1501), **art. 5**

C391 Pt. 15 modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), **art. 29** (with art. 30(6))

C392 Pt. 15 modified (7.10.2008 at 9.30 a.m.) by The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2644), **art. 14** (with art. 15(8)

C393 Pt. 15 modified (8.10.2008 at 12.15 p.m.) by The Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2674), **art. 15** (with art. 16(8))

The scheme manager

212 The scheme manager.

(1) The Authority must establish a body corporate ("the scheme manager") to exercise the functions conferred on the scheme manager by or under this Part.

(2) The Authority must take such steps as are necessary to ensure that the scheme manager is, at all times, capable of exercising those functions.

(3) The constitution of the scheme manager must provide for it to have—

(a) a chairman; and

(b) a board (which must include the chairman) whose members are the scheme manager's directors.

(4) The chairman and other members of the board must be persons appointed, and liable to removal from office, by the Authority (acting, in the case of the chairman, with the approval of the Treasury).

(5) But the terms of their appointment (and in particular those governing removal from office) must be such as to secure their independence from the Authority in the operation of the compensation scheme.

(6) The scheme manager is not to be regarded as exercising functions on behalf of the Crown.

(7) The scheme manager's board members, officers and staff are not to be regarded as Crown servants.

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The scheme

213 The compensation scheme.

(1) The Authority must by rules establish a scheme for compensating persons in cases where relevant persons are unable, or are likely to be unable, to satisfy claims against them.

(2) The rules are to be known as the Financial Services Compensation Scheme (but are referred to in this Act as "the compensation scheme").

(3) The compensation scheme must, in particular, provide for the scheme manager—

(a) to assess and pay compensation, in accordance with the scheme, to claimants in respect of claims made in connection with regulated activities carried on (whether or not with permission) by relevant persons; and

(b) to have power to impose levies on authorised persons, or any class of authorised person, for the purpose of meeting its expenses (including in particular expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks).

(4) The compensation scheme may provide for the scheme manager to have power to impose levies on authorised persons, or any class of authorised person, for the purpose of recovering the cost (whenever incurred) of establishing the scheme.

(5) In making any provision of the scheme by virtue of subsection (3)(b), the Authority must take account of the desirability of ensuring that the amount of the levies imposed on a particular class of authorised person reflects, so far as practicable, the amount of the claims made, or likely to be made, in respect of that class of person.

(6) An amount payable to the scheme manager as a result of any provision of the scheme made by virtue of subsection (3)(b) or (4) may be recovered as a debt due to the scheme manager.

(7) Sections 214 to 217 make further provision about the scheme but are not to be taken as limiting the power conferred on the Authority by subsection (1).

(8) In those sections "specified" means specified in the scheme.

(9) In this Part (except in sections 219, 220 or 224) "relevant person" means a person who was—

(a) an authorised person at the time the act or omission giving rise to the claim against him took place; or

(b) an appointed representative at that time.

(10) But a person who, at that time—

(a) qualified for authorisation under Schedule 3, and

(b) fell within a prescribed category,

is not to be regarded as a relevant person in relation to any activities for which he had permission as a result of any provision of, or made under, that Schedule unless he had elected to participate in the scheme in relation to those activities at that time.

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Modifications etc. (not altering text)

C394 S. 213(3)(a) excluded (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2), 5, **Sch. para. 8**

C395 S. 213(3)(a) excluded (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2), **6**

C396 S. 213(9) excluded (2.7.2002) by The Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (S.I. 2002/1501), **art. 5(1)**

Commencement Information

I57 S. 213 wholly in force at 18.6.2001; s. 213 not in force at Royal Assent see s. 431(2); s. 213(10) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 213 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**

Provisions of the scheme

214 General.

(1) The compensation scheme may, in particular, make provision—

(a) as to the circumstances in which a relevant person is to be taken (for the purposes of the scheme) to be unable, or likely to be unable, to satisfy claims made against him;

(b) for the establishment of different funds for meeting different kinds of claim;

(c) for the imposition of different levies in different cases;

(d) limiting the levy payable by a person in respect of a specified period;

(e) for repayment of the whole or part of a levy in specified circumstances;

(f) for a claim to be entertained only if it is made by a specified kind of claimant;

(g) for a claim to be entertained only if it falls within a specified kind of claim;

(h) as to the procedure to be followed in making a claim;

(i) for the making of interim payments before a claim is finally determined;

(j) limiting the amount payable on a claim to a specified maximum amount or a maximum amount calculated in a specified manner;

(k) for payment to be made, in specified circumstances, to a person other than the claimant.

(2) Different provision may be made with respect to different kinds of claim.

(3) The scheme may provide for the determination and regulation of matters relating to the scheme by the scheme manager.

(4) The scheme, or particular provisions of the scheme, may be made so as to apply only in relation to—

(a) activities carried on,

(b) claimants,

(c) matters arising, or

(d) events occurring,

in specified territories, areas or localities.

(5) The scheme may provide for a person who—

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(a) qualifies for authorisation under Schedule 3, and

(b) falls within a prescribed category,

to elect to participate in the scheme in relation to some or all of the activities for which he has permission as a result of any provision of, or made under, that Schedule.

(6) The scheme may provide for the scheme manager to have power—

(a) in specified circumstances,

(b) but only if the scheme manager is satisfied that the claimant is entitled to receive a payment in respect of his claim—

(i) under a scheme which is comparable to the compensation scheme, or

(ii) as the result of a guarantee given by a government or other authority,

to make a full payment of compensation to the claimant and recover the whole or part of the amount of that payment from the other scheme or under that guarantee.

Commencement Information

I58 S. 214 wholly in force at 18.6.2001; s. 214 not in force at Royal Assent see s. 431(2); s. 214(5) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 214 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**

PROSPECTIVE

[F106 214A Contingency funding

(1) The Treasury may make regulations ("contingency fund regulations") permitting the scheme manager to impose levies under section 213 for the purpose of maintaining contingency funds from which possible expenses may be paid.

(2) Contingency fund regulations may make provision about the establishment and management of contingency funds; in particular, the regulations may make provision about—

(a) the number and size of funds;

(b) the circumstances and timing of their establishment;

(c) the classes of person from whom contributions to the funds may be levied;

(d) the amount and timing of payments into and out of funds (which may include provision for different levies for different classes of person);

(e) refunds;

(f) the ways in which funds' contents may be invested (including (i) the extent of reliance on section 223A, and (ii) the application of investment income);

(g) the purposes for which funds may be applied, but only so as to determine whether a fund is to be used (i) for the payment of compensation, (ii) for the purposes of co-operating with a bank liquidator in accordance with section 99 of the Banking Act 2009, or (iii) for contributions under section 214B;

(h) procedures to be followed in connection with funds, including the keeping of records and the provision of information.

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(3) The compensation scheme may include provision about contingency funds provided that it is not inconsistent with contingency fund regulations.**]**

Textual Amendments

F106 S. 214A inserted (prosp.) by Banking Act 2009 (c. 1), **ss. 170(1)**, 263(1)(2) (with s. 247)

VALID FROM 17/02/2009

214B Contribution to costs of special resolution regime

(1) This section applies where—

(a) a stabilisation power under Part 1 of the Banking Act 2009 has been exercised in respect of a bank, building society or credit union (within the meaning of that Part), and

(b) the Treasury think that the bank, building society or credit union was, or but for the exercise of the stabilisation power would have become, unable to satisfy claims against it.

(2) Where this section applies—

(a) the Treasury may require the scheme manager to make payments in connection with the exercise of the stabilisation power, and

(b) payments shall be treated as expenditure under the scheme for all purposes (including levies, contingency funds and borrowing).

(3) The Treasury shall make regulations—

(a) specifying what expenses the scheme manager may be required to incur under subsection (2),

(b) providing for independent verification of the nature and amount of expenses incurred in connection with the exercise of the stabilisation power (which may include provision about appointment and payment of an auditor), and

(c) providing for the method by which amounts to be paid are to be determined.

(4) The regulations must ensure that payments required do not exceed the amount of compensation that would have been payable under the scheme if the stabilisation power had not been exercised and the bank had been unable to satisfy claims against it; and for that purpose the amount of compensation that would have been payable does not include—

(a) amounts that would have been likely, at the time when the stabilisation power was exercised, to be recovered by the scheme from the bank, or

(b) any compensation actually paid to an eligible depositor of the bank.

(5) The regulations must provide for the appointment of an independent valuer (who may be the person appointed as valuer under section 54 of the Banking Act 2009 in respect of the exercise of the stabilisation power) to calculate the amounts referred to in subsection (4)(a); and the regulations—

(a) must provide for the valuer to be appointed by the Treasury or by a person designated by the Treasury,

(b) must include provision enabling the valuer to reconsider a decision,

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(c) must provide a right of appeal to a court or tribunal,
(d) must provide for payment of the valuer,
(e) may replicate or apply a provision of section 54 or 55, and
(f) may apply or include any provision that is or could be made under that section.

(6) Payments required to be made by the scheme by virtue of section 61 of the Banking Act 2009 (special resolution regime: compensation) shall be treated for the purposes of subsection (4) as if required to be made under this section.

(7) The regulations may include provision for payments (including payments under those provisions of the Banking Act 2009) to be made—
(a) before verification in accordance with subsection (3)(b), and
(b) before the calculation of the limit imposed by subsection (4), by reference to estimates of that limit and subject to any necessary later adjustment.

(8) The regulations may include provision—
(a) about timing;
(b) about procedures to be followed;
(c) for discretionary functions to be exercised by a specified body or by persons of a specified class;
(d) about the resolution of disputes (which may include provision conferring jurisdiction on a court or tribunal).

(9) The compensation scheme may include provision about payments under and levies in connection with this section, provided that it is not inconsistent with this section or regulations under it.

Modifications etc. (not altering text)
C397 S. 214B applied (with modifications) (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), **ss. 83(2)(h)(i)**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, **3**, Sch.

VALID FROM 08/04/2010

[F107[F107214C Limit on amount of special resolution regime payments

(1) The total amount of special resolution regime payments required to be made in respect of a person ("the institution") may not exceed—
(a) notional net expenditure (see subsection (3)), minus
(b) actual net expenditure (see subsection (4)).

(2) A "special resolution regime payment" is—
(a) a payment under section 214B(2); or
(b) a payment required to be made by the scheme manager by virtue of section 61 of the Banking Act 2009 (special resolution regime: compensation).

(3) Notional net expenditure is—
(a) the total amount of expenses that would have been incurred under the compensation scheme in respect of the institution if the stabilisation power

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had not been exercised and the institution had been unable to satisfy claims against it, minus

(b) the total amount that would have been likely, at the time when the power was exercised, to be recovered by the scheme manager in respect of the institution in those circumstances.

(4) Actual net expenditure is—

(a) the total amount of expenses (other than special resolution regime payments) actually incurred by the scheme manager in respect of the institution, minus

(b) the total amount actually recovered by the scheme manager in respect of the institution.

(5) In subsection (3)(a) "expenses" includes interest at a specified rate on the difference, at any time, between—

(a) the total amount of expenses (including interest) that would have been incurred as mentioned in subsection (3)(a) at or before that time; and

(b) the total amount that would have been likely to have been recovered as mentioned in subsection (3)(b) at or before that time.

(6) In subsection (4)(a) "expenses" includes interest at a specified rate on the difference, at any time, between—

(a) the total amount of expenses (including special resolution regime payments and interest) actually incurred by the scheme manager in respect of the institution at or before that time; and

(b) the total amount actually recovered by the scheme manager in respect of the institution at or before that time.

(7) In paragraph (b) of subsections (3) to (6) references to amounts recovered (or likely to have been recovered) by the scheme manager do not include any levy received (or likely to have been received) by it.**]**

Textual Amendments

F107 Ss. 214B-214D substituted (8.4.2010) for s. 214B by Financial Services Act 2010 (c. 28), **ss. 16(1)**, 26

Modifications etc. (not altering text)

C398 Ss. 214B-214D applied (with modifications) (8.4.2010) by Financial Services Act 2010 (c. 28), **ss. 16(2)**, 26(1)

VALID FROM 08/04/2010

214D Contributions under section 214B: supplementary

(1) This section supplements sections 214B and 214C.

(2) The scheme manager must determine—

(a) the amounts of expenses (other than interest) that would have been incurred as mentioned in section 214C(3)(a); and

(b) the time or times at which those amounts would have been likely to have been incurred.

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(3) The Treasury, or a person designated by the Treasury, must in accordance with regulations appoint a person ("the valuer") to determine—

(a) the amounts that would have been likely, at the time when the stabilisation power was exercised, to be recovered as mentioned in section 214C(3)(b); and

(b) the time or times at which those amounts would have been likely to be recovered.

The person appointed under this subsection may be the person appointed as valuer under section 54 of the Banking Act 2009 in respect of the exercise of the stabilisation power.

(4) Regulations may enable the Treasury to specify principles to be applied by—

(a) the scheme manager when exercising functions under subsection (2); or

(b) the valuer when exercising functions under subsection (3).

(5) The regulations may in particular enable the Treasury to require the scheme manager or valuer—

(a) to use, or not to use, specified methods;

(b) to take specified matters into account in a specified manner; or

(c) not to take specified matters into account.

(6) Regulations—

(a) must provide for independent verification of expenses within section 214B(2);

(b) may provide for the independent verification of other matters; and

(c) may contain provision about the appointment and payment of an auditor.

(7) Regulations—

(a) must contain provision enabling the valuer to reconsider a decision;

(b) must provide a right of appeal to a court or tribunal against any decision of the valuer;

(c) may provide for payment of the valuer; and

(d) may apply (with or without modifications) or make provision corresponding to—

(i) any provision of sections 54 to 56 of the Banking Act 2009; or

(ii) any provision made, or that could be made, by virtue of any of those sections.

(8) Regulations may make provision for payments under section 214B(2) to be made—

(a) before any verification required by the regulations is undertaken, and

(b) before the limit imposed by section 214C is calculated,

subject to any necessary later adjustment.

(9) If they do so they must provide that the amount of any payment required by virtue of subsection (8) must not be such as to give rise to an expectation that an amount will be required to be repaid to the scheme manager (once any necessary verification has been undertaken and the limit imposed by section 214C has been calculated).

(10) Regulations may—

(a) make provision supplementing section 214B or 214C or this section;

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(b) make further provision about the method by which amounts to be paid under section 214B(2) are to be determined;

(c) make provision about timing;

(d) make provision about procedures to be followed;

(e) provide for discretionary functions to be exercised by a specified body or by persons of a specified class; and

(f) make provision about the resolution of disputes (which may include provision conferring jurisdiction on a court or tribunal).

(11) "Regulations" means regulations made by the Treasury.

(12) Any payment made by the Treasury by virtue of this section is to be met out of money provided by Parliament.

(13) The compensation scheme may make provision about payments under section 214B(2) and levies in connection with such payments (except provision inconsistent with any provision made by or under section 214B or 214C or this section).**]**

Textual Amendments

F107 Ss. 214B-214D substituted (8.4.2010) for s. 214B by Financial Services Act 2010 (c. 28), **ss. 16(1)**, 26

Modifications etc. (not altering text)

C399 Ss. 214B-214D applied (with modifications) (8.4.2010) by Financial Services Act 2010 (c. 28), **ss. 16(2)**, 26(1)

215 Rights of the scheme in relevant person's insolvency.

(1) The compensation scheme may, in particular, make provision—

(a) as to the effect of a payment of compensation under the scheme in relation to rights or obligations arising out of the claim against a relevant person in respect of which the payment was made;

(b) for conferring on the scheme manager a right of recovery against that person.

(2) Such a right of recovery conferred by the scheme does not, in the event of the relevant person's insolvency, exceed such right (if any) as the claimant would have had in that event.

(3) If a person other than the scheme manager **[**F108makes an administration application under Schedule B1 to the 1986 Act or presents a petition under Article 22 of the 1989 Order**]** in relation to a company or partnership which is a relevant person, the scheme manager has the same rights as are conferred on the Authority by section 362.

[F109(3A) In subsection (3) the reference to making an administration application includes a reference to—

(a) appointing an administrator under paragraph 14 or 22 of Schedule B1 to the 1986 Act, or

(b) filing with the court a copy of notice of intention to appoint an administrator under either of those paragraphs.**]**

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(4) If a person other than the scheme manager presents a petition for the winding up of a body which is a relevant person, the scheme manager has the same rights as are conferred on the Authority by section 371.

(5) If a person other than the scheme manager presents a bankruptcy petition to the court in relation to an individual who, or an entity which, is a relevant person, the scheme manager has the same rights as are conferred on the Authority by section 374.

(6) Insolvency rules may be made for the purpose of integrating any procedure for which provision is made as a result of subsection (1) into the general procedure on the administration of a company or partnership or on a winding-up, bankruptcy or sequestration.

(7) "Bankruptcy petition" means a petition to the court—

(a) under section 264 of the 1986 Act or Article 238 of the 1989 Order for a bankruptcy order to be made against an individual;

(b) under section 5 of the 1985 Act for the sequestration of the estate of an individual; or

(c) under section 6 of the 1985 Act for the sequestration of the estate belonging to or held for or jointly by the members of an entity mentioned in subsection (1) of that section.

(8) "Insolvency rules" are—

(a) for England and Wales, rules made under sections 411 and 412 of the 1986 Act;

(b) for Scotland, rules made by order by the Treasury, after consultation with the Scottish Ministers, for the purposes of this section; and

(c) for Northern Ireland, rules made under Article 359 of the 1989 Order and section 55 of the [M34]Judicature (Northern Ireland) Act 1978.

(9) "The 1985 Act", "the 1986 Act", "the 1989 Order" and "court" have the same meaning as in Part XXIV.

Textual Amendments

F108 Words in s. 215(3) substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 54(2)**; S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, art. 2))

F109 S. 215(3A) inserted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 54(3)**; S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C400 S. 215(3)(4)(6) applied (with modifications) (6.4.2001 for E.W.S and 13.9.2004 for N.I.) by S.I. 2001/1090, regs. 1, 6; S.R. 2004/307, **reg. 6**

Commencement Information

I59 S. 215 wholly in force at 18.6.2001; s. 215 not in force at Royal Assent see s. 431(2); s. 215(6)(8)(9) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 215 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**

Marginal Citations

M34 1978 c. 23.

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216 Continuity of long-term insurance policies.

(1) The compensation scheme may, in particular, include provision requiring the scheme manager to make arrangements for securing continuity of insurance for policyholders, or policyholders of a specified class, of relevant long-term insurers.

(2) "Relevant long-term insurers" means relevant persons who—

(a) have permission to effect or carry out contracts of long-term insurance; and

(b) are unable, or likely to be unable, to satisfy claims made against them.

(3) The scheme may provide for the scheme manager to take such measures as appear to him to be appropriate—

(a) for securing or facilitating the transfer of a relevant long-term insurer's business so far as it consists of the carrying out of contracts of long-term insurance, or of any part of that business, to another authorised person;

(b) for securing the issue by another authorised person to the policyholders concerned of policies in substitution for their existing policies.

(4) The scheme may also provide for the scheme manager to make payments to the policyholders concerned—

(a) during any period while he is seeking to make arrangements mentioned in subsection (1);

(b) if it appears to him that it is not reasonably practicable to make such arrangements.

(5) A provision of the scheme made by virtue of section 213(3)(b) may include power to impose levies for the purpose of meeting expenses of the scheme manager incurred in—

(a) taking measures as a result of any provision of the scheme made by virtue of subsection (3);

(b) making payments as a result of any such provision made by virtue of subsection (4).

217 Insurers in financial difficulties.

(1) The compensation scheme may, in particular, include provision for the scheme manager to have power to take measures for safeguarding policyholders, or policyholders of a specified class, of relevant insurers.

(2) "Relevant insurers" means relevant persons who—

(a) have permission to effect or carry out contracts of insurance; and

(b) are in financial difficulties.

(3) The measures may include such measures as the scheme manager considers appropriate for—

(a) securing or facilitating the transfer of a relevant insurer's business so far as it consists of the carrying out of contracts of insurance, or of any part of that business, to another authorised person;

(b) giving assistance to the relevant insurer to enable it to continue to effect or carry out contracts of insurance.

(4) The scheme may provide—

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(a) that if measures of a kind mentioned in subsection (3)(a) are to be taken, they should be on terms appearing to the scheme manager to be appropriate, including terms reducing, or deferring payment of, any of the things to which any of those who are eligible policyholders in relation to the relevant insurer are entitled in their capacity as such;

(b) that if measures of a kind mentioned in subsection (3)(b) are to be taken, they should be conditional on the reduction of, or the deferment of the payment of, the things to which any of those who are eligible policyholders in relation to the relevant insurer are entitled in their capacity as such;

(c) for ensuring that measures of a kind mentioned in subsection (3)(b) do not benefit to any material extent persons who were members of a relevant insurer when it began to be in financial difficulties or who had any responsibility for, or who may have profited from, the circumstances giving rise to its financial difficulties, except in specified circumstances;

(d) for requiring the scheme manager to be satisfied that any measures he proposes to take are likely to cost less than it would cost to pay compensation under the scheme if the relevant insurer became unable, or likely to be unable, to satisfy claims made against him.

(5) The scheme may provide for the Authority to have power—

(a) to give such assistance to the scheme manager as it considers appropriate for assisting the scheme manager to determine what measures are practicable or desirable in the case of a particular relevant insurer;

(b) to impose constraints on the taking of measures by the scheme manager in the case of a particular relevant insurer;

(c) to require the scheme manager to provide it with information about any particular measures which the scheme manager is proposing to take.

(6) The scheme may include provision for the scheme manager to have power—

(a) to make interim payments in respect of eligible policyholders of a relevant insurer;

(b) to indemnify any person making payments to eligible policyholders of a relevant insurer.

(7) A provision of the scheme made by virtue of section 213(3)(b) may include power to impose levies for the purpose of meeting expenses of the scheme manager incurred in—

(a) taking measures as a result of any provision of the scheme made by virtue of subsection (1);

(b) making payments or giving indemnities as a result of any such provision made by virtue of subsection (6).

(8) "Financial difficulties" and "eligible policyholders" have such meanings as may be specified.

Annual report

218 Annual report.

(1) At least once a year, the scheme manager must make a report to the Authority on the discharge of its functions.

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(2) The report must—

(a) include a statement setting out the value of each of the funds established by the compensation scheme; and

(b) comply with any requirements specified in rules made by the Authority.

(3) The scheme manager must publish each report in the way it considers appropriate.

Information and documents

VALID FROM 17/02/2009

[F110[Authority's power to require information

F110218A

(1) The Authority may make rules enabling the Authority to require authorised persons to provide information, which may then be made available to the scheme manager by the Authority.

(2) A requirement may be imposed only if the Authority thinks the information is of a kind that may be of use to the scheme manager in connection with functions in respect of the scheme.

(3) A requirement under this section may apply—

(a) to authorised persons generally or only to specified persons or classes of person;

(b) to the provision of information at specified periods, in connection with specified events or in other ways.

(4) In addition to requirements under this section, a notice under section 165 may relate to information or documents which the Authority thinks are reasonably required by the scheme manager in connection with the performance of functions in respect of the scheme; and section 165(4) is subject to this subsection.

(5) Rules under subsection (1) shall be prepared, made and treated in the same way as (and may be combined with) the Authority's general rules.**]]**

Textual Amendments

F110 S. 218A inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), **ss. 176(1)**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, **3**, Sch.

219 Scheme manager's power to require information.

(1) The scheme manager may, by notice in writing given to the relevant person in respect of whom a claim is made under the scheme or to a person otherwise involved, require that person—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

(2) The information or documents must be provided or produced—

(a) before the end of such reasonable period as may be specified; and

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(b) in the case of information, in such manner or form as may be specified.

(3) This section applies only to information and documents the provision or production of which the scheme manager considers—

(a) to be necessary for the fair determination of the claim; or

(b) to be necessary (or likely to be necessary) for the fair determination of other claims made (or which it expects may be made) in respect of the relevant person concerned.

(4) If a document is produced in response to a requirement imposed under this section, the scheme manager may—

(a) take copies or extracts from the document; or

(b) require the person producing the document to provide an explanation of the document.

(5) If a person who is required under this section to produce a document fails to do so, the scheme manager may require the person to state, to the best of his knowledge and belief, where the document is.

(6) If the relevant person is insolvent, no requirement may be imposed under this section on a person to whom section 220 or 224 applies.

(7) If a person claims a lien on a document, its production under this Part does not affect the lien.

(8) "Relevant person" has the same meaning as in section 224.

(9) "Specified" means specified in the notice given under subsection (1).

(10) A person is involved in a claim made under the scheme if he was knowingly involved in the act or omission giving rise to the claim.

Modifications etc. (not altering text)

C401 S. 219 extended (1.12.2001) by S.I. 2001/2967, **arts. 1(2)**, 7(a), 12(4)(a); S.I. 2001/3538, **art. 2(1)**

C402 S. 219(2)(4)(5)(7) applied (7.10.2008 at 9.30 a.m.) by The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2644), **art. 16** (with art. 15(8))

C403 S. 219(2)(4)(5)(7) applied (8.10.2008 at 10.10 a.m.) by The Transfer of Rights and Liabilities to ING Order 2008 (S.I. 2008/2666), **art. 13(3)**

C404 S. 219(2)(4)(5)(7) applied (8.10.2008 at 12.15 p.m.) by The Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2674), **art. 17(3)** (with art. 16(8))

220 Scheme manager's power to inspect information held by liquidator etc.

(1) For the purpose of assisting the scheme manager to discharge its functions in relation to a claim made in respect of an insolvent relevant person, a person to whom this section applies must permit a person authorised by the scheme manager to inspect relevant documents.

(2) A person inspecting a document under this section may take copies of, or extracts from, the document.

(3) This section applies to—

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(a) the administrative receiver, administrator, liquidator or trustee in bankruptcy of an insolvent relevant person;

(b) the permanent trustee, within the meaning of the [M35]Bankruptcy (Scotland) Act 1985, on the estate of an insolvent relevant person.

(4) This section does not apply to a liquidator, administrator or trustee in bankruptcy who is—

(a) the Official Receiver;

(b) the Official Receiver for Northern Ireland; or

(c) the Accountant in Bankruptcy.

(5) "Relevant person" has the same meaning as in section 224.

Modifications etc. (not altering text)
C405 S. 220 extended (1.12.2001) by S.I. 2001/2967, **arts. 1(2)**, 8, 12(4)(c); S.I. 2001/3538, **art. 2(1)**

Marginal Citations
M35 1985 c. 66.

221 Powers of court where information required.

(1) If a person ("the defaulter")—

(a) fails to comply with a requirement imposed under section 219, or

(b) fails to permit documents to be inspected under section 220,

the scheme manager may certify that fact in writing to the court and the court may enquire into the case.

(2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement (or to permit the documents to be inspected), it may deal with the defaulter (and, in the case of a body corporate, any director or officer) as if he were in contempt **[**[F111]; and "officer", in relation to a limited liability partnership, means a member of the limited liability partnership.**]**.

(3) "Court" means—

(a) the High Court;

(b) in Scotland, the Court of Session.

Textual Amendments
F111 Words in s. 221(2) inserted (6.4.2001 for E.W.S. and 13.9.2004 for N.I.) by S.I. 2001/1090, regs. 1, 9, Sch. 5 para. 21; S.R. 2004/307, reg. 9, **Sch. 4 para. 17**

Modifications etc. (not altering text)
C406 S. 221 extended (1.12.2001) by S.I. 2001/2967, **arts. 1(2)**, 7(b), 8, 12(4)(b)(c); S.I. 2001/3538, **art. 2(1)**

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Miscellaneous

VALID FROM 17/02/2009

221A Delegation of functions

(1) The scheme manager may arrange for any of its functions to be discharged on its behalf by another person (a "scheme agent").

(2) Before entering into arrangements the scheme manager must be satisfied that the scheme agent—

(a) is competent to discharge the function, and

(b) has been given sufficient directions to enable the agent to take any decisions required in the course of exercising the function in accordance with policy determined by the scheme manager.

(3) Arrangements may include provision for payments to be made by the scheme manager to the scheme agent (which payments are management expenses of the scheme manager).

222 Statutory immunity.

(1) Neither the scheme manager nor any person who is, or is acting as, its board member, officer or member of staff is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the scheme manager's functions.

(2) Subsection (1) does not apply—

(a) if the act or omission is shown to have been in bad faith; or

(b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the [M36]Human Rights Act 1998.

Modifications etc. (not altering text)

C407 S. 222 modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), **art. 32** (with art. 30(6))

C408 S. 222 modified (7.10.2008 at 9.30 a.m.) by The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2644), **art. 17** (with art. 15(8))

C409 S. 222 modified (8.10.2008 at 10.10 a.m.) by The Transfer of Rights and Liabilities to ING Order 2008 (S.I. 2008/2666), **art. 14**

C410 S. 222 modified (8.10.2008 at 12.15 p.m.) by The Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2674), **art. 18** (with art. 16(8))

Marginal Citations

M36 1998 c. 42.

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

223 Management expenses.

(1) The amount which the scheme manager may recover, from the sums levied under the scheme, as management expenses attributable to a particular period may not exceed such amount as may be fixed by the scheme as the limit applicable to that period.

(2) In calculating the amount of any levy to be imposed by the scheme manager, no amount may be included to reflect management expenses unless the limit mentioned in subsection (1) has been fixed by the scheme.

(3) "Management expenses" means expenses incurred, or expected to be incurred, by the scheme manager in connection with its functions under this Act other than those incurred—

(a) in paying compensation;

(b) as a result of any provision of the scheme made by virtue of section 216(3) or (4) or 217(1) or (6).

Commencement Information

I60 S. 223 wholly in force at 1.12.2001; s. 223 not in force at Royal Assent see s. 431(2); s. 223 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 223 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

PROSPECTIVE

[F112 223A Investing in National Loans Fund

(1) Sums levied for the purpose of maintaining a contingency fund may be paid to the Treasury.

(2) The Treasury may receive sums under subsection (1) and may set terms and conditions of receipts.

(3) Sums received shall be treated as if raised under section 12 of the National Loans Act 1968 (and shall therefore be invested as part of the National Loans Fund).

(4) Interest accruing on the invested sums may be credited to the contingency fund (subject to any terms and conditions set under subsection (2)).

(5) The Treasury shall comply with any request of the scheme manager to arrange for the return of sums for the purpose of making payments out of a contingency fund (subject to any terms and conditions set under subsection (2)).**]**

Textual Amendments

F112 S. 223A inserted (prosp.) by Banking Act 2009 (c. 1), **ss. 172**, 263(1)(2) (with s. 247)

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

VALID FROM 17/02/2009

[F113[F113223B Borrowing from National Loans Fund

(1) The scheme manager may request a loan from the National Loans Fund for the purpose of funding expenses incurred or expected to be incurred under the scheme.

(2) The Treasury may arrange for money to be paid out of the National Loans Fund in pursuance of a request under subsection (1).

(3) The Treasury shall determine—

(a) the rate of interest on a loan, and

(b) other terms and conditions.

(4) The Treasury may make regulations—

(a) about the amounts that may be borrowed under this section;

(b) permitting the scheme manager to impose levies under section 213 for the purpose of meeting expenses in connection with loans under this section (and the regulations may have effect despite any provision of this Act);

(c) about the classes of person on whom those levies may be imposed;

(d) about the amounts and timing of those levies.

(5) The compensation scheme may include provision about borrowing under this section provided that it is not inconsistent with regulations under this section.**]]**

Textual Amendments

F113 S. 223B inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), **ss. 173**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, **3**, Sch.

VALID FROM 17/02/2009

[F114[F114223C Payments in error

(1) Payments made by the scheme manager in error may be provided for in setting a levy by virtue of section 213, 214A, 214B or 223B.

(2) This section does not apply to payments made in bad faith.**]]**

Textual Amendments

F114 S. 223C inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), **ss. 177**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, **3**, Sch.

224 Scheme manager's power to inspect documents held by Official Receiver etc.

(1) If, as a result of the insolvency or bankruptcy of a relevant person, any documents have come into the possession of a person to whom this section applies, he must permit any

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person authorised by the scheme manager to inspect the documents for the purpose of establishing—

(a) the identity of persons to whom the scheme manager may be liable to make a payment in accordance with the compensation scheme; or

(b) the amount of any payment which the scheme manager may be liable to make.

(2) A person inspecting a document under this section may take copies or extracts from the document.

(3) In this section "relevant person" means a person who was—

(a) an authorised person at the time the act or omission which may give rise to the liability mentioned in subsection (1)(a) took place; or

(b) an appointed representative at that time.

(4) But a person who, at that time—

(a) qualified for authorisation under Schedule 3, and

(b) fell within a prescribed category,

is not to be regarded as a relevant person for the purposes of this section in relation to any activities for which he had permission as a result of any provision of, or made under, that Schedule unless he had elected to participate in the scheme in relation to those activities at that time.

(5) This section applies to—

(a) the Official Receiver;

(b) the Official Receiver for Northern Ireland; and

(c) the Accountant in Bankruptcy.

Modifications etc. (not altering text)

C411 S. 224 extended (1.12.2001) by S.I. 2001/2967, **arts. 1(2)**, 8, 12(4)(c); S.I. 2001/3538, **art. 2(1)**

C412 S. 224(3) excluded (2.7.2002) by The Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (S.I. 2002/1501), **art. 5(1)**

Commencement Information

I61 S. 224 wholly in force at 1.12.2001; s. 224 not in force at Royal Assent see s. 431(2); s. 224(4) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 224 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 17/02/2009

224A Functions under the Banking Act 2009

A reference in this Part to functions of the scheme manager (including a reference to functions conferred by or under this Part) includes a reference to functions conferred by or under the Banking Act 2009.

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VALID FROM 12/10/2010

[F115 PART 15A

POWER TO REQUIRE FSCS MANAGER TO ACT IN RELATION TO OTHER SCHEMES

Textual Amendments

F115 Pt. 15A inserted (12.10.2010) by Financial Services Act 2010 (c. 28), **ss. 17**, 26(3); S.I. 2010/2480, **art. 2(d)**

Introduction

224B Meaning of "relevant scheme" etc

(1) The following provisions apply for the purposes of this Part.

(2) "Relevant scheme" means a scheme or arrangement (other than the FSCS) for the payment of compensation (in certain cases) to customers of persons who provide financial services or carry on a business connected with the provision of such services.

(3) References to the manager of a relevant scheme are to the person who administers it or (if there is no such person) the person responsible for making payments under it.

(4) "The FSCS" means the Financial Services Compensation Scheme (see section 213(2)).

(5) "The FSCS manager" means the scheme manager as defined by section 212(1).

(6) "Expense" includes anything that, if incurred in relation to the FSCS, would amount to an expense for the purposes of the FSCS.

(7) "Notice" means a notice in writing.

(8) In subsection (2)—

(a) "customers" includes customers outside the United Kingdom;

(b) "persons" includes persons outside the United Kingdom;

(c) references to the provision of financial services include the provision outside the United Kingdom of such services.

(9) This Part applies to cases where the manager of the relevant scheme is the Treasury or any other Minister of the Crown as it applies to cases where that manager is any other person.

Power to require FSCS manager to act

224C Power to require FSCS manager to act on behalf of manager of relevant scheme

(1) This section applies if compensation is payable under a relevant scheme.

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(2) The Treasury may by notice require the FSCS manager to exercise (on behalf of the manager of the relevant scheme) specified functions in respect of specified claims for compensation under the relevant scheme.

(3) A notice may be given only with the consent of the manager of the relevant scheme.

(4) In subsection (2) "specified" means specified, or of a description specified, in the notice.

(5) Claims or descriptions of claims may be specified by reference to the persons or description of persons whose claims they are.

224D Cases where FSCS manager may decline to act

(1) This section applies where a notice under section 224C(2) (a "section 224C notice") has been given in respect of a relevant scheme.

(2) The FSCS manager is not under a duty to comply with the section 224C notice if, as soon as reasonably practicable after receiving it, the FSCS manager gives a notice to the Treasury stating that a ground set out in section 224E applies.

(3) Where a notice under subsection (2) is given, the FSCS manager may recover from the manager of the relevant scheme an amount equal to the total expenses incurred by the FSCS manager in connection with the relevant scheme in the period—

(a) beginning with the giving of the section 224C notice; and

(b) ending with the giving of the notice under subsection (2).

(4) The duty to comply with the section 224C notice ceases if, after starting to comply with it, the FSCS manager gives a notice to the Treasury and the manager of the relevant scheme stating that a ground set out in section 224E applies.

(5) Where a notice under subsection (4) is given, the FSCS manager must give the Treasury such information connected with the FSCS manager's exercise of functions in relation to the relevant scheme as the Treasury may reasonably require.

(6) Any notice under this section—

(a) may be given only if, before giving it, the FSCS manager has taken reasonable steps to deal with anything that is causing the ground or grounds in question to apply; and

(b) must contain details of those steps.

224E Grounds for declining to act

(1) This section sets out the grounds referred to in section 224D(2) and (4).

(2) The first ground is that the FSCS manager is not satisfied that it will be able to obtain any information required in order to comply with the section 224C notice.

(3) The second ground is that the FSCS manager is not satisfied that it will be able to obtain any advice or other assistance from the manager of the relevant scheme that is required in order to comply with the section 224C notice.

(4) The third ground is—

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(a) that the FSCS manager has not received an amount at least equal to the total expenses it expects to incur in connection with its relevant scheme functions; and

(b) either—

(i) that there are no arrangements for the provision of funds to the FSCS manager to enable it to exercise those functions and meet those expenses; or

(ii) that the FSCS manager considers that any such arrangements are unsatisfactory.

(5) The fourth ground is that the FSCS manager considers that complying with the section 224C notice would detrimentally affect the exercise of its functions under the FSCS.

(6) The fifth ground is—

(a) that there is no undertaking from the manager of the relevant scheme not to bring proceedings against the FSCS manager; or

(b) that the FSCS manager considers that the terms of any such undertaking are unsatisfactory.

(7) The sixth ground is—

(a) that there are no arrangements for the reimbursement of any expenses incurred by the FSCS manager in connection with any proceedings brought against it in respect of its relevant scheme functions (including expenses incurred in meeting any award of damages made against it); or

(b) that the FSCS manager considers that any such arrangements are unsatisfactory.

(8) In subsection (6) references to an undertaking of the kind mentioned there are to an undertaking not to bring proceedings in respect of the FSCS manager's relevant scheme functions except proceedings in respect of an act or omission of the FSCS manager that is alleged to have been in bad faith.

(9) In this section "proceedings" includes proceedings outside the United Kingdom.

Rules

224F Rules about relevant schemes

(1) The Authority may by rules make provision in connection with the exercise by the FSCS manager of functions in respect of relevant schemes.

(2) The provision that may be made by the rules includes any provision corresponding to provision that could be contained in the FSCS; but this is subject to subsections (3) and (4).

(3) The rules may confer on the FSCS manager a power to impose levies on authorised persons (or any class of authorised persons) for the purpose of meeting its management expenses incurred in connection with its functions in respect of relevant schemes.

(4) But if the rules confer such a power they must provide that the power may be exercised in relation to expenses incurred in connection with a relevant scheme only

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if the FSCS manager has tried its best to obtain reimbursement of the expenses from the manager of the relevant scheme.

(5) The rules may apply any provision of the FSCS, with or without modifications.

(6) An amount payable to the FSCS manager as a result of any provision of the rules made by virtue of subsection (3) may be recovered as a debt due to the FSCS manager.

(7) References to the FSCS manager's "management expenses" are to its expenses incurred otherwise than in paying compensation.**]**

PART XVI

THE OMBUDSMAN SCHEME

Modifications etc. (not altering text)

C413 Pt. 16 applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2), **125** (with reg. 3)

C414 Pt. 16 applied (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), **reg. 76(2)** (with reg. 3)

The scheme

225 The scheme and the scheme operator.

(1) This Part provides for a scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person.

(2) The scheme is to be administered by a body corporate ("the scheme operator").

(3) The scheme is to be operated under a name chosen by the scheme operator but is referred to in this Act as "the ombudsman scheme".

(4) Schedule 17 makes provision in connection with the ombudsman scheme and the scheme operator.

226 Compulsory jurisdiction.

(1) A complaint which relates to an act or omission of a person ("the respondent") in carrying on an activity to which compulsory jurisdiction rules apply is to be dealt with under the ombudsman scheme if the conditions mentioned in subsection (2) are satisfied.

(2) The conditions are that—

(a) the complainant is eligible and wishes to have the complaint dealt with under the scheme;

(b) the respondent was an authorised person at the time of the act or omission to which the complaint relates; and

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(c) the act or omission to which the complaint relates occurred at a time when compulsory jurisdiction rules were in force in relation to the activity in question.

(3) "Compulsory jurisdiction rules" means rules—

(a) made by the Authority for the purposes of this section; and

(b) specifying the activities to which they apply.

(4) Only activities which are regulated activities, or which could be made regulated activities by an order under section 22, may be specified.

(5) Activities may be specified by reference to specified categories (however described).

(6) A complainant is eligible, in relation to the compulsory jurisdiction of the ombudsman scheme, if he falls within a class of person specified in the rules as eligible.

(7) The rules—

(a) may include provision for persons other than individuals to be eligible; but

(b) may not provide for authorised persons to be eligible except in specified circumstances or in relation to complaints of a specified kind.

(8) The jurisdiction of the scheme which results from this section is referred to in this Act as the "compulsory jurisdiction".

Modifications etc. (not altering text)

C415 S. 226 extended (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, **arts. 1(1)**, 3(1); S.I. 2001/3538, **art. 2(1)**

C416 S. 226(2) excluded (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, **arts. 1(1)**, 2(4); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I62 S. 226 wholly in force at 1.12.2001; s. 226 not in force at Royal Assent see s. 431(2); s. 226 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 226 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 16/06/2006

[F116[F116226A Consumer credit jurisdiction

(1) A complaint which relates to an act or omission of a person ("the respondent") is to be dealt with under the ombudsman scheme if the conditions mentioned in subsection (2) are satisfied.

(2) The conditions are that—

(a) the complainant is eligible and wishes to have the complaint dealt with under the scheme;

(b) the complaint falls within a description specified in consumer credit rules;

(c) at the time of the act or omission the respondent was the licensee under a standard licence or was authorised to carry on an activity by virtue of section 34A of the Consumer Credit Act 1974;

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(d) the act or omission occurred in the course of a business being carried on by the respondent which was of a type mentioned in subsection (3);

(e) at the time of the act or omission that type of business was specified in an order made by the Secretary of State; and

(f) the complaint cannot be dealt with under the compulsory jurisdiction.

(3) The types of business referred to in subsection (2)(d) are—

(a) a consumer credit business;

(b) a consumer hire business;

(c) a business so far as it comprises or relates to credit brokerage;

(d) a business so far as it comprises or relates to debt-adjusting;

(e) a business so far as it comprises or relates to debt-counselling;

(f) a business so far as it comprises or relates to debt-collecting;

(g) a business so far as it comprises or relates to debt administration;

(h) a business so far as it comprises or relates to the provision of credit information services;

(i) a business so far as it comprises or relates to the operation of a credit reference agency.

(4) A complainant is eligible if—

(a) he is—

(i) an individual; or

(ii) a surety in relation to a security provided to the respondent in connection with the business mentioned in subsection (2)(d); and

(b) he falls within a class of person specified in consumer credit rules.

(5) The approval of the Treasury is required for an order under subsection (2)(e).

(6) The jurisdiction of the scheme which results from this section is referred to in this Act as the "consumer credit jurisdiction".

(7) In this Act "consumer credit rules" means rules made by the scheme operator with the approval of the Authority for the purposes of the consumer credit jurisdiction.

(8) Consumer credit rules under this section may make different provision for different cases.

(9) Expressions used in the Consumer Credit Act 1974 have the same meaning in this section as they have in that Act.**]]**

Textual Amendments

F116 S. 226A inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), **ss. 59(1)**, 71(2) (with Sch. 3 para. 29); S.I. 2006/1508, **art. 3(1)**, Sch. 1

227 Voluntary jurisdiction.

(1) A complaint which relates to an act or omission of a person ("the respondent") in carrying on an activity to which voluntary jurisdiction rules apply is to be dealt with under the ombudsman scheme if the conditions mentioned in subsection (2) are satisfied.

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(2) The conditions are that—

(a) the complainant is eligible and wishes to have the complaint dealt with under the scheme;

(b) at the time of the act or omission to which the complaint relates, the respondent was participating in the scheme;

(c) at the time when the complaint is referred under the scheme, the respondent has not withdrawn from the scheme in accordance with its provisions;

(d) the act or omission to which the complaint relates occurred at a time when voluntary jurisdiction rules were in force in relation to the activity in question; and

(e) the complaint cannot be dealt with under the compulsory jurisdiction.

(3) "Voluntary jurisdiction rules" means rules—

(a) made by the scheme operator for the purposes of this section; and

(b) specifying the activities to which they apply.

(4) The only activities which may be specified in the rules are activities which are, or could be, specified in compulsory jurisdiction rules.

(5) Activities may be specified by reference to specified categories (however described).

(6) The rules require the Authority's approval.

(7) A complainant is eligible, in relation to the voluntary jurisdiction of the ombudsman scheme, if he falls within a class of person specified in the rules as eligible.

(8) The rules may include provision for persons other than individuals to be eligible.

(9) A person qualifies for participation in the ombudsman scheme if he falls within a class of person specified in the rules in relation to the activity in question.

(10) Provision may be made in the rules for persons other than authorised persons to participate in the ombudsman scheme.

(11) The rules may make different provision in relation to complaints arising from different activities.

(12) The jurisdiction of the scheme which results from this section is referred to in this Act as the "voluntary jurisdiction".

(13) In such circumstances as may be specified in voluntary jurisdiction rules, a complaint—

(a) which relates to an act or omission occurring at a time before the rules came into force, and

(b) which could have been dealt with under a scheme which has to any extent been replaced by the voluntary jurisdiction,

is to be dealt with under the ombudsman scheme even though paragraph (b) or (d) of subsection (2) would otherwise prevent that.

(14) In such circumstances as may be specified in voluntary jurisdiction rules, a complaint is to be dealt with under the ombudsman scheme even though—

(a) paragraph (b) or (d) of subsection (2) would otherwise prevent that, and

(b) the complaint is not brought within the scheme as a result of subsection (13),

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but only if the respondent has agreed that complaints of that kind were to be dealt with under the scheme.

Commencement Information

I63 S. 227 wholly in force at 1.12.2001; s. 227 not in force at Royal Assent see s. 431(2); s. 227 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 227 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Determination of complaints

228 Determination under the compulsory jurisdiction.

(1) This section applies only in relation to the compulsory jurisdiction.

(2) A complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case.

(3) When the ombudsman has determined a complaint he must give a written statement of his determination to the respondent and to the complainant.

(4) The statement must—

(a) give the ombudsman's reasons for his determination;

(b) be signed by him; and

(c) require the complainant to notify him in writing, before a date specified in the statement, whether he accepts or rejects the determination.

(5) If the complainant notifies the ombudsman that he accepts the determination, it is binding on the respondent and the complainant and final.

(6) If, by the specified date, the complainant has not notified the ombudsman of his acceptance or rejection of the determination he is to be treated as having rejected it.

(7) The ombudsman must notify the respondent of the outcome.

(8) A copy of the determination on which appears a certificate signed by an ombudsman is evidence (or in Scotland sufficient evidence) that the determination was made under the scheme.

(9) Such a certificate purporting to be signed by an ombudsman is to be taken to have been duly signed unless the contrary is shown.

Modifications etc. (not altering text)

C417 Ss. 228-232 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), **5**

C418 S. 228 applied (1.12.2001) by S.I. 2001/2326, **arts. 1(1)(b)**, 6(11), 7(1); S.I. 2001/3538, **art. 2(1)**

C419 S. 228(2) excluded (1.12.2001) by S.I. 2001/2326, **arts. 1(1)(b)**, 6(1)(a); S.I. 2001/3538, **art. 2(1)**

C420 S. 228(4)(c)(5)-(7) excluded (1.12.2001) by S.I. 2001/2326, **arts. 1(1)(b)**, 6(7)(8)(9); S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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229 Awards.

(1) This section applies only in relation to the compulsory jurisdiction.

(2) If a complaint which has been dealt with under the scheme is determined in favour of the complainant, the determination may include—

(a) an award against the respondent of such amount as the ombudsman considers fair compensation for loss or damage (of a kind falling within subsection (3)) suffered by the complainant ("a money award");

(b) a direction that the respondent take such steps in relation to the complainant as the ombudsman considers just and appropriate (whether or not a court could order those steps to be taken).

(3) A money award may compensate for—

(a) financial loss; or

(b) any other loss, or any damage, of a specified kind.

(4) The Authority may specify the maximum amount which may be regarded as fair compensation for a particular kind of loss or damage specified under subsection (3)(b).

(5) A money award may not exceed the monetary limit; but the ombudsman may, if he considers that fair compensation requires payment of a larger amount, recommend that the respondent pay the complainant the balance.

(6) The monetary limit is such amount as may be specified.

(7) Different amounts may be specified in relation to different kinds of complaint.

(8) A money award—

(a) may provide for the amount payable under the award to bear interest at a rate and as from a date specified in the award; and

(b) is enforceable by the complainant in accordance with Part III of Schedule 17.

(9) Compliance with a direction under subsection (2)(b)—

(a) is enforceable by an injunction; or

(b) in Scotland, is enforceable by an order under section 45 of the [M37]Court of Session Act 1988.

(10) Only the complainant may bring proceedings for an injunction or proceedings for an order.

(11) "Specified" means specified in compulsory jurisdiction rules.

Modifications etc. (not altering text)

C421 Ss. 228-232 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), **5**

C422 S. 229 applied (1.12.2001) by S.I. 2001/2326, **arts. 1(1)(b)**, 7(1); S.I. 2001/3538, **art. 2(1)**
S. 229 restricted (1.12.2001) by S.I. 2001/2326, **arts. 1(1)(b)**, 6(1)(b)(4)(5); S.I. 2001/3538, **art. 2(1)**

C423 S. 229(8)(b) applied (1.12.2001) by S.I. 2001/2326, **arts. 1(1)(b)**, 6(4); S.I. 2001/3538, **art. 2(1)**

C424 S. 229(9)(10) applied (1.12.2001) by S.I. 2001/2326, **arts. 1(1)(b)**, 6(5); S.I. 2001/3538, **art. 2(1)**

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Commencement Information

I64 S. 229 wholly in force at 1.12.2001; s. 229 not in force at Royal Assent see s. 431(2); s. 229 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 229 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Marginal Citations

M37 1988 c. 36.

230 Costs.

(1) The scheme operator may by rules ("costs rules") provide for an ombudsman to have power, on determining a complaint under the compulsory jurisdiction, to award costs in accordance with the provisions of the rules.

(2) Costs rules require the approval of the Authority.

(3) Costs rules may not provide for the making of an award against the complainant in respect of the respondent's costs.

(4) But they may provide for the making of an award against the complainant in favour of the scheme operator, for the purpose of providing a contribution to resources deployed in dealing with the complaint, if in the opinion of the ombudsman—

(a) the complainant's conduct was improper or unreasonable; or

(b) the complainant was responsible for an unreasonable delay.

(5) Costs rules may authorise an ombudsman making an award in accordance with the rules to order that the amount payable under the award bears interest at a rate and as from a date specified in the order.

(6) An amount due under an award made in favour of the scheme operator is recoverable as a debt due to the scheme operator.

(7) Any other award made against the respondent is to be treated as a money award for the purposes of paragraph 16 of Schedule 17.

Modifications etc. (not altering text)

C425 Ss. 228-232 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), **5**

C426 S. 230 applied (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, **arts. 1(1)**, 7(1); S.I. 2001/3538, **art. 2(1)**
S. 230 restricted (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, **arts. 1(1)**, 6(1)(c); S.I. 2001/3538, **art. 2(1)**

C427 S. 230(6)(7) applied (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, **arts. 1(1)**, 6(6); S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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Information

231 Ombudsman's power to require information.

(1) An ombudsman may, by notice in writing given to a party to a complaint, require that party—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

(2) The information or documents must be provided or produced—

(a) before the end of such reasonable period as may be specified; and

(b) in the case of information, in such manner or form as may be specified.

(3) This section applies only to information and documents the production of which the ombudsman considers necessary for the determination of the complaint.

(4) If a document is produced in response to a requirement imposed under this section, the ombudsman may—

(a) take copies or extracts from the document; or

(b) require the person producing the document to provide an explanation of the document.

(5) If a person who is required under this section to produce a document fails to do so, the ombudsman may require him to state, to the best of his knowledge and belief, where the document is.

(6) If a person claims a lien on a document, its production under this Part does not affect the lien.

(7) "Specified" means specified in the notice given under subsection (1).

Modifications etc. (not altering text)

C428 S. 231 applied (1.12.2001) by S.I. 2001/2326, **arts. 1(1)(b)**, 11(5); S.I. 2001/3538, **art. 2(1)**

C429 Ss. 228-232 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), **5**

S. 231 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), **11(5)**

232 Powers of court where information required.

(1) If a person ("the defaulter") fails to comply with a requirement imposed under section 231, the ombudsman may certify that fact in writing to the court and the court may enquire into the case.

(2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and, in the case of a body corporate, any director or officer) as if he were in contempt **[**[F117]; and "officer", in relation to a limited liability partnership, means a member of the limited liability partnership.**]**.

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(3) "Court" means—

(a) the High Court;

(b) in Scotland, the Court of Session.

Textual Amendments

F117 Words in s. 232(2) inserted (6.4.2001 for E.W.S and 13.9.2004 for N.I.) by S.I. 2001/1090, regs. 1, 9, Sch. 5 para. 21; S.R. 2004/307, reg. 9, **Sch. 4 para. 17**

Modifications etc. (not altering text)

C430 S. 232 applied (1.12.2001) by S.I. 2001/2326, **arts. 1(1)(b)**, 11(5); S.I. 2001/3538, **art. 2(1)**

C431 Ss. 228-232 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), **5**
S. 232 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), **11(5)**

233 Data protection.

In section 31 of the [M38]Data Protection Act 1998 (regulatory activity), after subsection (4), insert—

"(4A) Personal data processed for the purpose of discharging any function which is conferred by or under Part XVI of the Financial Services and Markets Act 2000 on the body established by the Financial Services Authority for the purposes of that Part are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of the function."

Marginal Citations

M38 1998 c. 29.

Funding

234 Industry funding.

(1) For the purpose of funding—

(a) the establishment of the ombudsman scheme (whenever any relevant expense is incurred), and

(b) its operation in relation to the compulsory jurisdiction,

the Authority may make rules requiring the payment to it or to the scheme operator, by authorised persons or any class of authorised person of specified amounts (or amounts calculated in a specified way).

(2) "Specified" means specified in the rules.

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Modifications etc. (not altering text)

C432 S. 234(1) amended (1.12.2001) by S.I. 2001/2326, **arts. 1(1)(b)**, 12(1); S.I. 2001/3538, **art. 2(1)**

C433 S. 234(1) extended (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), **6(1)**

VALID FROM 16/06/2006

[F118[F118234A Funding by consumer credit licensees etc.

(1) For the purpose of funding—

(a) the establishment of the ombudsman scheme so far as it relates to the consumer credit jurisdiction (whenever any relevant expense is incurred), and

(b) its operation in relation to the consumer credit jurisdiction,

the scheme operator may from time to time with the approval of the Authority determine a sum which is to be raised by way of contributions under this section.

(2) A sum determined under subsection (1) may include a component to cover the costs of the collection of contributions to that sum ("collection costs") under this section.

(3) The scheme operator must notify the OFT of every determination under subsection (1).

(4) The OFT must give general notice of every determination so notified.

(5) The OFT may by general notice impose requirements on—

(a) licensees to whom this section applies, or

(b) persons who make applications to which this section applies,

to pay contributions to the OFT for the purpose of raising sums determined under subsection (1).

(6) The amount of the contribution payable by a person under such a requirement—

(a) shall be the amount specified in or determined under the general notice; and

(b) shall be paid before the end of the period or at the time so specified or determined.

(7) A general notice under subsection (5) may—

(a) impose requirements only on descriptions of licensees or applicants specified in the notice;

(b) provide for exceptions from any requirement imposed on a description of licensees or applicants;

(c) impose different requirements on different descriptions of licensees or applicants;

(d) make provision for refunds in specified circumstances.

(8) Contributions received by the OFT must be paid to the scheme operator.

(9) As soon as practicable after the end of—

(a) each financial year of the scheme operator, or

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(b) if the OFT and the scheme operator agree that this paragraph is to apply instead of paragraph (a) for the time being, each period agreed by them,

the scheme operator must pay to the OFT an amount representing the extent to which collection costs are covered in accordance with subsection (2) by the total amount of the contributions paid by the OFT to it during the year or (as the case may be) the agreed period.

(10) Amounts received by the OFT from the scheme operator are to be retained by it for the purpose of meeting its costs.

(11) The Secretary of State may by order provide that the functions of the OFT under this section are for the time being to be carried out by the scheme operator.

(12) An order under subsection (11) may provide that while the order is in force this section shall have effect subject to such modifications as may be set out in the order.

(13) The licensees to whom this section applies are licensees under standard licences which cover to any extent the carrying on of a type of business specified in an order under section 226A(2)(e).

(14) The applications to which this section applies are applications for—

(a) standard licences covering to any extent the carrying on of a business of such a type;

(b) the renewal of standard licences on terms covering to any extent the carrying on of a business of such a type.

(15) Expressions used in the Consumer Credit Act 1974 have the same meaning in this section as they have in that Act.**]]**

Textual Amendments

F118 S. 234A inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), **ss. 60**, 71(2); S.I. 2006/1508, **art. 3(1)**, Sch. 1

PART XVII

COLLECTIVE INVESTMENT SCHEMES

CHAPTER I

INTERPRETATION

235 Collective investment schemes.

(1) In this Part "collective investment scheme" means 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.

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(2) The arrangements must be such that the persons who are to participate ("participants") do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.

(3) The arrangements must also have either or both of the following characteristics—

(a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;

(b) the property is managed as a whole by or on behalf of the operator of the scheme.

(4) If arrangements provide for such pooling as is mentioned in subsection (3)(a) in relation to separate parts of the property, the arrangements are not to 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) The Treasury may by order provide that arrangements do not amount to a collective investment scheme—

(a) in specified circumstances; or

(b) if the arrangements fall within a specified category of arrangement.

236 Open-ended investment companies.

(1) In this Part "an open-ended investment company" means a collective investment scheme which satisfies both the property condition and the investment condition.

(2) The property condition is that the property belongs beneficially to, and is managed by or on behalf of, a body corporate ("BC") having as its purpose the investment of its funds with the aim of—

(a) spreading investment risk; and

(b) giving its members the benefit of the results of the management of those funds by or on behalf of that body.

(3) The investment condition is that, in relation to BC, a reasonable investor would, if he were to participate in the scheme—

(a) expect that he would be able to realize, within a period appearing to him to be reasonable, his investment in the scheme (represented, at any given time, by the value of shares in, or securities of, BC held by him as a participant in the scheme); and

(b) be satisfied that his investment would be realized on a basis calculated wholly or mainly by reference to the value of property in respect of which the scheme makes arrangements.

(4) In determining whether the investment condition is satisfied, no account is to be taken of any actual or potential redemption or repurchase of shares or securities under—

(a) Chapter VII of Part V of the [M39]Companies Act 1985;

(b) Chapter VII of Part VI of the [M40]Companies (Northern Ireland) Order 1986;

(c) corresponding provisions in force in another EEA State; or

(d) provisions in force in a country or territory other than an EEA state which the Treasury have, by order, designated as corresponding provisions.

(5) The Treasury may by order amend the definition of "an open-ended investment company" for the purposes of this Part.

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Marginal Citations

M39 1985 c. 6.

M40 S.I. 1986/1032 (N.I. 6.)

237 Other definitions.

(1) In this Part "unit trust scheme" means a collective investment scheme under which the property is held on trust for the participants.

(2) In this Part—

"trustee", in relation to a unit trust scheme, means the person holding the property in question on trust for the participants;

"depositary", in relation to—

(a) a collective investment scheme which is constituted by a body incorporated by virtue of regulations under section 262, or

(b) any other collective investment scheme which is not a unit trust scheme,

means any person to whom the property subject to the scheme is entrusted for safekeeping;

"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;

"units" means the rights or interests (however described) of the participants in a collective investment scheme.

(3) In this Part—

"an authorised unit trust scheme" means a unit trust scheme which is authorised for the purposes of this Act by an authorisation order in force under section 243;

"an authorised open-ended investment company" means a body incorporated by virtue of regulations under section 262 in respect of which an authorisation order is in force under any provision made in such regulations by virtue of subsection (2)(l) of that section;

"a recognised scheme" means a scheme recognised under section 264, 270 or 272.

CHAPTER II

RESTRICTIONS ON PROMOTION

Modifications etc. (not altering text)

C434 Pt. XVII Ch. II (ss. 238-241) modified (31.10.2001) by S.I. 2001/3347, **Sch. para. 8**

238 Restrictions on promotion.

(1) An authorised person must not communicate an invitation or inducement to participate in a collective investment scheme.

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(2) But that is subject to the following provisions of this section and to section 239.

(3) Subsection (1) applies in the case of a communication originating outside the United Kingdom only if the communication is capable of having an effect in the United Kingdom.

(4) Subsection (1) does not apply in relation to—

(a) an authorised unit trust scheme;

(b) a scheme constituted by an authorised open-ended investment company; or

(c) a recognised scheme.

(5) Subsection (1) does not apply to anything done in accordance with rules made by the Authority for the purpose of exempting from that subsection the promotion otherwise than to the general public of schemes of specified descriptions.

(6) The Treasury may by order specify circumstances in which subsection (1) does not apply.

(7) An order under subsection (6) may, in particular, provide that subsection (1) does not apply in relation to communications—

(a) of a specified description;

(b) originating in a specified country or territory outside the United Kingdom;

(c) originating in a country or territory which falls within a specified description of country or territory outside the United Kingdom; or

(d) originating outside the United Kingdom.

(8) The Treasury may by order repeal subsection (3).

(9) "Communicate" includes causing a communication to be made.

(10) "Promotion otherwise than to the general public" includes promotion in a way designed to reduce, so far as possible, the risk of participation by persons for whom participation would be unsuitable.

(11) "Participate", in relation to a collective investment scheme, means become a participant (within the meaning given by section 235(2)) in the scheme.

Commencement Information

I65 S. 238 wholly in force at 1.12.2001; s. 238 not in force at Royal Assent see s. 431(2); s. 238 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 238 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 238 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

239 Single property schemes.

(1) The Treasury may by regulations make provision for exempting single property schemes from section 238(1).

(2) For the purposes of subsection (1) a single property scheme is a scheme which has the characteristics mentioned in subsection (3) and satisfies such other requirements as are prescribed by the regulations conferring the exemption.

(3) The characteristics are—

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(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.

(4) If regulations are made under subsection (1), the Authority may make rules imposing duties or liabilities on the operator and (if any) the trustee or depositary of a scheme exempted by the regulations.

(5) The rules may include, to such extent as the Authority thinks appropriate, provision for purposes corresponding to those for which provision can be made under section 248 in relation to authorised unit trust schemes.

Commencement Information

I66 S. 239 wholly in force at 18.6.2001; s. 239 not in force at Royal Assent see s. 431(2); s. 239(1)-(3) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 239 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**

240 Restriction on approval of promotion.

(1) An authorised person may not approve for the purposes of section 21 the content of a communication relating to a collective investment scheme if he would be prohibited by section 238(1) from effecting the communication himself or from causing it to be communicated.

(2) For the purposes of determining in any case whether there has been a contravention of section 21(1), an approval given in contravention of subsection (1) is to be regarded as not having been given.

241 Actions for damages.

If an authorised person contravenes a requirement imposed on him by section 238 or 240, section 150 applies to the contravention as it applies to a contravention mentioned in that section.

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CHAPTER III

AUTHORISED UNIT TRUST SCHEMES

Applications for authorisation

242 Applications for authorisation of unit trust schemes.

(1) Any application for an order declaring a unit trust scheme to be an authorised unit trust scheme must be made to the Authority by the manager and trustee, or proposed manager and trustee, of the scheme.

(2) The manager and trustee (or proposed manager and trustee) must be different persons.

(3) The application—

(a) must be made in such manner as the Authority may direct; and

(b) must contain or be accompanied by such information as the Authority may reasonably require for the purpose of determining the application.

(4) At any time after receiving an application and before determining it, the Authority may require the applicants to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(5) Different directions may be given, and different requirements imposed, in relation to different applications.

(6) The Authority may require applicants to present information which they are required to give under this section in such form, or to verify it in such a way, as the Authority may direct.

Modifications etc. (not altering text)

C435 S. 242 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 39(1) (with art. 23(2))

Commencement Information

I67 S. 242 wholly in force at 1.12.2001; s. 242 not in force at Royal Assent see s. 431(2); s. 242(3) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 242 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 242 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

243 Authorisation orders.

(1) If, on an application under section 242 in respect of a unit trust scheme, the Authority—

(a) is satisfied that the scheme complies with the requirements set out in this section,

(b) is satisfied that the scheme complies with the requirements of the trust scheme rules, and

(c) has been provided with a copy of the trust deed and a certificate signed by a solicitor to the effect that it complies with such of the requirements of this section or those rules as relate to its contents,

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the Authority may make an order declaring the scheme to be an authorised unit trust scheme.

(2) If the Authority makes an order under subsection (1), it must give written notice of the order to the applicant.

(3) In this Chapter "authorisation order" means an order under subsection (1).

(4) The manager and the trustee must be persons who are independent of each other.

(5) The manager and the trustee must each—

(a) be a body corporate incorporated in the United Kingdom or another EEA State, and

(b) have a place of business in the United Kingdom,

and the affairs of each must be administered in the country in which it is incorporated.

(6) If the manager is incorporated in another EEA State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 264.

(7) The manager and the trustee must each be an authorised person and the manager must have permission to act as manager and the trustee must have permission to act as trustee.

(8) The name of the scheme must not be undesirable or misleading.

(9) The purposes of the scheme must be reasonably capable of being successfully carried into effect.

(10) The participants must be entitled to have their units redeemed in accordance with the scheme at a price—

(a) related to the net value of the property to which the units relate; and

(b) determined in accordance with the scheme.

(11) But a scheme is to be treated as complying with subsection (10) 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 that subsection.

Modifications etc. (not altering text)

C436 S. 243(1) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 65(1); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I68 S. 243 wholly in force at 1.12.2001; s. 243 not in force at Royal Assent see s. 431(2); s. 243 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 243 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

244 Determination of applications.

(1) An application under section 242 must be determined by the Authority before the end of the period of six months beginning with the date on which it receives the completed application.

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(2) The Authority may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.

(3) The applicant may withdraw his application, by giving the Authority written notice, at any time before the Authority determines it.

Modifications etc. (not altering text)
C437 S. 244 applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 39(1) (with art. 23(2))

Commencement Information
I69 S. 244 wholly in force at 1.12.2001; s. 244 not in force at Royal Assent see s. 431(2); s. 244 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 244 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Applications refused

245 Procedure when refusing an application.

(1) If the Authority proposes to refuse an application made under section 242 it must give each of the applicants a warning notice.

(2) If the Authority decides to refuse the application—
(a) it must give each of the applicants a decision notice; and
(b) either applicant may refer the matter to the Tribunal.

Commencement Information
I70 S. 245 wholly in force at 1.12.2001; s. 245 not in force at Royal Assent see s. 431(2); s. 245 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 245 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Certificates

246 Certificates.

(1) If the manager or trustee of a unit trust scheme which complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument so requests, the Authority may issue a certificate to the effect that the scheme complies with those conditions.

(2) Such a certificate may be issued on the making of an authorisation order in respect of the scheme or at any subsequent time.

Modifications etc. (not altering text)
C438 S. 246 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 65(3); S.I. 2001/3538, **art. 2(1)**

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Commencement Information

I71 S. 246 wholly in force at 1.12.2001; s. 246 not in force at Royal Assent see s. 431(2); s. 246 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 246 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Rules

247 Trust scheme rules.

(1) The Authority may make rules ("trust scheme rules") as to—

(a) the constitution, management and operation of authorised unit trust schemes;

(b) the powers, duties, rights and liabilities of the manager and trustee of any such scheme;

(c) the rights and duties of the participants in any such scheme; and

(d) the winding up of any such scheme.

(2) Trust scheme rules may, in particular, 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 provision of those reports to the participants and to the Authority; and

(g) with respect to the amendment of the scheme.

(3) Trust scheme rules may make provision as to the contents of the trust deed, including provision requiring any of the matters mentioned in subsection (2) to be dealt with in the deed.

(4) But trust scheme rules are binding on the manager, trustee and participants independently of the contents of the trust deed and, in the case of the participants, have effect as if contained in it.

(5) If—

(a) a modification is made of the statutory provisions in force in Great Britain or Northern Ireland relating to companies,

(b) the modification relates to the rights and duties of persons who hold the beneficial title to any shares in a company without also holding the legal title, and

(c) it appears to the Treasury that, for the purpose of assimilating the law relating to authorised unit trust schemes to the law relating to companies as so modified, it is expedient to modify the rule-making powers conferred on the Authority by this section,

the Treasury may by order make such modifications of those powers as they consider appropriate.

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248 Scheme particulars rules.

(1) The Authority may make rules ("scheme particulars rules") requiring the manager of an authorised unit trust scheme—

(a) to submit scheme particulars to the Authority; and

(b) to publish scheme particulars or make them available to the public on request.

(2) "Scheme particulars" means particulars in such form, containing such information about the scheme and complying with such requirements, as are specified in scheme particulars rules.

(3) Scheme particulars rules may require the manager of an authorised unit trust scheme to submit, and to publish or make available, revised or further scheme particulars if there is a significant change affecting any matter—

(a) which is contained in scheme particulars previously published or made available; and

(b) whose inclusion in those particulars was required by the rules.

(4) Scheme particulars rules may require the manager of an authorised unit trust scheme to submit, and to publish or make available, revised or further scheme particulars if—

(a) a significant new matter arises; and

(b) the inclusion of information in respect of that matter would have been required in previous particulars if it had arisen when those particulars were prepared.

(5) Scheme particulars rules may provide for the payment, by the person or persons who in accordance with the rules are treated as responsible for any scheme particulars, of compensation to any qualifying person who has suffered loss as a result of—

(a) any untrue or misleading statement in the particulars; or

(b) the omission from them of any matter required by the rules to be included.

(6) "Qualifying person" means a person who—

(a) has become or agreed to become a participant in the scheme; or

(b) although not being a participant, has a beneficial interest in units in the scheme.

(7) Scheme particulars rules do not affect any liability which any person may incur apart from the rules.

249 Disqualification of auditor for breach of trust scheme rules.

(1) If it appears to the Authority that an auditor has failed to comply with a duty imposed on him by trust scheme rules, it may disqualify him from being the auditor for any authorised unit trust scheme or authorised open-ended investment company.

(2) Subsections (2) to (5) of section 345 have effect in relation to disqualification under subsection (1) as they have effect in relation to disqualification under subsection (1) of that section.

Modifications etc. (not altering text)

C439 S. 249(1) applied (with modifications) (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) (S.R. 2004/335), regs. 1(1)(b), 69, {Sch. 5 para. 20} (with reg. 1(2))

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250 Modification or waiver of rules.

(1) In this section "rules" means—

(a) trust scheme rules; or

(b) scheme particulars rules.

(2) The Authority may, on the application or with the consent of any person to whom any rules apply, direct that all or any of the rules—

(a) are not to apply to him as respects a particular scheme; or

(b) are to apply to him, as respects a particular scheme, with such modifications as may be specified in the direction.

(3) The Authority may, on the application or with the consent of the manager and trustee of a particular scheme acting jointly, direct that all or any of the rules—

(a) are not to apply to the scheme; or

(b) are to apply to the scheme with such modifications as may be specified in the direction.

(4) Subsections (3) to (9) and (11) of section 148 have effect in relation to a direction under subsection (2) as they have effect in relation to a direction under section 148(2) but with the following modifications—

(a) subsection (4)(a) is to be read as if the words "by the authorised person" were omitted;

(b) any reference to the authorised person (except in subsection (4)(a)) is to be read as a reference to the person mentioned in subsection (2); and

(c) subsection (7)(b) is to be read, in relation to a participant of the scheme, as if the word "commercial" were omitted.

(5) Subsections (3) to (9) and (11) of section 148 have effect in relation to a direction under subsection (3) as they have effect in relation to a direction under section 148(2) but with the following modifications—

(a) subsection (4)(a) is to be read as if the words "by the authorised person" were omitted;

(b) subsections (7)(b) and (11) are to be read as if references to the authorised person were references to each of the manager and the trustee of the scheme;

(c) subsection (7)(b) is to be read, in relation to a participant of the scheme, as if the word "commercial" were omitted;

(d) subsection (8) is to be read as if the reference to the authorised person concerned were a reference to the scheme concerned and to its manager and trustee; and

(e) subsection (9) is to be read as if the reference to the authorised person were a reference to the manager and trustee of the scheme acting jointly.

Modifications etc. (not altering text)

C440 S. 250(2) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(6); S.I. 2001/3538, **art. 2(1)**

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Alterations

251 Alteration of schemes and changes of manager or trustee.

(1) The manager of an authorised unit trust scheme must give written notice to the Authority of any proposal to alter the scheme or to replace its trustee.

(2) Any notice given in respect of a proposal to alter the scheme involving a change in the trust deed must 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 trust scheme rules.

(3) The trustee of an authorised unit trust scheme must give written notice to the Authority of any proposal to replace the manager of the scheme.

(4) Effect is not to be given to any proposal of which notice has been given under subsection (1) or (3) unless—

(a) the Authority, by written notice, has given its approval to the proposal; or

(b) one month, beginning with the date on which the notice was given, has expired without the manager or trustee having received from the Authority a warning notice under section 252 in respect of the proposal.

(5) The Authority must not approve a proposal to replace the manager or the trustee of an authorised unit trust scheme unless it is satisfied that, if the proposed replacement is made, the scheme will continue to comply with the requirements of section 243(4) to (7).

Modifications etc. (not altering text)

C441 S. 251 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(7); S.I. 2001/3538, **art. 2(1)**

C442 S. 251(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 40(1) (with art. 23(2))

C443 S. 251(3) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 41(1) (with art. 23(2))

Commencement Information

I72 S. 251 wholly in force at 1.12.2001; s. 251 not in force at Royal Assent see s. 431(2); s. 251 (except subsection (4)(b)) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 251 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

252 Procedure when refusing approval of change of manager or trustee.

(1) If the Authority proposes to refuse approval of a proposal to replace the trustee or manager of an authorised unit trust scheme, it must give a warning notice to the person by whom notice of the proposal was given under section 251(1) or (3).

(2) If the Authority proposes to refuse approval of a proposal to alter an authorised unit trust scheme it must give separate warning notices to the manager and the trustee of the scheme.

(3) To be valid the warning notice must be received by that person before the end of one month beginning with the date on which notice of the proposal was given.

(4) If, having given a warning notice to a person, the Authority decides to refuse approval—

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(a) it must give him a decision notice; and
(b) he may refer the matter to the Tribunal.

Modifications etc. (not altering text)

C444 S. 252 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(7); S.I. 2001/3538, **art. 2(1)**

C445 S. 252(3) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 40(3), 41(2) (with art. 23(2))

Commencement Information

I73 S. 252 wholly in force at 1.12.2001; s. 252 not in force at Royal Assent see s. 431(2); s. 252 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 252 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 01/07/2011

[F119[F119252A Proposal to convert to a non-feeder UCITS

(1) This section applies where the manager of an authorised unit trust scheme which is a feeder UCITS proposes to make an alteration to the scheme which—
(a) involves a change in the trust deed, and
(b) will enable the scheme to convert into a UCITS which is not a feeder UCITS.

(2) The manager must give written notice of the proposal to the Authority.

(3) Any notice given in respect of such a proposal must be accompanied by—
(a) a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the trust scheme rules; and
(b) the specified information.

(4) The Authority must, within 15 working days after the date on which it received the notice under subsection (2), give—
(a) written notice to the manager of the scheme that the Authority approves the proposed amendments to the trust deed, or
(b) separate warning notices to the manager and trustee of the scheme that the Authority proposes to refuse approval of the proposed amendments.

(5) Effect is not to be given to any proposal of which notice has been given under subsection (2) unless the Authority, by written notice, has given its approval to the proposal.

(6) If, having given a warning notice to a person, the Authority decides to refuse approval—
(a) it must give that person a decision notice; and
(b) that person may refer the matter to the Tribunal.

(7) Subsection (8) applies where—
(a) the notice given under subsection (2) relates to a proposal to amend the trust deed of a feeder UCITS to enable it to convert into a UCITS which is not a feeder UCITS following the winding-up of its master UCITS; and

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(b) the proceeds of the winding-up are to be paid to the feeder UCITS before the date on which the feeder UCITS proposes to start investing in accordance with the new investment objectives and policy provided for in its amended trust deed and scheme rules.

(8) Where this subsection applies, the Authority may only approve the proposal subject to the conditions set out in section 283A(5) and (6).

(9) In this section, "specified" means—

(a) specified in rules made by the Authority to implement the UCITS directive, or

(b) specified in any directly applicable Community regulation or decision made under the UCITS directive.**]]**

Textual Amendments

F119 S. 252A inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(19)**

Exclusion clauses

253 Avoidance of exclusion clauses.

Any provision of the trust deed of an authorised unit trust scheme is 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.

Ending of authorisation

254 Revocation of authorisation order otherwise than by consent.

(1) An authorisation order may be revoked by an order made by the Authority if it appears to the Authority that—

(a) one or more of the requirements for the making of the order are no longer satisfied;

(b) the manager or trustee of the scheme concerned has contravened a requirement imposed on him by or under this Act;

(c) the manager or trustee of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular;

(d) no regulated activity is being carried on in relation to the scheme and the period of that inactivity began at least twelve months earlier; or

(e) none of paragraphs (a) to (d) applies, but it is desirable to revoke the authorisation order in order to protect the interests of participants or potential participants in the scheme.

(2) For the purposes of subsection (1)(e), the Authority may take into account any matter relating to—

(a) the scheme;

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(b) the manager or trustee;
(c) any person employed by or associated with the manager or trustee in connection with the scheme;
(d) any director of the manager or trustee;
(e) any person exercising influence over the manager or trustee;
(f) any body corporate in the same group as the manager or trustee;
(g) any director of any such body corporate;
(h) any person exercising influence over any such body corporate.

Modifications etc. (not altering text)
C446 S. 254 applied (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 46(4)(5) (with art. 23(2))
C447 S. 254(1)(a) modified (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 65(2); S.I. 2001/3538, **art. 2(1)**
C448 S. 254(1)(d) excluded (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(2); S.I. 2001/3538, **art. 2(1)**

255 Procedure.

(1) If the Authority proposes to make an order under section 254 revoking an authorisation order ("a revoking order"), it must give separate warning notices to the manager and the trustee of the scheme.

(2) If the Authority decides to make a revoking order, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

Modifications etc. (not altering text)
C449 S. 255(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 46(1) (with art. 23(2))

256 Requests for revocation of authorisation order.

(1) An authorisation order may be revoked by an order made by the Authority at the request of the manager or trustee of the scheme concerned.

(2) If the Authority makes an order under subsection (1), it must give written notice of the order to the manager and trustee of the scheme concerned.

(3) The Authority may refuse a request to make an order under this section if it considers that—
(a) the public interest requires that any matter concerning the scheme should be investigated before a decision is taken as to whether the authorisation order should be revoked; or
(b) revocation would not be in the interests of the participants or would be incompatible with a Community obligation.

(4) If the Authority proposes to refuse a request under this section, it must give separate warning notices to the manager and the trustee of the scheme.

(5) If the Authority decides to refuse the request, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

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Modifications etc. (not altering text)
C450 S. 256(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 46(6) (with art. 23(2))

Powers of intervention

257 Directions.

(1) The Authority may give a direction under this section if it appears to the Authority that—

(a) one or more of the requirements for the making of an authorisation order are no longer satisfied;

(b) the manager or trustee of an authorised unit trust scheme has contravened, or is likely to contravene, a requirement imposed on him by or under this Act;

(c) the manager or trustee of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular; or

(d) none of paragraphs (a) to (c) applies, but it is desirable to give a direction in order to protect the interests of participants or potential participants in such a scheme.

(2) A direction under this section 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;

(b) require the manager and trustee of the scheme to wind it up.

(3) If the authorisation order is revoked, the revocation does not affect any direction under this section which is then in force.

(4) A direction may be given under this section in relation to a scheme in the case of which the authorisation order has been revoked if a direction under this section was already in force at the time of revocation.

(5) If a person contravenes a direction under this section, section 150 applies to the contravention as it applies to a contravention mentioned in that section.

(6) The Authority may, either on its own initiative or on the application of the manager or trustee of the scheme concerned, revoke or vary a direction given under this section if it appears to the Authority—

(a) in the case of revocation, that it is no longer necessary for the direction to take effect or continue in force;

(b) in the case of variation, that the direction should take effect or continue in force in a different form.

Modifications etc. (not altering text)
C451 S. 257(1) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 69(1); S.I. 2001/3538, **art. 2(1)**
C452 S. 257(1)(b) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(7); S.I. 2001/3538, **art. 2(1)**
C453 S. 257(6) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 69(3); S.I. 2001/3538, **art. 2(1)**

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Commencement Information

I74 S. 257 wholly in force at 1.12.2001; s. 257 not in force at Royal Assent see s. 431(2); s. 257 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 257 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

258 Applications to the court.

(1) If the Authority could give a direction under section 257, it may also apply to the court for an order—

(a) removing the manager or the trustee, or both the manager and the trustee, of the scheme; and

(b) replacing the person or persons removed with a suitable person or persons nominated by the Authority.

(2) The Authority may nominate a person for the purposes of subsection (1)(b) only if it is satisfied that, if the order was made, the requirements of section 243(4) to (7) would be complied with.

(3) If it appears to the Authority that there is no person it can nominate for the purposes of subsection (1)(b), it may apply to the court for an order—

(a) removing the manager or the trustee, or both the manager and the trustee, of the scheme; and

(b) appointing an authorised person to wind up the scheme.

(4) On an application under this section the court may make such order as it thinks fit.

(5) The court may, on the application of the Authority, rescind any such order as is mentioned in subsection (3) and substitute such an order as is mentioned in subsection (1).

(6) The Authority must give written notice of the making of an application under this section to the manager and trustee of the scheme concerned.

(7) The jurisdiction conferred by this section may be exercised by—

(a) the High Court;

(b) in Scotland, the Court of Session.

VALID FROM 01/07/2011

[F120[F120258A Winding up or merger of master UCITS

(1) Subsection (2) applies if a master UCITS which has one or more feeder UCITS which are authorised unit trust schemes is wound up, whether as a result of a direction given by the Authority under section 257, an order of the court under section 258, rules made by the Authority or otherwise.

(2) The Authority must direct the manager and trustee of any authorised unit trust scheme which is a feeder UCITS of the master UCITS to wind up the feeder UCITS unless—

(a) the Authority approves under section 283A the investment by the feeder UCITS of at least 85% of the total property which is subject to the collective

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investment scheme constituted by the feeder UCITS in units of another UCITS or master UCITS; or

(b) the Authority approves under section 252A an amendment of the trust deed of the feeder UCITS which would enable it to convert into a UCITS which is not a feeder UCITS.

(3) Subsection (4) applies if a master UCITS which has one or more feeder UCITS which are authorised unit trust schemes—

(a) merges with another UCITS, or

(b) is divided into two or more UCITS.

(4) The Authority must direct the manager and trustee of any authorised unit trust scheme which is a feeder UCITS of the master UCITS to wind up the scheme unless—

(a) the Authority approves under section 283A the investment by the scheme of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in the units of—

(i) the master UCITS which results from the merger;

(ii) one of the UCITS resulting from the division; or

(iii) another UCITS or master UCITS;

(b) the Authority approves under section 252A an amendment of the trust deed of the scheme which would enable it to convert into a UCITS which is not a feeder UCITS.**]]**

Textual Amendments

F120 S. 258A inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(21)**

259 Procedure on giving directions under section 257 and varying them on Authority's own initiative.

(1) A direction takes effect—

(a) immediately, if the notice given under subsection (3) states that that is the case;

(b) on such date as may be specified in the notice; or

(c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A direction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its power under section 257, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the Authority proposes to give a direction under section 257, or gives such a direction with immediate effect, it must give separate written notice to the manager and the trustee of the scheme concerned.

(4) The notice must—

(a) give details of the direction;

(b) inform the person to whom it is given of when the direction takes effect;

(c) state the Authority's reasons for giving the direction and for its determination as to when the direction takes effect;

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(d) inform the person to whom it is given that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and

(e) inform him of his right to refer the matter to the Tribunal.

(5) If the direction imposes a requirement under section 257(2)(a), the notice must state that the requirement has effect until—

(a) a specified date; or

(b) a further direction.

(6) If the direction imposes a requirement under section 257(2)(b), the scheme must be wound up—

(a) by a date specified in the notice; or

(b) if no date is specified, as soon as practicable.

(7) The Authority may extend the period allowed under the notice for making representations.

(8) If, having considered any representations made by a person to whom the notice was given, the Authority decides—

(a) to give the direction in the way proposed, or

(b) if it has been given, not to revoke the direction,

it must give separate written notice to the manager and the trustee of the scheme concerned.

(9) If, having considered any representations made by a person to whom the notice was given, the Authority decides—

(a) not to give the direction in the way proposed,

(b) to give the direction in a way other than that proposed, or

(c) to revoke a direction which has effect,

it must give separate written notice to the manager and the trustee of the scheme concerned.

(10) A notice given under subsection (8) must inform the person to whom it is given of his right to refer the matter to the Tribunal.

(11) A notice under subsection (9)(b) must comply with subsection (4).

(12) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(13) This section applies to the variation of a direction on the Authority's own initiative as it applies to the giving of a direction.

(14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

Commencement Information

I75 S. 259 wholly in force at 1.12.2001; s. 259 not in force at Royal Assent see s. 431(2); s. 259 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 259 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

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260 Procedure: refusal to revoke or vary direction.

(1) If on an application under section 257(6) for a direction to be revoked or varied the Authority proposes—

(a) to vary the direction otherwise than in accordance with the application, or

(b) to refuse to revoke or vary the direction,

it must give the applicant a warning notice.

(2) If the Authority decides to refuse to revoke or vary the direction—

(a) it must give the applicant a decision notice; and

(b) the applicant may refer the matter to the Tribunal.

Commencement Information

I76 S. 260 wholly in force at 1.12.2001; s. 260 not in force at Royal Assent see s. 431(2); s. 260 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 260 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

261 Procedure: revocation of direction and grant of request for variation.

(1) If the Authority decides on its own initiative to revoke a direction under section 257 it must give separate written notices of its decision to the manager and trustee of the scheme.

(2) If on an application under section 257(6) for a direction to be revoked or varied the Authority decides to revoke the direction or vary it in accordance with the application, it must give the applicant written notice of its decision.

(3) A notice under this section must specify the date on which the decision takes effect.

(4) The Authority may publish such information about the revocation or variation, in such way, as it considers appropriate.

Commencement Information

I77 S. 261 wholly in force at 1.12.2001; s. 261 not in force at Royal Assent see s. 431(2); s. 261 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2 Sch. Pt. 2**; s. 261 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 01/07/2011

[F121[F121 261A Information for home state regulator

(1) Subsection (2) applies if, in accordance with rules made by the Authority to implement Article 66 of the UCITS directive, the Authority is informed by the manager of an authorised unit trust scheme which is a master UCITS that a feeder UCITS which invests in units of the scheme is an EEA UCITS.

(2) The Authority must immediately inform the home state regulator of the feeder UCITS of the investment made by that UCITS in the master UCITS.]

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Textual Amendments

F121 Ss. 261A, 261B inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(23)**

VALID FROM 01/07/2011

261B Information for feeder UCITS

(1) The Authority must immediately inform the operator of any authorised unit trust scheme which is a feeder UCITS of an authorised unit trust scheme or an authorised open-ended investment company (the master UCITS) of—

(a) any failure of which the Authority becomes aware by the master UCITS to comply with a provision made in implementation of Chapter VIII of the UCITS directive;

(b) any warning notice or decision notice given to the master UCITS in relation to a contravention of any provision made in implementation of Chapter VIII of the UCITS directive by or under any enactment or in rules of the Authority;

(c) any information reported to the Authority pursuant to rules of the Authority made to implement Article 106(1) of the UCITS directive which relates to the master UCITS, or to one or more of its directors, or its management company, trustee, depositary or auditor.

(2) The Authority must immediately inform the operator of any authorised unit trust scheme which is a feeder UCITS of an EEA UCITS of any information received from the home state regulator of the EEA UCITS in relation to—

(a) any failure by the EEA UCITS to comply with any requirement in Chapter VIII of the UCITS directive;

(b) any decision or measure imposed on the EEA UCITS under provisions implementing Chapter VIII of the UCITS directive;

(c) any information reported to the home state regulator pursuant to Article 106(1) of the UCITS directive relating to the EEA UCITS, its operator, depositary or auditor.

(3) Where the Authority has the information described in subsection (1)(a), (b) or (c) in relation to an authorised unit trust scheme which is a master UCITS for one or more feeder UCITS which are EEA UCITS, the Authority must immediately give that information to the home state regulator of each feeder UCITS established outside the United Kingdom.**]**

Textual Amendments

F121 Ss. 261A, 261B inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(23)**

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CHAPTER IV

OPEN-ENDED INVESTMENT COMPANIES

262 Open-ended investment companies.

(1) The Treasury may by regulations make provision for—

(a) facilitating the carrying on of collective investment by means of open-ended investment companies;

(b) regulating such companies.

(2) The regulations may, in particular, make provision—

(a) for the incorporation and registration in Great Britain of bodies corporate;

(b) for a body incorporated by virtue of the regulations to take such form as may be determined in accordance with the regulations;

(c) as to the purposes for which such a body may exist, the investments which it may issue and otherwise as to its constitution;

(d) as to the management and operation of such a body and the management of its property;

(e) as to the powers, duties, rights and liabilities of such a body and of other persons, including—

(i) the directors or sole director of such a body;

(ii) its depositary (if any);

(iii) its shareholders, and persons who hold the beneficial title to shares in it without holding the legal title;

(iv) its auditor; and

(v) any persons who act or purport to act on its behalf;

(f) as to the merger of one or more such bodies and the division of such a body;

(g) for the appointment and removal of an auditor for such a body;

(h) as to the winding up and dissolution of such a body;

(i) for such a body, or any director or depositary of such a body, to be required to comply with directions given by the Authority;

(j) enabling the Authority to apply to a court for an order removing and replacing any director or depositary of such a body;

(k) for the carrying out of investigations by persons appointed by the Authority or the Secretary of State;

(l) corresponding to any provision made in relation to unit trust schemes by Chapter III of this Part.

(3) Regulations under this section may—

(a) impose criminal liability;

(b) confer functions on the Authority;

(c) in the case of provision made by virtue of subsection (2)(l), authorise the making of rules by the Authority;

(d) confer jurisdiction on any court or on the Tribunal;

(e) provide for fees to be charged by the Authority in connection with the carrying out of any of its functions under the regulations (including fees payable on a periodical basis);

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(f) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act);

(g) make consequential amendments, repeals and revocations of any such legislation;

(h) modify or exclude any rule of law.

(4) The provision that may be made by virtue of subsection (3)(f) includes provision extending or adapting any power to make subordinate legislation.

(5) Regulations under this section may, in particular—

(a) revoke the [M41]Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996; and

(b) provide for things done under or in accordance with those regulations to be treated as if they had been done under or in accordance with regulations under this section.

Marginal Citations

M41 S.I. 1996/2827.

263 Amendment of section 716 Companies Act 1985.

In section 716(1) of the [M42]Companies Act 1985 (prohibition on formation of companies with more than 20 members unless registered under the Act etc.), after "this Act," insert " is incorporated by virtue of regulations made under section 262 of the Financial Services and Markets Act 2000 ".

Marginal Citations

M42 1985 c. 6.

CHAPTER V

RECOGNISED OVERSEAS SCHEMES

Schemes constituted in other EEA States

264 Schemes constituted in other EEA States.

(1) A collective investment scheme constituted in another EEA State is a recognised scheme if—

(a) it satisfies such requirements as are prescribed for the purposes of this section; and

(b) not less than two months before inviting persons in the United Kingdom to become participants in the scheme, the operator of the scheme gives notice to the Authority of his intention to do so, specifying the way in which the invitation is to be made.

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(2) But this section does not make the scheme a recognised scheme if within two months of receiving the notice under subsection (1) the Authority 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 way 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 Authority under subsection (1)—

(a) must be accompanied by a certificate from the authorities mentioned in subsection (2)(b) to the effect that the scheme complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument;

(b) must 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) must contain or be accompanied by such other information and documents as may be prescribed.

(4) A notice given by the Authority under subsection (2) must—

(a) give the reasons for which the Authority considers that the law in force in the United Kingdom will not be complied with; and

(b) specify a reasonable period (which may not be less than 28 days) within which any person to whom it is given may make representations to the Authority.

(5) For the purposes of this section a collective investment scheme is constituted in another EEA 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.

(6) The operator of a recognised scheme may give written notice to the Authority that he desires the scheme to be no longer recognised by virtue of this section.

(7) On the giving of notice under subsection (6), the scheme ceases to be a recognised scheme.

Modifications etc. (not altering text)

C454 S. 264 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 66(1); S.I. 2001/3538, **art. 2(1)**

C455 S. 264(1)(b) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 42(1) (with art. 23(2))

C456 S. 264(2) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 42(4) (with art. 23(2))
S. 264(2) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(8); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I78 S. 264 wholly in force at 1.12.2001; s. 264 not in force at Royal Assent see s. 431(2); s. 264(1)(3)(c) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 264 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 264 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

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265 Representations and references to the Tribunal.

(1) This section applies if any representations are made to the Authority, before the period for making representations has ended, by a person to whom a notice was given by the Authority under section 264(2).

(2) The Authority must, within a reasonable period, decide in the light of those representations whether or not to withdraw its notice.

(3) If the Authority withdraws its notice the scheme is a recognised scheme from the date on which the notice is withdrawn.

(4) If the Authority decides not to withdraw its notice, it must give a decision notice to each person to whom the notice under section 264(2) was given.

(5) The operator of the scheme to whom the decision notice is given may refer the matter to the Tribunal.

Commencement Information

I79 S. 265 wholly in force at 1.12.2001; s. 265 not in force at Royal Assent see s. 431(2); s. 265 (except subsection (3)) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 265 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

266 Disapplication of rules.

(1) Apart from—

(a) financial promotion rules, and

(b) rules under section 283(1),

rules made by the Authority under this Act do not apply to the operator, trustee or depositary of a scheme in relation to the carrying on by him of regulated activities for which he has permission in that capacity.

[F122(1A) But subsection (1) does not affect the application of rules to an operator of a scheme if the operator is an EEA firm falling within paragraph 5(f) of Schedule 3 who qualifies for authorisation under that Schedule.**]**

(2) "Scheme" means a scheme which is a recognised scheme by virtue of section 264.

Textual Amendments

F122 S. 266(1A) inserted (13.2.2004) by The Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066), **reg. 9**

267 Power of Authority to suspend promotion of scheme.

(1) Subsection (2) applies if it appears to the Authority that the operator of a scheme has communicated an invitation or inducement in relation to the scheme in a manner contrary to financial promotion rules.

(2) The Authority may direct that—

(a) the exemption from subsection (1) of section 238 provided by subsection (4)(c) of that section is not to apply in relation to the scheme; and

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(b) subsection (5) of that section does not apply with respect to things done in relation to the scheme.

(3) A direction under subsection (2) has effect—

(a) for a specified period;

(b) until the occurrence of a specified event; or

(c) until specified conditions are complied with.

(4) The Authority may, either on its own initiative or on the application of the operator of the scheme concerned, vary a direction given under subsection (2) if it appears to the Authority that the direction should take effect or continue in force in a different form.

(5) The Authority may, either on its own initiative or on the application of the operator of the recognised scheme concerned, revoke a direction given under subsection (2) if it appears to the Authority—

(a) that the conditions specified in the direction have been complied with; or

(b) that it is no longer necessary for the direction to take effect or continue in force.

(6) If an event is specified, the direction ceases to have effect (unless revoked earlier) on the occurrence of that event.

(7) For the purposes of this section and sections 268 and 269—

(a) the scheme's home State is the EEA State in which the scheme is constituted (within the meaning given by section 264);

(b) the competent authorities in the scheme's home State are the authorities in that State who are responsible for the authorisation of collective investment schemes.

(8) "Scheme" means a scheme which is a recognised scheme by virtue of section 264.

(9) "Specified", in relation to a direction, means specified in it.

268 Procedure on giving directions under section 267 and varying them on Authority's own initiative.

(1) A direction under section 267 takes effect—

(a) immediately, if the notice given under subsection (3)(a) states that that is the case;

(b) on such date as may be specified in the notice; or

(c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A direction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to its reasons for exercising its power under section 267, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the Authority proposes to give a direction under section 267, or gives such a direction with immediate effect, it must—

(a) give the operator of the scheme concerned written notice; and

(b) inform the competent authorities in the scheme's home State of its proposal or (as the case may be) of the direction.

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(4) The notice must—

(a) give details of the direction;

(b) inform the operator of when the direction takes effect;

(c) state the Authority's reasons for giving the direction and for its determination as to when the direction takes effect;

(d) inform the operator that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and

(e) inform him of his right to refer the matter to the Tribunal.

(5) The Authority may extend the period allowed under the notice for making representations.

(6) Subsection (7) applies if, having considered any representations made by the operator, the Authority decides—

(a) to give the direction in the way proposed, or

(b) if it has been given, not to revoke the direction.

(7) The Authority must—

(a) give the operator of the scheme concerned written notice; and

(b) inform the competent authorities in the scheme's home State of the direction.

(8) Subsection (9) applies if, having considered any representations made by a person to whom the notice was given, the Authority decides—

(a) not to give the direction in the way proposed,

(b) to give the direction in a way other than that proposed, or

(c) to revoke a direction which has effect.

(9) The Authority must—

(a) give the operator of the scheme concerned written notice; and

(b) inform the competent authorities in the scheme's home State of its decision.

(10) A notice given under subsection (7)(a) must inform the operator of his right to refer the matter to the Tribunal.

(11) A notice under subsection (9)(a) given as a result of subsection (8)(b) must comply with subsection (4).

(12) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(13) This section applies to the variation of a direction on the Authority's own initiative as it applies to the giving of a direction.

(14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

269 Procedure on application for variation or revocation of direction.

(1) If, on an application under subsection (4) or (5) of section 267, the Authority proposes—

(a) to vary a direction otherwise than in accordance with the application, or

(b) to refuse the application,

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it must give the operator of the scheme concerned a warning notice.

(2) If, on such an application, the Authority decides—

(a) to vary a direction otherwise than in accordance with the application, or

(b) to refuse the application,

it must give the operator of the scheme concerned a decision notice.

(3) If the application is refused, the operator of the scheme may refer the matter to the Tribunal.

(4) If, on such an application, the Authority decides to grant the application it must give the operator of the scheme concerned written notice.

(5) If the Authority decides on its own initiative to revoke a direction given under section 267 it must give the operator of the scheme concerned written notice.

(6) The Authority must inform the competent authorities in the scheme's home State of any notice given under this section.

Schemes authorised in designated countries or territories

270 Schemes authorised in designated countries or territories.

(1) A collective investment scheme which is not a recognised scheme by virtue of section 264 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 Treasury;

(b) the scheme is of a class specified by the order;

(c) the operator of the scheme has given written notice to the Authority that he wishes it to be recognised; and

(d) either—

(i) the Authority, by written notice, has given its approval to the scheme's being recognised; or

(ii) two months, beginning with the date on which notice was given under paragraph (c), have expired without the operator receiving a warning notice from the Authority under section 271.

(2) The Treasury may not make an order designating any country or territory for the purposes of this section unless satisfied—

(a) that the law and practice under which relevant collective investment schemes 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 or under this Part in the case of comparable authorised schemes; and

(b) that adequate arrangements exist, or will exist, for co-operation between the authorities of the country or territory responsible for the authorisation and supervision of relevant collective investment schemes and the Authority.

(3) "Relevant collective investment schemes" means collective investment schemes of the class or classes to be specified by the order.

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(4) "Comparable authorised schemes" means whichever of the following the Treasury consider to be the most appropriate, having regard to the class or classes of scheme to be specified by the order—

(a) authorised unit trust schemes;

(b) authorised open-ended investment companies;

(c) both such unit trust schemes and such companies.

(5) If the Treasury are considering whether to make an order designating a country or territory for the purposes of this section—

(a) the Treasury must ask the Authority for a report—

(i) on the law and practice of that country or territory in relation to the authorisation and supervision of relevant collective investment schemes,

(ii) on any existing or proposed arrangements for co-operation between it and the authorities responsible in that country or territory for the authorisation and supervision of relevant collective investment schemes,

having regard to the Treasury's need to be satisfied as mentioned in subsection (2);

(b) the Authority must provide the Treasury with such a report; and

(c) the Treasury must have regard to it in deciding whether to make the order.

(6) The notice to be given by the operator under subsection (1)(c)—

(a) must 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) must contain or be accompanied by such information and documents as may be specified by the Authority.

Modifications etc. (not altering text)

C457 S. 270 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 67(2); S.I. 2001/3538, **art. 2(1)**

C458 S. 270(1) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 67(1); S.I. 2001/3538, **art. 2(1)**

C459 S. 270(1)(c) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 43(1) (with art. 23(2))

Commencement Information

I80 S. 270 wholly in force at 1.12.2001; s. 270 not in force at Royal Assent see s. 431(2); s. 270 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 270 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 270 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

271 Procedure.

(1) If the Authority proposes to refuse approval of a scheme's being a recognised scheme by virtue of section 270, it must give the operator of the scheme a warning notice.

(2) To be valid the warning notice must be received by the operator before the end of two months beginning with the date on which notice was given under section 270(1)(c).

(3) If, having given a warning notice, the Authority decides to refuse approval—

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(a) it must give the operator of the scheme a decision notice; and
(b) the operator may refer the matter to the Tribunal.

Modifications etc. (not altering text)
C460 S. 271(2) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 43(4) (with art. 23(2))

Commencement Information
I81 S. 271 wholly in force at 1.12.2001; s. 271 not in force at Royal Assent see s. 431(2); s. 271 (except subsection (2)) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 271 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Individually recognised overseas schemes

272 Individually recognised overseas schemes.

(1) The Authority may, on the application of the operator of a collective investment scheme which—
(a) is managed in a country or territory outside the United Kingdom,
(b) does not satisfy the requirements prescribed for the purposes of section 264,
(c) is not managed in a country or territory designated for the purposes of section 270 or, if it is so managed, is of a class not specified by the designation order, and
(d) appears to the Authority to satisfy the requirements set out in the following provisions of this section,
make an order declaring the scheme to be a recognised scheme.

(2) Adequate protection must be afforded to participants in the scheme.

(3) The arrangements for the scheme's constitution and management must be adequate.

(4) The powers and duties of the operator and, if the scheme has a trustee or depositary, of the trustee or depositary must be adequate.

(5) In deciding whether the matters mentioned in subsection (3) or (4) are adequate, the Authority must have regard to—
(a) any rule of law, and
(b) any matters which are, or could be, the subject of rules,
applicable in relation to comparable authorised schemes.

(6) "Comparable authorised schemes" means whichever of the following the Authority considers the most appropriate, having regard to the nature of scheme in respect of which the application is made—
(a) authorised unit trust schemes;
(b) authorised open-ended investment companies;
(c) both such unit trust schemes and such companies.

(7) The scheme must take the form of an open-ended investment company or (if it does not take that form) the operator must be a body corporate.

(8) The operator of the scheme must—

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(a) if an authorised person, have permission to act as operator;
(b) if not an authorised person, be a fit and proper person to act as operator.

(9) The trustee or depositary (if any) of the scheme must—
(a) if an authorised person, have permission to act as trustee or depositary;
(b) if not an authorised person, be a fit and proper person to act as trustee or depositary.

(10) The operator and the trustee or depositary (if any) of the scheme must be able and willing to co-operate with the Authority by the sharing of information and in other ways.

(11) The name of the scheme must not be undesirable or misleading.

(12) The purposes of the scheme must be reasonably capable of being successfully carried into effect.

(13) 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.

(14) But a scheme is to be treated as complying with subsection (13) 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 that subsection.

(15) Subsection (13) is not to be read as imposing a requirement that the participants must be entitled to have their units redeemed (or sold as mentioned in subsection (14)) immediately following a demand to that effect.

Modifications etc. (not altering text)
C461 S. 272(1) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 68(1); S.I. 2001/3538, **art. 2(1)**
C462 S. 272(8)(9) modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 9**

Commencement Information
I82 S. 272 wholly in force at 1.12.2001; s. 272 not in force at Royal Assent see s. 431(2); s. 272 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 272 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

273 Matters that may be taken into account.

For the purposes of subsections (8)(b) and (9)(b) of section 272, the Authority may take into account any matter relating to—
(a) any person who is or will be employed by or associated with the operator, trustee or depositary in connection with the scheme;
(b) any director of the operator, trustee or depositary;
(c) any person exercising influence over the operator, trustee or depositary;
(d) any body corporate in the same group as the operator, trustee or depositary;
(e) any director of any such body corporate;
(f) any person exercising influence over any such body corporate.

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Commencement Information

I83 S. 273 wholly in force at 1.12.2001; s. 273 not in force at Royal Assent see s. 431(2); s. 273 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 273 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

274 Applications for recognition of individual schemes.

(1) An application under section 272 for an order declaring a scheme to be a recognised scheme must be made to the Authority by the operator of the scheme.

(2) The application—

(a) must be made in such manner as the Authority may direct;

(b) must 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;

(c) must contain or be accompanied by such information as the Authority may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) Different directions may be given, and different requirements imposed, in relation to different applications.

(5) The Authority may require an applicant to present information which he is required to give under this section in such form, or to verify it in such a way, as the Authority may direct.

Modifications etc. (not altering text)

C463 S. 274 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 44(1) (with art. 23(2))

Commencement Information

I84 S. 274 wholly in force at 1.12.2001; s. 274 not in force at Royal Assent see s. 431(2); s. 274(2) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 274 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 274 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

275 Determination of applications.

(1) An application under section 272 must be determined by the Authority before the end of the period of six months beginning with the date on which it receives the completed application.

(2) The Authority may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.

(3) If the Authority makes an order under section 272(1), it must give written notice of the order to the applicant.

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Modifications etc. (not altering text)

C464 S. 275(1)(2) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 44(2)(3) (with art. 23(2))

Commencement Information

I85 S. 275 wholly in force at 1.12.2001; s. 275 not in force at Royal Assent see s. 431(2); s. 275 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 275 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

276 Procedure when refusing an application.

(1) If the Authority proposes to refuse an application made under section 272 it must give the applicant a warning notice.

(2) If the Authority decides to refuse the application—

(a) it must give the applicant a decision notice; and

(b) the applicant may refer the matter to the Tribunal.

Commencement Information

I86 S. 276 wholly in force at 1.12.2001; s. 276 not in force at Royal Assent see s. 431(2); s. 276 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 276 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

277 Alteration of schemes and changes of operator, trustee or depositary.

(1) The operator of a scheme recognised by virtue of section 272 must give written notice to the Authority of any proposed alteration to the scheme.

(2) Effect is not to be given to any such proposal unless—

(a) the Authority, by written notice, has given its approval to the proposal; or

(b) one month, beginning with the date on which notice was given under subsection (1), has expired without the Authority having given written notice to the operator that it has decided to refuse approval.

(3) At least one month before any replacement of the operator, trustee or depositary of such a scheme, notice of the proposed replacement must be given to the Authority—

(a) by the operator, trustee or depositary (as the case may be); or

(b) by the person who is to replace him.

Modifications etc. (not altering text)

C465 S. 277(1) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(9); S.I. 2001/3538, **art. 2(1)**
S. 277(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 45(1) (with art. 23(2))

C466 S. 277(2)(b) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 45(2) (with art. 23(2))

C467 S. 277(3) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 45(3) (with art. 23(2))

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Commencement Information

I87 S. 277 wholly in force at 1.12.2001; s. 277 not in force at Royal Assent see s. 431(2); s. 277 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 277 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Schemes recognised under sections 270 and 272

278 Rules as to scheme particulars.

The Authority may make rules imposing duties or liabilities on the operator of a scheme recognised under section 270 or 272 for purposes corresponding to those for which rules may be made under section 248 in relation to authorised unit trust schemes.

279 Revocation of recognition.

The Authority may direct that a scheme is to cease to be recognised by virtue of section 270 or revoke an order under section 272 if it appears to the Authority—

(a) that the operator, trustee or depositary of the scheme has contravened a requirement imposed on him by or under this Act;

(b) that the operator, trustee or depositary of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular;

(c) in the case of an order under section 272, that one or more of the requirements for the making of the order are no longer satisfied; or

(d) that none of paragraphs (a) to (c) applies, but it is undesirable in the interests of the participants or potential participants that the scheme should continue to be recognised.

Modifications etc. (not altering text)

C468 S. 279 applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 47(4)(b) (with art. 23(2))
S. 279 applied (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 48(4)(5) (with art. 23(2))

C469 S. 279(c) modified (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 68(2); S.I. 2001/3538, **art. 2(1)**

280 Procedure.

(1) If the Authority proposes to give a direction under section 279 or to make an order under that section revoking a recognition order, it must give a warning notice to the operator and (if any) the trustee or depositary of the scheme.

(2) If the Authority decides to give a direction or make an order under that section—

(a) it must without delay give a decision notice to the operator and (if any) the trustee or depositary of the scheme; and

(b) the operator or the trustee or depositary may refer the matter to the Tribunal.

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Modifications etc. (not altering text)
C470 S. 280(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 47(1), 48(1) (with art. 23(2))

281 Directions.

(1) In this section a "relevant recognised scheme" means a scheme recognised under section 270 or 272.

(2) If it appears to the Authority that—

(a) the operator, trustee or depositary of a relevant recognised scheme has contravened, or is likely to contravene, a requirement imposed on him by or under this Act,

(b) the operator, trustee or depositary of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular,

(c) one or more of the requirements for the recognition of a scheme under section 272 are no longer satisfied, or

(d) none of paragraphs (a) to (c) applies, but the exercise of the power conferred by this section is desirable in order to protect the interests of participants or potential participants in a relevant recognised scheme who are in the United Kingdom,

it may direct that the scheme is not to be a recognised scheme for a specified period or until the occurrence of a specified event or until specified conditions are complied with.

Modifications etc. (not altering text)
C471 S. 281 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 70(b), 71(b); S.I. 2001/3538, **art. 2(1)**
S. 281 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(9); S.I. 2001/3538, **art. 2(1)**

282 Procedure on giving directions under section 281 and varying them otherwise than as requested.

(1) A direction takes effect—

(a) immediately, if the notice given under subsection (3) states that that is the case;

(b) on such date as may be specified in the notice; or

(c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A direction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its power under section 281, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the Authority proposes to give a direction under section 281, or gives such a direction with immediate effect, it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.

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(4) The notice must—

(a) give details of the direction;

(b) inform the person to whom it is given of when the direction takes effect;

(c) state the Authority's reasons for giving the direction and for its determination as to when the direction takes effect;

(d) inform the person to whom it is given that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and

(e) inform him of his right to refer the matter to the Tribunal.

(5) The Authority may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by a person to whom the notice was given, the Authority decides—

(a) to give the direction in the way proposed, or

(b) if it has been given, not to revoke the direction,

it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.

(7) If, having considered any representations made by a person to whom the notice was given, the Authority decides—

(a) not to give the direction in the way proposed,

(b) to give the direction in a way other than that proposed, or

(c) to revoke a direction which has effect,

it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.

(8) A notice given under subsection (6) must inform the person to whom it is given of his right to refer the matter to the Tribunal.

(9) A notice under subsection (7)(b) must comply with subsection (4).

(10) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(11) This section applies to the variation of a direction on the Authority's own initiative as it applies to the giving of a direction.

(12) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

Facilities and information in UK

283 Facilities and information in UK.

(1) The Authority may make rules requiring operators of recognised schemes to maintain in the United Kingdom, or in such part or parts of it as may be specified, such facilities as the Authority thinks desirable in the interests of participants and as are specified in rules.

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(2) The Authority 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 communication of his which—

(a) is a communication of an invitation or inducement of a kind mentioned in section 21(1); and

(b) names the scheme.

(3) In the case of a communication originating outside the United Kingdom, subsection (2) only applies if the communication is capable of having an effect in the United Kingdom.

Commencement Information

I88 S. 283 wholly in force at 1.12.2001; s. 283 not in force at Royal Assent see s. 431(2); s. 283(1) in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 283 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 01/07/2011

[F123CHAPTER 5A

MASTER-FEEDER STRUCTURES

Textual Amendments

F123 Ch. 5A inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(26)**

283A Master-feeder structures

(1) The operator of a UK UCITS may not invest a higher proportion of the property which is subject to the collective investment scheme constituted by that UCITS in units of another UCITS than is permitted by rules made by the Authority implementing Article 55 of the UCITS directive unless the investment is approved by the Authority in accordance with this section.

(2) An application for approval under subsection (1) of an investment must be made by the operator of the UK UCITS in such manner, and accompanied by such information, as is required by rules made by the Authority.

(3) The Authority must grant an application made under subsection (2) if it is satisfied—

(a) that the UCITS, its operator, trustee or depositary and auditor and the UCITS in which it proposes to invest, and its operator, have complied with—

(i) the requirements laid down in Chapter VIII of the UCITS directive, and

(ii) any other requirements imposed by the Authority in relation to the application;

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(b) in a case where the application is made by the operator of a feeder UCITS in respect of the investment of the proceeds of the winding-up of its master UCITS, that the proceeds of the winding up are to be paid to the feeder UCITS before the date on which the investment is to be made.

(4) In a case within subsection (3)(b), approval must be subject to the conditions in subsections (5) and (6).

(5) The first condition is that the feeder UCITS is to receive the proceeds of the winding-up—

(a) in cash; or

(b) wholly or partly in assets other than cash in a case where the feeder UCITS so elects and each of the following so permits—

(i) the decision of the master UCITS that it should be wound up;

(ii) the trust deed or instrument of incorporation of the feeder UCITS; and

(iii) either the agreement between the feeder UCITS and its master UCITS, or the internal conduct of business rules operated by the feeder UCITS and the master UCITS in accordance with rules made by the Authority.

(6) The second condition is that cash received by the feeder UCITS in accordance with paragraph (5)(a) may not be reinvested before the date on which the feeder UCITS proposes to invest in the new UCITS, except for the purpose of efficient cash management.

(7) The Authority must, within 15 working days of the date on which the Authority had received all the information required in relation to the application, give written notice to the operator—

(a) that the Authority approves its application, or

(b) that the Authority objects to the application.

(8) Following receipt of notice that the Authority objects to the application, the operator may refer the Authority's decision to the Tribunal.

283B Reports on derivative instruments

(1) An authorised person who is the management company in relation to a UCITS must report to the Authority at specified intervals of not more than 12 months about any investment in derivative instruments during the specified period to which the report relates.

(2) The report must be in the specified form and contain the specified information.

(3) The Authority must review the regularity and completeness of the information provided by each management company under subsection (1).

(4) In this section, "specified" means specified—

(a) in rules made by the Authority to implement the UCITS directive, or

(b) in any directly applicable Community regulation or decision made under the UCITS directive.**]**

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CHAPTER VI

INVESTIGATIONS

284 Power to investigate.

(1) An investigating authority may appoint one or more competent persons to investigate on its behalf—

(a) the affairs of, or of the manager or trustee of, any authorised unit trust scheme,

(b) the affairs of, or of the operator, trustee or depositary 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, trustee or depositary of, any other collective investment scheme except a body incorporated by virtue of regulations under section 262,

if it appears to the investigating authority that it is in the interests of the participants or potential participants to do so or that the matter is of public concern.

(2) A person appointed under subsection (1) to investigate the affairs of, or of the manager, trustee, operator or depositary of, any scheme (scheme "A"), may also, if he thinks it necessary for the purposes of that investigation, investigate—

(a) the affairs of, or of the manager, trustee, operator or depositary of, any other such scheme as is mentioned in subsection (1) whose manager, trustee, operator or depositary is the same person as the manager, trustee, operator or depositary of scheme A;

(b) the affairs of such other schemes and persons (including bodies incorporated by virtue of regulations under section 262 and the directors and depositaries of such bodies) as may be prescribed.

(3) If the person appointed to conduct an investigation under this section ("B") considers that a person ("C") is or may be able to give information which is relevant to the investigation, B may require C—

(a) to produce to B any documents in C's possession or under his control which appear to B to be relevant to the investigation,

(b) to attend before B, and

(c) otherwise to give B all assistance in connection with the investigation which C is reasonably able to give,

and it is C's duty to comply with that requirement.

(4) Subsections (5) to (9) of section 170 apply if an investigating authority appoints a person under this section to conduct an investigation on its behalf as they apply in the case mentioned in subsection (1) of that section.

(5) Section 174 applies to a statement made by a person in compliance with a requirement imposed under this section as it applies to a statement mentioned in that section.

(6) Subsections (2) to (4) and (6) of section 175 and section 177 have effect as if this section were contained in Part XI.

(7) Subsections (1) to (9) of section 176 apply in relation to a person appointed under subsection (1) as if—

(a) references to an investigator were references to a person so appointed;

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(b) references to an information requirement were references to a requirement imposed under section 175 or under subsection (3) by a person so appointed;

(c) the premises mentioned in subsection (3)(a) were the premises of a person whose affairs are the subject of an investigation under this section or of an appointed representative of such a person.

(8) No person may be required under this section to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless subsection (9) or (10) applies.

(9) This subsection applies if—

(a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or

(b) the imposing on the person concerned of a requirement with respect to information or a document of a kind mentioned in subsection (8) has been specifically authorised by the investigating authority.

(10) This subsection applies if the person owing the obligation of confidence or the person to whom it is owed is—

(a) the manager, trustee, operator or depositary of any collective investment scheme which is under investigation;

(b) the director of a body incorporated by virtue of regulations under section 262 which is under investigation;

(c) any other person whose own affairs are under investigation.

(11) "Investigating authority" means the Authority or the Secretary of State.

Modifications etc. (not altering text)

C472 S. 284(1) extended (with modifications) (1.12.2001) by S.I. 2001/3646, **arts. 1(2)**, 8

Commencement Information

I89 S. 284 wholly in force at 1.12.2001; s. 284 not in force at Royal Assent see s. 431(2); s. 284(2) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 284 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

PART XVIII

RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES

CHAPTER I

EXEMPTION

General

285 Exemption for recognised investment exchanges and clearing houses.

(1) In this Act—

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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(a) "recognised investment exchange" means an investment exchange in relation to which a recognition order is in force; and

(b) "recognised clearing house" means a clearing house in relation to which a recognition order is in force.

(2) A recognised investment exchange is exempt from the general prohibition as respects any regulated activity—

(a) which is carried on as a part of the exchange's business as an investment exchange; or

(b) which is carried on for the purposes of, or in connection with, the provision of clearing services by the exchange.

(3) A recognised clearing house is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the provision of clearing services by the clearing house.

286 Qualification for recognition.

(1) The Treasury may make regulations setting out the requirements—

(a) which must be satisfied by an investment exchange or clearing house if it is to qualify as a body in respect of which the Authority may make a recognition order under this Part; and

(b) which, if a recognition order is made, it must continue to satisfy if it is to remain a recognised body.

(2) But if regulations contain provision as to the default rules of an investment exchange or clearing house, or as to proceedings taken under such rules by such a body, they require the approval of the Secretary of State.

(3) "Default rules" means rules of an investment exchange or clearing house which provide for the taking of action in the event of a person's appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the exchange or clearing house.

(4) "Market contract" means—

(a) a contract to which Part VII of the [M43]Companies Act 1989 applies as a result of section 155 of that Act or a contract to which Part V of the [M44]Companies (No. 2)(Northern Ireland) Order 1990 applies as a result of Article 80 of that Order; and

(b) such other kind of contract as may be prescribed.

(5) Requirements resulting from this section are referred to in this Part as "recognition requirements".

Marginal Citations

M43 1989 c. 40.

M44 S.I. 1990/1504 (N.I. 10).

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Applications for recognition

287 Application by an investment exchange.

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

(2) The application must be made in such manner as the Authority may direct and must be accompanied by—

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

(b) a copy of any guidance issued by the applicant;

(c) the required particulars; and

(d) such other information as the Authority may reasonably require for the purpose of determining the application.

(3) The required particulars are—

(a) particulars of any arrangements which the applicant has made, or proposes to make, for the provision of clearing services in respect of transactions effected on the exchange;

(b) if the applicant proposes to provide clearing services in respect of transactions other than those effected on the exchange, particulars of the criteria which the applicant will apply when determining to whom it will provide those services.

Commencement Information

I90 S. 287 wholly in force at 3.9.2001; s. 287 not in force at Royal Assent see s. 431(2); s. 287(2) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 287 in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2, **Sch. Pt. 2**

288 Application by a clearing house.

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

(2) The application must be made in such manner as the Authority may direct and must be accompanied by—

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

(b) a copy of any guidance issued by the applicant;

(c) the required particulars; and

(d) such other information as the Authority may reasonably require for the purpose of determining the application.

(3) The required particulars are—

(a) if the applicant makes, or proposes to make, clearing arrangements with a recognised investment exchange, particulars of those arrangements;

(b) if the applicant proposes to provide clearing services for persons other than recognised investment exchanges, particulars of the criteria which it will apply when determining to whom it will provide those services.

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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Commencement Information

I91 S. 288 wholly in force at 3.9.2001; s. 288 not in force at Royal Assent see s. 431(2); s. 288(2) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 288 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, **art. 2 Sch. Pt. 2**

289 Applications: supplementary.

(1) At any time after receiving an application and before determining it, the Authority may require the applicant to provide such further information as it reasonably considers necessary to enable it to determine the application.

(2) Information which the Authority requires in connection with an application must be provided in such form, or verified in such manner, as the Authority may direct.

(3) Different directions may be given, or requirements imposed, by the Authority with respect to different applications.

290 Recognition orders.

(1) If it appears to the Authority that the applicant satisfies the recognition requirements applicable in its case, the Authority may make a recognition order declaring the applicant to be—

(a) a recognised investment exchange, if the application is made under section 287;

(b) a recognised clearing house, if it is made under section 288.

(2) The Treasury's approval of the making of a recognition order is required under section 307.

(3) In considering an application, the Authority may have regard to any information which it considers is relevant to the application.

(4) A recognition order must specify a date on which it is to take effect.

(5) Section 298 has effect in relation to a decision to refuse to make a recognition order—

(a) as it has effect in relation to a decision to revoke such an order; and

(b) as if references to a recognised body were references to the applicant.

(6) Subsection (5) does not apply in a case in which the Treasury have failed to give their approval under section 307.

Commencement Information

I92 S. 290 wholly in force at 1.12.2001; s. 290 not in force at Royal Assent see s. 431(2); s. 290 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 290 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

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VALID FROM 20/12/2006

[F124[F124290A Refusal of recognition on ground of excessive regulatory provision

(1) The Authority must not make a recognition order if it appears to the Authority that an existing or proposed regulatory provision of the applicant in connection with—

(a) the applicant's business as an investment exchange, or

(b) the provision by the applicant of clearing services,

imposes or will impose an excessive requirement on the persons affected (directly or indirectly) by it.

(2) The reference in section 290(1) (making of recognition order) to satisfying the applicable recognition requirements shall be read accordingly.

(3) Expressions used in subsection (1) above that are defined for the purposes of section 300A (power of Authority to disallow excessive regulatory provision) have the same meaning as in that section.

(4) The provisions of section 300A(3) and (4) (determination whether regulatory provision excessive) apply for the purposes of this section as for the purposes of section 300A.

(5) Section 298 has effect in relation to a decision under this section to refuse a recognition order—

(a) as it has effect in relation to a decision to revoke such an order, and

(b) as if references to a recognised body were references to the applicant.

(6) This section does not apply to an application for recognition as an overseas investment exchange or overseas clearing house.**]]**

Textual Amendments

F124 S. 290A inserted (20.12.2006) by Investment Exchanges and Clearing Houses Act 2006 (c. 55), **ss. 4**, 5(2)

291 Liability in relation to recognised body's regulatory functions.

(1) A recognised body and its officers and staff are not to be liable in damages for anything done or omitted in the discharge of the recognised body's regulatory functions unless it is shown that the act or omission was in bad faith.

(2) But subsection (1) does not prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the [M45]Human Rights Act 1998.

(3) "Regulatory functions" means the functions of the recognised body so far as relating to, or to matters arising out of, the obligations to which the body is subject under or by virtue of this Act.

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Modifications etc. (not altering text)

C473 S. 291 modified (22.2.2008) by The Northern Rock plc Transfer Order 2008 (S.I. 2008/432), **art. 20**

C474 S. 291 modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), **art. 39**

Marginal Citations

M45 1998 c. 42.

292 Overseas investment exchanges and overseas clearing houses.

(1) An application under section 287 or 288 by an overseas applicant must contain the address of a place in the United Kingdom for the service on the applicant of notices or other documents required or authorised to be served on it under this Act.

(2) If it appears to the Authority that an overseas applicant satisfies the requirements of subsection (3) it may make a recognition order declaring the applicant to be—

(a) a recognised investment exchange;

(b) a recognised clearing house.

(3) The requirements are that—

(a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with recognition requirements;

(b) there are adequate procedures for dealing with a person who is unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the investment exchange or clearing house;

(c) the applicant is able and willing to co-operate with the Authority by the sharing of information and in other ways;

(d) adequate arrangements exist for co-operation between the Authority and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.

(4) In considering whether it is satisfied as to the requirements mentioned in subsection (3)(a) and (b), the Authority is to have regard to—

(a) the relevant law and practice of the country or territory in which the applicant's head office is situated;

(b) the rules and practices of the applicant.

(5) In relation to an overseas applicant and 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)—

(a) the reference in section 313(2) to recognition requirements is to be read as a reference to matters corresponding to the matters in respect of which provision is made in the recognition requirements;

(b) sections 296(1) and 297(2) have effect as if the requirements mentioned in section 296(1)(a) and section 297(2)(a) were those of subsection (3)(a), (b), and (c) of this section;

(c) section 297(2) has effect as if the grounds on which a recognition order may be revoked under that provision included the ground that in the opinion of the

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Authority arrangements of the kind mentioned in subsection (3)(d) no longer exist.

Commencement Information

I93 S. 292 wholly in force at 1.12.2001; s. 292 not in force at Royal Assent see s. 431(2); s. 292(1) in force and s. 292(2)-(5) in force specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 292 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 01/04/2007

[F125 Publication of information by recognised investment exchange

Textual Amendments

F125 S. 292A and cross-heading inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(2), **Sch. 2 para. 5**

292A Publication of information by recognised investment exchange

(1) A recognised investment exchange must as soon as practicable after a recognition order is made in respect of it publish such particulars of the ownership of the exchange as the Authority may reasonably require.

(2) The particulars published under subsection (1) must include particulars of the identity and scale of interests of the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly.

(3) If an ownership transfer takes place in relation to a recognised investment exchange, the exchange must as soon as practicable after becoming aware of the transfer publish such particulars relating to the transfer as the Authority may reasonably require.

(4) ”Ownership transfer”, in relation to an exchange, means a transfer of ownership which gives rise to a change in the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly.

(5) A recognised investment exchange must publish such particulars of any decision it makes to suspend or remove a financial instrument from trading on a regulated market operated by it as the Authority may reasonably require.

(6) The Authority may determine the manner of publication under subsections (1), (3) and (5) and the timing of publication under subsection (5).

(7) This section does not apply to an overseas investment exchange.**]**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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Supervision

293 Notification requirements.

(1) The Authority may make rules requiring a recognised body to give it—

(a) notice of such events relating to the body as may be specified; and

(b) such information in respect of those events as may be specified.

(2) The rules may also require a recognised body to give the Authority, at such times or in respect of such periods as may be specified, such information relating to the body as may be specified.

(3) An obligation imposed by the rules extends only to a notice or information which the Authority may reasonably require for the exercise of its functions under this Act.

(4) The rules may require information to be given in a specified form and to be verified in a specified manner.

(5) If a recognised body—

(a) alters or revokes any of its rules or guidance, or

(b) makes new rules or issues new guidance,

it must give written notice to the Authority without delay.

(6) If a recognised investment exchange makes a change—

(a) in the arrangements it makes for the provision of clearing services in respect of transactions effected on the exchange, or

(b) in the criteria which it applies when determining to whom it will provide clearing services,

it must give written notice to the Authority without delay.

(7) If a recognised clearing house makes a change—

(a) in the recognised investment exchanges for whom it provides clearing services, or

(b) in the criteria which it applies when determining to whom (other than recognised investment exchanges) it will provide clearing services,

it must give written notice to the Authority without delay.

(8) Subsections (5) to (7) do not apply to an overseas investment exchange or an overseas clearing house.

(9) "Specified" means specified in the Authority's rules.

Commencement Information

I94 S. 293 wholly in force at 1.12.2001; s. 293 not in force at Royal Assent see s. 431(2); s. 293 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 293 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

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VALID FROM 01/04/2007

[F126[F126293A Information: compliance of recognised investment exchanges with directly applicable Community regulations

The Authority may require a recognised investment exchange to give the Authority such information as it reasonably requires in order to satisfy itself that the exchange is complying with any directly applicable Community regulation made under the markets in financial instruments directive.**]]**

Textual Amendments

F126 S. 293A inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(2), **Sch. 2 para. 6**

294 Modification or waiver of rules.

(1) The Authority may, on the application or with the consent of a recognised body, direct that rules made under section 293 or 295—

(a) are not to apply to the body; or

(b) are to apply to the body with such modifications as may be specified in the direction.

(2) An application must be made in such manner as the Authority may direct.

(3) Subsections (4) to (6) apply to a direction given under subsection (1).

(4) The Authority may not give a direction unless it is satisfied that—

(a) compliance by the recognised body with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made; and

(b) the direction would not result in undue risk to persons whose interests the rules are intended to protect.

(5) A direction may be given subject to conditions.

(6) The Authority may—

(a) revoke a direction; or

(b) vary it on the application, or with the consent, of the recognised body to which it relates.

Modifications etc. (not altering text)

C475 S. 294 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(10); S.I. 2001/3538, **art. 2(1)**

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Commencement Information

I95 S. 294 wholly in force at 3.9.2001; s. 294 not in force at Royal Assent see s. 431(2); s. 294(2) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 294 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, **art. 2 Sch. Pt. 2**

295 Notification: overseas investment exchanges and overseas clearing houses.

(1) At least once a year, every overseas investment exchange and overseas clearing house must provide the Authority with a report.

(2) The report must contain a statement as to whether any events have occurred which are likely—

(a) to affect the Authority's assessment of whether it is satisfied as to the requirements set out in section 292(3); or

(b) to have any effect on competition.

(3) The report must also contain such information as may be specified in rules made by the Authority.

(4) The investment exchange or clearing house must provide the Treasury and the **[**[F127]OFT**]** with a copy of the report.

Textual Amendments

F127 Words in s. 295 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(9)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

Commencement Information

I96 S. 295 wholly in force at 1.12.2001; s. 295 not in force at Royal Assent see s. 431(2); s. 295 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 295 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

296 Authority's power to give directions.

(1) This section applies if it appears to the Authority that a recognised body—

(a) has failed, or is likely to fail, to satisfy the recognition requirements; or

(b) has failed to comply with any other obligation imposed on it by or under this Act.

(2) The Authority may direct the body to take specified steps for the purpose of securing the body's compliance with—

(a) the recognition requirements; or

(b) any obligation of the kind in question.

(3) A direction under this section is enforceable, on the application of the Authority, by an injunction or, in Scotland, by an order for specific performance under section 45 of the [M46]Court of Session Act 1988.

(4) The fact that a rule made by a recognised body has been altered in response to a direction given by the Authority does not prevent it from being subsequently altered or revoked by the recognised body.

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Modifications etc. (not altering text)
C476 S. 296 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(11); S.I. 2001/3538, **art. 2(1)**

Marginal Citations
M46 1988 c. 36.

297 Revoking recognition.

(1) A recognition order may be revoked by an order made by the Authority at the request, or with the consent, of the recognised body concerned.

(2) If it appears to the Authority that a recognised body—

(a) is failing, or has failed, to satisfy the recognition requirements, or

(b) is failing, or has failed, to comply with any other obligation imposed on it by or under this Act,

it may make an order revoking the recognition order for that body even though the body does not wish the order to be made.

(3) An order under this section ("a revocation order") must specify the date on which it is to take effect.

(4) In the case of a revocation order made under subsection (2), the specified date must not be earlier than the end of the period of three months beginning with the day on which the order is made.

(5) A revocation order may contain such transitional provisions as the Authority thinks necessary or expedient.

Modifications etc. (not altering text)
C477 S. 297 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(11); S.I. 2001/3538, **art. 2(1)**

298 Directions and revocation: procedure.

(1) Before giving a direction under section 296, or making a revocation order under section 297(2), the Authority must—

(a) give written notice of its intention to do so to the recognised body concerned;

(b) take such steps as it considers reasonably practicable to bring the notice to the attention of members (if any) of that body; and

(c) publish the notice in such manner as it thinks appropriate for bringing it to the attention of other persons who are, in its opinion, likely to be affected.

(2) A notice under subsection (1) must—

(a) state why the Authority intends to give the direction or make the order; and

(b) draw attention to the right to make representations conferred by subsection (3).

(3) Before the end of the period for making representations—

(a) the recognised body,

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(b) any member of that body, and

(c) any other person who is likely to be affected by the proposed direction or revocation order,

may make representations to the Authority.

(4) The period for making representations is—

(a) two months beginning—

(i) with the date on which the notice is served on the recognised body; or

(ii) if later, with the date on which the notice is published; or

(b) such longer period as the Authority may allow in the particular case.

(5) In deciding whether to—

(a) give a direction, or

(b) make a revocation order,

the Authority must have regard to any representations made in accordance with subsection (3).

(6) When the Authority has decided whether to give a direction under section 296 or to make the proposed revocation order, it must—

(a) give the recognised body written notice of its decision; and

(b) if it has decided to give a direction or make an order, take such steps as it considers reasonably practicable for bringing its decision to the attention of members of the body or of other persons who are, in the Authority's opinion, likely to be affected.

(7) If the Authority considers it essential to do so, it may give a direction under section 296—

(a) without following the procedure set out in this section; or

(b) if the Authority has begun to follow that procedure, regardless of whether the period for making representations has expired.

(8) If the Authority has, in relation to a particular matter, followed the procedure set out in subsections (1) to (5), it need not follow it again if, in relation to that matter, it decides to take action other than that specified in its notice under subsection (1).

Modifications etc. (not altering text)

C478 S. 298 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(11); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I97 S. 298 wholly in force at 1.12.2001; s. 298 not in force at Royal Assent see s. 431(2); s. 298 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2 Sch. Pt. 2**; s. 298 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

299 Complaints about recognised bodies.

(1) The Authority must make arrangements for the investigation of any relevant complaint about a recognised body.

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(2) "Relevant complaint" means a complaint which the Authority considers is relevant to the question of whether the body concerned should remain a recognised body.

300 Extension of functions of Tribunal.

(1) If the Treasury are satisfied that the condition mentioned in subsection (2) is satisfied, they may by order confer functions on the Tribunal with respect to disciplinary proceedings—

(a) of one or more investment exchanges in relation to which a recognition order under section 290 is in force or of such investment exchanges generally, or

(b) of one or more clearing houses in relation to which a recognition order under that section is in force or of such clearing houses generally.

(2) The condition is that it is desirable to exercise the power conferred under subsection (1) with a view to ensuring that—

(a) decisions taken in disciplinary proceedings with respect to which functions are to be conferred on the Tribunal are consistent with—

(i) decisions of the Tribunal in cases arising under Part VIII; and

(ii) decisions taken in other disciplinary proceedings with respect to which the Tribunal has functions as a result of an order under this section; or

(b) the disciplinary proceedings are in accordance with the Convention rights.

(3) An order under this section may modify or exclude any provision made by or under this Act with respect to proceedings before the Tribunal.

(4) "Disciplinary proceedings" means proceedings under the rules of an investment exchange or clearing house in relation to market abuse by persons subject to the rules.

(5) "The Convention rights" has the meaning given in section 1 of the [M47]Human Rights Act 1998.

Marginal Citations

M47 1998 c. 42.

VALID FROM 20/12/2006

[F128]Power to disallow excessive regulatory provision

Textual Amendments

F128 S. 300A and cross-heading inserted (20.12.2006) by Investment Exchanges and Clearing Houses Act 2006 (c. 55), **ss. 1**, 5(2) (with s. 5(3))

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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300A Power of Authority to disallow excessive regulatory provision

(1) This section applies where a recognised body proposes to make any regulatory provision in connection with its business as an investment exchange or the provision by it of clearing services.

(2) If it appears to the Authority—

(a) that the proposed provision will impose a requirement on persons affected (directly or indirectly) by it, and

(b) that the requirement is excessive,

the Authority may direct that the proposed provision must not be made.

(3) A requirement is excessive if—

(a) it is not required under Community law or any enactment or rule of law in the United Kingdom, and

(b) either—

(i) it is not justified as pursuing a reasonable regulatory objective, or

(ii) it is disproportionate to the end to be achieved.

(4) In considering whether a requirement is excessive the Authority must have regard to all the relevant circumstances, including—

(a) the effect of existing legal and other requirements,

(b) the global character of financial services and markets and the international mobility of activity,

(c) the desirability of facilitating innovation, and

(d) the impact of the proposed provision on market confidence.

(5) In this section "requirement" includes any obligation or burden.

(6) Any provision made in contravention of a direction under this section is of no effect.

[F129[300B Duty to notify proposal to make regulatory provision

(1) A recognised body that proposes to make any regulatory provision must give written notice of the proposal to the Authority without delay.

(2) The Authority may by rules under section 293 (notification requirements)—

(a) specify descriptions of regulatory provision in relation to which, or circumstances in which, the duty in subsection (1) above does not apply, or

(b) provide that the duty applies only to specified descriptions of regulatory provision or in specified circumstances.

(3) The Authority may also by rules under that section—

(a) make provision as to the form and contents of the notice required, and

(b) require the body to provide such information relating to the proposal as may be specified in the rules or as the Authority may reasonably require.]

Textual Amendments

F129 Ss. 300B-300E inserted (20.12.2006) by Investment Exchanges and Clearing Houses Act 2006 (c. 55), **ss. 2**, 3, 5(2) (with s. 5(3))

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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300C Restriction on making provision before Authority decides whether to act

(1) Where notice of a proposal to make regulatory provision is required to be given to the Authority under section 300B, the provision must not be made—

(a) before that notice is given, or

(b) subject to the following provisions of this section, before the end of the initial period.

(2) The initial period is—

(a) the period of 30 days beginning with the day on which the Authority receives notice of the proposal, or

(b) if any consultation period announced by the body in relation to the proposal ends after that 30-day period, the end of the consultation period.

(3) If before the end of the initial period the Authority notifies the body that it is calling in the proposal, the provisions of section 300D (consideration by Authority whether to disallow proposed provision) apply as to when the provision may be made.

(4) If—

(a) before the end of the initial period the Authority notifies the body that it is not calling in the proposal, or

(b) the initial period ends without the Authority having notified the body that it is calling in the proposal,

the body may then make the proposed provision.

(5) Any provision made in contravention of this section is of no effect.

Textual Amendments

F129 Ss. 300B-300E inserted (20.12.2006) by Investment Exchanges and Clearing Houses Act 2006 (c. 55), **ss. 2**, 3, 5(2) (with s. 5(3))

300D Consideration by Authority whether to disallow proposed provision

(1) This section applies where the Authority notifies a recognised body that it is calling in a proposal to make regulatory provision.

(2) The Authority must publish a notice—

(a) giving details of the proposed provision,

(b) stating that it has called in the proposal in order to consider whether to disallow it, and

(c) specifying a period during which representations with respect to that question may be made to it.

(3) The Authority may extend the period for making representations.

(4) The Authority must notify the body of its decision whether to disallow the provision not later than 30 days after the end of the period for making representations, and must publish the decision and the reasons for it.

(5) The body must not make the provision unless and until—

(a) the Authority notifies it of its decision not to disallow it, or

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(b) the 30-day period specified in subsection (4) ends without the Authority having notified any decision.

(6) If the Authority notifies the body of its decision to disallow the provision and that decision is questioned in legal proceedings—

(a) the body must not make the provision until those proceedings, and any proceedings on appeal, are finally determined,

(b) if the Authority's decision is quashed and the matter is remitted to it for reconsideration, the court may give directions as to the period within which the Authority is to complete its reconsideration, and

(c) the body must not make the provision until—

(i) the Authority notifies it of its decision on reconsideration not to disallow the provision, or

(ii) the period specified by the court ends without the Authority having notified any decision.

(7) Any provision made in contravention of subsection (5) or (6) is of no effect.

Textual Amendments

F129 Ss. 300B-300E inserted (20.12.2006) by Investment Exchanges and Clearing Houses Act 2006 (c. 55), **ss. 2**, 3, 5(2) (with s. 5(3))

300E Power to disallow excessive regulatory provision: supplementary

(1) In sections 300A to 300D—

(a) "regulatory provision" means any rule, guidance, arrangements, policy or practice, and

(b) references to making provision shall be read accordingly as including, as the case may require, issuing guidance, entering into arrangements or adopting a policy or practice.

(2) For the purposes of those sections a variation of a proposal is treated as a new proposal.

(3) Those sections do not apply to an overseas investment exchange or overseas clearing house.**]]**

Textual Amendments

F129 Ss. 300B-300E inserted (20.12.2006) by Investment Exchanges and Clearing Houses Act 2006 (c. 55), **ss. 2**, 3, 5(2) (with s. 5(3))

Other matters

301 Supervision of certain contracts.

(1) The Secretary of State and the Treasury, acting jointly, may by regulations provide for—

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(a) Part VII of the [M48]Companies Act 1989 (financial markets and insolvency), and

(b) Part V of the [M49]Companies (No. 2)(Northern Ireland) Order 1990,

to apply to relevant contracts as it applies to contracts connected with a recognised body.

(2) "Relevant contracts" means contracts of a prescribed description in relation to which settlement arrangements are provided by a person for the time being included in a list ("the list") maintained by the Authority for the purposes of this section.

(3) Regulations may be made under this section only if the Secretary of State and the Treasury are satisfied, having regard to the extent to which the relevant contracts concerned are contracts of a kind dealt in by persons supervised by the Authority, that it is appropriate for the arrangements mentioned in subsection (2) to be supervised by the Authority.

(4) The approval of the Treasury is required for—

(a) the conditions set by the Authority for admission to the list; and

(b) the arrangements for admission to, and removal from, the list.

(5) If the Treasury withdraw an approval given by them under subsection (4), all regulations made under this section and then in force are to be treated as suspended.

(6) But if—

(a) the Authority changes the conditions or arrangements (or both), and

(b) the Treasury give a fresh approval under subsection (4),

the suspension of the regulations ends on such date as the Treasury may, in giving the fresh approval, specify.

(7) The Authority must—

(a) publish the list as for the time being in force; and

(b) provide a certified copy of it to any person who wishes to refer to it in legal proceedings.

(8) A certified copy of the list is evidence (or in Scotland sufficient evidence) of the contents of the list.

(9) A copy of the list which purports to be certified by or on behalf of the Authority is to be taken to have been duly certified unless the contrary is shown.

(10) Regulations under this section may, in relation to a person included in the list—

(a) apply (with such exceptions, additions and modifications as appear to the Secretary of State and the Treasury to be necessary or expedient) such provisions of, or made under, this Act as they consider appropriate;

(b) provide for the provisions of Part VII of the [M50]Companies Act 1989 and Part V of the [M51]Companies (No. 2)(Northern Ireland) Order 1990 to apply (with such exceptions, additions or modifications as appear to the Secretary of State and the Treasury to be necessary or expedient).

Marginal Citations

M48 1989 c. 40.

M49 S.I. 1990/1504 (N.I. 10).

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M50 1989 c. 40.
M51 S.I. 1990/1504 (N.I. 10).

VALID FROM 01/04/2007

CHAPTER 1A

CONTROL OVER RECOGNISED INVESTMENT EXCHANGE

Notice of control

301A Obligation to notify the Authority of acquisition of or increase in control

(1) If a step which a person proposes to take would result in his acquiring—
(a) control over a recognised investment exchange,
(b) an additional kind of control over an exchange, or
(c) an increase in a relevant kind of control which he already has over an exchange,
he must notify the Authority of his proposal.

(2) A person who, without himself taking any such step, acquires any such control or additional or increased control must notify the Authority before the end of the period of 14 days beginning with the day on which he first becomes aware that he has acquired it.

(3) A person who is under the duty to notify the Authority imposed by subsection (1) must also give notice to the Authority on acquiring, or increasing, the control in question.

(4) A notice under subsection (1) or (2) is referred to in this Chapter as a "notice of control".

(5) Section 182 applies to a notice of control under this Chapter as it applies to a notice of control under Part 12.

(6) Nothing in this Chapter applies to an overseas investment exchange.

Acquiring and increasing control

301B Acquiring and increasing control

(1) For the purposes of this Chapter, a person ("the acquirer") acquires control over a recognised investment exchange ("E") on first falling within any of the cases in subsection (2).

(2) The cases are where the acquirer—
(a) holds 20% or more of the shares in E;
(b) is able to exercise significant influence over the management of E by virtue of his shareholding in E;
(c) holds 20% or more shares in a parent undertaking ("P") of E;

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(d) is able to exercise significant influence over the management of P by virtue of his shareholding in P;

(e) is entitled to exercise, or control the exercise of, 20% or more of the voting power in E;

(f) is able to exercise significant influence over the management of E by virtue of his voting power in E;

(g) is entitled to exercise, or to control the exercise of, 20% or more of the voting power in P; or

(h) is able to exercise significant influence over the management of P by virtue of his voting power in P.

(3) In subsection (2) "the acquirer" means—

(a) the acquirer,

(b) any of his associates, or

(c) the acquirer and any of his associates.

(4) For the purposes of this Chapter, each of the following is to be regarded as a kind of control—

(a) control arising as a result of the holding of shares in E;

(b) control arising as a result of the holding of shares in P;

(c) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in E;

(d) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in P.

(5) For the purposes of this Chapter, a controller of E increases his control over E if—

(a) the percentage of shares held by the controller in E increases by the step mentioned in subsection (6);

(b) the percentage of shares held by the controller in P increases by the step mentioned in subsection (6);

(c) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in E increases by the step mentioned in subsection (6);

(d) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in P increases by the step mentioned in subsection (6); or

(e) the controller becomes a parent undertaking of E.

(6) The step is from 20% or more (but less than 50%) to 50% or more.

(7) In the rest of this Chapter "acquiring control" or "having control" includes—

(a) acquiring or having an additional kind of control; or

(b) acquiring an increase in a relevant kind of control, or having increased control of a relevant kind.

Acquiring or increasing control: procedure

301C Duty of Authority in relation to notice of control

(1) The Authority must, before the end of the period of three months beginning with the date on which it receives a notice of control, determine whether—

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(a) to approve of the person concerned having the control to which the notice relates; or

(b) to give a warning notice under subsection (7).

(2) If the Authority decides to approve of the person concerned having the control to which the notice relates it must notify that person of its approval in writing without delay.

(3) If the Authority fails to comply with subsection (1) it is to be treated as having given its approval and notified the person concerned at the end of the period fixed by that subsection.

(4) The Authority's approval remains effective only if the person to whom it relates acquires the control in question—

(a) before the end of such period as may be specified in the notice of approval under subsection (2); or

(b) if no period is specified, before the end of the period of one year beginning with the date—

(i) of the notice of approval under subsection (2);

(ii) on which the Authority is treated as having given approval under subsection (3); or

(iii) of a decision on a reference to the Tribunal which results in the person concerned receiving approval.

(5) The Authority may give a decision notice under this subsection unless it is satisfied that the approval requirement is met.

(6) The approval requirement is that the acquisition of control by the person who gave the notice of control does not pose a threat to the sound and prudent management of any financial market operated by the recognised investment exchange.

(7) If the Authority proposes to give the person concerned a decision notice under subsection (5), it must give him a warning notice.

(8) A person to whom a decision notice is given under subsection (5) may refer the matter to the Tribunal.

301D Objection to existing control

(1) If the Authority is not satisfied that the approval requirement is met, it may give a decision notice under this section to a person if he has failed to comply with a duty to notify imposed by section 301A.

(2) If the failure relates to subsection (1) or (2) of that section, the Authority may (instead of giving a notice under subsection (1)) approve the acquisition of control in question by the person concerned as if he had given it a notice of control.

(3) The Authority may also give a decision notice under this section to a person who is a controller of a recognised investment exchange if the Authority becomes aware of matters as a result of which it is satisfied that the approval requirement is not met with respect to the controller.

(4) If the Authority proposes to give a decision notice under subsection (1) or (3) to a person, it must give him a warning notice before the end of the period of three months beginning—

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(a) in the case of a notice to be given under subsection (1), with the date on which it became aware of the failure to comply with the duty in question;

(b) in the case of a notice to be given under subsection (3), with the date on which it became aware of the matters in question.

(5) A person to whom a decision notice is given under this section may refer the matter to the Tribunal.

(6) "Approval requirement" has the same meaning as in section 301C.

Improperly acquired shares

301E Improperly acquired shares

(1) The powers conferred by this section are exercisable if a person has acquired, or has continued to hold, any shares in contravention of a decision notice given under section 301C(5) or 301D(1) or (3).

(2) The Authority may by notice in writing given to the person concerned ("a restriction notice") direct that any such shares which are specified in the notice are, until further notice, subject to one or more of the following restrictions—

(a) a transfer of (or agreement to transfer) those shares, or in the case of unissued shares any transfer of (or agreement to transfer) the right to be issued with them, is void;

(b) no voting rights are to be exercisable in respect of the shares;

(c) no further shares are to be issued in right of them or in pursuance of any offer made to their holder;

(d) except in a liquidation, no payment is to be made of any sums due from the body corporate on the shares, whether in respect of capital or otherwise.

(3) The court may, on the application of the Authority, order the sale of any shares to which this section applies and, if they are for the time being subject to any restriction under subsection (2), that they are to cease to be subject to that restriction.

(4) No order may be made under subsection (3)—

(a) until the end of the period within which a reference may be made to the Tribunal in respect of the decision notice in question; and

(b) if a reference is made, until the matter has been determined or the reference withdrawn.

(5) If an order has been made under subsection (3), the court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) If shares are sold in pursuance of an order under this section, the proceeds of sale, less the costs of the sale, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him.

(7) This section applies—

(a) in the case of an acquirer falling within section 301A(1), to all the shares—

(i) in the recognised investment exchange which the acquirer has acquired,

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(ii) which are held by him or an associate of his, and

(iii) which were not so held immediately before he became a person having control over the exchange;

(b) in the case of an acquirer falling within section 301A(2), to all the shares held by him or an associate of his at the time when he first became aware that he had acquired control over the exchange; and

(c) to all the shares in an undertaking ("C")—

(i) which are held by the acquirer or an associate of his, and

(ii) which were not so held before he became a person with control in relation to the exchange,

where C is the undertaking in which shares were acquired by the acquirer (or an associate of his) and, as a result, he became a person with control in relation to that exchange.

(8) A copy of the restriction notice must be given to—

(a) the recognised investment exchange to whose shares it relates; and

(b) if it relates to shares held by an associate of that exchange, that associate.

(9) The jurisdiction conferred by this section may be exercised by the High Court and the Court of Session.

Offences

301F Offences in relation to acquisition of control

(1) A person who fails to comply with the duty to notify the Authority imposed on him by section 301A(1) is guilty of an offence.

(2) A person who fails to comply with the duty to notify the Authority imposed on him by section 301A(2) is guilty of an offence.

(3) If a person who has given a notice of control to the Authority carries out the proposal to which the notice relates, he is guilty of an offence if—

(a) the period of three months beginning with the date on which the Authority received the notice is still running; and

(b) the Authority has not responded to the notice by either giving its approval or giving him a warning notice under section 301C(7).

(4) A person to whom the Authority has given a warning notice under subsection (7) of section 301C is guilty of an offence if he carries out the proposal to which the notice relates before the Authority has decided whether to give him a decision notice under subsection (5) of that section.

(5) A person to whom a decision notice under section 301C(5) or 301D(1) or (3) has been given is guilty of an offence if he acquires or retains the control to which the notice applies at a time when the notice is still in force.

(6) A person guilty of an offence under subsection (1), (2), (3) or (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) A person guilty of an offence under subsection (5) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

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

(8) It is a defence for a person charged with an offence under subsection (1) to show that he had, at the time of the alleged offence, no knowledge of the act or circumstances by virtue of which the duty to notify the Authority arose.

(9) If a person—

(a) was under the duty to notify the Authority imposed by section 301A(1) but had no knowledge of the act or circumstances by virtue of which that duty arose, but

(b) subsequently becomes aware of that act or those circumstances,

he must notify the Authority before the end of the period of 14 days beginning with the day on which he first became so aware.

(10) A person who fails to comply with the duty to notify the Authority imposed by subsection (9) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Interpretation

301G Interpretation of Chapter 1A

In this Chapter—

"associate", "shares" and "voting power" have the same meaning as in section 422;

"controller", in relation to a recognised investment exchange, means a person who falls within any of the cases in section 301B(2);

"notice of control" has the meaning given in section 301A(4).

CHAPTER II

COMPETITION SCRUTINY

302 Interpretation.

(1) In this Chapter and Chapter III—

"practices" means—

(a) in relation to a recognised investment exchange, the practices of the exchange in its capacity as such; and

(b) in relation to a recognised clearing house, the practices of the clearing house in respect of its clearing arrangements;

"regulatory provisions" means—

(a) the rules of an investment exchange or a clearing house;

(b) any guidance issued by an investment exchange or clearing house;

(c) in the case of an investment exchange, the arrangements and criteria mentioned in section 287(3);

(d) in the case of a clearing house, the arrangements and criteria mentioned in section 288(3).

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(2) For the purposes of this Chapter, regulatory provisions or practices have a significantly adverse effect on competition if—

(a) they have, or are intended or likely to have, that effect; or

(b) the effect that they have, or are intended or likely to have, is to require or encourage behaviour which has, or is intended or likely to have, a significantly adverse effect on competition.

(3) If regulatory provisions or practices have, or are intended or likely to have, the effect of requiring or encouraging exploitation of the strength of a market position they are to be taken, for the purposes of this Chapter, to have an adverse effect on competition.

(4) In determining under this Chapter whether any regulatory provisions have, or are intended or likely to have, a particular effect, it may be assumed that persons to whom the provisions concerned are addressed will act in accordance with them.

Role of [F130Office of Fair Trading]

Textual Amendments

F130 S. 303: cross-heading substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(10)(f)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

303 Initial report by [F131OFT].

(1) The Authority must send to the Treasury and to the [F132OFT] a copy of any regulatory provisions with which it is provided on an application for recognition under section 287 or 288.

(2) The Authority must send to the [F133OFT] such information in its possession as a result of the application for recognition as it considers will assist [F134the OFT] in discharging [F135its] functions in connection with the application.

(3) The [F136OFT] must issue a report as to whether—

(a) a regulatory provision of which a copy has been sent to [F137it] under subsection (1) has a significantly adverse effect on competition; or

(b) a combination of regulatory provisions so copied to [F137it] have such an effect.

(4) If the [F138OFT's] conclusion is that one or more provisions have a significantly adverse effect on competition, [F139it] must state [F140its] reasons for that conclusion.

(5) When the [F141OFT] issues a report under subsection (3), [F142the OFT] must send a copy of it to the Authority, the Competition Commission and the Treasury.

Textual Amendments

F131 S. 303: words in sidenote substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(10)(f)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F132 Words in s. 303(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(10)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F133 Words in s. 303(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(10)(b)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

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F134 Words in s. 303(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(10)(b)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
F135 Word in s. 303(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(10)(b)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
F136 Words in s. 303(3) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(10)(c)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
F137 Word in s. 303(3) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(10)(c)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
F138 Words in s. 303(4) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(10)(d)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
F139 Word in s. 303(4) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(10)(d)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
F140 Word in s. 303(4) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(10)(d)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
F141 Words in s. 303(5) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(10)(e)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
F142 Words in s. 303(5) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(10)(e)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

304 Further reports by [F143OFT].

(1) The **[**F143OFT**]** must keep under review the regulatory provisions and practices of recognised bodies.

(2) If at any time the **[**F143OFT**]** considers that—

(a) a regulatory provision or practice has a significantly adverse effect on competition, or

(b) regulatory provisions or practices, or a combination of regulating provisions and practices have such an effect,

[F144the OFT**]** must make a report.

(3) If at any time the **[**F143OFT**]** considers that—

(a) a regulatory provision or practice does not have a significantly adverse effect on competition, or

(b) regulatory provisions or practices, or a combination of regulatory provisions and practices do not have any such effect,

[F144the OFT**]** may make a report to that effect.

(4) A report under subsection (2) must contain details of the adverse effect on competition.

(5) If the **[**F143OFT**]** makes a report under subsection (2), **[**F144the OFT**]** must—

(a) send a copy of it to the Treasury, to the Competition Commission and to the Authority; and

(b) publish it in the way appearing to **[**F145the OFT**]** to be best calculated to bring it to the attention of the public.

(6) If the **[**F143OFT**]** makes a report under subsection (3)—

(a) **[**F144the OFT**]** must send a copy of it to the Treasury, to the Competition Commission and to the Authority; and

(b) **[**F144the OFT**]** may publish it.

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(7) Before publishing a report under this section, the **[**F143OFT**]** must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the **[**F143OFT**]**, would or might seriously and prejudicially affect his interests.

(8) Before publishing such a report, the **[**F143OFT**]** must exclude any matter which relates to the affairs of a particular body the publication of which, in the opinion of the **[**F143OFT**]**, would or might seriously and prejudicially affect its interests.

(9) Subsections (7) and (8) do not apply to the copy of a report which the **[**F143OFT**]** is required to send to the Treasury, the Competition Commission and the Authority under subsection (5)(a) or (6)(a).

(10) For the purposes of the law of defamation, absolute privilege attaches to any report of the **[**F143OFT**]** under this section.

Textual Amendments

F143 Words in s. 304 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(11)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F144 Words in s. 304 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(11)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F145 Words in s. 304(5)(b) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(11)(b)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

305 Investigations by [F146OFT].

(1) For the purpose of investigating any matter with a view to its consideration under section 303 or 304, the **[**F146OFT**]** may exercise the powers conferred on **[**F147it**]** by this section.

(2) The **[**F146OFT**]** may by notice in writing require any person to produce to **[**F147it**]** or to a person appointed by **[**F147it**]** for the purpose, at a time and place specified in the notice, any document which—

(a) is specified or described in the notice; and

(b) is a document in that person's custody or under his control.

(3) The **[**F146OFT**]** may by notice in writing—

(a) require any person carrying on any business to provide **[**F147it**]** with such information as may be specified or described in the notice; and

(b) specify the time within which, and the manner and form in which, any such information is to be provided.

(4) A requirement may be imposed under subsection (2) or (3)(a) only in respect of documents or information which relate to any matter relevant to the investigation.

(5) If a person ("the defaulter") refuses, or otherwise fails, to comply with a notice under this section, the **[**F146OFT**]** may certify that fact in writing to the court and the court may enquire into the case.

(6) If, after hearing any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence, the court is satisfied that the

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defaulter did not have a reasonable excuse for refusing or otherwise failing to comply with the notice, the court may deal with the defaulter as if he were in contempt.

(7) In this section, "the court" means—

(a) the High Court; or

(b) in Scotland, the Court of Session.

Textual Amendments

F146 Words in s. 305 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(12)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F147 Word in s. 305 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(12)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

Commencement Information

I98 S. 305 wholly in force at 1.12.2001; s. 305 not in force at Royal Assent see s. 431(2); s. 305 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 305 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Role of Competition Commission

306 Consideration by Competition Commission.

(1) If subsection (2) or (3) applies, the Commission must investigate the matter which is the subject of the **[**F148OFT's**]** report.

(2) This subsection applies if the **[**F149OFT**]** sends to the Competition Commission a report—

(a) issued by **[**F150the OFT**]** under section 303(3) which concludes that one or more regulatory provisions have a significantly adverse effect on competition, or

(b) made by **[**F150the OFT**]** under section 304(2).

(3) This subsection applies if the **[**F149OFT**]** asks the Commission to consider a report—

(a) issued by **[**F150the OFT**]** under section 303(3) which concludes that one or more regulatory provisions do not have a significantly adverse effect on competition, or

(b) made by **[**F150the OFT**]** under section 304(3).

(4) The Commission must then make its own report on the matter unless it considers that, as a result of a change of circumstances, no useful purpose would be served by a report.

(5) If the Commission decides in accordance with subsection (4) not to make a report, it must make a statement setting out the change of circumstances which resulted in that decision.

(6) A report made under this section must state the Commission's conclusion as to whether—

(a) the regulatory provision or practice which is the subject of the report has a significantly adverse effect on competition, or

(b) the regulatory provisions or practices or combination of regulatory provisions and practices which are the subject of the report have such an effect.

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(7) A report under this section stating the Commission's conclusion that there is a significantly adverse effect on competition must also—

(a) state whether the Commission considers that that effect is justified; and

(b) if it states that the Commission considers that it is not justified, state its conclusion as to what action, if any, the Treasury ought to direct the Authority to take.

(8) Subsection (9) applies whenever the Commission is considering, for the purposes of this section, whether a particular adverse effect on competition is justified.

(9) The Commission must ensure, so far as that is reasonably possible, that the conclusion it reaches is compatible with the obligations imposed on the recognised body concerned by or under this Act.

(10) A report under this section must contain such an account of the Commission's reasons for its conclusions as is expedient, in the opinion of the Commission, for facilitating proper understanding of them.

(11) The provisions of Schedule 14 (except paragraph 2(b)) apply for the purposes of this section as they apply for the purposes of section 162.

(12) If the Commission makes a report under this section it must send a copy to the Treasury, the Authority and the **[**F149OFT**]**.

Textual Amendments

F148 Words in s. 306 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(13)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F149 Words in s. 306 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(13)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F150 Words in s. 306 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(13)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

Commencement Information

I99 S. 306 wholly in force at 1.12.2001; s. 306 not in force at Royal Assent see s. 431(2); s. 306 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 306 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Role of the Treasury

307 Recognition orders: role of the Treasury.

(1) Subsection (2) applies if, on an application for a recognition order—

(a) the **[**F151OFT**]** makes a report under section 303 but does not ask the Competition Commission to consider it under section 306;

(b) the Competition Commission concludes—

(i) that the applicant's regulatory provisions do not have a significantly adverse effect on competition; or

(ii) that if those provisions do have that effect, the effect is justified.

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(2) The Treasury may refuse to approve the making of the recognition order only if they consider that the exceptional circumstances of the case make it inappropriate for them to give their approval.

(3) Subsection (4) applies if, on an application for a recognition order, the Competition Commission concludes—

(a) that the applicant's regulatory provisions have a significantly adverse effect on competition; and

(b) that that effect is not justified.

(4) The Treasury must refuse to approve the making of the recognition order unless they consider that the exceptional circumstances of the case make it inappropriate for them to refuse their approval.

Textual Amendments

F151 Words in s. 307 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(14)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

308 Directions by the Treasury.

(1) This section applies if the Competition Commission makes a report under section 306(4) (other than a report on an application for a recognition order) which states the Commission's conclusion that there is a significantly adverse effect on competition.

(2) If the Commission's conclusion, as stated in the report, is that the adverse effect on competition is not justified, the Treasury must give a remedial direction to the Authority.

(3) But subsection (2) does not apply if the Treasury consider—

(a) that, as a result of action taken by the Authority or the recognised body concerned in response to the Commission's report, it is unnecessary for them to give a direction; or

(b) that the exceptional circumstances of the case make it inappropriate or unnecessary for them to do so.

(4) In considering the action to be specified in a remedial direction, the Treasury must have regard to any conclusion of the Commission included in the report because of section 306(7)(b).

(5) Subsection (6) applies if—

(a) the Commission's conclusion, as stated in its report, is that the adverse effect on competition is justified; but

(b) the Treasury consider that the exceptional circumstances of the case require them to act.

(6) The Treasury may give a direction to the Authority requiring it to take such action—

(a) as they consider to be necessary in the light of the exceptional circumstances of the case; and

(b) as may be specified in the direction.

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(7) If the action specified in a remedial direction is the giving by the Authority of a direction—

(a) the direction to be given must be compatible with the recognition requirements applicable to the recognised body in relation to which it is given; and

(b) subsections (3) and (4) of section 296 apply to it as if it were a direction given under that section.

(8) "Remedial direction" means a direction requiring the Authority—

(a) to revoke the recognition order for the body concerned; or

(b) to give such directions to the body concerned as may be specified in it.

309 Statements by the Treasury.

(1) If, in reliance on subsection (3)(a) or (b) of section 308, the Treasury decline to act under subsection (2) of that section, they must make a statement to that effect, giving their reasons.

(2) If the Treasury give a direction under section 308 they must make a statement giving—

(a) details of the direction; and

(b) if the direction is given under subsection (6) of that section, their reasons for giving it.

(3) The Treasury must—

(a) publish any statement made under this section in the way appearing to them best calculated to bring it to the attention of the public; and

(b) lay a copy of it before Parliament.

310 Procedure on exercise of certain powers by the Treasury.

(1) Subsection (2) applies if the Treasury are considering—

(a) whether to refuse their approval under section 307;

(b) whether section 308(2) applies; or

(c) whether to give a direction under section 308(6).

(2) The Treasury must—

(a) take such steps as they consider appropriate to allow the exchange or clearing house concerned, and any other person appearing to the Treasury to be affected, an opportunity to make representations—

(i) about any report made by the **[**F152OFT**]** under section 303 or 304 or by the Competition Commission under section 306;

(ii) as to whether, and if so how, the Treasury should exercise their powers under section 307 or 308; and

(b) have regard to any such representations.

Textual Amendments

F152 Words in s. 310 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(14)(b)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

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Commencement Information

I100 S. 310 wholly in force at 1.12.2001; s. 310 not in force at Royal Assent see s. 431(2); s. 310 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 310 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

CHAPTER III

EXCLUSION FROM THE COMPETITION ACT 1998

311 The Chapter I prohibition.

(1) The Chapter I prohibition does not apply to an agreement for the constitution of a recognised body to the extent to which the agreement relates to the regulatory provisions of that body.

(2) If the conditions set out in subsection (3) are satisfied, the Chapter I prohibition does not apply to an agreement for the constitution of—

(a) an investment exchange which is not a recognised investment exchange, or

(b) a clearing house which is not a recognised clearing house,

to the extent to which the agreement relates to the regulatory provisions of that body.

(3) The conditions are that—

(a) the body has applied for a recognition order in accordance with the provisions of this Act; and

(b) the application has not been determined.

(4) The Chapter I prohibition does not apply to a recognised body's regulatory provisions.

(5) The Chapter I prohibition does not apply to a decision made by a recognised body to the extent to which the decision relates to any of that body's regulatory provisions or practices.

(6) The Chapter I prohibition does not apply to practices of a recognised body.

(7) The Chapter I prohibition does not apply to an agreement the parties to which consist of or include—

(a) a recognised body, or

(b) a person who is subject to the rules of a recognised body,

to the extent to which the agreement consists of provisions the inclusion of which is required or encouraged by any of the body's regulatory provisions or practices.

(8) If a recognised body's recognition order is revoked, this section is to have effect as if that body had continued to be recognised until the end of the period of six months beginning with the day on which the revocation took effect.

(9) "The Chapter I prohibition" means the prohibition imposed by section 2(1) of the [M52]Competition Act 1998.

(10) Expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.

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Modifications etc. (not altering text)
C479 S. 311(1)(4)(5)(7)(8) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(11); S.I. 2001/3538, **art. 2(1)**

Marginal Citations
M52 1998 c. 41.

312 The Chapter II prohibition.

(1) The Chapter II prohibition does not apply to—
(a) practices of a recognised body;
(b) the adoption or enforcement of such a body's regulatory provisions;
(c) any conduct which is engaged in by such a body or by a person who is subject to the rules of such a body to the extent to which it is encouraged or required by the regulatory provisions of the body.

(2) The Chapter II prohibition means the prohibition imposed by section 18(1) of the [M53]Competition Act 1998.

Modifications etc. (not altering text)
C480 S. 312(1)(b) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(11); S.I. 2001/3538, **art. 2(1)**

Marginal Citations
M53 1998 c. 41.

VALID FROM 01/04/2007

[F153CHAPTER 3A

PASSPORT RIGHTS

Textual Amendments
F153 Pt. 18 Ch. 3A (ss. 312A-312D) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(2), **Sch. 2 para. 15** (with reg. 5)

Modifications etc. (not altering text)
C481 Pt. 18 Ch. 3A applied (with modifications) (12.12.2011) by The Recognised Auction Platforms Regulations 2011 (S.I. 2011/2699), **reg. 8**, Sch. 3 (as amended (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701), reg. 1(2)(3)(4)(6), **Sch. 5 para. 14(1)** (with reg. 7))

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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EEA market operators in United Kingdom

312A Exercise of passport rights by EEA market operator

(1) An EEA market operator may, in pursuance of the right under the applicable provision, make arrangements in the United Kingdom to facilitate access to, or use of, a specified regulated market or specified multilateral trading facility operated by it if—

(a) the operator has given its home state regulator notice of its intention to make such arrangements; and

(b) the home state regulator has given the Authority notice of the operator's intention.

(2) In making arrangements under subsection (1), the operator is exempt from the general prohibition as respects any regulated activity which is carried on as a part of its business of operating the market or facility in question, or in connection with, or for the purposes of, that business.

(3) ”Specified” means specified in the notice referred to in subsection (1)(a).

(4) This section does not apply to an overseas investment exchange.

312B Removal of passport rights from EEA market operator

(1) The Authority may prohibit an EEA market operator from making or, as the case may be, continuing arrangements in the United Kingdom, in pursuance of the applicable provision, to facilitate access to, or use of, a regulated market or multilateral trading facility operated by the operator if—

(a) the Authority has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement, and

(b) the Authority has first complied with subsections (3) to (9).

(2) A requirement is relevant if it is imposed—

(a) by the operator's home state regulator in the implementation of the markets in financial instruments directive or any Community legislation made under that directive;

(b) by provision implementing that directive, or any Community legislation made under it, in the operator's home state; or

(c) by any directly applicable Community regulation made under that directive.

(3) The Authority must notify the operator and its home state regulator of its finding under subsection (1)(a).

(4) The notice to the home state regulator under subsection (3) must—

(a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the operator puts an end to the contravention; and

(b) state that the Authority proposes to exercise the power under subsection (1) if the operator continues the contravention.

(5) The Authority may not exercise the power under subsection (1) unless satisfied—

(a) either—

(i) that the home state regulator has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or

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(ii) that the measures taken by the home state regulator have proved inadequate for that purpose; and

(b) that the operator is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the orderly functioning of the financial markets.

(6) If the Authority is satisfied as mentioned in subsection (5), it must give written notice to—

(a) the operator, and

(b) the home state regulator,

of its intention to exercise the power under subsection (1).

(7) A notice under subsection (6) must—

(a) state why the Authority intends to exercise its power under subsection (1), and

(b) in the case of the notice to the operator, inform the operator that it may make representations to the Authority before the end of the representation period.

(8) The representation period is—

(a) the period of two months beginning with the date on which the notice is given to the operator; or

(b) such longer period as the Authority may allow in a particular case.

(9) If, having considered any representations made by the operator, the Authority decides to exercise the power under subsection (1), it must—

(a) notify the operator in writing that it will be prohibited from making or, as the case may be, continuing the arrangements mentioned in that subsection from the date specified in the notice; and

(b) notify the home state regulator of the action to be taken in relation to the operator.

(10) If the Authority exercises the power under subsection (1) it must at the earliest opportunity notify the Commission of the action taken in relation to the operator.

(11) The exemption conferred on an operator by section 312A(2) ceases to apply if the Authority exercises the power under subsection (1) in relation to the operator.

(12) The right to make the arrangements mentioned in subsection (1) may be reinstated in relation to the operator (together with the exemption mentioned in subsection (11)) if the Authority is satisfied that the contravention which led to the Authority exercising the power under subsection (1) has been remedied.

Recognised investment exchanges operating in EEA States (other than the United Kingdom)

312C Exercise of passport rights by recognised investment exchange

(1) Subject to subsection (4), a recognised investment exchange may, in pursuance of the right under the applicable provision, make arrangements in an EEA State (other than the United Kingdom) to facilitate access to, or use of, a regulated market or multilateral trading facility operated by the exchange ("the relevant arrangements").

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(2) The exchange must give the Authority written notice of its intention to make the relevant arrangements which—

(a) describes the arrangements, and

(b) identifies the EEA State in which it intends to make them.

(3) The Authority must, within one month of receiving a notice under subsection (2), send a copy of it to the host state regulator.

(4) The exchange may not make the relevant arrangements until the Authority has complied with subsection (3).

(5) Subsection (6) applies if the Authority receives a request for information—

(a) under the second sub-paragraph of Article 31.6 of the markets in financial instruments directive (in the case of relevant arrangements relating to a multilateral trading facility), or

(b) under the third sub-paragraph of Article 42.6 of that directive (in the case of relevant arrangements relating to a regulated market),

from the host state regulator.

(6) The Authority must, as soon as reasonably practicable, comply with the request.

(7) ”Host state regulator” means the competent authority (within the meaning of Article 4.1.22 of the markets in financial instruments directive) of the EEA State in which the exchange intends to make, or has made, the relevant arrangements.

(8) This section does not apply to an overseas investment exchange.

Interpretation

312D Interpretation of Chapter 3A

In this Chapter—

“the applicable provision” means—

(a) in the case of arrangements relating to a multilateral trading facility, Article 31.5 of the markets in financial instruments directive; and

(b) in the case of arrangements relating to a regulated market, the first sub-paragraph of Article 42.6 of that directive;

“EEA market operator” means a person who is a market operator (within the meaning of Article 4.1.13 of the markets in financial instruments directive) whose home state is an EEA State other than the United Kingdom;

“home state”, in relation to an EEA market operator, means the EEA State in which it has its registered office, or if it has no registered office, its head office;

“home state regulator” means the competent authority (within the meaning of Article 4.1.22 of the markets in financial instruments directive) of the EEA State which is the home state in relation to the EEA market operator concerned.**]**

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CHAPTER IV

Interpretation

313 Interpretation of Part XVIII.

(1) In this Part—

"application" means an application for a recognition order made under section 287 or 288;

"applicant" means a body corporate or unincorporated association which has applied for a recognition order;

[[F154]"OFT"means the Office of Fair Trading;**]**

"overseas applicant" means a body corporate or association which has neither its head office nor its registered office in the United Kingdom and which has applied for a recognition order;

"overseas investment exchange" means a body corporate or association which has neither its head office nor its registered office in the United Kingdom and in relation to which a recognition order is in force;

"overseas clearing house" means a body corporate or association which has neither its head office nor its registered office in the United Kingdom and in relation to which a recognition order is in force;

"recognised body" means a recognised investment exchange or a recognised clearing house;

"recognised clearing house" has the meaning given in section 285;

"recognised investment exchange" has the meaning given in section 285;

"recognition order" means an order made under section 290 or 292;

"recognition requirements" has the meaning given by section 286;

"remedial direction" has the meaning given in section 308(8);

"revocation order" has the meaning given in section 297.

(2) References in this Part to rules of an investment exchange (or a clearing house) are to rules made, or conditions imposed, by the investment exchange (or the clearing house) with respect to—

(a) recognition requirements;

(b) admission of persons to, or their exclusion from the use of, its facilities; or

(c) matters relating to its constitution.

(3) References in this Part to guidance issued by an investment exchange are references to guidance issued, or any recommendation made, in writing or other legible form and intended to have continuing effect, by the investment exchange to—

(a) all or any class of its members or users, or

(b) persons seeking to become members of the investment exchange or to use its facilities,

with respect to any of the matters mentioned in subsection (2)(a) to (c).

(4) References in this Part to guidance issued by a clearing house are to guidance issued, or any recommendation made, in writing or other legible form and intended to have continuing effect, by the clearing house to—

(a) all or any class of its members, or

(b) persons using or seeking to use its services,

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with respect to the provision by it or its members of clearing services.

Textual Amendments

F154 S. 313(1): definition substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(15)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

VALID FROM 01/04/2007

PART 18A

SUSPENSION AND REMOVAL OF FINANCIAL INSTRUMENTS FROM TRADING

313A Authority's power to require suspension or removal of financial instruments from trading

(1) The Authority may, for the purpose of protecting—

(a) the interests of investors, or

(b) the orderly functioning of the financial markets,

require an institution to suspend or remove a financial instrument from trading.

(2) If the Authority exercises the power conferred by subsection (1), the institution concerned or, if any, the issuer of the financial instrument concerned may refer the matter to the Tribunal.

(3) In this section, "trading" includes trading otherwise than on a regulated market or a multilateral trading facility.

313B Suspension or removal of financial instruments from trading: procedure

(1) A requirement imposed on an institution under section 313A (a "relevant requirement") takes effect—

(a) immediately, if the notice given under subsection (2) states that this is the case;

(b) in any other case, on such date as may be specified in the notice.

(2) If the Authority proposes to impose a relevant requirement on an institution, or imposes such a requirement with immediate effect, it must give written notice to—

(a) the institution, and

(b) if any, the issuer of the financial instrument in question.

(3) The notice must—

(a) give details of the relevant requirement;

(b) state the Authority's reasons for imposing the requirement and choosing the date on which it took effect or takes effect;

(c) inform the recipient that he may make representations to the Authority within such period as may be specified by the notice (whether or not he has referred the matter to the Tribunal);

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(d) inform him of the date on which the requirement took effect or takes effect; and

(e) inform him of his right to refer the matter to the Tribunal and give an indication of the procedure on such a reference.

(4) The Authority may extend the period within which representations may be made to it.

(5) If, having considered any representations made to it by the institution or any issuer, the Authority decides—

(a) to impose the relevant requirement proposed, or

(b) if it has been imposed, not to revoke it,

it must give the institution and any issuer written notice.

(6) If, having considered any representations made to it by the institution or any issuer, the Authority decides—

(a) not to impose the relevant requirement proposed, or

(b) to revoke a requirement which has been imposed,

it must give the institution and any issuer written notice.

(7) A notice given under subsection (5) must inform the recipient of his right to refer the matter to the Tribunal.

(8) Subsections (9) and (10) apply if—

(a) the Authority has imposed a relevant requirement on an institution, and

(b) the institution or any issuer of the financial instrument in question has applied for the revocation of the requirement.

(9) If the Authority decides to grant the application, it must give the institution and any issuer written notice of its decision.

(10) If the Authority proposes to refuse the application, it must give the institution and any issuer a warning notice.

(11) If, having considered any representations made in response to the warning notice, the Authority decides to refuse the application, it must give the institution and any issuer a decision notice.

(12) If the Authority gives a decision notice under subsection (11), the recipient may refer the matter to the Tribunal.

VALID FROM 09/04/2010

[F155[Procedure following consideration of representations

F156[313BA

F156(1) This section applies where, within the period specified under section 313B(3), (3A) or (4), representations are made to the Authority in relation to a requirement that it has proposed to impose or has imposed under section 313A.

(2) The Authority must decide whether to impose the requirement or (in the case of a requirement that has been imposed) whether to revoke it.

(3) In the case of a requirement that the Authority has proposed to impose on a class of institutions, the Authority may decide to impose the requirement—

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(a) on the class;
(b) on the class apart from one or more specified members of it; or
(c) only on one or more specified members of the class.

(4) In the case of a requirement that the Authority has imposed on a class of institutions, the Authority may decide to revoke it in relation to—
(a) the class;
(b) the class apart from one or more specified members of it; or
(c) one or more specified members of the class only.

(5) The Authority must give written notice of its decision to—
(a) any institution which has made representations, and
(b) the issuer of the financial instrument in question (if any).

(6) In the case of a requirement that the Authority has proposed to impose or has imposed on a class, the Authority must also give notice of its decision by publishing it by means of a regulatory information service unless the decision is—
(a) to impose the requirement on the class, or
(b) not to revoke the requirement in relation to the class or any member of it.

(7) An institution to which notice is required to be given under subsection (5) may refer the matter to the Tribunal if the Authority's decision is that the requirement will be imposed on, or will continue to apply to, the institution.

(8) An issuer to whom notice is required to be given under subsection (5) may refer the matter to the Tribunal if the Authority's decision is that the requirement will be imposed on, or will continue to apply to, the institution or (in the case of a requirement relating to a class) any of the institutions in the class.

(9) A notice given under subsection (5) must inform the recipient if the recipient has a right to refer the matter to the Tribunal.**]**

Textual Amendments

F155 Pt. 18A inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(3), **Sch. 3 para. 1**

F156 Ss. 313BA-313BE inserted (9.4.2010) by The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 (S.I. 2010/1193), **reg. 4**

VALID FROM 09/04/2010

313BB Revocation of requirements: applications by institutions

(1) This section applies where the Authority has imposed a requirement on an institution or a class of institutions under section 313A.

(2) The institution or any of the institutions in the class may apply to the Authority for the revocation of the requirement.

(3) The Authority must decide whether to revoke the requirement.

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(4) In the case of a requirement imposed on a class of institutions, the Authority may decide to revoke it in relation to—

(a) the class;

(b) the class apart from one or more specified members of it; or

(c) one or more specified members of the class only.

(5) The Authority must give a warning notice if—

(a) in the case of a requirement imposed on an institution, the Authority proposes not to revoke the requirement, or

(b) in the case of a requirement imposed on a class, the Authority proposes to make a decision which would have the effect that the requirement continues to apply to the applicant (whether or not it would have the effect that it continues to apply to other members of the class).

(6) The warning notice must be given to—

(a) the applicant, and

(b) the issuer of the financial instrument in question (if any).

Textual Amendments

F155 Pt. 18A inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(3), **Sch. 3 para. 1**

F156 Ss. 313BA-313BE inserted (9.4.2010) by The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 (S.I. 2010/1193), **reg. 4**

VALID FROM 09/04/2010

313BC Decisions on applications for revocation by institutions

(1) This section applies where, having considered any representations made in response to a warning notice, the Authority has decided whether to grant an application for revocation made under section 313BB.

(2) The Authority must give written notice in accordance with subsection (3) if—

(a) in the case of a requirement imposed on an institution, the Authority decides to revoke the requirement, or

(b) in the case of a requirement imposed on a class, the Authority makes a decision which has the effect that the requirement will no longer apply to the applicant (whether or not it will continue to apply to other members of the class).

(3) The written notice must be given to—

(a) the applicant, and

(b) the issuer of the financial instrument in question (if any).

(4) If the Authority is required to give written notice under subsection (2) in relation to a requirement imposed on a class, the Authority must also give notice of its decision by publishing it by means of a regulatory information service.

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(5) The Authority must give a decision notice in accordance with subsection (6) if—

(a) in the case of a requirement imposed on an institution, the Authority decides not to revoke the requirement, or

(b) in the case of a requirement imposed on a class, the Authority makes a decision which has the effect that the requirement will continue to apply to the applicant (whether or not it will continue to apply to other members of the class).

(6) The decision notice must be given to—

(a) the applicant, and

(b) the issuer of the financial instrument in question (if any).

(7) If the Authority is required to give a decision notice in relation to a requirement imposed on a class, the Authority must also give notice of its decision by publishing it by means of a regulatory information service.

(8) If the Authority gives a decision notice, the recipient may refer the matter to the Tribunal.

Textual Amendments

F155 Pt. 18A inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(3), **Sch. 3 para. 1**

F156 Ss. 313BA-313BE inserted (9.4.2010) by The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 (S.I. 2010/1193), **reg. 4**

VALID FROM 09/04/2010

313BD Revocation of requirements: applications by issuers

(1) This section applies where the Authority has imposed a requirement on an institution or a class of institutions under section 313A.

(2) The issuer of the financial instrument may apply to the Authority for the revocation of the requirement.

(3) The Authority must decide whether to revoke the requirement.

(4) In the case of a requirement imposed on a class of institutions, the Authority may decide to revoke it in relation to—

(a) the class;

(b) the class apart from one or more specified members of it; or

(c) one or more specified members of the class only.

(5) The Authority must give the issuer a warning notice if—

(a) in the case of a requirement imposed on an institution, the Authority proposes not to revoke the requirement, or

(b) in the case of a requirement imposed on a class, the Authority proposes not to revoke the requirement or to revoke it in relation to—

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(i) the class apart from one or more specified members of it, or
(ii) one or more specified members of the class only.

Textual Amendments

F155 Pt. 18A inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(3), **Sch. 3 para. 1**

F156 Ss. 313BA-313BE inserted (9.4.2010) by The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 (S.I. 2010/1193), **reg. 4**

VALID FROM 09/04/2010

313BE Decisions on applications for revocation by issuers

(1) This section applies where, having considered any representations made in response to a warning notice, the Authority has decided whether to grant an application for revocation made under section 313BD.

(2) The Authority must give written notice to the issuer if the Authority decides to revoke the requirement.

(3) If the Authority is required to give written notice under subsection (2) in relation to a requirement imposed on a class, the Authority must also give notice of its decision by publishing it by means of a regulatory information service.

(4) The Authority must give the issuer a decision notice if—
(a) in the case of a requirement imposed on an institution, the Authority decides not to revoke the requirement, or
(b) in the case of a requirement imposed on a class, the Authority decides not to revoke the requirement or makes a decision to revoke the requirement in relation to—
(i) the class apart from one or more specified members of it, or
(ii) one or more specified members of the class only.

(5) If the Authority is required to give a decision notice under subsection (4)(b), it must also give notice of its decision by publishing it by means of a regulatory information service.

(6) If the Authority gives a decision notice under subsection (4), the issuer may refer the matter to the Tribunal.**]]**

Textual Amendments

F155 Pt. 18A inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(3), **Sch. 3 para. 1**

F156 Ss. 313BA-313BE inserted (9.4.2010) by The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 (S.I. 2010/1193), **reg. 4**

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313C Notification in relation to suspension or removal of a financial instrument from trading

(1) If the Authority exercises the power under section 313A(1) in relation to a financial instrument traded on a regulated market, it must as soon as reasonably practicable—

(a) publish its decision in such manner as it considers appropriate, and

(b) inform the competent authorities of all other EEA States of its decision.

(2) If the Authority receives notice from a recognised investment exchange that the exchange has suspended or removed a financial instrument from trading on a regulated market operated by it, the Authority must inform the competent authorities of all other EEA States of the action taken by the exchange.

(3) Subsections (4) and (5) apply if the Authority receives notice from the competent authority of another EEA State that that authority, pursuant to Article 41.2 of the markets in financial instruments directive—

(a) has required the suspension of a financial instrument from trading, or

(b) has required the removal of a financial instrument from trading.

(4) In the case of a notice under subsection (3)(a), the Authority—

(a) must require each recognised investment exchange to suspend the instrument from trading on any regulated market operated by the exchange, and

(b) must require each institution operating a multilateral trading facility to suspend the instrument from trading on that facility,

unless such a step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.

(5) In the case of a notice under subsection (3)(b), the Authority—

(a) must require each recognised investment exchange to remove the instrument from trading on any regulated market operated by the exchange, and

(b) must require each institution operating a multilateral trading facility to remove the instrument from trading on that facility,

unless such a step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.

(6) ”Competent authority” has the meaning given in Article 4.1.22 of the markets in financial instruments directive.

313D Interpretation of Part 18A

In this Part—

“financial instrument” has the meaning given in Article 4.1.17 of the markets in financial instruments directive;

“institution” means—

(a) a recognised investment exchange, other than an overseas investment exchange (within the meaning of Part 18);

(b) an investment firm;

(c) a credit institution authorised under the banking consolidation directive, when carrying on investment services and activities; or

(d) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State,

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but does not include an EEA firm qualifying for authorisation under Schedule 3;

"issuer", in relation to a financial instrument, means the person who issued the instrument;

"multilateral trading facility" has the meaning given in Article 4.1.15 of the markets in financial instruments directive;

"regulated market" has the meaning given in Article 4.1.14 of the markets in financial instruments directive.

PART XIX

LLOYD'S

General

314 Authority's general duty.

(1) The Authority must keep itself informed about—

(a) the way in which the Council supervises and regulates the market at Lloyd's; and

(b) the way in which regulated activities are being carried on in that market.

(2) The Authority must keep under review the desirability of exercising—

(a) any of its powers under this Part;

(b) any powers which it has in relation to the Society as a result of section 315.

The Society

315 The Society: authorisation and permission.

(1) The Society is an authorised person.

(2) The Society has permission to carry on a regulated activity of any of the following kinds—

(a) arranging deals in contracts of insurance written at Lloyd's ("the basic market activity");

(b) arranging deals in participation in Lloyd's syndicates ("the secondary market activity"); and

(c) an activity carried on in connection with, or for the purposes of, the basic or secondary market activity.

(3) For the purposes of Part IV, the Society's permission is to be treated as if it had been given on an application for permission under that Part.

(4) The power conferred on the Authority by section 45 may be exercised in anticipation of the coming into force of the Society's permission (or at any other time).

(5) The Society is not subject to any requirement of this Act concerning the registered office of a body corporate.

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Commencement Information

I101 S. 315 wholly in force at 1.12.2001; s. 315 not in force at Royal Assent see s. 431(2); s. 315(3)-(5) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 315 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Power to apply Act to Lloyd's underwriting

316 Direction by Authority.

(1) The general prohibition or (if the general prohibition is not applied under this section) a core provision applies to the carrying on of an insurance market activity by—

(a) a member of the Society, or

(b) the members of the Society taken together,

only if the Authority so directs.

(2) A direction given under subsection (1) which applies a core provision is referred to in this Part as "an insurance market direction".

(3) In subsection (1)—

"core provision" means a provision of this Act mentioned in section 317; and

"insurance market activity" means a regulated activity relating to contracts of insurance written at Lloyd's.

(4) In deciding whether to give a direction under subsection (1), the Authority must have particular regard to—

(a) the interests of policyholders and potential policyholders;

(b) any failure by the Society to satisfy an obligation to which it is subject as a result of a provision of the law of another EEA State which—

(i) gives effect to any of the insurance directives; and

(ii) is applicable to an activity carried on in that State by a person to whom this section applies;

(c) the need to ensure the effective exercise of the functions which the Authority has in relation to the Society as a result of section 315.

(5) A direction under subsection (1) must be in writing.

(6) A direction under subsection (1) applying the general prohibition may apply it in relation to different classes of person.

(7) An insurance market direction—

(a) must specify each core provision, class of person and kind of activity to which it applies;

(b) may apply different provisions in relation to different classes of person and different kinds of activity.

(8) A direction under subsection (1) has effect from the date specified in it, which may not be earlier than the date on which it is made.

(9) A direction under subsection (1) must be published in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

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(10) The Authority may charge a reasonable fee for providing a person with a copy of the direction.

(11) The Authority must, without delay, give the Treasury a copy of any direction which it gives under this section.

Commencement Information

I102 S. 316 wholly in force at 1.12.2001; s. 316 not in force at Royal Assent see s. 431(2); s. 316(1) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 316 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

317 The core provisions.

(1) The core provisions are Parts V, X, XI, XII, XIV, XV, XVI, XXII and XXIV, sections 384 to 386 and Part XXVI.

(2) References in an applied core provision to an authorised person are (where necessary) to be read as references to a person in the class to which the insurance market direction applies.

(3) An insurance market direction may provide that a core provision is to have effect, in relation to persons to whom the provision is applied by the direction, with modifications.

318 Exercise of powers through Council.

(1) The Authority may give a direction under this subsection to the Council or to the Society (acting through the Council) or to both.

(2) A direction under subsection (1) is one given to the body concerned—

(a) in relation to the exercise of its powers generally with a view to achieving, or in support of, a specified objective; or

(b) in relation to the exercise of a specified power which it has, whether in a specified manner or with a view to achieving, or in support of, a specified objective.

(3) "Specified" means specified in the direction.

(4) A direction under subsection (1) may be given—

(a) instead of giving a direction under section 316(1); or

(b) if the Authority considers it necessary or expedient to do so, at the same time as, or following, the giving of such a direction.

(5) A direction may also be given under subsection (1) in respect of underwriting agents as if they were among the persons mentioned in section 316(1).

(6) A direction under this section—

(a) does not, at any time, prevent the exercise by the Authority of any of its powers;

(b) must be in writing.

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(7) A direction under subsection (1) must be published in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(8) The Authority may charge a reasonable fee for providing a person with a copy of the direction.

(9) The Authority must, without delay, give the Treasury a copy of any direction which it gives under this section.

Commencement Information

I103 S. 318 wholly in force at 1.12.2001; s. 318 not in force at Royal Assent see s. 431(2); s. 318(1) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 318 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

319 Consultation.

(1) Before giving a direction under section 316 or 318, the Authority must publish a draft of the proposed direction.

(2) The draft must be accompanied by—

(a) a cost benefit analysis; and

(b) notice that representations about the proposed direction may be made to the Authority within a specified time.

(3) Before giving the proposed direction, the Authority must have regard to any representations made to it in accordance with subsection (2)(b).

(4) If the Authority gives the proposed direction it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2)(b); and

(b) its response to them.

(5) If the direction differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant—

(a) the Authority must (in addition to complying with subsection (4)) publish details of the difference; and

(b) those details must be accompanied by a cost benefit analysis.

(6) Subsections (1) to (5) do not apply if the Authority considers that the delay involved in complying with them would be prejudicial to the interests of consumers.

(7) Neither subsection (2)(a) nor subsection (5)(b) applies if the Authority considers—

(a) that, making the appropriate comparison, there will be no increase in costs; or

(b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.

(8) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(9) When the Authority is required to publish a document under this section it must do so in the way appearing to it to be best calculated to bring it to the attention of the public.

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(10) "Cost benefit analysis" means an estimate of the costs together with an analysis of the benefits that will arise—

(a) if the proposed direction is given; or

(b) if subsection (5)(b) applies, from the direction that has been given.

(11) "The appropriate comparison" means—

(a) in relation to subsection (2)(a), a comparison between the overall position if the direction is given and the overall position if it is not given;

(b) in relation to subsection (5)(b), a comparison between the overall position after the giving of the direction and the overall position before it was given.

Former underwriting members

320 Former underwriting members.

(1) A former underwriting member may carry out each contract of insurance that he has underwritten at Lloyd's whether or not he is an authorised person.

(2) If he is an authorised person, any Part IV permission that he has does not extend to his activities in carrying out any of those contracts.

(3) The Authority may impose on a former underwriting member such requirements as appear to it to be appropriate for the purpose of protecting policyholders against the risk that he may not be able to meet his liabilities.

(4) A person on whom a requirement is imposed may refer the matter to the Tribunal.

Commencement Information

I104 S. 320 wholly in force at 1.12.2001; s. 320 not in force at Royal Assent see s. 431(2); s. 320(3)(4) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 320 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

321 Requirements imposed under section 320.

(1) A requirement imposed under section 320 takes effect—

(a) immediately, if the notice given under subsection (2) states that that is the case;

(b) in any other case, on such date as may be specified in that notice.

(2) If the Authority proposes to impose a requirement on a former underwriting member ("A") under section 320, or imposes such a requirement on him which takes effect immediately, it must give him written notice.

(3) The notice must—

(a) give details of the requirement;

(b) state the Authority's reasons for imposing it;

(c) inform A that he may make representations to the Authority within such period as may be specified in the notice (whether or not he has referred the matter to the Tribunal);

(d) inform him of the date on which the requirement took effect or will take effect; and

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(e) inform him of his right to refer the matter to the Tribunal.

(4) The Authority may extend the period allowed under the notice for making representations.

(5) If, having considered any representations made by A, the Authority decides—

(a) to impose the proposed requirement, or

(b) if it has been imposed, not to revoke it,

it must give him written notice.

(6) If the Authority decides—

(a) not to impose a proposed requirement, or

(b) to revoke a requirement that has been imposed,

it must give A written notice.

(7) If the Authority decides to grant an application by A for the variation or revocation of a requirement, it must give him written notice of its decision.

(8) If the Authority proposes to refuse an application by A for the variation or revocation of a requirement it must give him a warning notice.

(9) If the Authority, having considered any representations made in response to the warning notice, decides to refuse the application, it must give A a decision notice.

(10) A notice given under—

(a) subsection (5), or

(b) subsection (9) in the case of a decision to refuse the application,

must inform A of his right to refer the matter to the Tribunal.

(11) If the Authority decides to refuse an application for a variation or revocation of the requirement, the applicant may refer the matter to the Tribunal.

(12) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

Commencement Information

I105 S. 321 wholly in force at 1.12.2001; s. 321 not in force at Royal Assent see s. 431(2); s. 321 in force for certain purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 321 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

322 Rules applicable to former underwriting members.

(1) The Authority may make rules imposing such requirements on persons to whom the rules apply as appear to it to be appropriate for protecting policyholders against the risk that those persons may not be able to meet their liabilities.

(2) The rules may apply to—

(a) former underwriting members generally; or

(b) to a class of former underwriting member specified in them.

(3) Section 319 applies to the making of proposed rules under this section as it applies to the giving of a proposed direction under section 316.

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

(4) Part X (except sections 152 to 154) does not apply to rules made under this section.

Commencement Information

I106 S. 322 wholly in force at 1.12.2001; s. 322 not in force at Royal Assent see s. 431(2); s. 322 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 322 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Transfers of business done at Lloyd's

323 Transfer schemes.

The Treasury may by order provide for the application of any provision of Part VII (with or without modification) in relation to schemes for the transfer of the whole or any part of the business carried on by one or more members of the Society or former underwriting members.

Supplemental

324 Interpretation of this Part.

(1) In this Part—

"arranging deals", in relation to the investments to which this Part applies, has the same meaning as in paragraph 3 of Schedule 2;

"former underwriting member" means a person ceasing to be an underwriting member of the Society on, or at any time after, 24 December 1996; and

"participation in Lloyd's syndicates", in relation to the secondary market activity, means the investment described in sub-paragraph (1) of paragraph 21 of Schedule 2.

(2) A term used in this Part which is defined in [M54]Lloyd's Act 1982 has the same meaning as in that Act.

Marginal Citations

M54 1982 c.xiv.

PART XX

PROVISION OF FINANCIAL SERVICES BY MEMBERS OF THE PROFESSIONS

Modifications etc. (not altering text)

C482 Pt. 20 modified (E.W.S.) by S.I. 2000/119, Sch. 4 para. 11 (as substituted (1.7.2009 in accordance with art. 1(1)(c) of S.I. 2009/1587) by S.I. 2009/1587, **art. 3(11)**)

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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325 Authority's general duty.

(1) The Authority must keep itself informed about—

(a) the way in which designated professional bodies supervise and regulate the carrying on of exempt regulated activities by members of the professions in relation to which they are established;

(b) the way in which such members are carrying on exempt regulated activities.

(2) In this Part—

"exempt regulated activities" means regulated activities which may, as a result of this Part, be carried on by members of a profession which is supervised and regulated by a designated professional body without breaching the general prohibition; and

"members", in relation to a profession, means persons who are entitled to practise the profession in question and, in practising it, are subject to the rules of the body designated in relation to that profession, whether or not they are members of that body.

(3) The Authority must keep under review the desirability of exercising any of its powers under this Part.

(4) Each designated professional body must co-operate with the Authority, by the sharing of information and in other ways, in order to enable the Authority to perform its functions under this Part.

Commencement Information

I107 S. 325 wholly in force at 1.12.2001; s. 325 not in force at Royal Assent see s. 431(2); s. 325(4) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 325 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

326 Designation of professional bodies.

(1) The Treasury may by order designate bodies for the purposes of this Part.

(2) A body designated under subsection (1) is referred to in this Part as a designated professional body.

(3) The Treasury may designate a body under subsection (1) only if they are satisfied that—

(a) the basic condition, and

(b) one or more of the additional conditions,

are met in relation to it.

(4) The basic condition is that the body has rules applicable to the carrying on by members of the profession in relation to which it is established of regulated activities which, if the body were to be designated, would be exempt regulated activities.

(5) The additional conditions are that—

(a) the body has power under any enactment to regulate the practice of the profession;

(b) being a member of the profession is a requirement under any enactment for the exercise of particular functions or the holding of a particular office;

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(c) the body has been recognised for the purpose of any enactment other than this Act and the recognition has not been withdrawn;

(d) the body is established in an EEA State other than the United Kingdom and in that State—

(i) the body has power corresponding to that mentioned in paragraph (a);

(ii) there is a requirement in relation to the body corresponding to that mentioned in paragraph (b); or

(iii) the body is recognised in a manner corresponding to that mentioned in paragraph (c).

(6) "Enactment" includes an Act of the Scottish Parliament, Northern Ireland legislation and subordinate legislation (whether made under an Act, an Act of the Scottish Parliament or Northern Ireland legislation).

(7) "Recognised" means recognised by—

(a) a Minister of the Crown;

(b) the Scottish Ministers;

(c) a Northern Ireland Minister;

(d) a Northern Ireland department or its head.

327 Exemption from the general prohibition.

(1) The general prohibition does not apply to the carrying on of a regulated activity by a person ("P") if—

(a) the conditions set out in subsections (2) to (7) are satisfied; and

(b) there is not in force—

(i) a direction under section 328, or

(ii) an order under section 329,

which prevents this subsection from applying to the carrying on of that activity by him.

(2) P must be—

(a) a member of a profession; or

(b) controlled or managed by one or more such members.

(3) P must not receive from a person other than his client any pecuniary reward or other advantage, for which he does not account to his client, arising out of his carrying on of any of the activities.

(4) The manner of the provision by P of any service in the course of carrying on the activities must be incidental to the provision by him of professional services.

(5) P must not carry on, or hold himself out as carrying on, a regulated activity other than—

(a) one which rules made as a result of section 332(3) allow him to carry on; or

(b) one in relation to which he is an exempt person.

(6) The activities must not be of a description, or relate to an investment of a description, specified in an order made by the Treasury for the purposes of this subsection.

(7) The activities must be the only regulated activities carried on by P (other than regulated activities in relation to which he is an exempt person).

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(8) "Professional services" means services—

(a) which do not constitute carrying on a regulated activity, and

(b) the provision of which is supervised and regulated by a designated professional body.

Modifications etc. (not altering text)

C483 S. 327(5)(7) restricted (1.12.2001) by S.I. 2001/544, **arts. 2(1)**, 13(1); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I108 S. 327 wholly in force at 1.12.2001; s. 327 not in force at Royal Assent see s. 431(2); s. 327(6) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 327 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

328 Directions in relation to the general prohibition.

(1) The Authority may direct that section 327(1) is not to apply to the extent specified in the direction.

(2) A direction under subsection (1)—

(a) must be in writing;

(b) may be given in relation to different classes of person or different descriptions of regulated activity.

(3) A direction under subsection (1) must be published in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(4) The Authority may charge a reasonable fee for providing a person with a copy of the direction.

(5) The Authority must, without delay, give the Treasury a copy of any direction which it gives under this section.

[[F157](6) The Authority may exercise the power conferred by subsection (1) only if it is satisfied either—

(a) that it is desirable to do so in order to protect the interests of clients; or

(b) that it is necessary to do so in order to comply with a Community obligation imposed by the insurance mediation directive.**]**

(7) In considering whether it is **[**[F158]satisfied of the matter specified in subsection (6)(a)**]**, the Authority must have regard amongst other things to the effectiveness of any arrangements made by any designated professional body—

(a) for securing compliance with rules made under section 332(1);

(b) for dealing with complaints against its members in relation to the carrying on by them of exempt regulated activities;

(c) in order to offer redress to clients who suffer, or claim to have suffered, loss as a result of misconduct by its members in their carrying on of exempt regulated activities;

(d) for co-operating with the Authority under section 325(4).

(8) In this Part "clients" means—

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(a) persons who use, have used or are or may be contemplating using, any of the services provided by a member of a profession in the course of carrying on exempt regulated activities;

(b) persons who have rights or interests which are derived from, or otherwise attributable to, the use of any such services by other persons; or

(c) persons who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them.

(9) If a member of a profession is carrying on an exempt regulated activity in his capacity as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or are or may be contemplating using services provided by that person in his carrying on of that activity.

Textual Amendments

F157 S. 328(6) substituted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), **reg. 9(a)**

F158 Words in s. 328(7) substituted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), **reg. 9(b)**

329 Orders in relation to the general prohibition.

(1) Subsection (2) applies if it appears to the Authority that a person to whom, as a result of section 327(1), the general prohibition does not apply is not a fit and proper person to carry on regulated activities in accordance with that section.

(2) The Authority may make an order disapplying section 327(1) in relation to that person to the extent specified in the order.

(3) The Authority may, on the application of the person named in an order under subsection (1), vary or revoke it.

(4) "Specified" means specified in the order.

(5) If a partnership is named in an order under this section, the order is not affected by any change in its membership.

(6) If a partnership named in an order under this section is dissolved, the order continues to have effect in relation to any partnership which succeeds to the business of the dissolved partnership.

(7) For the purposes of subsection (6), a partnership is to be regarded as succeeding to the business of another partnership only if—

(a) the members of the resulting partnership are substantially the same as those of the former partnership; and

(b) succession is to the whole or substantially the whole of the business of the former partnership.

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Modifications etc. (not altering text)
C484 S. 329(1) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(4); S.I. 2001/3538, **art. 2(1)**

330 Consultation.

(1) Before giving a direction under section 328(1), the Authority must publish a draft of the proposed direction.

(2) The draft must be accompanied by—
- (a) a cost benefit analysis; and
- (b) notice that representations about the proposed direction may be made to the Authority within a specified time.

(3) Before giving the proposed direction, the Authority must have regard to any representations made to it in accordance with subsection (2)(b).

(4) If the Authority gives the proposed direction it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with subsection (2)(b); and
- (b) its response to them.

(5) If the direction differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant—
- (a) the Authority must (in addition to complying with subsection (4)) publish details of the difference; and
- (b) those details must be accompanied by a cost benefit analysis.

(6) Subsections (1) to (5) do not apply if the Authority considers that the delay involved in complying with them would prejudice the interests of consumers.

(7) Neither subsection (2)(a) nor subsection (5)(b) applies if the Authority considers—
- (a) that, making the appropriate comparison, there will be no increase in costs; or
- (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.

(8) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(9) When the Authority is required to publish a document under this section it must do so in the way appearing to it to be best calculated to bring it to the attention of the public.

(10) "Cost benefit analysis" means an estimate of the costs together with an analysis of the benefits that will arise—
- (a) if the proposed direction is given; or
- (b) if subsection (5)(b) applies, from the direction that has been given.

(11) "The appropriate comparison" means—
- (a) in relation to subsection (2)(a), a comparison between the overall position if the direction is given and the overall position if it is not given;
- (b) in relation to subsection (5)(b), a comparison between the overall position after the giving of the direction and the overall position before it was given.

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331 Procedure on making or varying orders under section 329.

(1) If the Authority proposes to make an order under section 329, it must give the person concerned a warning notice.

(2) The warning notice must set out the terms of the proposed order.

(3) If the Authority decides to make an order under section 329, it must give the person concerned a decision notice.

(4) The decision notice must—

(a) name the person to whom the order applies;

(b) set out the terms of the order; and

(c) be given to the person named in the order.

(5) Subsections (6) to (8) apply to an application for the variation or revocation of an order under section 329.

(6) If the Authority decides to grant the application, it must give the applicant written notice of its decision.

(7) If the Authority proposes to refuse the application, it must give the applicant a warning notice.

(8) If the Authority decides to refuse the application, it must give the applicant a decision notice.

(9) A person—

(a) against whom the Authority have decided to make an order under section 329, or

(b) whose application for the variation or revocation of such an order the Authority had decided to refuse,

may refer the matter to the Tribunal.

(10) The Authority may not make an order under section 329 unless—

(a) the period within which the decision to make to the order may be referred to the Tribunal has expired and no such reference has been made; or

(b) if such a reference has been made, the reference has been determined.

332 Rules in relation to persons to whom the general prohibition does not apply.

(1) The Authority may make rules applicable to persons to whom, as a result of section 327(1), the general prohibition does not apply.

(2) The power conferred by subsection (1) is to be exercised for the purpose of ensuring that clients are aware that such persons are not authorised persons.

(3) A designated professional body must make rules—

(a) applicable to members of the profession in relation to which it is established who are not authorised persons; and

(b) governing the carrying on by those members of regulated activities (other than regulated activities in relation to which they are exempt persons).

(4) Rules made in compliance with subsection (3) must be designed to secure that, in providing a particular professional service to a particular client, the member carries

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on only regulated activities which arise out of, or are complementary to, the provision by him of that service to that client.

(5) Rules made by a designated professional body under subsection (3) require the approval of the Authority.

Modifications etc. (not altering text)
C485 S. 332(3)(b) restricted (1.12.2001) by S.I. 2001/544, **arts. 2(1)**, 13(1); S.I. 2001/3538, **art. 2(1)**

333 False claims to be a person to whom the general prohibition does not apply.

(1) A person who—

(a) describes himself (in whatever terms) as a person to whom the general prohibition does not apply, in relation to a particular regulated activity, as a result of this Part, or

(b) behaves, or otherwise holds himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is such a person,

is guilty of an offence if he is not such a person.

(2) In proceedings for an offence under this section it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.

(4) But where the conduct constituting the offence involved or included the public display of any material, the maximum fine for the offence is level 5 on the standard scale multiplied by the number of days for which the display continued.

PART XXI

MUTUAL SOCIETIES

Friendly societies

334 The Friendly Societies Commission.

(1) The Treasury may by order provide—

(a) for any functions of the Friendly Societies Commission to be transferred to the Authority;

(b) for any functions of the Friendly Societies Commission which have not been, or are not being, transferred to the Authority to be transferred to the Treasury.

(2) If the Treasury consider it appropriate to do so, they may by order provide for the Friendly Societies Commission to cease to exist on a day specified in or determined in accordance with the order.

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(3) The enactments relating to friendly societies which are mentioned in Part I of Schedule 18 are amended as set out in that Part.

(4) Part II of Schedule 18—

(a) removes certain restrictions on the ability of incorporated friendly societies to form subsidiaries and control corporate bodies; and

(b) makes connected amendments.

Commencement Information

I109 S. 334 wholly in force at 1.12.2001; s. 334 not in force at Royal Assent see s. 431(2); s. 334(1)(2) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 334 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

335 The Registry of Friendly Societies.

(1) The Treasury may by order provide—

(a) for any functions of the Chief Registrar of Friendly Societies, or of an assistant registrar of friendly societies for the central registration area, to be transferred to the Authority;

(b) for any of their functions which have not been, or are not being, transferred to the Authority to be transferred to the Treasury.

(2) The Treasury may by order provide—

(a) for any functions of the central office of the registry of friendly societies to be transferred to the Authority;

(b) for any functions of that office which have not been, or are not being, transferred to the Authority to be transferred to the Treasury.

(3) The Treasury may by order provide—

(a) for any functions of the assistant registrar of friendly societies for Scotland to be transferred to the Authority;

(b) for any functions of the assistant registrar which have not been, or are not being, transferred to the Authority to be transferred to the Treasury.

(4) If the Treasury consider it appropriate to do so, they may by order provide for—

(a) the office of Chief Registrar of Friendly Societies,

(b) the office of assistant registrar of friendly societies for the central registration area,

(c) the central office, or

(d) the office of assistant registrar of friendly societies for Scotland,

to cease to exist on a day specified in or determined in accordance with the order.

Building societies

336 The Building Societies Commission.

(1) The Treasury may by order provide—

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(a) for any functions of the Building Societies Commission to be transferred to the Authority;

(b) for any functions of the Building Societies Commission which have not been, or are not being, transferred to the Authority to be transferred to the Treasury.

(2) If the Treasury consider it appropriate to do so, they may by order provide for the Building Societies Commission to cease to exist on a day specified in or determined in accordance with the order.

(3) The enactments relating to building societies which are mentioned in Part III of Schedule 18 are amended as set out in that Part.

Commencement Information

I110 S. 336 wholly in force at 1.12.2001; s. 336 not in force at Royal Assent see s. 431(2); s. 336(1)(2) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 336 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

337 The Building Societies Investor Protection Board.

The Treasury may by order provide for the Building Societies Investor Protection Board to cease to exist on a day specified in or determined in accordance with the order.

Industrial and provident societies and credit unions

338 Industrial and provident societies and credit unions.

(1) The Treasury may by order provide for the transfer to the Authority of any functions conferred by—

(a) the [M55]Industrial and Provident Societies Act 1965;

(b) the [M56]Industrial and Provident Societies Act 1967;

(c) the [M57]Friendly and Industrial and Provident Societies Act 1968;

(d) the [M58]Industrial and Provident Societies Act 1975;

(e) the [M59]Industrial and Provident Societies Act 1978;

(f) the [M60]Credit Unions Act 1979.

(2) The Treasury may by order provide for the transfer to the Treasury of any functions under those enactments which have not been, or are not being, transferred to the Authority.

(3) The enactments relating to industrial and provident societies which are mentioned in Part IV of Schedule 18 are amended as set out in that Part.

(4) The enactments relating to credit unions which are mentioned in Part V of Schedule 18 are amended as set out in that Part.

Commencement Information

I111 S. 388 wholly in force at 1.12.2001; s. 388 not in force at Royal Assent see s. 431(2); s. 338(1)(2) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 388 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

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Marginal Citations

M55 1965 c. 12.
M56 1967 c. 48.
M57 1968 c. 55.
M58 1975 c. 41.
M59 1978 c. 34.
M60 1979 c. 34.

Supplemental

339 Supplemental provisions.

(1) The additional powers conferred by section 428 on a person making an order under this Act include power for the Treasury, when making an order under section 334, 335, 336 or 338 which transfers functions, to include provision—

(a) for the transfer of any functions of a member of the body, or servant or agent of the body or person, whose functions are transferred by the order;

(b) for the transfer of any property, rights or liabilities held, enjoyed or incurred by any person in connection with transferred functions;

(c) for the carrying on and completion by or under the authority of the person to whom functions are transferred of any proceedings, investigations or other matters commenced, before the order takes effect, by or under the authority of the person from whom the functions are transferred;

(d) amending any enactment relating to transferred functions in connection with their exercise by, or under the authority of, the person to whom they are transferred;

(e) for the substitution of the person to whom functions are transferred for the person from whom they are transferred, in any instrument, contract or legal proceedings made or begun before the order takes effect.

(2) The additional powers conferred by section 428 on a person making an order under this Act include power for the Treasury, when making an order under section 334(2), 335(4), 336(2) or 337, to include provision—

(a) for the transfer of any property, rights or liabilities held, enjoyed or incurred by any person in connection with the office or body which ceases to have effect as a result of the order;

(b) for the carrying on and completion by or under the authority of such person as may be specified in the order of any proceedings, investigations or other matters commenced, before the order takes effect, by or under the authority of the person whose office, or the body which, ceases to exist as a result of the order;

(c) amending any enactment which makes provision with respect to that office or body;

(d) for the substitution of the Authority, the Treasury or such other body as may be specified in the order in any instrument, contract or legal proceedings made or begun before the order takes effect.

(3) On or after the making of an order under any of sections 334 to 338 ("the original order"), the Treasury may by order make any incidental, supplemental, consequential or transitional provision which they had power to include in the original order.

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(4) A certificate issued by the Treasury that property vested in a person immediately before an order under this Part takes effect has been transferred as a result of the order is conclusive evidence of the transfer.

(5) Subsections (1) and (2) are not to be read as affecting in any way the powers conferred by section 428.

PART XXII

AUDITORS AND ACTUARIES

Modifications etc. (not altering text)
C486 Pt. 22 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(b), 62, **Sch. 3 para. 5** (with reg. 3) (as amended (1.4.2013) by S.I. 2013/472, **Sch. 2 para. 196(5)(e)** and (18.9.2023) by S.I. 2023/790, regs. 1(2)(a), **2(3)(b)**)

Appointment

340 Appointment.

(1) Rules may require an authorised person, or an authorised person falling within a specified class—

(a) to appoint an auditor, or

(b) to appoint an actuary,

if he is not already under an obligation to do so imposed by another enactment.

(2) Rules may require an authorised person, or an authorised person falling within a specified class—

(a) to produce periodic financial reports; and

(b) to have them reported on by an auditor or an actuary.

(3) Rules may impose such other duties on auditors of, or actuaries acting for, authorised persons as may be specified.

(4) Rules under subsection (1) may make provision—

(a) specifying the manner in which and time within which an auditor or actuary is to be appointed;

(b) requiring the Authority to be notified of an appointment;

(c) enabling the Authority to make an appointment if no appointment has been made or notified;

(d) as to remuneration;

(e) as to the term of office, removal and resignation of an auditor or actuary.

(5) An auditor or actuary appointed as a result of rules under subsection (1), or on whom duties are imposed by rules under subsection (3)—

(a) must act in accordance with such provision as may be made by rules; and

(b) is to have such powers in connection with the discharge of his functions as may be provided by rules.

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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) In subsections (1) to (3) "auditor" or "actuary" means an auditor, or actuary, who satisfies such requirements as to qualifications, experience and other matters (if any) as may be specified.

(7) "Specified" means specified in rules.

Information

341 Access to books etc.

(1) An appointed auditor of, or an appointed actuary acting for, an authorised person—

(a) has a right of access at all times to the authorised person's books, accounts and vouchers; and

(b) is entitled to require from the authorised person's officers such information and explanations as he reasonably considers necessary for the performance of his duties as auditor or actuary.

(2) "Appointed" means appointed under or as a result of this Act.

Modifications etc. (not altering text)

C487 Ss. 341-346 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 4** (with reg. 3)

342 Information given by auditor or actuary to the Authority.

(1) This section applies to a person who is, or has been, an auditor of an authorised person appointed under or as a result of a statutory provision.

(2) This section also applies to a person who is, or has been, an actuary acting for an authorised person and appointed under or as a result of a statutory provision.

(3) An auditor or actuary does not contravene any duty to which he is subject merely because he gives to the Authority—

(a) information on a matter of which he has, or had, become aware in his capacity as auditor of, or actuary acting for, the authorised person, or

(b) his opinion on such a matter,

if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the Authority.

(4) Subsection (3) applies whether or not the auditor or actuary is responding to a request from the Authority.

(5) The Treasury may make regulations prescribing circumstances in which an auditor or actuary must communicate matters to the Authority as mentioned in subsection (3).

(6) It is the duty of an auditor or actuary to whom any such regulations apply to communicate a matter to the Authority in the circumstances prescribed by the regulations.

(7) The matters to be communicated to the Authority in accordance with the regulations may include matters relating to persons other than the authorised person concerned.

Status: *Point in time view as at 01/07/2005. 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)

C488 Ss. 341-346 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 4** (with reg. 3)

Commencement Information

I112 S. 342 wholly in force at 1.12.2001; s. 342 not in force at Royal Assent see s. 431(2); s. 342(5) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 342 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

343 Information given by auditor or actuary to the Authority: persons with close links.

(1) This section applies to a person who—

(a) is, or has been, an auditor of an authorised person appointed under or as a result of a statutory provision; and

(b) is, or has been, an auditor of a person ("CL") who has close links with the authorised person.

(2) This section also applies to a person who—

(a) is, or has been, an actuary acting for an authorised person and appointed under or as a result of a statutory provision; and

(b) is, or has been, an actuary acting for a person ("CL") who has close links with the authorised person.

(3) An auditor or actuary does not contravene any duty to which he is subject merely because he gives to the Authority—

(a) information on a matter concerning the authorised person of which he has, or had, become aware in his capacity as auditor of, or actuary acting for, CL, or

(b) his opinion on such a matter,

if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the Authority.

(4) Subsection (3) applies whether or not the auditor or actuary is responding to a request from the Authority.

(5) The Treasury may make regulations prescribing circumstances in which an auditor or actuary must communicate matters to the Authority as mentioned in subsection (3).

(6) It is the duty of an auditor or actuary to whom any such regulations apply to communicate a matter to the Authority in the circumstances prescribed by the regulations.

(7) The matters to be communicated to the Authority in accordance with the regulations may include matters relating to persons other than the authorised person concerned.

(8) CL has close links with the authorised person concerned ("A") if CL is—

(a) a parent undertaking of A;

(b) a subsidiary undertaking of A;

(c) a parent undertaking of a subsidiary undertaking of A; or

(d) a subsidiary undertaking of a parent undertaking of A.

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(9) "Subsidiary undertaking" includes all the instances mentioned in Article 1(1) and (2) of the Seventh Company Law Directive in which an entity may be a subsidiary of an undertaking.

Modifications etc. (not altering text)

C489 Ss. 341-346 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 4** (with reg. 3)

Commencement Information

I113 S. 343 wholly in force at 1.12.2001; s. 343 not in force at Royal Assent see s. 431(2); s. 343(5) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 343 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

344 Duty of auditor or actuary resigning etc. to give notice.

(1) This section applies to an auditor or actuary to whom section 342 applies.

(2) He must without delay notify the Authority if he—

(a) is removed from office by an authorised person;

(b) resigns before the expiry of his term of office with such a person; or

(c) is not re-appointed by such a person.

(3) If he ceases to be an auditor of, or actuary acting for, such a person, he must without delay notify the Authority—

(a) of any matter connected with his so ceasing which he thinks ought to be drawn to the Authority's attention; or

(b) that there is no such matter.

Modifications etc. (not altering text)

C490 Ss. 341-346 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 4** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 155(6)(d)** (with Sch. 2 para. 156))

Disqualification

345 Disqualification.

(1) If it appears to the Authority that an auditor or actuary to whom section 342 applies has failed to comply with a duty imposed on him under this Act, it may disqualify him from being the auditor of, or (as the case may be) from acting as an actuary for, any authorised person or any particular class of authorised person.

(2) If the Authority proposes to disqualify a person under this section it must give him a warning notice.

(3) If it decides to disqualify him it must give him a decision notice.

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(4) The Authority may remove any disqualification imposed under this section if satisfied that the disqualified person will in future comply with the duty in question.

(5) A person who has been disqualified under this section may refer the matter to the Tribunal.

Modifications etc. (not altering text)

C491 S. 345 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 78; S.I. 2001/3538, **art. 2(1)**
S. 345 amended (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 19 (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 345 amended (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 19; S.I. 2001/3538, **art. 2(1)**

C492 Ss. 341-346 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 4** (with reg. 3)

Offence

346 Provision of false or misleading information to auditor or actuary.

(1) An authorised person who knowingly or recklessly gives an appointed auditor or actuary information which is false or misleading in a material particular is guilty of an offence and liable—

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

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

(2) Subsection (1) applies equally to an officer, controller or manager of an authorised person.

(3) "Appointed" means appointed under or as a result of this Act.

Modifications etc. (not altering text)

C493 Ss. 341-346 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 4** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 155(6)(d)** (with Sch. 2 para. 156))

PART XXIII

PUBLIC RECORD, DISCLOSURE OF INFORMATION AND CO-OPERATION

The public record

347 The record of authorised persons etc.

(1) The Authority must maintain a record of every—

(a) person who appears to the Authority to be an authorised person;

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(b) authorised unit trust scheme;
(c) authorised open-ended investment company;
(d) recognised scheme;
(e) recognised investment exchange;
(f) recognised clearing house;
(g) individual to whom a prohibition order relates;
(h) approved person; and
(i) person falling within such other class (if any) as the Authority may determine.

(2) The record must include such information as the Authority considers appropriate and at least the following information—
(a) in the case of a person appearing to the Authority to be an authorised person—
(i) information as to the services which he holds himself out as able to provide; and
(ii) any address of which the Authority is aware at which a notice or other document may be served on him;
(b) in the case of an authorised unit trust scheme, the name and address of the manager and trustee of the scheme;
(c) in the case of an authorised open-ended investment company, the name and address of—
(i) the company;
(ii) if it has only one director, the director; and
(iii) its depositary (if any);
(d) in the case of a recognised scheme, the name and address of—
(i) the operator of the scheme; and
(ii) any representative of the operator in the United Kingdom;
(e) in the case of a recognised investment exchange or recognised clearing house, the name and address of the exchange or clearing house;
(f) in the case of an individual to whom a prohibition order relates—
(i) his name; and
(ii) details of the effect of the order;
(g) in the case of a person who is an approved person—
(i) his name;
(ii) the name of the relevant authorised person;
(iii) if the approved person is performing a controlled function under an arrangement with a contractor of the relevant authorised person, the name of the contractor.

(3) If it appears to the Authority that a person in respect of whom there is an entry in the record as a result of one of the paragraphs of subsection (1) has ceased to be a person to whom that paragraph applies, the Authority may remove the entry from the record.

(4) But if the Authority decides not to remove the entry, it must—
(a) make a note to that effect in the record; and
(b) state why it considers that the person has ceased to be a person to whom that paragraph applies.

(5) The Authority must—

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(a) make the record available for inspection by members of the public in a legible form at such times and in such place or places as the Authority may determine; and

(b) provide a certified copy of the record, or any part of it, to any person who asks for it—

(i) on payment of the fee (if any) fixed by the Authority; and

(ii) in a form (either written or electronic) in which it is legible to the person asking for it.

(6) The Authority may—

(a) publish the record, or any part of it;

(b) exploit commercially the information contained in the record, or any part of that information.

(7) "Authorised unit trust scheme", "authorised open-ended investment company" and "recognised scheme" have the same meaning as in Part XVII, and associated expressions are to be read accordingly.

(8) "Approved person" means a person in relation to whom the Authority has given its approval under section 59 and "controlled function" and "arrangement" have the same meaning as in that section.

(9) "Relevant authorised person" has the meaning given in section 66.

Modifications etc. (not altering text)

C494 S. 347(1)(a) disapplied (temp. from 31.10.2004 until 30.4.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 9**

C495 S. 347(1)(a) disapplied (temp. from 14.1.2005 until 14.7.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004, (S.I. 2004/3351), arts. 1(2)(b), 5, {Sch. para. 8}

C496 S. 347(1)(h) disapplied (temp. from 31.10.2004 until 30.4.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 10**

C497 S. 347(1)(h) disapplied (temp. from 14.1.2005 until 14.7.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004, (S.I. 2004/3351), arts. 1(2)(b), 5, {Sch. para. 9}

Commencement Information

I114 S. 347 partly in force; s. 347 not in force at Royal Assent see s. 431(2); s. 347(3)-(9) in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**; s. 347(1)(2) in force for specified purposes at 1.12.2001, 1.5.2002, 1.8.2002, 1.12.2002 by S.I. 2001/3528, **art. 2(1)(3)**

Disclosure of information

348 Restrictions on disclosure of confidential information by Authority etc.

(1) Confidential information must not be disclosed by a primary recipient, or by any person obtaining the information directly or indirectly from a primary recipient, without the consent of—

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(a) the person from whom the primary recipient obtained the information; and
(b) if different, the person to whom it relates.

(2) In this Part "confidential information" means information which—
(a) relates to the business or other affairs of any person;
(b) was received by the primary recipient for the purposes of, or in the discharge of, any functions of the Authority, the competent authority for the purposes of Part VI or the Secretary of State under any provision made by or under this Act; and
(c) is not prevented from being confidential information by subsection (4).

(3) It is immaterial for the purposes of subsection (2) whether or not the information was received—
(a) by virtue of a requirement to provide it imposed by or under this Act;
(b) for other purposes as well as purposes mentioned in that subsection.

(4) Information is not confidential information if—
(a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section; or
(b) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.

(5) Each of the following is a primary recipient for the purposes of this Part—
(a) the Authority;
(b) any person exercising functions conferred by Part VI on the competent authority;
(c) the Secretary of State;
(d) a person appointed to make a report under section 166;
(e) any person who is or has been employed by a person mentioned in paragraphs (a) to (c);
(f) any auditor or expert instructed by a person mentioned in those paragraphs.

(6) In subsection (5)(f) "expert" includes—
(a) a competent person appointed by the competent authority under section 97;
(b) a competent person appointed by the Authority or the Secretary of State to conduct an investigation under Part XI;
(c) any body or person appointed under paragraph 6 of Schedule 1 to perform a function on behalf of the Authority.

Modifications etc. (not altering text)

C498 S. 348 extended (1.12.2001) by S.I. 2001/3648, **arts. 1**, 3(2), 4, 5(2), 7(2)
S. 348 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, **s. 53A** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 152**); S.I. 2001/3538, **art. 2(1)**
S. 348 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, **s. 63A(1)** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. I para. 78**); S.I. 2001/3538, **art. 2(1)**

C499 S. 348 applied (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), **regs. 16(2)**, **50(3)** (with reg. 3)

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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C500 S. 348 modified (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), **reg. 50(4)** (with reg. 3)
C501 S. 348 applied (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), **reg. 16(2)(3)** (with reg. 3)
C502 S. 348 applied (with modifications) (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), **reg. 50(3)-(6)** (with reg. 3)
C503 S. 348 applied (with modifications) (5.5.2004) by The Credit Institutions (Reorganisation and Winding up) Regulations 2004 (S.I. 2004/1045), **regs. 18**, **38**
C504 S. 348 excluded (20.5.2006) by The Takeovers Directive (Interim Implementation) Regulations 2006 (S.I. 2006/1183), **reg. 18(1)**
C505 S. 348 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 43**
C506 S. 348 applied (with modifications) (2.3.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(a), 95, **Sch. 5 para. 5** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 155(6)(e)** (with Sch. 2 para. 156))
C507 S. 348 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. para. 4**
C508 S. 348(1) restricted (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), **regs. 16(3)**, **50(5)** (with reg. 3)

349 Exceptions from section 348.

(1) Section 348 does not prevent a disclosure of confidential information which is—

(a) made for the purpose of facilitating the carrying out of a public function; and

(b) permitted by regulations made by the Treasury under this section.

(2) The regulations may, in particular, make provision permitting the disclosure of confidential information or of confidential information of a prescribed kind—

(a) by prescribed recipients, or recipients of a prescribed description, to any person for the purpose of enabling or assisting the recipient to discharge prescribed public functions;

(b) by prescribed recipients, or recipients of a prescribed description, to prescribed persons, or persons of prescribed descriptions, for the purpose of enabling or assisting those persons to discharge prescribed public functions;

(c) by the Authority to the Treasury or the Secretary of State for any purpose;

(d) by any recipient if the disclosure is with a view to or in connection with prescribed proceedings.

(3) The regulations may also include provision—

(a) making any permission to disclose confidential information subject to conditions (which may relate to the obtaining of consents or any other matter);

(b) restricting the uses to which confidential information disclosed under the regulations may be put.

(4) In relation to confidential information, each of the following is a "recipient"—

(a) a primary recipient;

(b) a person obtaining the information directly or indirectly from a primary recipient.

(5) "Public functions" includes—

(a) functions conferred by or in accordance with any provision contained in any enactment or subordinate legislation;

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(b) functions conferred by or in accordance with any provision contained in the Community Treaties or any Community instrument;

(c) similar functions conferred on persons by or under provisions having effect as part of the law of a country or territory outside the United Kingdom;

(d) functions exercisable in relation to prescribed disciplinary proceedings.

(6) "Enactment" includes—

(a) an Act of the Scottish Parliament;

(b) Northern Ireland legislation.

(7) "Subordinate legislation" has the meaning given in the [M61]Interpretation Act 1978 and also includes an instrument made under an Act of the Scottish Parliament or under Northern Ireland legislation.

Modifications etc. (not altering text)

C509 S. 349 extended (1.12.2001) by S.I. 2001/3648, **arts. 1**, 3(2), 4, 5(2), 7(2)
S. 349 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, **s. 53A** as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 152**; S.I. 2001/3538, **art. 2(1)**
S. 349 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40 (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. I para. 78**; S.I. 2001/3538, **art. 2(1)**

C510 S. 349 applied (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), **regs. 16(2)**, **50(3)** (with reg. 3)

C511 S. 349 modified (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), **reg. 50(4)** (with reg. 3)

C512 S. 349 applied (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), **reg. 16(2)(3)** (with reg. 3)

C513 S. 349 applied (with modifications) (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), **reg. 50(3)-(6)** (with reg. 3)

C514 S. 349 applied (with modifications) (5.5.2004) by The Credit Institutions (Reorganisation and Winding up) Regulations 2004 (S.I. 2004/1045), **regs. 18**, **38**

Commencement Information

I115 S. 349 wholly in force at 18.6.2001; s. 349 not in force at Royal Assent see s. 431(2); s. 349 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 349 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**

Marginal Citations

M61 1978 c. 30.

350 Disclosure of information by the Inland Revenue.

(1) No obligation as to secrecy imposed by statute or otherwise prevents the disclosure of Revenue information to—

(a) the Authority, or

(b) the Secretary of State,

if the disclosure is made for the purpose of assisting in the investigation of a matter under section 168 or with a view to the appointment of an investigator under that section.

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(2) A disclosure may only be made under subsection (1) by or under the authority of the Commissioners of Inland Revenue.

(3) Section 348 does not apply to Revenue information.

(4) Information obtained as a result of subsection (1) may not be used except—

(a) for the purpose of deciding whether to appoint an investigator under section 168;

(b) in the conduct of an investigation under section 168;

(c) in criminal proceedings brought against a person under this Act or the [M62]Criminal Justice Act 1993 as a result of an investigation under section 168;

(d) for the purpose of taking action under this Act against a person as a result of an investigation under section 168;

(e) in proceedings before the Tribunal as a result of action taken as mentioned in paragraph (d).

(5) Information obtained as a result of subsection (1) may not be disclosed except—

(a) by or under the authority of the Commissioners of Inland Revenue;

(b) in proceedings mentioned in subsection (4)(c) or (e) or with a view to their institution.

(6) Subsection (5) does not prevent the disclosure of information obtained as a result of subsection (1) to a person to whom it could have been disclosed under subsection (1).

(7) "Revenue information" means information held by a person which it would be an offence under section 182 of the [M63]Finance Act 1989 for him to disclose.

Modifications etc. (not altering text)

C515 S. 350 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, **s. 53A** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 152**); S.I. 2001/3538, **art. 2(1)**
S. 350 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, **s. 63A** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. I para. 78**); S.I. 2001/3538, **art. 2(1)**

C516 S. 350 restricted (7.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 17(6), 53(1), **Sch. 2 Pt. 2 para. 18** (with s. 22); S.I. 2005/1126, **art. 2(1)**

Commencement Information

I116 S. 350 wholly in force 3.9.2001; s. 350 not in force at Royal Assent see s. 431(2); s. 350(3)(7) in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 350 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**

Marginal Citations

M62 1993 c. 36.

M63 1989 c. 26.

351 Competition information.

(1) [F159] . . . . . .

(2) [F159] . . . . . .

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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(3) F159 . . . . . .

(4) Section 348 does not apply to competition information.

(5) "Competition information" means information which—

(a) relates to the affairs of a particular individual or body;

(b) is not otherwise in the public domain; and

(c) was obtained under or by virtue of a competition provision.

(6) "Competition provision" means any provision of—

(a) an order made under section 95;

(b) Chapter III of Part X; or

(c) Chapter II of Part XVIII.

(7) F160 . . . . . .

Textual Amendments

F159 S. 351(1)-(3) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), **ss. 247(k)**, 278(2), 279, **Sch. 26** (with s. 237); S.I. 2003/1397, **art. 2(1)**, Sch.

F160 S. 351(7) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), **ss. 247(k)**, 278(2), 279, **Sch. 26** (with s. 237); S.I. 2003/1397, **art. 2(1)**, Sch.

Modifications etc. (not altering text)

C517 S. 351 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, **s. 53A** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 152**); S.I. 2001/3538, **art. 2(1)**
S. 351 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, **s. 63A** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. I para. 78**); S.I. 2001/3538, **art. 2(1)**

C518 S. 351 applied (2.3.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(a), 95, **Sch. 5 para. 5** (with reg. 3)

C519 S. 351 applied (9.2.2011 for certain purposes and 30.4.2011 otherwise) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xiv)(b), 62, **Sch. 3 para. 6** (with reg. 3)

Commencement Information

I117 S. 351 wholly in force at 18.6.2001; s. 351 not in force at Royal Assent see s. 431(2); s. 351(7) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 351 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**

VALID FROM 01/07/2011

[F161[F161351A Disclosure under the UCITS directive

(1) This section applies in relation to a disclosure made by a person who falls within subsection (2) for the purpose of compliance with requirements set out in rules made by the Authority to implement Chapter VIII of the UCITS directive.

(2) The following persons fall within this subsection—

(a) the auditor of an authorised unit trust scheme that is a master UCITS;

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(b) the trustee of an authorised unit trust scheme that is a master UCITS;
(c) the auditor of an authorised unit trust scheme that is a feeder UCITS;
(d) the trustee of an authorised unit trust scheme that is a feeder UCITS; or
(e) a person acting on behalf of a person within paragraph (a), (b), (c) or (d) above.

(3) A disclosure to which this section applies is not to be taken as a contravention of any duty to which the person making the disclosure is subject.

(4) In this section, "authorised unit trust scheme", "master UCITS" and "feeder UCITS" have the meaning given in section 237.**]]**

Textual Amendments

F161 S. 351A inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(28)**

352 Offences.

(1) A person who discloses information in contravention of section 348 or 350(5) is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable—
(a) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(3) A person is guilty of an offence if, in contravention of any provision of regulations made under section 349, he uses information which has been disclosed to him in accordance with the regulations.

(4) A person is guilty of an offence if, in contravention of subsection (4) of section 350, he uses information which has been disclosed to him in accordance with that section.

(5) A person guilty of an offence under subsection (3) or (4) is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.

(6) In proceedings for an offence under this section it is a defence for the accused to prove—
(a) that he did not know and had no reason to suspect that the information was confidential information or that it had been disclosed in accordance with section 350;
(b) that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Modifications etc. (not altering text)

C520 S. 352 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, **s. 53A** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 152**); S.I. 2001/3538, **art. 2(1)**

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S. 352 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, **s. 63A** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. I para. 78**; S.I. 2001/3538, **art. 2(1)**
S. 352 extended (1.12.2001) by S.I. 2001/3648, **arts. 1**, 3(2)

C521 S. 352 applied (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), **regs. 16(2)**, **50(3)** (with reg. 3)

C522 S. 352 modified (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), **reg. 50(4)** (with reg. 3)

C523 S. 352 applied (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), **reg. 16(2)(3)** (with reg. 3)

C524 S. 352 applied (with modifications) (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), **reg. 50(3)-(6)** (with reg. 3)

C525 S. 352 applied (with modifications) (5.5.2004) by The Credit Institutions (Reorganisation and Winding up) Regulations 2004 (S.I. 2004/1045), **regs. 18**, **38**

C526 S. 352 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 43**

C527 S. 352 applied (2.3.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(a), 95, **Sch. 5 para. 5** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 155(6)(e)** (with Sch. 2 para. 156))

C528 S. 352 applied (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. para. 4**

C529 S. 352 applied (9.2.2011 for certain purposes and 30.4.2011 otherwise) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xiv)(b), 62, **Sch. 3 para. 6** (with reg. 3)

Commencement Information

I118 S. 352 wholly in force at 3.9.2001; s. 352 not in force at Royal Assent see s. 431(2); s. 352 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 352 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**

353 Removal of other restrictions on disclosure.

(1) The Treasury may make regulations permitting the disclosure of any information, or of information of a prescribed kind—

(a) by prescribed persons for the purpose of assisting or enabling them to discharge prescribed functions under this Act or any rules or regulations made under it;

(b) by prescribed persons, or persons of a prescribed description, to the Authority for the purpose of assisting or enabling the Authority to discharge prescribed functions.

(2) Regulations under this section may not make any provision in relation to the disclosure of confidential information by primary recipients or by any person obtaining confidential information directly or indirectly from a primary recipient.

(3) If a person discloses any information as permitted by regulations under this section the disclosure is not to be taken as a contravention of any duty to which he is subject.

Modifications etc. (not altering text)

C530 S. 353 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, **s. 53A** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 152**); S.I. 2001/3538, **art. 2(1)**

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S. 353 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, 63A (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. I para. 78**); S.I. 2001/3538, **art. 2(1)**

Co-operation

354 Authority's duty to co-operate with others.

(1) The Authority must take such steps as it considers appropriate to co-operate with other persons (whether in the United Kingdom or elsewhere) who have functions—

(a) similar to those of the Authority; or

(b) in relation to the prevention or detection of financial crime.

(2) Co-operation may include the sharing of information which the Authority is not prevented from disclosing.

(3) "Financial crime" has the same meaning as in section 6.

PART XXIV

INSOLVENCY

Interpretation

355 Interpretation of this Part.

(1) In this Part—

"the 1985 Act" means the [M64]Bankruptcy (Scotland) Act 1985;

"the 1986 Act" means the [M65]Insolvency Act 1986;

"the 1989 Order" means the [M66]Insolvency (Northern Ireland) Order 1989;

"body" means a body of persons—

(a) over which the court has jurisdiction under any provision of, or made under, the 1986 Act (or the 1989 Order); but

(b) which is not a building society, a friendly society or an industrial and provident society; and

"court" means—

(a) the court having jurisdiction for the purposes of the 1985 Act or the 1986 Act; or

(b) in Northern Ireland, the High Court.

(2) In this Part "insurer" has such meaning as may be specified in an order made by the Treasury.

Modifications etc. (not altering text)

C531 S. 355 modified (21.2.2009) by The Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (S.I. 2009/317), **art. 5(1)(3)**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations

M64 1985 c. 66.
M65 1986 c. 45.
M66 S.I. 1989/2405 (N.I. 19).

Voluntary arrangements

356 Authority's powers to participate in proceedings: company voluntary arrangements.

[F162(1) Where a voluntary arrangement has effect under Part I of the 1986 Act in respect of a company or insolvent partnership which is an authorised person, the Authority may apply to the court under section 6 or 7 of that Act.**]**

[F163(2) Where a voluntary arrangement has been approved under Part II of the 1989 Order in respect of a company or insolvent partnership which is an authorised person, the Authority may apply to the court under Article 19 or 20 of that Order.**]**

(3) If a person other than the Authority makes an application to the court in relation to the company or insolvent partnership under **[**F164any**]** of those provisions, the Authority is entitled to be heard at any hearing relating to the application.

Textual Amendments

F162 S. 356(1) substituted (1.1.2003 subject to transitional provisions in arts. 3-5 of the commencing S.I.) by 2000 c. 39, s. 15(3)(a); S.I. 2002/2711, **art. 2**
F163 S. 356(2) substituted (1.1.2003 subject to transitional provisions in arts. 3-5 of the commencing S.I.) by 2000 c. 39, s. 15(3)(b); S.I. 2002/2711, **art. 2**
F164 Word in s. 356(3) substituted (1.1.2003 subject to transitional provisions in arts. 3-5 of the commencing S.I.) by 2000 c. 39, s. 15(3)(c); S.I. 2002/2711, **art. 2**

Modifications etc. (not altering text)

C532 S. 356 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **regs. 1**, 6
C533 S. 356 applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**

357 Authority's powers to participate in proceedings: individual voluntary arrangements.

(1) The Authority is entitled to be heard on an application by an individual who is an authorised person under section 253 of the 1986 Act (or Article 227 of the 1989 Order).

(2) Subsections (3) to (6) apply if such an order is made on the application of such a person.

(3) A person appointed for the purpose by the Authority is entitled to attend any meeting of creditors of the debtor summoned under section 257 of the 1986 Act (or Article 231 of the 1989 Order).

(4) Notice of the result of a meeting so summoned is to be given to the Authority by the chairman of the meeting.

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(5) The Authority may apply to the court—

(a) under section 262 of the 1986 Act (or Article 236 of the 1989 Order); or

(b) under section 263 of the 1986 Act (or Article 237 of the 1989 Order).

(6) If a person other than the Authority makes an application to the court under any provision mentioned in subsection (5), the Authority is entitled to be heard at any hearing relating to the application.

358 Authority's powers to participate in proceedings: trust deeds for creditors in Scotland.

(1) This section applies where a trust deed has been granted by or on behalf of a debtor who is an authorised person.

(2) The trustee must, as soon as practicable after he becomes aware that the debtor is an authorised person, send to the Authority—

(a) in every case, a copy of the trust deed;

(b) where any other document or information is sent to every creditor known to the trustee in pursuance of paragraph 5(1)(c) of Schedule 5 to the 1985 Act, a copy of such document or information.

(3) Paragraph 7 of that Schedule applies to the Authority as if it were a qualified creditor who has not been sent a copy of the notice as mentioned in paragraph 5(1)(c) of the Schedule.

(4) The Authority must be given the same notice as the creditors of any meeting of creditors held in relation to the trust deed.

(5) A person appointed for the purpose by the Authority is entitled to attend and participate in (but not to vote at) any such meeting of creditors as if the Authority were a creditor under the deed.

(6) This section does not affect any right the Authority has as a creditor of a debtor who is an authorised person.

(7) Expressions used in this section and in the 1985 Act have the same meaning in this section as in that Act.

Administration orders

[F165 359 Administration order

(1) The Authority may make an administration application under Schedule B1 to the 1986 Act (or present a petition under Article 22 of the 1989 Order) in relation to a company or insolvent partnership which—

(a) is or has been an authorised person,

(b) is or has been an appointed representative, or

(c) is carrying on or has carried on a regulated activity in contravention of the general prohibition.

(2) Subsection (3) applies in relation to an administration application made (or a petition presented) by the Authority by virtue of this section.

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(3) Any of the following shall be treated for the purpose of paragraph 11(a) of Schedule B1 to the 1986 Act (or Article 21(1)(a) of the 1989 Order) as unable to pay its debts—

(a) a company or partnership in default on an obligation to pay a sum due and payable under an agreement, and

(b) an authorised deposit taker in default on an obligation to pay a sum due and payable in respect of a relevant deposit.

(4) In this section—

"agreement" means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the company or partnership,

"authorised deposit taker" means a person with a Part IV permission to accept deposits (but not a person who has a Part IV permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission),

"company" means a company—

(a) in respect of which an administrator may be appointed under Schedule B1 to the 1986 Act, or

(b) to which Article 21 of the 1989 Order applies, and

"relevant deposit" shall, ignoring any restriction on the meaning of deposit arising from the identity of the person making the deposit, be construed in accordance with—

(a) section 22,

(b) any relevant order under that section, and

(c) Schedule 2.

(5) The definition of "authorised deposit taker" in subsection (4) shall be construed in accordance with—

(a) section 22,

(b) any relevant order under that section, and

(c) Schedule 2.**]**

Textual Amendments

F165 S. 359 substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 55** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**)

Modifications etc. (not altering text)

C534 S. 359(1)-(4) applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**

360 Insurers.

(1) The Treasury may by order provide that such provisions of Part II of the 1986 Act (or Part III of the 1989 Order) as may be specified are to apply in relation to insurers with such modifications as may be specified.

(2) An order under this section—

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(a) may provide that such provisions of this Part as may be specified are to apply in relation to the administration of insurers in accordance with the order with such modifications as may be specified; and

(b) requires the consent of the Secretary of State.

(3) "Specified" means specified in the order.

Modifications etc. (not altering text)

C535 S. 360 excluded (10.8.2005) by The Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005 (S.I. 2005/1998), **reg. 2(4)**

[F166 361 Administrator's duty to report to Authority

(1) This section applies where a company or partnership is—

(a) in administration within the meaning of Schedule B1 to the 1986 Act, or

(b) the subject of an administration order under Part III of the 1989 Order.

(2) If the administrator thinks that the company or partnership is carrying on or has carried on a regulated activity in contravention of the general prohibition, he must report to the Authority without delay.

(3) Subsection (2) does not apply where the administration arises out of an administration order made on an application made or petition presented by the Authority.**]**

Textual Amendments

F166 S. 361 substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 56** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**)

Modifications etc. (not altering text)

C536 Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**

362 Authority's powers to participate in proceedings.

(1) This section applies if a person other than the Authority **[**F167 makes an administration application under Schedule B1 to the 1986 Act (or presents a petition under Article 22 of the 1989 Order)**]** in relation to a company or partnership which—

(a) is, or has been, an authorised person;

(b) is, or has been, an appointed representative; or

(c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

[F168 (1A) This section also applies in relation to—

(a) the appointment under paragraph 14 or 22 of Schedule B1 to the 1986 Act of an administrator of a company of a kind described in subsection (1)(a) to (c), or

(b) the filing with the court of a copy of notice of intention to appoint an administrator under either of those paragraphs.**]**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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(2) The Authority is entitled to be heard—

(a) at the hearing of the **[**F169administration application or the petition**]**; and

(b) at any other hearing of the court in relation to the company or partnership under Part II of the 1986 Act (or Part III of the 1989 Order).

(3) Any notice or other document required to be sent to a creditor of the company or partnership must also be sent to the Authority.

[F170(4) The Authority may apply to the court under paragraph 74 of Schedule B1 to the 1986 Act (or Article 39 of the 1989 Order).

(4A) In respect of an application under subsection (4)—

(a) paragraph 74(1)(a) and (b) shall have effect as if for the words "harm the interests of the applicant (whether alone or in common with some or all other members or creditors)" there were substituted the words "harm the interests of some or all members or creditors", and

(b) Article 39 of the 1989 Order shall have effect with the omission of the words "(including at least himself").**]**

(5) A person appointed for the purpose by the Authority is entitled—

(a) to attend any meeting of creditors of the company or partnership summoned under any enactment;

(b) to attend any meeting of a committee established under **[**F171paragraph 57 of Schedule B1 to the 1986 Act**]**(or Article 38 of the 1989 Order); and

(c) to make representations as to any matter for decision at such a meeting.

(6) If, during the course of the administration of a company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the Authority may apply to the court under section 425 of the M67Companies Act 1985 (or Article 418 of the M68Companies (Northern Ireland) Order 1986).

Textual Amendments

F167 Words in s. 362(1) substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 57(a)** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**)

F168 S. 362(1A) inserted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 57(b)** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**)

F169 Words in s. 362(2)(a) substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 57(c)** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**)

F170 S. 362(4)(4A) substituted (15.9.2003) for s. 362(4) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 57(d)** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**)

F171 Words in s. 362(5)(b) substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 57(e)** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**)

Modifications etc. (not altering text)

C537 S. 362 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **regs. 1**, 6

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C538 Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**

Marginal Citations

M67 1985 c. 6.

M68 S.I. 1986/1032 (N.I. 6).

362A Administrator appointed by company or directors

(1) This section applies in relation to a company of a kind described in section 362(1)(a) to (c).

(2) An administrator of the company may not be appointed under paragraph 22 of Schedule B1 to the 1986 Act without the consent of the Authority.

(3) Consent under subsection (2)—

(a) must be in writing, and

(b) must be filed with the court along with the notice of intention to appoint under paragraph 27 of that Schedule.

(4) In a case where no notice of intention to appoint is required—

(a) subsection (3)(b) shall not apply, but

(b) consent under subsection (2) must accompany the notice of appointment filed under paragraph 29 of that Schedule.

Modifications etc. (not altering text)

C539 Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**

Receivership

363 Authority's powers to participate in proceedings.

(1) This section applies if a receiver has been appointed in relation to a company which—

(a) is, or has been, an authorised person;

(b) is, or has been, an appointed representative; or

(c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

(2) The Authority is entitled to be heard on an application made under section 35 or 63 of the 1986 Act (or Article 45 of the 1989 Order).

(3) The Authority is entitled to make an application under section 41(1)(a) or 69(1)(a) of the 1986 Act (or Article 51(1)(a) of the 1989 Order).

(4) A report under section 48(1) or 67(1) of the 1986 Act (or Article 58(1) of the 1989 Order) must be sent by the person making it to the Authority.

(5) A person appointed for the purpose by the Authority is entitled—

(a) to attend any meeting of creditors of the company summoned under any enactment;

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(b) to attend any meeting of a committee established under section 49 or 68 of the 1986 Act (or Article 59 of the 1989 Order); and

(c) to make representations as to any matter for decision at such a meeting.

Modifications etc. (not altering text)

C540 S. 363 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **regs. 1**, 6

C541 Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**

364 Receiver's duty to report to Authority.

If—

(a) a receiver has been appointed in relation to a company, and

(b) it appears to the receiver that the company is carrying on, or has carried on, a regulated activity in contravention of the general prohibition,

the receiver must report the matter to the Authority without delay.

Modifications etc. (not altering text)

C542 S. 364 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **regs. 1**, 6

C543 Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**

Voluntary winding up

365 Authority's powers to participate in proceedings.

(1) This section applies in relation to a company which—

(a) is being wound up voluntarily;

(b) is an authorised person; and

(c) is not an insurer effecting or carrying out contracts of long-term insurance.

(2) The Authority may apply to the court under section 112 of the 1986 Act (or Article 98 of the 1989 Order) in respect of the company.

(3) The Authority is entitled to be heard at any hearing of the court in relation to the voluntary winding up of the company.

(4) Any notice or other document required to be sent to a creditor of the company must also be sent to the Authority.

(5) A person appointed for the purpose by the Authority is entitled—

(a) to attend any meeting of creditors of the company summoned under any enactment;

(b) to attend any meeting of a committee established under section 101 of the 1986 Act (or Article 87 of the 1989 Order); and

(c) to make representations as to any matter for decision at such a meeting.

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(6) The voluntary winding up of the company does not bar the right of the Authority to have it wound up by the court.

(7) If, during the course of the winding up of the company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the Authority may apply to the court under section 425 of the [M69]Companies Act 1985 (or Article 418 of the [M70]Companies (Northern Ireland) Order 1986).

Modifications etc. (not altering text)
C544 S. 365 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **regs. 1**, 6
C545 Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**

Marginal Citations
M69 1985 c. 6.
M70 S.I. 1986/1032 (N.I. 6).

366 Insurers effecting or carrying out long-term contracts or insurance.

(1) An insurer effecting or carrying out contracts of long-term insurance may not be wound up voluntarily without the consent of the Authority.

(2) If notice of a general meeting of such an insurer is given, specifying the intention to propose a resolution for voluntary winding up of the insurer, a director of the insurer must notify the Authority as soon as practicable after he becomes aware of it.

(3) A person who fails to comply with subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) The following provisions do not apply in relation to a winding-up resolution—
(a) sections 378(3) and 381A of the [M71]Companies Act 1985 ("the 1985 Act"); and
(b) Articles 386(3) and 389A of the [M72]Companies (Northern Ireland) Order 1986 ("the 1986 Order").

(5) A copy of a winding-up resolution forwarded to the registrar of companies in accordance with section 380 of the 1985 Act (or Article 388 of the 1986 Order) must be accompanied by a certificate issued by the Authority stating that it consents to the voluntary winding up of the insurer.

(6) If subsection (5) is complied with, the voluntary winding up is to be treated as having commenced at the time the resolution was passed.

(7) If subsection (5) is not complied with, the resolution has no effect.

(8) "Winding-up resolution" means a resolution for voluntary winding up of an insurer effecting or carrying out contracts of long-term insurance.

Marginal Citations
M71 1985 c. 6.
M72 S.I. 1986/1032 (N.I. 6).

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Winding up by the court

367 Winding-up petitions.

(1) The Authority may present a petition to the court for the winding up of a body which—

(a) is, or has been, an authorised person;

(b) is, or has been, an appointed representative; or

(c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

(2) In subsection (1) "body" includes any partnership.

(3) On such a petition, the court may wind up the body if—

(a) the body is unable to pay its debts within the meaning of section 123 or 221 of the 1986 Act (or Article 103 or 185 of the 1989 Order); or

(b) the court is of the opinion that it is just and equitable that it should be wound up.

(4) If a body is in default on an obligation to pay a sum due and payable under an agreement, it is to be treated for the purpose of subsection (3)(a) as unable to pay its debts.

(5) "Agreement" means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the body concerned.

(6) Subsection (7) applies if a petition is presented under subsection (1) for the winding up of a partnership—

(a) on the ground mentioned in subsection (3)(b); or

(b) in Scotland, on a ground mentioned in subsection (3)(a) or (b).

(7) The court has jurisdiction, and the 1986 Act (or the 1989 Order) has effect, as if the partnership were an unregistered company as defined by section 220 of that Act (or Article 184 of that Order).

Modifications etc. (not altering text)

C546 S. 367 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **regs. 1**, 6
S. 367 amended (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 12 (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 367 amended (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 12; S.I. 2001/3538, **art. 2(1)**

C547 S. 367 applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**

C548 S. 367 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 6** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para 155(6)(f) (with Sch. 2 para. 156))

C549 S. 367 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(b), 62, **Sch. 3 para. 7** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(g)**)

C550 S. 367(3)(a) modified (1.12.2001) by S.I. 2001/3650, **arts. 1(a)**, 15

C551 S. 367(5) modified (1.12.2001) by S.I. 2001/3650, **arts. 1(a)**, 14

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368 Winding-up petitions: EEA and Treaty firms.

The Authority may not present a petition to the court under section 367 for the winding up of—

(a) an EEA firm which qualifies for authorisation under Schedule 3, or

(b) a Treaty firm which qualifies for authorisation under Schedule 4,

unless it has been asked to do so by the home state regulator of the firm concerned.

Modifications etc. (not altering text)

C552 S. 368 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 6** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 155(6)(f) (with Sch. 2 para. 156))

C553 S. 368 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(b), 62, **Sch. 3 para. 7** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(g)**)

369 Insurers: service of petition etc. on Authority.

(1) If a person other than the Authority presents a petition for the winding up of an authorised person with permission to effect or carry out contracts of insurance, the petitioner must serve a copy of the petition on the Authority.

(2) If a person other than the Authority applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised person with permission to effect or carry out contracts of insurance, the applicant must serve a copy of the application on the Authority.

VALID FROM 12/03/2009

[F172[F172369A Reclaim funds: service of petition etc on Authority

(1) If a person other than the Authority presents a petition for the winding up of an authorised reclaim fund, the petitioner must serve a copy of the petition on the Authority.

(2) If a person other than the Authority applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised reclaim fund, the applicant must serve a copy of the application on the Authority.

(3) In this section "authorised reclaim fund" means a reclaim fund within the meaning given by section 5(1) of the Dormant Bank and Building Society Accounts Act 2008 that is authorised for the purposes of this Act.**]]**

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Textual Amendments

F172 S. 369A inserted (12.3.2009) by Dormant Bank and Building Society Accounts Act 2008 (c. 31), ss. 15, 31(1), **Sch. 2 para. 7**; S.I. 2009/490, **art. 2** (with art. 3)

370 Liquidator's duty to report to Authority.

If—

(a) a company is being wound up voluntarily or a body is being wound up on a petition presented by a person other than the Authority, and

(b) it appears to the liquidator that the company or body is carrying on, or has carried on, a regulated activity in contravention of the general prohibition,

the liquidator must report the matter to the Authority without delay.

Modifications etc. (not altering text)

C554 S. 370 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **regs. 1**, 6

C555 S. 370 applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**

C556 S. 370 modified (21.2.2009) by The Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (S.I. 2009/317), **art. 5(1)(6)**

371 Authority's powers to participate in proceedings.

(1) This section applies if a person other than the Authority presents a petition for the winding up of a body which—

(a) is, or has been, an authorised person;

(b) is, or has been, an appointed representative; or

(c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

(2) The Authority is entitled to be heard—

(a) at the hearing of the petition; and

(b) at any other hearing of the court in relation to the body under or by virtue of Part IV or V of the 1986 Act (or Part V or VI of the 1989 Order).

(3) Any notice or other document required to be sent to a creditor of the body must also be sent to the Authority.

(4) A person appointed for the purpose by the Authority is entitled—

(a) to attend any meeting of creditors of the body;

(b) to attend any meeting of a committee established for the purposes of Part IV or V of the 1986 Act under section 101 of that Act or under section 141 or 142 of that Act;

(c) to attend any meeting of a committee established for the purposes of Part V or VI of the 1989 Order under Article 87 of that Order or under Article 120 of that Order; and

(d) to make representations as to any matter for decision at such a meeting.

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(5) If, during the course of the winding up of a company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the Authority may apply to the court under section 425 of the [M73]Companies Act 1985 (or Article 418 of the [M74]Companies (Northern Ireland) Order 1986).

Modifications etc. (not altering text)

C557 S. 371 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **regs. 1**, 6

C558 S. 371 applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**

Marginal Citations

M73 1985 c. 6.

M74 S.I. 1986/1032 (N.I. 6).

Bankruptcy

372 Petitions.

(1) The Authority may present a petition to the court—

(a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual; or

(b) under section 5 of the 1985 Act for the sequestration of the estate of an individual.

(2) But such a petition may be presented only on the ground that—

(a) the individual appears to be unable to pay a regulated activity debt; or

(b) the individual appears to have no reasonable prospect of being able to pay a regulated activity debt.

(3) An individual appears to be unable to pay a regulated activity debt if he is in default on an obligation to pay a sum due and payable under an agreement.

(4) An individual appears to have no reasonable prospect of being able to pay a regulated activity debt if—

(a) the Authority has served on him a demand requiring him to establish to the satisfaction of the Authority that there is a reasonable prospect that he will be able to pay a sum payable under an agreement when it falls due;

(b) at least three weeks have elapsed since the demand was served; and

(c) the demand has been neither complied with nor set aside in accordance with rules.

(5) A demand made under subsection (4)(a) is to be treated for the purposes of the 1986 Act (or the 1989 Order) as if it were a statutory demand under section 268 of that Act (or Article 242 of that Order).

(6) For the purposes of a petition presented in accordance with subsection (1)(b)—

(a) the Authority is to be treated as a qualified creditor; and

(b) a ground mentioned in subsection (2) constitutes apparent insolvency.

(7) "Individual" means an individual—

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(a) who is, or has been, an authorised person; or

(b) who is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

(8) "Agreement" means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the individual concerned.

(9) "Rules" means—

(a) in England and Wales, rules made under section 412 of the 1986 Act;

(b) in Scotland, rules made by order by the Treasury, after consultation with the Scottish Ministers, for the purposes of this section; and

(c) in Northern Ireland, rules made under Article 359 of the 1989 Order.

Commencement Information

I119 S. 372 wholly in force at 1.12.2001; s. 372 not in force at Royal Assent see s. 431(2); s. 372 in force for certain purposes at 20.7.2001 by S.I. 2001/2632, art. 2(1), **Sch. Pt. 1**; s. 372 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

373 Insolvency practitioner's duty to report to Authority.

(1) If—

(a) a bankruptcy order or sequestration award is in force in relation to an individual by virtue of a petition presented by a person other than the Authority, and

(b) it appears to the insolvency practitioner that the individual is carrying on, or has carried on, a regulated activity in contravention of the general prohibition,

the insolvency practitioner must report the matter to the Authority without delay.

(2) "Bankruptcy order" means a bankruptcy order under Part IX of the 1986 Act (or Part IX of the 1989 Order).

(3) "Sequestration award" means an award of sequestration under section 12 of the 1985 Act.

(4) "Individual" includes an entity mentioned in section 374(1)(c).

374 Authority's powers to participate in proceedings.

(1) This section applies if a person other than the Authority presents a petition to the court—

(a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual;

(b) under section 5 of the 1985 Act for the sequestration of the estate of an individual; or

(c) under section 6 of the 1985 Act for the sequestration of the estate belonging to or held for or jointly by the members of an entity mentioned in subsection (1) of that section.

(2) The Authority is entitled to be heard—

(a) at the hearing of the petition; and

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(b) at any other hearing in relation to the individual or entity under—

(i) Part IX of the 1986 Act;

(ii) Part IX of the 1989 Order; or

(iii) the 1985 Act.

(3) A copy of the report prepared under section 274 of the 1986 Act (or Article 248 of the 1989 Order) must also be sent to the Authority.

(4) A person appointed for the purpose by the Authority is entitled—

(a) to attend any meeting of creditors of the individual or entity;

(b) to attend any meeting of a committee established under section 301 of the 1986 Act (or Article 274 of the 1989 Order);

(c) to attend any meeting of commissioners held under paragraph 17 or 18 of Schedule 6 to the 1985 Act; and

(d) to make representations as to any matter for decision at such a meeting.

(5) "Individual" means an individual who—

(a) is, or has been, an authorised person; or

(b) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

(6) "Entity" means an entity which—

(a) is, or has been, an authorised person; or

(b) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

Provisions against debt avoidance

375 Authority's right to apply for an order.

(1) The Authority may apply for an order under section 423 of the 1986 Act (or Article 367 of the 1989 Order) in relation to a debtor if—

(a) at the time the transaction at an undervalue was entered into, the debtor was carrying on a regulated activity (whether or not in contravention of the general prohibition); and

(b) a victim of the transaction is or was party to an agreement entered into with the debtor, the making or performance of which constituted or was part of a regulated activity carried on by the debtor.

(2) An application made under this section is to be treated as made on behalf of every victim of the transaction to whom subsection (1)(b) applies.

(3) Expressions which are given a meaning in Part XVI of the 1986 Act (or Article 367, 368 or 369 of the 1989 Order) have the same meaning when used in this section.

Modifications etc. (not altering text)

C559 S. 375 modified (21.2.2009) by The Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (S.I. 2009/317), **art. 5(1)(7)**

C560 S. 375 applied (with modifications) (8.2.2011 with application in accordance with reg. 27(a) of the applying S.I.) by The Investment Bank Special Administration Regulations 2011 (S.I. 2011/245), regs. 1, 27(a), **Sch. 6 para. 3(5)** (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential

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Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 198(s)(ii)** (with Sch. 2 para. 213))

Supplemental provisions concerning insurers

376 Continuation of contracts of long-term insurance where insurer in liquidation.

(1) This section applies in relation to the winding up of an insurer which effects or carries out contracts of long-term insurance.

(2) Unless the court otherwise orders, the liquidator must carry on the insurer's business so far as it consists of carrying out the insurer's contracts of long-term insurance with a view to its being transferred as a going concern to a person who may lawfully carry out those contracts.

(3) In carrying on the business, the liquidator—

(a) may agree to the variation of any contracts of insurance in existence when the winding up order is made; but

(b) must not effect any new contracts of insurance.

(4) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the insurer attributable to contracts of long-term insurance effected by it require the appointment of a special manager, he may apply to the court.

(5) On such an application, the court may appoint a special manager to act during such time as the court may direct.

(6) The special manager is to have such powers, including any of the powers of a receiver or manager, as the court may direct.

(7) Section 177(5) of the 1986 Act (or Article 151(5) of the 1989 Order) applies to a special manager appointed under subsection (5) as it applies to a special manager appointed under section 177 of the 1986 Act (or Article 151 of the 1989 Order).

(8) If the court thinks fit, it may reduce the value of one or more of the contracts of long-term insurance effected by the insurer.

(9) Any reduction is to be on such terms and subject to such conditions (if any) as the court thinks fit.

(10) The court may, on the application of an official, appoint an independent actuary to investigate the insurer's business so far as it consists of carrying out its contracts of long-term insurance and to report to the official—

(a) on the desirability or otherwise of that part of the insurer's business being continued; and

(b) on any reduction in the contracts of long-term insurance effected by the insurer that may be necessary for successful continuation of that part of the insurer's business.

(11) "Official" means—

(a) the liquidator;

(b) a special manager appointed under subsection (5); or

(c) the Authority.

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(12) The liquidator may make an application in the name of the insurer and on its behalf under Part VII without obtaining the permission that would otherwise be required by section 167 of, and Schedule 4 to, the 1986 Act (or Article 142 of, and Schedule 2 to, the 1989 Order).

377 Reducing the value of contracts instead of winding up.

(1) This section applies in relation to an insurer which has been proved to be unable to pay its debts.

(2) If the court thinks fit, it may reduce the value of one or more of the insurer's contracts instead of making a winding up order.

(3) Any reduction is to be on such terms and subject to such conditions (if any) as the court thinks fit.

Modifications etc. (not altering text)

C561 S. 377 excluded (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), **reg. 4(6)** (with reg. 3)

C562 S. 377 excluded (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), **reg. 4(7)** (with reg. 3)

378 Treatment of assets on winding up.

(1) The Treasury may by regulations provide for the treatment of the assets of an insurer on its winding up.

(2) The regulations may, in particular, provide for—

(a) assets representing a particular part of the insurer's business to be available only for meeting liabilities attributable to that part of the insurer's business;

(b) separate general meetings of the creditors to be held in respect of liabilities attributable to a particular part of the insurer's business.

379 Winding-up rules.

(1) Winding-up rules may include provision—

(a) for determining the amount of the liabilities of an insurer to policyholders of any class or description for the purpose of proof in a winding up; and

(b) generally for carrying into effect the provisions of this Part with respect to the winding up of insurers.

(2) Winding-up rules may, in particular, make provision for all or any of the following matters—

(a) the identification of assets and liabilities;

(b) the apportionment, between assets of different classes or descriptions, of—

(i) the costs, charges and expenses of the winding up; and

(ii) any debts of the insurer of a specified class or description;

(c) the determination of the amount of liabilities of a specified description;

(d) the application of assets for meeting liabilities of a specified description;

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(e) the application of assets representing any excess of a specified description.

(3) "Specified" means specified in winding-up rules.

(4) "Winding-up rules" means rules made under section 411 of the 1986 Act (or Article 359 of the 1989 Order).

(5) Nothing in this section affects the power to make winding-up rules under the 1986 Act or the 1989 Order.

PART XXV

INJUNCTIONS AND RESTITUTION

Modifications etc. (not altering text)

C563 Pt. 25 amended (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 10(10), 11(10) (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
Pt. 25 amended (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 10(10), 11(10); S.I. 2001/3538, **art. 2(1)**
Pt. 25 extended (1.12.2001) by S.I. 2001/3646, **arts. 1(1)**, 3(1)(a)

Injunctions

380 Injunctions.

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

(a) that there is a reasonable likelihood that any person will contravene a relevant requirement, or

(b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) If on the application of the Authority or the Secretary of State the court is satisfied—

(a) that any person has contravened a relevant requirement, and

(b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the Authority or the Secretary of State, the court is satisfied that any person may have—

(a) contravened a relevant requirement, or

(b) been knowingly concerned in the contravention of such a requirement,

it may make an order restraining (or in Scotland an interdict prohibiting) him from disposing of, or otherwise dealing with, any assets of his which it is satisfied he is reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.

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(5) In subsection (2), references to remedying a contravention include references to mitigating its effect.

(6) "Relevant requirement"—

(a) in relation to an application by the Authority, means a requirement—

(i) which is imposed by or under this Act; or

(ii) which is imposed by or under any other Act and whose contravention constitutes an offence which the Authority has power to prosecute under this Act;

(b) in relation to an application by the Secretary of State, means a requirement which is imposed by or under this Act and whose contravention constitutes an offence which the Secretary of State has power to prosecute under this Act.

(7) In the application of subsection (6) to Scotland—

(a) in paragraph (a)(ii) for "which the Authority has power to prosecute under this Act" substitute " mentioned in paragraph (a) or (b) of section 402(1) "; and

(b) in paragraph (b) omit "which the Secretary of State has power to prosecute under this Act".

Modifications etc. (not altering text)

C564 S. 380 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(2)** (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 77(7)(a)(ii)**)

C565 S. 380(1)(2) modified (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 20(3) (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 380(1)(2) modified (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 20(3); S.I. 2001/3538, **art. 2(1)**

C566 S. 380(2) extended (with modifications) (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 2 (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 380(2) extended (with modifications) (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 2; S.I. 2001/3538, **art. 2(1)**
S. 380(2) extended (1.12.2001) by S.I. 2001/3646, **arts. 1(2)**, 3(3)(a)

C567 S. 380(3)(a) extended (with modifications) (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 4 (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 380(3)(a) extended (with modifications) (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 4; S.I. 2001/3538, **art. 2(1)**

381 Injunctions in cases of market abuse.

(1) If, on the application of the Authority, the court is satisfied—

(a) that there is a reasonable likelihood that any person will engage in market abuse, or

(b) that any person is or has engaged in market abuse and that there is a reasonable likelihood that the market abuse will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the market abuse.

(2) If on the application of the Authority the court is satisfied—

(a) that any person is or has engaged in market abuse, and

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(b) that there are steps which could be taken for remedying the market abuse,

the court may make an order requiring him to take such steps as the court may direct to remedy it.

(3) Subsection (4) applies if, on the application of the Authority, the court is satisfied that any person—

(a) may be engaged in market abuse; or

(b) may have been engaged in market abuse.

(4) The court make an order restraining (or in Scotland an interdict prohibiting) the person concerned from disposing of, or otherwise dealing with, any assets of his which it is satisfied that he is reasonably likely to dispose of, or otherwise deal with.

(5) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.

(6) In subsection (2), references to remedying any market abuse include references to mitigating its effect.

Restitution orders

382 Restitution orders.

(1) The court may, on the application of the Authority or the Secretary of State, make an order under subsection (2) if it is satisfied that a person has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—

(a) that profits have accrued to him as a result of the contravention; or

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

(2) The court may order the person concerned to pay to the Authority such sum as appears to the court to be just having regard—

(a) in a case within paragraph (a) of subsection (1), 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;

(c) in a case within both of those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(3) Any amount paid to the Authority in pursuance of an order under subsection (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.

(4) On an application under subsection (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes—

(a) establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of that subsection;

(b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in paragraph (b) of that subsection and, if so, the extent of that loss or adverse effect; and

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(c) determining how any amounts are to be paid or distributed under subsection (3).

(5) The court may require any accounts or other information supplied under subsection (4) to be verified in such manner as it may direct.

(6) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.

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

(8) "Qualifying person" means a person appearing to the court to be someone—

(a) to whom the profits mentioned in subsection (1)(a) are attributable; or

(b) who has suffered the loss or adverse effect mentioned in subsection (1)(b).

(9) "Relevant requirement"—

(a) in relation to an application by the Authority, means a requirement—

(i) which is imposed by or under this Act; or

(ii) which is imposed by or under any other Act and whose contravention constitutes an offence which the Authority has power to prosecute under this Act;

(b) in relation to an application by the Secretary of State, means a requirement which is imposed by or under this Act and whose contravention constitutes an offence which the Secretary of State has power to prosecute under this Act.

(10) In the application of subsection (9) to Scotland—

(a) in paragraph (a)(ii) for "which the Authority has power to prosecute under this Act" substitute "mentioned in paragraph (a) or (b) of section 402(1); and

(b) in paragraph (b) omit "which the Secretary of State has power to prosecute under this Act"".

Modifications etc. (not altering text)

C568 S. 382 extended (with modifications) (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 2 (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 382 extended (with modifications) (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 2; S.I. 2001/3538, **art. 2(1)**

C569 S. 382 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(2)**

C570 S. 382(3)-(5)(8) applied (with modifications) (26.11.2001) by S.I. 2001/3755, **regs. 1**, 9(7)(9) (with regs. 39, 45)

383 Restitution orders in cases of market abuse.

(1) The court may, on the application of the Authority, make an order under subsection (4) if it is satisfied that a person ("the person concerned")—

(a) has engaged in market abuse, or

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(b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by the person concerned, would amount to market abuse,

and the condition mentioned in subsection (2) is fulfilled.

(2) The condition is—

(a) that profits have accrued to the person concerned as a result; or

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

(3) But the court may not make an order under subsection (4) if it is satisfied that—

(a) the person concerned believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1); or

(b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of subsection (1).

(4) The court may order the person concerned to pay to the Authority such sum as appears to the court to be just having regard—

(a) in a case within paragraph (a) of subsection (2), 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;

(c) in a case within both of those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(5) Any amount paid to the Authority in pursuance of an order under subsection (4) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.

(6) On an application under subsection (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes—

(a) establishing whether any and, if so, what profits have accrued to him as mentioned in subsection (2)(a);

(b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in subsection (2)(b) and, if so, the extent of that loss or adverse effect; and

(c) determining how any amounts are to be paid or distributed under subsection (5).

(7) The court may require any accounts or other information supplied under subsection (6) to be verified in such manner as it may direct.

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

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

(10) "Qualifying person" means a person appearing to the court to be someone—

(a) to whom the profits mentioned in paragraph (a) of subsection (2) are attributable; or

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(b) who has suffered the loss or adverse effect mentioned in paragraph (b) of that subsection.

Restitution required by Authority

384 Power of Authority to require restitution.

(1) The Authority may exercise the power in subsection (5) if it is satisfied that an authorised person ("the person concerned") has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—

(a) that profits have accrued to him as a result of the contravention; or

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

(2) The Authority may exercise the power in subsection (5) if it is satisfied that a person ("the person concerned")—

(a) has engaged in market abuse, or

(b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by the person concerned, would amount to market abuse,

and the condition mentioned in subsection (3) is fulfilled,

(3) The condition is—

(a) that profits have accrued to the person concerned as a result of the market abuse; or

(b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the market abuse.

(4) But the Authority may not exercise that power as a result of subsection (2) if, having considered any representations made to it in response to a warning notice, there are reasonable grounds for it to be satisfied that—

(a) the person concerned believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of that subsection; or

(b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection.

(5) The power referred to in subsections (1) and (2) is a power to require the person concerned, in accordance with such arrangements as the Authority considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the Authority to be just having regard—

(a) in a case within paragraph (a) of subsection (1) or (3), to the profits appearing to the Authority to have accrued;

(b) in a case within paragraph (b) of subsection (1) or (3), to the extent of the loss or other adverse effect;

(c) in a case within paragraphs (a) and (b) of subsection (1) or (3), to the profits appearing to the Authority to have accrued and to the extent of the loss or other adverse effect.

(6) "Appropriate person" means a person appearing to the Authority to be someone—

(a) to whom the profits mentioned in paragraph (a) of subsection (1) or (3) are attributable; or

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(b) who has suffered the loss or adverse effect mentioned in paragraph (b) of subsection (1) or (3).

(7) "Relevant requirement" means—

(a) a requirement imposed by or under this Act; and

(b) a requirement which is imposed by or under any other Act and whose contravention constitutes an offence in relation to which this Act confers power to prosecute on the Authority.

(8) In the application of subsection (7) to Scotland, in paragraph (b) for "in relation to which this Act confers power to prosecute on the Authority" substitute " mentioned in paragraph (a) or (b) of section 402(1) ".

Modifications etc. (not altering text)

C571 S. 384 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(1)**

C572 S. 384(5) extended (with modifications) (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 3 (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**

S. 384(5) extended (with modifications) (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 3; S.I. 2001/3538, **art. 2(1)**

385 Warning notices.

(1) If the Authority proposes to exercise the power under section 384(5) in relation to a person, it must give him a warning notice.

(2) A warning notice under this section must specify the amount which the Authority proposes to require the person concerned to pay or distribute as mentioned in section 384(5).

Modifications etc. (not altering text)

C573 S. 385 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 61(6) (with art. 23(2))

386 Decision notices.

(1) If the Authority decides to exercise the power under section 384(5), it must give a decision notice to the person in relation to whom the power is exercised.

(2) The decision notice must—

(a) state the amount that he is to pay or distribute as mentioned in section 384(5);

(b) identify the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and

(c) state the arrangements in accordance with which the payment or distribution is to be made.

(3) If the Authority decides to exercise the power under section 384(5), the person in relation to whom it is exercised may refer the matter to the Tribunal.

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Modifications etc. (not altering text)

C574 S. 386 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 61(6) (with art. 23(2))

C575 S. 386(1) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 70(2) (with art. 23(2))

PART XXVI

NOTICES

Modifications etc. (not altering text)

C576 Pt. 26 (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, **s. 58A(6)(8)** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 75 (with art. 13(3), Sch.5)); S.I. 2001/3538, **art. 2(1)**
Pt. 26 (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, **s. 85(4B)** (as inserted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 95 (with art. 13(3), **Sch. 5**)); S.I. 2001/3538, **art. 2(1)**
Pt. 26 (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, **s. 36A(5C)(5D)** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 142(c) (with art. 13(3), **Sch. 5**)); S.I. 2001/3538, **art. 2(1)**
Pt. 26 (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, **s. 46A(6)(8)** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 148 (with art. 13(3), **Sch. 5**)); S.I. 2001/3538, **art. 2(1)**
Pt. 26 (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, **s. 93(6A)** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 177(d) (with art. 13(3), **Sch. 5**)); S.I. 2001/3538, **art. 2**

C577 Pt. 26 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 44**

C578 Pt. 26 applied (with modifications) (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(b)(xiii)(c), 95, **Sch. 5 para. 7** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 155(6)(g)(h)** (with Sch. 2 para. 156))

C579 Pt. 26 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. para. 5**

C580 Pt. 26 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 30**

C581 Pt. 26 applied (with modifications) (9.2.2011 for certain purposes and 30.4.2011 otherwise) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xiv)(b), 62, **Sch. 3 para. 8** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 196(5)(h))

Warning notices

387 Warning notices.

(1) A warning notice must—

(a) state the action which the Authority proposes to take;

(b) be in writing;

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(c) give reasons for the proposed action;

(d) state whether section 394 applies; and

(e) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it.

(2) The warning notice must specify a reasonable period (which may not be less than 28 days) within which the person to whom it is given may make representations to the Authority.

(3) The Authority may extend the period specified in the notice.

(4) The Authority must then decide, within a reasonable period, whether to give the person concerned a decision notice.

Modifications etc. (not altering text)

C582 S. 387 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c)**, 8(a) (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**

C583 S. 387 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **8(a)** (with reg. 1(2))

Decision notices

388 Decision notices.

(1) A decision notice must—

(a) be in writing;

(b) give the Authority's reasons for the decision to take the action to which the notice relates;

(c) state whether section 394 applies;

(d) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it; and

(e) give an indication of—

(i) any right to have the matter referred to the Tribunal which is given by this Act; and

(ii) the procedure on such a reference.

(2) If the decision notice was preceded by a warning notice, the action to which the decision notice relates must be action under the same Part as the action proposed in the warning notice.

(3) The Authority may, before it takes the action to which a decision notice ("the original notice") relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.

(4) The Authority may give a further decision notice as a result of subsection (3) only if the person to whom the original notice was given consents.

(5) If the person to whom a decision notice is given under subsection (3) had the right to refer the matter to which the original decision notice related to the Tribunal, he has that right as respects the decision notice under subsection (3).

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Modifications etc. (not altering text)

C584 S. 388 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c)**, 8(b) (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**

C585 S. 388 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **8(b)** (with reg. 1(2))

Conclusion of proceedings

389 Notices of discontinuance.

(1) If the Authority decides not to take—

(a) the action proposed in a warning notice, or

(b) the action to which a decision notice relates,

it must give a notice of discontinuance to the person to whom the warning notice or decision notice was given.

(2) But subsection (1) does not apply if the discontinuance of the proceedings concerned results in the granting of an application made by the person to whom the warning or decision notice was given.

(3) A notice of discontinuance must identify the proceedings which are being discontinued.

Modifications etc. (not altering text)

C586 S. 389 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c)**, 8(c) (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**

C587 S. 389 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **8(c)** (with reg. 1(2))

390 Final notices.

(1) If the Authority has given a person a decision notice and the matter was not referred to the Tribunal within the period mentioned in section 133(1), the Authority must, on taking the action to which the decision notice relates, give the person concerned and any person to whom the decision notice was copied a final notice.

(2) If the Authority has given a person a decision notice and the matter was referred to the Tribunal, the Authority must, on taking action in accordance with any directions given by—

(a) the Tribunal, or

(b) the court under section 137,

give that person and any person to whom the decision notice was copied a final notice.

(3) A final notice about a statement must—

(a) set out the terms of the statement;

(b) give details of the manner in which, and the date on which, the statement will be published.

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(4) A final notice about an order must—

(a) set out the terms of the order;

(b) state the date from which the order has effect.

(5) A final notice about a penalty must—

(a) state the amount of the penalty;

(b) state the manner in which, and the period within which, the penalty is to be paid;

(c) give details of the way in which the penalty will be recovered if it is not paid by the date stated in the notice.

(6) A final notice about a requirement to make a payment or distribution in accordance with section 384(5) must state—

(a) the persons to whom,

(b) the manner in which, and

(c) the period within which,

it must be made.

(7) In any other case, the final notice must—

(a) give details of the action being taken;

(b) state the date on which the action is to be taken.

(8) The period stated under subsection (5)(b) or (6)(c) may not be less than 14 days beginning with the date on which the final notice is given.

(9) If all or any of the amount of a penalty payable under a final notice is outstanding at the end of the period stated under subsection (5)(b), the Authority may recover the outstanding amount as a debt due to it.

(10) If all or any of a required payment or distribution has not been made at the end of a period stated in a final notice under subsection (6)(c), the obligation to make the payment is enforceable, on the application of the Authority, by injunction or, in Scotland, by an order under section 45 of the [M75]Court of Session Act 1988.

Modifications etc. (not altering text)

C588 S. 390 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c)**, 8(d) (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**

C589 S. 390 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **8(d)** (with reg. 1(2))

C590 S. 390(3)(4)(7) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 110(7) (with art. 23(2))

C591 S. 390(3)-(5)(8)(9) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 85(5)(b) (with art. 23(2))

C592 S. 390(3)-(5)(7)-(9) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 61(7) (with art. 23(2))

C593 S. 390(7) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 115(5), 122(4), 129 (with art. 23(2))

Marginal Citations

M75 1988 c. 36.

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Publication

391 Publication.

(1) Neither the Authority nor a person to whom a warning notice or decision notice is given or copied may publish the notice or any details concerning it.

(2) A notice of discontinuance must state that, if the person to whom the notice is given consents, the Authority may publish such information as it considers appropriate about the matter to which the discontinued proceedings related.

(3) A copy of a notice of discontinuance must be accompanied by a statement that, if the person to whom the notice is copied consents, the Authority may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.

(4) The Authority must publish such information about the matter to which a final notice relates as it considers appropriate.

(5) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.

(6) But the Authority may not publish information under this section if publication of it would, in its opinion, be unfair to the person with respect to whom the action was taken or prejudicial to the interests of consumers.

(7) Information is to be published under this section in such manner as the Authority considers appropriate.

(8) For the purposes of determining when a supervisory notice takes effect, a matter to which the notice relates is open to review if—

(a) the period during which any person may refer the matter to the Tribunal is still running;

(b) the matter has been referred to the Tribunal but has not been dealt with;

(c) the matter has been referred to the Tribunal and dealt with but the period during which an appeal may be brought against the Tribunal's decision is still running; or

(d) such an appeal has been brought but has not been determined.

(9) "Notice of discontinuance" means a notice given under section 389.

(10) "Supervisory notice" has the same meaning as in section 395.

(11) "Consumers" means persons who are consumers for the purposes of section 138.

Modifications etc. (not altering text)

C594 S. 391 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c)**, 9 (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**

C595 S. 391 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **9** (with reg. 1(2))

C596 S. 391(4)(6)(7) applied (1.12.2001) by S.I. 2001/2957, **arts. 1**, 13(8)(a), S.I. 2001/3538, art. 2(1)

C597 S. 391(4) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 61(7), 85(5)(b), 110(7), 115(5), 122(4), 129 (with art. 23(2))

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C598 S. 391(8) applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **27(14)** (with reg. 1(2))
C599 S. 391(8)(a)-(d) applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I 2009/209), regs. 1(2)(b)(v)(c), {11(13)} (with reg. 3)
C600 S. 391(11) modified (18.6.2001) by S.I. 2001/1821, **arts. 1(1)**, 3(5)

Third party rights and access to evidence

392 Application of sections 393 and 394.

Sections 393 and 394 apply to—

(a) a warning notice given in accordance with section 54(1), 57(1), 63(3), 67(1), 88(4)(b), 89(2), 92(1), 126(1), 207(1), 255(1), 280(1), 331(1), 345(2) (whether as a result of subsection (1) of that section or section 249(1)) or 385(1);

(b) a decision notice given in accordance with section 54(2), 57(3), 63(4), 67(4), 88(6)(b), 89(3), 92(4), 127(1), 208(1), 255(2), 280(2), 331(3), 345(3) (whether as a result of subsection (1) of that section or section 249(1)) or 386(1).

Modifications etc. (not altering text)
C601 S. 392(a) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 46(2), 47(2), 48(2), 52(4), 55(2) (with art. 23(2))

393 Third party rights.

(1) If any of the reasons contained in a warning notice to which this section applies relates to a matter which—

(a) identifies a person ("the third party") other than the person to whom the notice is given, and

(b) in the opinion of the Authority, is prejudicial to the third party,

a copy of the notice must be given to the third party.

(2) Subsection (1) does not require a copy to be given to the third party if the Authority—

(a) has given him a separate warning notice in relation to the same matter; or

(b) gives him such a notice at the same time as it gives the warning notice which identifies him.

(3) The notice copied to a third party under subsection (1) must specify a reasonable period (which may not be less than 28 days) within which he may make representations to the Authority.

(4) If any of the reasons contained in a decision notice to which this section applies relates to a matter which—

(a) identifies a person ("the third party") other than the person to whom the decision notice is given, and

(b) in the opinion of the Authority, is prejudicial to the third party,

a copy of the notice must be given to the third party.

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(5) If the decision notice was preceded by a warning notice, a copy of the decision notice must (unless it has been given under subsection (4)) be given to each person to whom the warning notice was copied.

(6) Subsection (4) does not require a copy to be given to the third party if the Authority—

(a) has given him a separate decision notice in relation to the same matter; or

(b) gives him such a notice at the same time as it gives the decision notice which identifies him.

(7) Neither subsection (1) nor subsection (4) requires a copy of a notice to be given to a third party if the Authority considers it impracticable to do so.

(8) Subsections (9) to (11) apply if the person to whom a decision notice is given has a right to refer the matter to the Tribunal.

(9) A person to whom a copy of the notice is given under this section may refer to the Tribunal—

(a) the decision in question, so far as it is based on a reason of the kind mentioned in subsection (4); or

(b) any opinion expressed by the Authority in relation to him.

(10) The copy must be accompanied by an indication of the third party's right to make a reference under subsection (9) and of the procedure on such a reference.

(11) A person who alleges that a copy of the notice should have been given to him, but was not, may refer to the Tribunal the alleged failure and—

(a) the decision in question, so far as it is based on a reason of the kind mentioned in subsection (4); or

(b) any opinion expressed by the Authority in relation to him.

(12) Section 394 applies to a third party as it applies to the person to whom the notice to which this section applies was given, in so far as the material which the Authority must disclose under that section relates to the matter which identifies the third party.

(13) A copy of a notice given to a third party under this section must be accompanied by a description of the effect of section 394 as it applies to him.

(14) Any person to whom a warning notice or decision notice was copied under this section must be given a copy of a notice of discontinuance applicable to the proceedings to which the warning notice or decision notice related.

Modifications etc. (not altering text)

C602 S. 393 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c)**, 24(3) (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**
S. 393 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 38(2), 46(2), 47(2), 48(2), 52(4), 55(2) (with art. 23(2))

C603 S. 393 applied by Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 95(10) (as inserted (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **13**)

C604 S. 393 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **24(3)** (with reg. 1(2))

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C605 S. 393(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 36(4) (with art. 23(2))

394 Access to Authority material.

(1) If the Authority gives a person ("A") a notice to which this section applies, it must—

(a) allow him access to the material on which it relied in taking the decision which gave rise to the obligation to give the notice;

(b) allow him access to any secondary material which, in the opinion of the Authority, might undermine that decision.

(2) But the Authority does not have to allow A access to material under subsection (1) if the material is excluded material or it—

(a) relates to a case involving a person other than A; and

(b) was taken into account by the Authority in A's case only for purposes of comparison with other cases.

(3) The Authority may refuse access A to particular material which it would otherwise have to allow him access to if, in its opinion, allowing him access to the material—

(a) would not be in the public interest; or

(b) would not be fair, having regard to—

(i) the likely significance of the material to A in relation to the matter in respect of which he has been given a notice to which this section applies; and

(ii) the potential prejudice to the commercial interests of a person other than A which would be caused by the material's disclosure.

(4) If the Authority does not allow A access to material because it is excluded material consisting of a protected item, it must give A written notice of—

(a) the existence of the protected item; and

(b) the Authority's decision not to allow him access to it.

(5) If the Authority refuses under subsection (3) to allow A access to material, it must give him written notice of—

(a) the refusal; and

(b) the reasons for it.

(6) "Secondary material" means material, other than material falling within paragraph (a) of subsection (1) which—

(a) was considered by the Authority in reaching the decision mentioned in that paragraph; or

(b) was obtained by the Authority in connection with the matter to which the notice to which this section applies relates but which was not considered by it in reaching that decision.

(7) "Excluded material" means material which—

[[F173](a) is material the disclosure of which for the purposes of or in connection with any legal proceedings is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000; or**]**

(c) is a protected item (as defined in section 413).

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Textual Amendments

F173 S. 394(7)(a) substituted (2.10.2000) for s. 394(7)(a)(b) by 2000 c. 23, s. 82, **Sch. 4 para. 11** (with s. 82(3)); S.I. 2000/2543, **art. 3**

Modifications etc. (not altering text)

C606 S. 394 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c)**, 24(3) (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**
S. 394 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 36(3), 38(2), 46(2), 47(2), 48(2), 52(4), 55(2) (with art. 23(2))

C607 S. 394 applied by Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 95(10) (as inserted (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **13**)

C608 S. 394 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **24(3)** (with reg. 1(2))

The Authority's procedures

395 The Authority's procedures.

(1) The Authority must determine the procedure that it proposes to follow in relation to the giving of—

(a) supervisory notices; and

(b) warning notices and decision notices.

(2) That procedure must be designed to secure, among other things, that the decision which gives rise to the obligation to give any such notice is taken by a person not directly involved in establishing the evidence on which that decision is based.

(3) But the procedure may permit a decision which gives rise to an obligation to give a supervisory notice to be taken by a person other than a person mentioned in subsection (2) if—

(a) the Authority considers that, in the particular case, it is necessary in order to protect the interests of consumers; and

(b) the person taking the decision is of a level of seniority laid down by the procedure.

(4) A level of seniority laid down by the procedure for the purposes of subsection (3)(b) must be appropriate to the importance of the decision.

(5) The Authority must issue a statement of the procedure.

(6) The statement must be published in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(7) The Authority may charge a reasonable fee for providing a person with a copy of the statement.

(8) The Authority must, without delay, give the Treasury a copy of any statement which it issues under this section.

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(9) When giving a supervisory notice, or a warning notice or decision notice, the Authority must follow its stated procedure.

(10) If the Authority changes the procedure in a material way, it must publish a revised statement.

(11) The Authority's failure in a particular case to follow its procedure as set out in the latest published statement does not affect the validity of a notice given in that case.

(12) But subsection (11) does not prevent the Tribunal from taking into account any such failure in considering a matter referred to it.

(13) "Supervisory notice" means a notice given in accordance with section—

(a) 53(4), (7) or (8)(b);
(b) 78(2) or (5);
[F174(ba) 96C;**]**
[F175(bb) 87O(2) or (5);**]**
(c) 197(3), (6) or (7)(b);
(d) 259(3), (8) or (9)(b);
(e) 268(3), (7)(a) or (9)(a) (as a result of subsection (8)(b));
(f) 282(3), (6) or (7)(b);
(g) 321(2) or (5).

Textual Amendments

F174 S. 395(13)(ba) inserted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), **reg. 7**

F175 S. 395(13)(bb) inserted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 14**

Modifications etc. (not altering text)

C609 S. 395 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c)**, 10 (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**
S. 395 amended (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c)**, 27(15) (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**

C610 S. 395 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **10** (with reg. 1(2))

C611 S. 395 modified (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **27(15)** (with reg. 1(2))

C612 S. 395(1)(9) excluded (1.12.2001) by S.I. 2001/2957, **arts. 1**, 12(9); S.I. 2001/3538, **art. 2(1)**

396 Statements under section 395: consultation.

(1) Before issuing a statement of procedure under section 395, the Authority must publish a draft of the proposed statement in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the Authority within a specified time.

(3) Before issuing the proposed statement of procedure, the Authority must have regard to any representations made to it in accordance with subsection (2).

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(4) If the Authority issues the proposed statement of procedure it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2); and

(b) its response to them.

(5) If the statement of procedure differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant, the Authority must (in addition to complying with subsection (4)) publish details of the difference.

(6) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to revise a statement of policy.

PART XXVII

OFFENCES

Miscellaneous offences

397 Misleading statements and practices.

(1) This subsection applies to a person who—

(a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive in a material particular;

(b) dishonestly conceals any material facts whether in connection with a statement, promise or forecast made by him or otherwise; or

(c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive in a material particular.

(2) A person to whom subsection (1) applies 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)—

(a) to enter or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement; or

(b) to exercise, or refrain from exercising, any rights conferred by a relevant investment.

(3) 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 relevant 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.

(4) In proceedings for an offence under subsection (2) brought against a person to whom subsection (1) applies as a result of paragraph (a) of that subsection, it is a defence for him to show that the statement, promise or forecast was made in conformity with

[[F176](a) price stabilising rules;

(b) control of information rules; or

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(c) the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.**]**

(5) In proceedings brought against any person for an offence under subsection (3) it is a defence for him to show—

(a) 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;

(b) that he acted or engaged in the conduct—

(i) for the purpose of stabilising the price of investments; and

(ii) in conformity with price stabilising rules; **F177**. . .

(c) that he acted or engaged in the conduct in conformity with control of information rules**[F178**; or

(a) that he acted or engaged in the conduct in conformity with the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.**]**

(6) Subsections (1) and (2) do 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 or arrangements are made in or from the United Kingdom for the statement, promise or forecast to be made or the facts to be concealed;

(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.

(7) Subsection (3) 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.

(8) A person guilty of an offence under this section is liable—

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

(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.

(9) "Relevant agreement" means an agreement—

(a) the entering into or performance of which by either party constitutes an activity of a specified kind or one which falls within a specified class of activity; and

(b) which relates to a relevant investment.

(10) "Relevant investment" means an investment of a specified kind or one which falls within a prescribed class of investment.

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Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

(11) Schedule 2 (except paragraphs 25 and 26) applies for the purposes of subsections (9) and (10) with references to section 22 being read as references to each of those subsections.

(12) Nothing in Schedule 2, as applied by subsection (11), limits the power conferred by subsection (9) or (10).

(13) "Investment" includes any asset, right or interest.

(14) "Specified" means specified in an order made by the Treasury.

Textual Amendments

F176 Words in s. 397(4) substituted (17.3.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), **reg. 8(2)**

F177 Word in s. 397(5)(b) repealed (17.3.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), **reg. 8(3)**

F178 S. 397(5)(a) and preceding word inserted (17.3.2005) after paragraph (c) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), **reg. 8(3)**

Commencement Information

I120 S. 397 wholly in force at 1.12.2001; s. 397 not in force at Royal Assent see s. 431(2); s. 397(9)-(14) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 397 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

398 Misleading the Authority: residual cases.

(1) A person who, in purported compliance with any requirement imposed by or under this Act, knowingly or recklessly gives the Authority information which is false or misleading in a material particular is guilty of an offence.

(2) Subsection (1) applies only to a requirement in relation to which no other provision of this Act creates an offence in connection with the giving of information.

(3) A person guilty of an offence under this section is liable—

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

(b) on conviction on indictment, to a fine.

Modifications etc. (not altering text)

C613 S. 398 extended (1.12.2001) by S.I. 2001/3646, **arts. 1(2)**, 3(3)(b)(4)
S. 398 excluded (1.12.2001) by S.I. 2001/3646, **arts. 1(2)**, 2(6)

C614 S. 398 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(2)**

C615 S. 398 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 25**

C616 S. 398(1)(3) applied (1.12.2001) by S.I. 1995/1537, **reg. 23(5)** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1**, 509(f))

C617 S. 398(1)(3) applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 38(1)**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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399 Misleading [F179the OFT].

Section 44 of the M76Competition Act 1998 (offences connected with the provision of false or misleading information) applies in relation to any function of **[**F180the Office of Fair Trading**]** under this Act as if it were a function under Part I of that Act.

Textual Amendments

F179 Words in s. 399 sidenote substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(16)(b)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F180 Words in s. 399 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(16)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

Marginal Citations

M76 1998 c. 41.

Bodies corporate and partnerships

400 Offences by bodies corporate etc.

(1) If an offence under this Act committed by a body corporate is shown—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, subsection (1) applies 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.

(3) If an offence under this Act committed by a partnership is shown—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on his part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) In subsection (3) "partner" includes a person purporting to act as a partner.

(5) "Officer", in relation to a body corporate, means—

(a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; and

(b) an individual who is a controller of the body.

(6) If an offence under this Act committed by an unincorporated association (other than a partnership) is shown—

(a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or

(b) to be attributable to any neglect on the part of such an officer or member,

that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

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(7) Regulations may provide for the application of any provision of this section, with such modifications as the Treasury consider appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside the United Kingdom.

Modifications etc. (not altering text)

C618 S. 400 applied (3.9.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/1228, **regs. 1(2)(b)(c)**, 81 (with reg. 1(2)(3)); S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; S.I. 2001/3538, **art. 2(1)**
S. 400 applied (1.12.2001) by S.I. 1995/1537, **reg. 23(6)** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1**, 509(g))
S. 400 amended (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 10(8), 11(8) (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 400 amended (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 10(8), 11(8); S.I. 2001/3538, **art. 2(1)**
S. 400 modified (1.12.2001) by S.I. 2001/3646, **arts. 1(1)**, 12(2), 13(3)

C619 S. 400 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **80** (with reg. 1(2))

C620 S. 400 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 38(2)**

C621 S. 400 applied by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), s. 15A(7) (as substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 232(2)** (with arts. 6, 11, 12))

C622 S. 400 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 26**

Institution of proceedings

401 Proceedings for offences.

(1) In this section "offence" means an offence under this Act or subordinate legislation made under this Act.

(2) Proceedings for an offence may be instituted in England and Wales only—
(a) by the Authority or the Secretary of State; or
(b) by or with the consent of the Director of Public Prosecutions.

(3) Proceedings for an offence may be instituted in Northern Ireland only—
(a) by the Authority or the Secretary of State; or
(b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(4) Except in Scotland, proceedings for an offence under section 203 may also be instituted by **[**[F181]the Office of Fair Trading**]**

(5) In exercising its power to institute proceedings for an offence, the Authority must comply with any conditions or restrictions imposed in writing by the Treasury.

(6) Conditions or restrictions may be imposed under subsection (5) in relation to—
(a) proceedings generally; or
(b) such proceedings, or categories of proceedings, as the Treasury may direct.

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Textual Amendments

F181 Words in s. 401 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(17)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

Modifications etc. (not altering text)

C623 S. 401 applied (1.12.2001) by S.I. 1995/1537, **reg. 23(6)** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1**, 509(g))

C624 S. 401 amended (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 10(8), 11(8), 13(1)(3) (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 401 amended (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 10(8), 11(8), 13(1); S.I. 2001/3538, **art. 2(1)**
S. 401 modified (1.12.2001) by S.I. 2001/3646, **arts. 1(1)**, 12(2), 13(3)

C625 S. 401 applied by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), s. 15A(7) (as substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 232(2)** (with arts. 6, 11, 12))

C626 S. 401 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 27**

C627 S. 401(2)(3)(5)(6) applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 38(2)**

402 Power of the Authority to institute proceedings for certain other offences.

(1) Except in Scotland, the Authority may institute proceedings for an offence under—

(a) Part V of the [M77]Criminal Justice Act 1993 (insider dealing); or

(b) prescribed regulations relating to money laundering.

(2) In exercising its power to institute proceedings for any such offence, the Authority must comply with any conditions or restrictions imposed in writing by the Treasury.

(3) Conditions or restrictions may be imposed under subsection (2) in relation to—

(a) proceedings generally; or

(b) such proceedings, or categories of proceedings, as the Treasury may direct.

Commencement Information

I121 S. 402 wholly in force at 1.12.2001; s. 402 not in force at Royal Assent see s. 431(2); s. 402(1)(b) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 402 in force for specified purposes at 19.10.2001 by S.I. 2001/3436, **art. 2**; s. 402 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Marginal Citations

M77 1993 c. 36.

403 Jurisdiction and procedure in respect of offences.

(1) A fine imposed on an unincorporated association on its conviction of an offence is to be paid out of the funds of the association.

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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(2) Proceedings for an offence alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members).

(3) Rules of court relating to the service of documents are to have effect as if the association were a body corporate.

(4) In proceedings for an offence brought against an unincorporated association—

(a) section 33 of the [M78]Criminal Justice Act 1925 and Schedule 3 to the [M79]Magistrates' Courts Act 1980 (procedure) apply as they do in relation to a body corporate;

(b) section 70 of the [M80]Criminal Procedure (Scotland) Act 1995 (procedure) applies as if the association were a body corporate;

(c) section 18 of the [M81]Criminal Justice (Northern Ireland) Act 1945 and Schedule 4 to the [M82]Magistrates' Courts (Northern Ireland) Order 1981 (procedure) apply as they do in relation to a body corporate.

(5) Summary proceedings for an offence may be taken—

(a) against a body corporate or unincorporated association at any place at which it has a place of business;

(b) against an individual at any place where he is for the time being.

(6) Subsection (5) does not affect any jurisdiction exercisable apart from this section.

(7) "Offence" means an offence under this Act.

Modifications etc. (not altering text)

C628 S. 403 applied (1.12.2001) by S.I. 1995/1537, **reg. 23(6)** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1**, 509(g))

C629 S. 403 amended (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 10(8), 11(8), 13(1)(3) (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 403 amended (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 10(8), 11(8), 13(1); S.I. 2001/3538, **art. 2(1)**
S. 403 modified (1.12.2001) by S.I. 2001/3646, **arts. 1(1)**, 12(2), 13(3)
S. 403 applied (3.9.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/1228, **regs. 1(2)(b)(c)**, 82 (with reg. 1(2)(3)); S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; S.I. 2001/3538, **art. 2(1)**

C630 S. 403 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **81** (with reg. 1(2))

C631 S. 403 applied by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), s. 15A(7) (as substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 232(2)** (with arts. 6, 11, 12))

C632 S. 403 applied (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 28**

Marginal Citations

M78 1925 c. 86.

M79 1980 c. 43.

M80 1995 c. 46.

M81 1945 c. 15 (N.I.)

M82 S.I. 1981/1675

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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PART XXVIII

MISCELLANEOUS

Schemes for reviewing past business

404 Schemes for reviewing past business.

(1) Subsection (2) applies if the Treasury are satisfied that there is evidence suggesting—

(a) that there has been a widespread or regular failure on the part of authorised persons to comply with rules relating to a particular kind of activity; and

(b) that, as a result, private persons have suffered (or will suffer) loss in respect of which authorised persons are (or will be) liable to make payments ("compensation payments").

(2) The Treasury may by order ("a scheme order") authorise the Authority to establish and operate a scheme for—

(a) determining the nature and extent of the failure;

(b) establishing the liability of authorised persons to make compensation payments; and

(c) determining the amounts payable by way of compensation payments.

(3) An authorised scheme must be made so as to comply with specified requirements.

(4) A scheme order may be made only if—

(a) the Authority has given the Treasury a report about the alleged failure and asked them to make a scheme order;

(b) the report contains details of the scheme which the Authority propose to make; and

(c) the Treasury are satisfied that the proposed scheme is an appropriate way of dealing with the failure.

(5) A scheme order may provide for specified provisions of or made under this Act to apply in relation to any provision of, or determination made under, the resulting authorised scheme subject to such modifications (if any) as may be specified.

(6) For the purposes of this Act, failure on the part of an authorised person to comply with any provision of an authorised scheme is to be treated (subject to any provision made by the scheme order concerned) as a failure on his part to comply with rules.

(7) The Treasury may prescribe circumstances in which loss suffered by a person ("A") acting in a fiduciary or other prescribed capacity is to be treated, for the purposes of an authorised scheme, as suffered by a private person in relation to whom A was acting in that capacity.

(8) This section applies whenever the failure in question occurred.

(9) "Authorised scheme" means a scheme authorised by a scheme order.

(10) "Private person" has such meaning as may be prescribed.

(11) "Specified" means specified in a scheme order.

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Modifications etc. (not altering text)
C633 S. 404 modified (6.8.2001) by S.I. 2001/2512, **arts. 1(1)**, 6(1)

VALID FROM 12/10/2010

[F182[Rules under s.404: supplementary

F182404A (1) Rules under section 404 may make provision—

(a) specifying the activities and requirements in relation to which relevant firms are to carry out investigations under consumer redress schemes;

(b) setting out, in relation to any specified description of case, examples of things done, or omitted to be done, that are to be regarded as constituting a failure to comply with a requirement;

(c) setting out, in relation to any specified description of case, matters to be taken into account, or steps to be taken, by relevant firms for the purpose of—

(i) assessing evidence as to a failure to comply with a requirement; or

(ii) determining whether such a failure has caused (or may cause) loss or damage to consumers;

(d) as to the kinds of redress that are, or are not, to be made to consumers in specified descriptions of case and the way in which redress is to be determined in specified descriptions of case;

(e) as to the things that relevant firms are, or are not, to do in establishing and operating consumer redress schemes;

(f) securing that relevant firms are not required to investigate anything occurring after a specified date;

(g) specifying the times by which anything required to be done under any consumer redress scheme is to be done;

(h) requiring relevant firms to provide information to the Authority;

(i) authorising one or more competent persons to do anything for the purposes of, or in connection with, the establishment or operation of any consumer redress scheme;

(j) for the nomination or approval by the Authority of persons authorised under paragraph (i);

(k) as to the circumstances in which, instead of a relevant firm, the Authority (or one or more competent persons acting on the Authority's behalf) may carry out the investigation and take the other relevant steps under any consumer redress scheme;

(l) as to the powers to be available to those carrying out an investigation by virtue of paragraph (k);

(m) as to the enforcement of any redress (for example, in the case of a money award, as a debt owed by a relevant firm).

(2) The only examples that may be set out in the rules as a result of subsection (1)(b) are examples of things done, or omitted to be done, that have been, or would be, held by a court or tribunal to constitute a failure to comply with a requirement.

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(3) Matters may not be set out in the rules as a result of subsection (1)(c) if they have not been, or would not be, taken into account by a court or tribunal for the purpose mentioned there.

(4) The Authority must exercise the power conferred as a result of subsection (1)(d) so as to secure that, in relation to any description of case, the only kinds of redress to be made are those which it considers to be just in relation to that description of case.

(5) In acting under subsection (4), the Authority must have regard (among other things) to the nature and extent of the losses or damage in question.

(6) The provision that may be made under subsection (1)(h) includes provision applying (with or without modifications)—

(a) any provision of section 165; or

(b) any provision of Part 11 relating to that section.

(7) The reference in subsection (1)(k) to the other relevant steps under any consumer redress scheme is a reference to the Authority making the determinations mentioned in section 404(6) and (7) (with the firm still required to make the redress).

(8) If the rules include provision under subsection (1)(k), they must also include provision for—

(a) giving warning and decision notices, and

(b) conferring rights on relevant firms to refer matters to the Tribunal,

in relation to any determination mentioned in section 404(6) and (7) made by the Authority.

(9) Nothing in this section is to be taken as limiting the power conferred by section 404.**]**

Textual Amendments

F182 Ss. 404-404G and preceding cross-heading substituted (12.10.2010) for s. 404 and preceding cross-heading by Financial Services Act 2010 (c. 28), **ss. 14**, 26(3); S.I. 2010/2480, **art. 2**

VALID FROM 12/10/2010

404B Complaints to the ombudsman scheme

(1) If—

(a) a consumer makes a complaint under the ombudsman scheme in respect of an act or omission of a relevant firm, and

(b) at the time the complaint is made, the subject-matter of the complaint falls to be dealt with (or has been dealt with) under a consumer redress scheme,

the way in which the complaint is to be determined by the ombudsman is to be as mentioned in subsection (4).

(2) If a consumer—

(a) is not satisfied with a determination made by a relevant firm under a consumer redress scheme, or

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(b) considers that a relevant firm has failed to make a determination in accordance with a consumer redress scheme,

the consumer may, in respect of that determination or failure, make a complaint under the ombudsman scheme.

(3) A complaint mentioned in subsection (1) or (2) is referred to in the following provisions of this section as a "relevant complaint".

(4) A relevant complaint is to be determined by reference to what, in the opinion of the ombudsman, the determination under the consumer redress scheme should be or should have been (subject to subsection (5)).

(5) If, in determining a relevant complaint, the ombudsman determines that the firm should make (or should have made) a payment of an amount to the consumer, the amount awarded by the ombudsman (a "money award") must not exceed the monetary limit (within the meaning of section 229).

(6) But the ombudsman may recommend that the firm pay a larger amount.

(7) A money award—

(a) may specify the date by which the amount awarded is to be paid;

(b) may provide for interest to be payable, at a rate specified in the award, on any amount which is not paid by that date; and

(c) is enforceable by the consumer in accordance with Part 3 or 3A of Schedule 17 (as the case may be).

(8) If, in determining a relevant complaint, the ombudsman determines that the firm should take (or should have taken) particular action in relation to the consumer, the ombudsman may direct the firm to take that action.

(9) Compliance with a direction under subsection (8) is enforceable, on the application of the consumer, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(10) In consequence of the provision made by this section, sections 228(2) and 229 do not apply in relation to relevant complaints; but all other provision made by or under Part 16 applies in relation to those complaints.

(11) The compulsory jurisdiction of the ombudsman scheme is to include the jurisdiction resulting from this section.

(12) Nothing in subsection (1) is to be taken as requiring the ombudsman to determine a complaint in any case where (apart from that subsection) the complaint would not fall to be determined (whether as a result of rules made under Schedule 17 or otherwise).

(13) Nothing in subsection (2) is to be taken as conferring an entitlement on a person who, for the purposes of the ombudsman scheme, is not an eligible complainant in relation to the subject-matter of the determination mentioned there.

Textual Amendments

F182 Ss. 404-404G and preceding cross-heading substituted (12.10.2010) for s. 404 and preceding cross-heading by Financial Services Act 2010 (c. 28), **ss. 14**, 26(3); S.I. 2010/2480, **art. 2**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 12/10/2010

404C Enforcement

The following provisions—

(a) Part 14 (disciplinary measures), and

(b) so much of this Act as relates to any provision of that Part,

(which apply only in relation to authorised persons) are also to apply in relation to relevant firms which are not (or are no longer) authorised persons.

Textual Amendments

F182 Ss. 404-404G and preceding cross-heading substituted (12.10.2010) for s. 404 and preceding cross-heading by Financial Services Act 2010 (c. 28), **ss. 14**, 26(3); S.I. 2010/2480, **art. 2**

VALID FROM 12/10/2010

404D Applications to Tribunal to quash rules or provision of rules

(1) Any person may apply to the Tribunal for a review of any rules made under section 404.

(2) The Tribunal may—

(a) dismiss the application; or

(b) make an order (a "quashing order") quashing any rules made under section 404 or any provision of those rules.

(3) An application may be made only if permission to make it has first been obtained from the Tribunal.

(4) The Tribunal may grant permission to make an application only if it considers that the applicant has a sufficient interest in the matter to which the application relates.

(5) The general rule is that, in determining an application, the Tribunal is to apply the principles applicable on an application for judicial review.

(6) If (or so far as) an application relates to an example set out in the rules as a result of section 404A(1)(b), the Tribunal may determine whether the example constitutes a failure to comply with the requirement in question.

(7) If (or so far as) an application relates to a matter set out in the rules as a result of section 404A(1)(c), the Tribunal may determine whether the matter should be taken into account as mentioned in that provision.

(8) In the case of an application within subsection (6) or (7), the Tribunal's jurisdiction under that subsection is in addition to its jurisdiction under subsection (5).

(9) A quashing order may be enforced as if it were an order made, on an application for judicial review, by the High Court or, in Scotland, the Court of Session.

(10) The Tribunal may award damages to the applicant if—

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Changes to legislation: *Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 23 April 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)*

(a) the application includes a claim for damages arising from any matter to which the application relates; and

(b) the Tribunal is satisfied that an award would have been made by the High Court or, in Scotland, the Court of Session if the claim had been made in an action begun in that court by the applicant when making the application.

(11) An award of damages under subsection (10) may be enforced as if it were an award made by the High Court or, in Scotland, the Court of Session.

(12) In the case of any proceedings under this section, the judge presiding at the proceedings must be—

(a) a judge of the High Court or the Court of Appeal or a judge of the Court of Session; or

(b) such other person as may be agreed from time to time by—

(i) the Lord Chief Justice, the Lord President or the Lord Chief Justice of Northern Ireland (as the case may be); and

(ii) the Senior President of Tribunals.

(13) Section 133 does not apply in the case of an application under this section, but—

(a) Tribunal Procedure Rules may make provision for the suspension of rules made under section 404 or of any provision of those rules, pending determination of the application; and

(b) in the case of an application within subsection (6) or (7), the Tribunal may consider any evidence relating to the application's subject-matter, whether or not it was available at the time the rules were made.

(14) If—

(a) the Tribunal refuses to grant permission to make an application under this section, and

(b) on an appeal by the applicant, the Court of Appeal grants the permission,

the Court of Appeal may go on to decide the application under this section.

Textual Amendments

F182 Ss. 404-404G and preceding cross-heading substituted (12.10.2010) for s. 404 and preceding cross-heading by Financial Services Act 2010 (c. 28), **ss. 14**, 26(3); S.I. 2010/2480, **art. 2**

VALID FROM 12/10/2010

404E Meaning of "consumers"

(1) For the purposes of sections 404 to 404B "consumers" means persons who—

(a) have used, or may have contemplated using, any of the services within subsection (2); or

(b) have relevant rights or interests in relation to any of the services within that subsection.

(2) The services within this subsection are services provided by—

(a) authorised persons in carrying on regulated activities;

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(b) authorised persons in carrying on a consumer credit business in connection with the accepting of deposits;

(c) authorised persons in communicating, or approving the communication by others of, invitations or inducements to engage in investment activity;

(d) authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services;

(e) persons acting as appointed representatives; or

(f) payment service providers in providing payment services.

(3) A person ("P") has a "relevant right or interest" in relation to any services within subsection (2) if P has a right or interest—

(a) which is derived from, or is otherwise attributable to, the use of the services by others; or

(b) which may be adversely affected by the use of the services by persons acting on P's behalf or in a fiduciary capacity in relation to P.

(4) If a person is providing a service within subsection (2) as a trustee, the persons who have been, or may have been, beneficiaries of the trust are to be treated as persons who have used, or may have contemplated using, the service.

(5) A person who deals with another person ("B") in the course of B providing a service within subsection (2) is to be treated as using the service.

(6) In this section—

"accepting", in relation to deposits, includes agreeing to accept;

"consumer credit business" has the same meaning as in the Consumer Credit Act 1974 (see section 189(1));

"credit institution" has the meaning given by section 138(1B);

"engage in investment activity" has the meaning given by section 21;

"payment services" has the same meaning as in the Payment Services Regulations 2009;

"payment service provider" means a person who is a payment service provider for the purposes of those regulations as a result of falling within any of paragraphs (a) to (e) of the definition in regulation 2(1);

"relevant ancillary services" has the meaning given by section 138(1C).

VALID FROM 12/10/2010

404F Other definitions etc

(1) For the purposes of sections 404 to 404B—

"redress" includes—

(a) interest; and

(b) a remedy or relief which could not be awarded in legal proceedings;

"specified" means specified in rules made under section 404.

(2) In determining for the purposes of those sections whether an authorised person has failed to comply with a requirement, anything which an appointed representative has done or omitted as respects business for which the authorised person has accepted

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responsibility is to be treated as having been done or omitted by the authorised person.

(3) References in those sections to the failure by a relevant firm to comply with a requirement applicable to the carrying on by it of any activity include anything done, or omitted to be done, by it in carrying on the activity—

(a) which is in breach of a duty or other obligation, prohibition or restriction; or

(b) which otherwise gives rise to the availability of a remedy or relief in legal proceedings.

(4) It does not matter whether—

(a) the duty or other obligation, prohibition or restriction, or

(b) the remedy or relief,

arises as a result of any provision made by or under this or any other Act, a rule of law or otherwise.

(5) References in sections 404 to 404B to a relevant firm include—

(a) a person who was at any time a relevant firm but has subsequently ceased to be one; and

(b) a person who has assumed a liability (including a contingent one) incurred by a relevant firm in respect of a failure by the firm to comply with a requirement applicable to the carrying on by it of any activity.

(6) References in those sections to the carrying on of an activity by a relevant firm are, accordingly, to be read in that case with the appropriate modifications.

(7) If the Authority varies a permission or authorisation of a person so as to impose requirements on the person to establish and operate a scheme which corresponds to, or is similar to, a consumer redress scheme, the provision that may be included in the permission or authorisation as varied includes—

(a) provision imposing requirements on the person corresponding to those that could be included in rules made under section 404; and

(b) provision corresponding to section 404B.

(8) In subsection (7) the reference to the variation of a permission or authorisation by the Authority is a reference to—

(a) the variation under section 44 or 45 of a Part IV permission; or

(b) the variation under regulation 8 or 11 of the Payment Services Regulations 2009 of an authorisation under those regulations.

VALID FROM 12/10/2010

404G Power to widen the scope of consumer redress schemes

(1) The Treasury may by order amend the definition of "relevant firms" in section 404 or the definition of "consumers" in section 404E (or both).

(2) An order under this section may make consequential amendments of any provision of sections 404 to 404F.**]**

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Textual Amendments

F182 Ss. 404-404G and preceding cross-heading substituted (12.10.2010) for s. 404 and preceding cross-heading by Financial Services Act 2010 (c. 28), **ss. 14**, 26(3); S.I. 2010/2480, **art. 2**

Third countries

405 Directions.

(1) For the purpose of implementing a third country decision, the Treasury may direct the Authority to—

(a) refuse an application for permission under Part IV made by a body incorporated in, or formed under the law of, any part of the United Kingdom;

(b) defer its decision on such an application either indefinitely or for such period as may be specified in the direction;

(c) give a notice of objection to a person who has served a notice of control to the effect that he proposes to acquire a 50% stake in a UK authorised person; or

(d) give a notice of objection to a person who has acquired a 50% stake in a UK authorised person without having served the required notice of control.

(2) A direction may also be given in relation to—

(a) any person falling within a class specified in the direction;

(b) future applications, notices of control or acquisitions.

(3) The Treasury may revoke a direction at any time.

(4) But revocation does not affect anything done in accordance with the direction before it was revoked.

(5) "Third country decision" means a decision of the Council or the Commission under—

(a) Article 7(5) of the investment services directive;

(b) **[**F183Article 23(5) of the banking consolidation directive**]**;

(c) Article 29b(4) of the first non-life insurance directive; or

[F184(d) Article 59(4) of the life assurance consolidation directive.**]**

Textual Amendments

F183 Words in s. 405(5)(b) substituted (22.11.2000) by S.I. 2000/2952, **reg. 8(3)**

F184 S. 405(5)(d) substituted (11.1.2005) by The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), **reg. 6(4)**

Commencement Information

I122 S. 405 wholly in force at 1.12.2001; s. 405 not in force at Royal Assent see s. 431(2); s. 405 (except (1)(c)(d)) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 405 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

406 Interpretation of section 405.

(1) For the purposes of section 405, a person ("the acquirer") acquires a 50% stake in a UK authorised person ("A") on first falling within any of the cases set out in subsection (2).

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(2) The cases are where the acquirer—

(a) holds 50% or more of the shares in A;

(b) holds 50% or more of the shares in a parent undertaking ("P") of A;

(c) is entitled to exercise, or control the exercise of, 50% or more of the voting power in A; or

(d) is entitled to exercise, or control the exercise of, 50% or more of the voting power in P.

(3) In subsection (2) "the acquirer" means—

(a) the acquirer;

(b) any of the acquirer's associates; or

(c) the acquirer and any of his associates.

(4) "Associate", "shares" and "voting power" have the same meaning as in section 422.

407 Consequences of a direction under section 405.

(1) If the Authority refuses an application for permission as a result of a direction under section 405(1)(a)—

(a) subsections (7) to (9) of section 52 do not apply in relation to the refusal; but

(b) the Authority must notify the applicant of the refusal and the reasons for it.

(2) If the Authority defers its decision on an application for permission as a result of a direction under section 405(1)(b)—

(a) the time limit for determining the application mentioned in section 52(1) or (2) stops running on the day of the deferral and starts running again (if at all) on the day the period specified in the direction (if any) ends or the day the direction is revoked; and

(b) the Authority must notify the applicant of the deferral and the reasons for it.

(3) If the Authority gives a notice of objection to a person as a result of a direction under section 405(1)(c) or (d)—

(a) sections 189 and 191 have effect as if the notice was a notice of objection within the meaning of Part XII; and

(b) the Authority must state in the notice the reasons for it.

Commencement Information

I123 S. 407 wholly in force at 1.12.2001; s. 407 not in force at Royal Assent see s. 431(2); s. 407(1)(2) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 407 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

408 EFTA firms.

(1) If a third country decision has been taken, the Treasury may make a determination in relation to an EFTA firm which is a subsidiary undertaking of a parent undertaking which is governed by the law of the country to which the decision relates.

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(2) "Determination" means a determination that the firm concerned does not qualify for authorisation under Schedule 3 even if it satisfies the conditions in paragraph 13 or 14 of that Schedule.

(3) A determination may also be made in relation to any firm falling within a class specified in the determination.

(4) The Treasury may withdraw a determination at any time.

(5) But withdrawal does not affect anything done in accordance with the determination before it was withdrawn.

(6) If the Treasury make a determination in respect of a particular firm, or withdraw such a determination, they must give written notice to that firm.

(7) The Treasury must publish notice of any determination (or the withdrawal of any determination)—

(a) in such a way as they think most suitable for bringing the determination (or withdrawal) to the attention of those likely to be affected by it; and

(b) on, or as soon as practicable after, the date of the determination (or withdrawal).

(8) "EFTA firm" means a firm, institution or undertaking which—

(a) is an EEA firm as a result of paragraph 5(a), (b) or (d) of Schedule 3; and

(b) is incorporated in, or formed under the law of, an EEA State which is not a member State.

(9) "Third country decision" has the same meaning as in section 405.

Commencement Information

I124 S. 408 wholly in force at 1.12.2001; s. 408 not in force at Royal Assent see s. 431(2); s. 408 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 408 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

409 Gibraltar.

(1) The Treasury may by order—

(a) modify Schedule 3 so as to provide for Gibraltar firms of a specified description to qualify for authorisation under that Schedule in specified circumstances;

(b) modify Schedule 3 so as to make provision in relation to the exercise by UK firms of rights under the law of Gibraltar which correspond to EEA rights;

(c) modify Schedule 4 so as to provide for Gibraltar firms of a specified description to qualify for authorisation under that Schedule in specified circumstances;

(d) modify section 264 so as to make provision in relation to collective investment schemes constituted under the law of Gibraltar;

(e) provide for the Authority to be able to give notice under section 264(2) on grounds relating to the law of Gibraltar;

(f) provide for this Act to apply to a Gibraltar recognised scheme as if the scheme were a scheme recognised under section 264.

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(2) The fact that a firm may qualify for authorisation under Schedule 3 as a result of an order under subsection (1) does not prevent it from applying for a Part IV permission.

(3) "Gibraltar firm" means a firm which has its head office in Gibraltar or is otherwise connected with Gibraltar.

(4) "Gibraltar recognised scheme" means a collective investment scheme—

(a) constituted in an EEA State other than the United Kingdom, and

(b) recognised in Gibraltar under provisions which appear to the Treasury to give effect to the provisions of a relevant Community instrument.

(5) "Specified" means specified in the order.

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

International obligations

410 International obligations.

(1) If it appears to the Treasury that any action proposed to be taken by a relevant person would be incompatible with Community obligations or any other international obligations of the United Kingdom, they may direct that person not to take that action.

(2) If it appears to the Treasury that any action which a relevant person has power to take is required for the purpose of implementing any such obligations, they may direct that person to take that action.

(3) A direction under this section—

(a) may include such supplemental or incidental requirements as the Treasury consider necessary or expedient; and

(b) is enforceable, on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the [M83]Court of Session Act 1988.

(4) "Relevant person" means—

(a) the Authority;

(b) any person exercising functions conferred by Part VI on the competent authority;

(c) any recognised investment exchange (other than one which is an overseas investment exchange);

(d) any recognised clearing house (other than one which is an overseas clearing house);

(e) a person included in the list maintained under section 301; or

(f) the scheme operator of the ombudsman scheme.

Modifications etc. (not altering text)

C634 S. 410 applied (1.12.2001) by S.I. 1995/1537, **reg. 23(3)** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1**, 509(d))

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations
M83 1988 c. 36.

Tax treatment of levies and repayments

411 Tax treatment of levies and repayments.

F185(1) . . . . . .

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

"**76A Levies and repayments under the Financial Services and Markets Act 2000.**

(1) In computing the amount of the profits to be charged under Case I of Schedule D arising from a trade carried on by an authorised person (other than an investment company)—

(a) to the extent that it would not be deductible apart from this section, any sum expended by the authorised person in paying a levy may be deducted as an allowable expense;

(b) any payment which is made to the authorised person as a result of a repayment provision is to be treated as a trading receipt.

(2) "Levy" has the meaning given in section 76(7A).

(3) "Repayment provision" means any provision made by virtue of—

(a) section 136(7) of the Financial Services and Markets Act 2000 ("the Act of 2000");

(b) section 214(1)(e) of the Act of 2000.

(4) "Authorised person" has the same meaning as in the Act of 2000.

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

(1) For the purposes of section 75 any sums paid by an investment company—

(a) by way of a levy, or

(b) as a result of an award of costs under costs rules,

shall be treated as part of its expenses of management.

(2) If a payment is made to an investment company as a result of a repayment provision, the company shall be charged to tax under Case VI of Schedule D on the amount of that payment.

(3) "Levy" has the meaning given in section 76(7A).

(4) "Costs rules" means—

(a) rules made under section 230 of the Financial Services and Markets Act 2000;

(b) provision relating to costs contained in the standard terms fixed under paragraph 18 of Schedule 17 to that Act.

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(5) "Repayment provision" has the meaning given in section 76A(3)."

Textual Amendments

F185 S. 411(1) repealed (1.12.2001) by S.I. 2001/3629, arts. 1(2)(a), 109, **Sch.**

Gaming contracts

412 Gaming contracts.

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

(a) section 18 of the [M84]Gaming Act 1845, section 1 of the [M85]Gaming Act 1892 or Article 170 of the [M86]Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985; or

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

(2) This section applies to a contract if—

(a) it is entered into by either or each party by way of business;

(b) the entering into or performance of it by either party constitutes an activity of a specified kind or one which falls within a specified class of activity; and

(c) it relates to an investment of a specified kind or one which falls within a specified class of investment.

(3) Part II of Schedule 2 applies for the purposes of subsection (2)(c), with the references to section 22 being read as references to that subsection.

(4) Nothing in Part II of Schedule 2, as applied by subsection (3), limits the power conferred by subsection (2)(c).

(5) "Investment" includes any asset, right or interest.

(6) "Specified" means specified in an order made by the Treasury.

Commencement Information

I125 S. 412 wholly in force at 1.12.2001; s. 412 not in force at Royal Assent see s. 431(2); s. 412 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 412 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Marginal Citations

M84 1845 c. 109.

M85 1892 c. 9.

M86 S.I. 1985/1204 (N.I. 11).

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 01/04/2007

[F186 Trade-matching and reporting systems

Textual Amendments

F186 Ss. 412A, 412B and preceding cross-heading inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(5), **Sch. 5 para. 18**

412A Approval and monitoring of trade-matching and reporting systems

(1) A relevant system is an approved relevant system if it is approved by the Authority under subsection (2) for the purposes of Article 25.5 of the markets in financial instruments directive; and references in this section and section 412B to an "approved relevant system" are to be read accordingly.

(2) The Authority must approve a relevant system if, on an application by the operator of the system, it is satisfied that the arrangements established by the system for reporting transactions comply with Article 12(1) of Commission Regulation 1287/2006 of 10 August 2006 [F187] ("the Regulation").

(3) Section 51(3) and (4) applies to an application under this section as it applies to an application under Part 4.

(4) If, at any time after approving a relevant system under subsection (2), the Authority is not satisfied as mentioned in that subsection, it may suspend or withdraw the approval.

(5) The Authority must keep under review the arrangements established by an approved relevant system for reporting transactions for the purpose of ensuring that the arrangements comply with Article 12(1) of the Regulation; and for the purposes of this subsection the Authority must have regard to information provided to it under subsections (6) and (7).

(6) The operator of an approved relevant system must make reports to the Authority at specified intervals containing specified information relating to—

(a) the system,

(b) the reports made by the system in accordance with Article 25 of the markets in financial instruments directive and the Regulation, and

(c) the transactions to which those reports relate.

"Specified" means specified by the Authority.

(7) The Authority may by written notice require the operator of an approved relevant system to provide such additional information as may be specified in the notice, by such reasonable time as may be so specified, about any of the matters mentioned in subsection (6).

(8) The recipient of a notice under subsection (7) must provide the information by the time specified in the notice.

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(9) In this section and section 412B, "relevant system" means a trade-matching or reporting system of a kind described in Article 12 of the Regulation.

Textual Amendments

F187 OJ No L 241, 2.9.2006, p. 1.

412B Procedure for approval and suspension or withdrawal of approval

(1) If the Authority approves a relevant system, it must give the operator of the system written notice specifying the date from which the approval has effect.

(2) If the Authority proposes to refuse to approve a relevant system, it must give the operator of the system a warning notice.

(3) If the Authority decides to refuse to approve a relevant system, it must give the operator of the system a decision notice.

(4) If the Authority proposes to suspend or withdraw its approval in relation to an approved relevant system, it must give the operator of the system a warning notice.

(5) If the Authority decides to suspend or withdraw its approval in relation to an approved relevant system, it must give the operator of the system a decision notice specifying the date from which the suspension or withdrawal is to take effect.

(6) Subsections (7) to (9) apply if—

(a) the Authority has suspended its approval in relation to an approved relevant system, and

(b) the operator of the system has applied for the suspension to be cancelled.

(7) The Authority must grant the application if it is satisfied as mentioned in section 412A(2); and in such a case the Authority must give written notice to the operator that the suspension is to be cancelled from the date specified in the notice.

(8) If the Authority proposes to refuse the application, it must give the operator a warning notice.

(9) If the Authority decides to refuse the application, it must give the operator a decision notice.

(10) A person who receives a decision notice under subsection (3), (5) or (9) may refer the matter to the Tribunal.**]**

Limitation on powers to require documents

413 Protected items.

(1) A person may not be required under this Act to produce, disclose or permit the inspection of protected items.

(2) "Protected items" means—

(a) communications between a professional legal adviser and his client or any person representing his client which fall within subsection (3);

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(b) communications between a professional legal adviser, his client or any person representing his client and any other person which fall within subsection (3) (as a result of paragraph (b) of that subsection);

(c) items which—

(i) are enclosed with, or referred to in, such communications;

(ii) fall within subsection (3); and

(iii) are in the possession of a person entitled to possession of them.

(3) A communication or item falls within this subsection if it is made—

(a) in connection with the giving of legal advice to the client; or

(b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.

(4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

Modifications etc. (not altering text)

C635 S. 413 applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(b)(xiii)(c), 95, **Sch. 5 para. 8** (with reg. 3)

C636 S. 413 applied (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. para. 6**

C637 S. 413 applied (9.2.2011 for certain purposes and 30.4.2011 otherwise) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xiv)(b), 62, **Sch. 3 para. 9** (with reg. 3)

Service of notices

414 Service of notices.

(1) The Treasury may by regulations make provision with respect to the procedure to be followed, or rules to be applied, when a provision of or made under this Act requires a notice, direction or document of any kind to be given or authorises the imposition of a requirement.

(2) The regulations may, in particular, make provision—

(a) as to the manner in which a document must be given;

(b) as to the address to which a document must be sent;

(c) requiring, or allowing, a document to be sent electronically;

(d) for treating a document as having been given, or as having been received, on a date or at a time determined in accordance with the regulations;

(e) as to what must, or may, be done if the person to whom a document is required to be given is not an individual;

(f) as to what must, or may, be done if the intended recipient of a document is outside the United Kingdom.

(3) Subsection (1) applies however the obligation to give a document is expressed (and so, in particular, includes a provision which requires a document to be served or sent).

(4) Section 7 of the [M87]Interpretation Act 1978 (service of notice by post) has effect in relation to provisions made by or under this Act subject to any provision made by regulations under this section.

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Modifications etc. (not altering text)

C638 S. 414 amended (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 10(7), 11(7) (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 414 amended (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 10(7), 11(7); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I126 S. 414 wholly in force at 18.6.2001; s. 414 not in force at Royal Assent see s. 431(2); s. 414(1)-(3) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 414 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**

Marginal Citations

M87 1978 c. 30.

Jurisdiction

415 Jurisdiction in civil proceedings.

(1) Proceedings arising out of any act or omission (or proposed act or omission) of—

(a) the Authority,

(b) the competent authority for the purposes of Part VI,

(c) the scheme manager, or

(d) the scheme operator,

in the discharge or purported discharge of any of its functions under this Act may be brought before the High Court or the Court of Session.

(2) The jurisdiction conferred by subsection (1) is in addition to any other jurisdiction exercisable by those courts.

Modifications etc. (not altering text)

C639 S. 415 applied (1.12.2001) by S.I. 1995/1537, **reg. 23(2)** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1**, 509(c))

C640 S. 415 modified (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), 8, **Sch. 2 para. 8**

VALID FROM 08/04/2010

I[F188] Powers of the Authority

Textual Amendments

F188 S. 415A and preceding cross-heading inserted (8.4.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(1)(l), **Sch. 2 para. 30**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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415A Powers of the Authority

Any power which the Authority has under any provision of this Act is not limited in any way by any other power which it has under any other provision of this Act.**]**

Removal of certain unnecessary provisions

416 Provisions relating to industrial assurance and certain other enactments.

(1) The following enactments are to cease to have effect—

(a) the [M88]Industrial Assurance Act 1923;

(b) the [M89]Industrial Assurance and Friendly Societies Act 1948;

(c) the [M90]Insurance Brokers (Registration) Act 1977.

(2) The [M91]Industrial Assurance (Northern Ireland) Order 1979 is revoked.

(3) The following bodies are to cease to exist—

(a) the Insurance Brokers Registration Council;

(b) the Policyholders Protection Board;

(c) the Deposit Protection Board;

(d) the Board of Banking Supervision.

(4) If the Treasury consider that, as a consequence of any provision of this section, it is appropriate to do so, they may by order make any provision of a kind that they could make under this Act (and in particular any provision of a kind mentioned in section 339) with respect to anything done by or under any provision of Part XXI.

(5) Subsection (4) is not to be read as affecting in any way any other power conferred on the Treasury by this Act.

Commencement Information

I127 S. 416 wholly in force at 1.12.2001; s. 416 not in force at Royal Assent see s. 431(2); s. 416(4)(5) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 416(1)(c)(3)(a) in force at 30.4.2001 by S.I. 2001/1282, **art. 2(a)**; s. 416 in force at 1.12.2001 so far as not already in force (except sub-section (3)(b)(c) which are in force at 2.3.2002) by S.I. 2001/3538, **art. 2(1)(4)**

Marginal Citations

M88 1923 c. 8.

M89 1948 c. 39.

M90 1977 c. 46.

M91 S.I. 1979/1574 (N.I. 13).

PART XXIX

INTERPRETATION

417 Definitions.

(1) In this Act—

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"appointed representative" has the meaning given in section 39(2);

"auditors and actuaries rules" means rules made under section 340;

"authorisation offence" has the meaning given in section 23(2);

"authorised open-ended investment company" has the meaning given in section 237(3);

"authorised person" has the meaning given in section 31(2);

"the Authority" means the Financial Services Authority;

"body corporate" includes a body corporate constituted under the law of a country or territory outside the United Kingdom;

"chief executive"—

(a) in relation to a body corporate whose principal place of business is within the United Kingdom, means an employee of that body who, alone or jointly with one or more others, is responsible under the immediate authority of the directors, for the conduct of the whole of the business of that body; and

(b) in relation to a body corporate whose principal place of business is outside the United Kingdom, means the person who, alone or jointly with one or more others, is responsible for the conduct of its business within the United Kingdom;

"collective investment scheme" has the meaning given in section 235;

"the Commission" means the European Commission (except in provisions relating to the Competition Commission);

"the compensation scheme" has the meaning given in section 213(2);

"control of information rules" has the meaning given in section 147(1);

"director", in relation to a body corporate, includes—

(a) a person occupying in relation to it the position of a director (by whatever name called); and

(b) a 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;

"documents" 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 **[**[F189], or in a form from which it can readily be produced in visible and legible form**]**;

[[F190]"electronic commerce directive" means Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);**]**

"exempt person", in relation to a regulated activity, means a person who is exempt from the general prohibition in relation to that activity as a result of an exemption order made under section 38(1) or as a result of section 39(1) or 285(2) or (3);

"financial promotion rules" means rules made under section 145;

"friendly society" means an incorporated or registered friendly society;

"general prohibition" has the meaning given in section 19(2);

"general rules" has the meaning given in section 138(2);

"incorporated friendly society" means a society incorporated under the [M92]Friendly Societies Act 1992;

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"industrial and provident society" means a society registered or deemed to be registered under the [M93]Industrial and Provident Societies Act 1965 or the [M94]Industrial and Provident Societies Act (Northern Ireland) 1969;

[[F191]"information society service" means an information society service within the meaning of Article 2(a) of the electronic commerce directive;**]**

"market abuse" has the meaning given in section 118;

"Minister of the Crown" has the same meaning as in the Ministers of the [M95]Crown Act 1975;

"money laundering rules" means rules made under section 146;

"notice of control" has the meaning given in section 178(5);

"the ombudsman scheme" has the meaning given in section 225(3);

"open-ended investment company" has the meaning given in section 236;

"Part IV permission" has the meaning given in section 40(4);

"partnership" includes a partnership constituted under the law of a country or territory outside the United Kingdom;

"prescribed" (where not otherwise defined) means prescribed in regulations made by the Treasury;

"price stabilising rules" means rules made under section 144;

"private company" has the meaning given in section 1(3) of the [M96]Companies Act 1985 or in Article 12(3) of the [M97]Companies (Northern Ireland) Order 1986;

"prohibition order" has the meaning given in section 56(2);

"recognised clearing house" and "recognised investment exchange" have the meaning given in section 285;

"registered friendly society" means a society which is—

(a) a friendly society within the meaning of section 7(1)(a) of the [M98]Friendly Societies Act 1974; and

(b) registered within the meaning of that Act;

"regulated activity" has the meaning given in section 22;

"regulating provisions" has the meaning given in section 159(1);

"regulatory objectives" means the objectives mentioned in section 2;

"regulatory provisions" has the meaning given in section 302;

"rule" means a rule made by the Authority under this Act;

"rule-making instrument" has the meaning given in section 153;

"the scheme manager" has the meaning given in section 212(1);

"the scheme operator" has the meaning given in section 225(2);

"scheme particulars rules" has the meaning given in section 248(1);

"Seventh Company Law Directive" means the European Council Seventh Company Law Directive of 13 June 1983 on consolidated accounts (No. 83/349/EEC);

"threshold conditions", in relation to a regulated activity, has the meaning given in section 41;

"the Treaty" means the treaty establishing the European Community;

"trust scheme rules" has the meaning given in section 247(1);

"UK authorised person" has the meaning given in section 178(4); and

"unit trust scheme" has the meaning given in section 237.

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(2) In the application of this Act to Scotland, references to a matter being actionable at the suit of a person are to be read as references to the matter being actionable at the instance of that person.

(3) For the purposes of any provision of this Act **[**F192(other than a provision of Part 6)**]** authorising or requiring a person to do anything within a specified number of days no account is to be taken of any day which is a public holiday in any part of the United Kingdom.

[F193(4) For the purposes of this Act—

(a) an information society service is provided from an EEA State if it is provided from an establishment in that State;

(b) an establishment, in connection with an information society service, is the place at which the provider of the service (being a national of an EEA State or a company or firm as mentioned in Article 48 of the Treaty) effectively pursues an economic activity for an indefinite period;

(c) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute that place as an establishment of the kind mentioned in paragraph (b);

(d) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment where the provider has the centre of his activities relating to the service.**]**

Textual Amendments

F189 S. 417(1): words in definition of "documents" inserted (1.4.2003) by 2001 c. 16, ss. 70, 138(2), Sch. 2 Pt. 2 para. 16(2)(f); S.I. 2003/708, **art. 2(c)(k)**

F190 S. 417: definition of "electronic commerce directive" inserted (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **13(2)(a)**

F191 S. 417: definition of "information society service" inserted (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **13(2)(b)**

F192 Words in s. 417(3) inserted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 15**

F193 S. 417(4) inserted (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **13(2)(c)**

Marginal Citations

M92 1992 c. 40.

M93 1965 c. 12.

M94 1969 c. 24. (N.I.)

M95 1975 c. 26.

M96 1985 c. 6.

M97 S.I. 1986/1032 (N.I. 6).

M98 1992 c. 40.

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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418 Carrying on regulated activities in the United Kingdom.

(1) In the **[**[F194]five**]** cases described in this section, a person who—

(a) is carrying on a regulated activity, but

(b) would not otherwise be regarded as carrying it on in the United Kingdom,

is, for the purposes of this Act, to be regarded as carrying it on in the United Kingdom.

(2) The first case is where—

(a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;

(b) he is entitled to exercise rights under a single market directive as a UK firm; and

(c) he is carrying on in another EEA State a regulated activity to which that directive applies.

(3) The second case is where—

(a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;

(b) he is the manager of a scheme which is entitled to enjoy the rights conferred by an instrument which is a relevant Community instrument for the purposes of section 264; and

(c) persons in another EEA State are invited to become participants in the scheme.

(4) The third case is where—

(a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;

(b) the day-to-day management of the carrying on of the regulated activity is the responsibility of—

(i) his registered office (or head office); or

(ii) another establishment maintained by him in the United Kingdom.

(5) The fourth case is where—

(a) his head office is not in the United Kingdom; but

(b) the activity is carried on from an establishment maintained by him in the United Kingdom.

[[F195](5A) The fifth case is any other case where the activity—

(a) consists of the provision of an information society service to a person or persons in one or more EEA States; and

(b) is carried on from an establishment in the United Kingdom.**]**

(6) For the purposes of subsections (2) to **[**[F196](5A)**]** it is irrelevant where the person with whom the activity is carried on is situated.

Textual Amendments

F194 Word in s. 418(1) substituted (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **13(3)(a)**

F195 S. 418(5A) inserted (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **13(3)(b)**

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F196 Word in s. 418(6) substituted (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **13(3)(c)**

419 Carrying on regulated activities by way of business.

(1) The Treasury may by order make provision—

(a) as to the circumstances in which a person who would otherwise not be regarded as carrying on a regulated activity by way of business is to be regarded as doing so;

(b) as to the circumstances in which a person who would otherwise be regarded as carrying on a regulated activity by way of business is to be regarded as not doing so.

(2) An order under subsection (1) may be made so as to apply—

(a) generally in relation to all regulated activities;

(b) in relation to a specified category of regulated activity; or

(c) in relation to a particular regulated activity.

(3) An order under subsection (1) may be made so as to apply—

(a) for the purposes of all provisions;

(b) for a specified group of provisions; or

(c) for a specified provision.

(4) "Provision" means a provision of, or made under, this Act.

(5) Nothing in this section is to be read as affecting the provisions of section 428(3).

420 Parent and subsidiary undertaking.

(1) In this Act, except in relation to an incorporated friendly society, "parent undertaking" and "subsidiary undertaking" have the same meaning as in Part VII of the [M99]Companies Act 1985 (or Part VIII of the [M100]Companies (Northern Ireland) Order 1986).

(2) But—

(a) "parent undertaking" also includes an individual who would be a parent undertaking for the purposes of those provisions if he were taken to be an undertaking (and "subsidiary undertaking" is to be read accordingly);

(b) "subsidiary undertaking" also includes, in relation to a body incorporated in or formed under the law of an EEA State other than the United Kingdom, an undertaking which is a subsidiary undertaking within the meaning of any rule of law in force in that State for purposes connected with implementation of the Seventh Company Law Directive (and "parent undertaking" is to be read accordingly).

(3) In this Act "subsidiary undertaking", in relation to an incorporated friendly society, means a body corporate of which the society has control within the meaning of section 13(9)(a) or (aa) of the [M101]Friendly Societies Act 1992 (and "parent undertaking" is to be read accordingly).

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Marginal Citations

M99 1985 c. 6.
M100 S.I. 1986/1032 (N.I. 6).
M101 1992 c. 40.

421 Group.

(1) In this Act "group", in relation to a person ("A"), means A and any person who is—

(a) a parent undertaking of A;
(b) a subsidiary undertaking of A;
(c) a subsidiary undertaking of a parent undertaking of A;
(d) a parent undertaking of a subsidiary undertaking of A;
(e) an undertaking in which A or an undertaking mentioned in paragraph (a), (b), (c) or (d) has a participating interest;
(f) if A or an undertaking mentioned in paragraph (a) or (d) is a building society, an associated undertaking of the society; or
(g) if A or an undertaking mentioned in paragraph (a) or (d) is an incorporated friendly society, a body corporate of which the society has joint control (within the meaning of section 13(9)(c) or (cc) of the [M102]Friendly Societies Act 1992).

(2) "Participating interest" has the same meaning as in Part VII of the [M103]Companies Act 1985 or Part VIII of the [M104]Companies (Northern Ireland) Order 1986; but also includes an interest held by an individual which would be a participating interest for the purposes of those provisions if he were taken to be an undertaking.

(3) "Associated undertaking" has the meaning given in section 119(1) of the [M105]Building Societies Act 1986.

Marginal Citations

M102 1992 c. 40.
M103 1985 c. 6.
M104 S.I. 1986/1032 (N.I. 6).
M105 1986 c. 53.

VALID FROM 06/04/2008

[F197[Meaning of "participating interest" F197]421A

(1) In section 421 a "participating interest" means an interest held by an undertaking in the shares of another undertaking which it holds on a long-term basis for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.

(2) A holding of 20% or more of the shares of an undertaking is presumed to be a participating interest unless the contrary is shown.

(3) The reference in subsection (1) to an interest in shares includes—

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(a) an interest which is convertible into an interest in shares, and

(b) an option to acquire shares or any such interest;

and an interest or option falls within paragraph (a) or (b) notwithstanding that the shares to which it relates are, until the conversion or the exercise of the option, unissued.

(4) For the purposes of this section an interest held on behalf of an undertaking shall be treated as held by it.

(5) In this section "undertaking" has the same meaning as in the Companies Acts (see section 1161(1) of the Companies Act 2006).**]]**

Textual Amendments

F197 S. 421A inserted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 212(3)** (with arts. 6, 11, 12)

422 Controller.

(1) In this Act "controller", in relation to an undertaking ("A"), means a person who falls within any of the cases in subsection (2).

(2) The cases are where the person—

(a) holds 10% or more of the shares in A;

(b) is able to exercise significant influence over the management of A by virtue of his shareholding in A;

(c) holds 10% or more of the shares in a parent undertaking ("P") of A;

(d) is able to exercise significant influence over the management of P by virtue of his shareholding in P;

(e) is entitled to exercise, or control the exercise of, 10% or more of the voting power in A;

(f) is able to exercise significant influence over the management of A by virtue of his voting power in A;

(g) is entitled to exercise, or control the exercise of, 10% or more of the voting power in P; or

(h) is able to exercise significant influence over the management of P by virtue of his voting power in P.

(3) In subsection (2) "the person" means—

(a) the person;

(b) any of the person's associates; or

(c) the person and any of his associates.

(4) "Associate", in relation to a person ("H") holding shares in an undertaking ("C") or entitled to exercise or control the exercise of voting power in relation to another undertaking ("D"), means—

(a) the spouse of H;

(b) a child or stepchild of H (if under 18);

(c) the trustee of any settlement under which H has a life interest in possession (or in Scotland a life interest);

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(d) an undertaking of which H is a director;

(e) a person who is an employee or partner of H;

(f) if H is an undertaking—

(i) a director of H;

(ii) a subsidiary undertaking of H;

(iii) a director or employee of such a subsidiary undertaking; and

(g) if H has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in C or D or under which they undertake to act together in exercising their voting power in relation to C or D, that other person.

(5) "Settlement", in subsection (4)(c), includes any disposition or arrangement under which property is held on trust (or subject to a comparable obligation).

(6) "Shares"—

(a) in relation to an undertaking with a share capital, means allotted shares;

(b) in relation to an undertaking with capital but no share capital, means rights to share in the capital of the undertaking;

(c) in relation to an undertaking without capital, means interests—

(i) conferring any right to share in the profits, or liability to contribute to the losses, of the undertaking; or

(ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

(7) "Voting power", in relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, means the right under the constitution of the undertaking to direct the overall policy of the undertaking or alter the terms of its constitution.

VALID FROM 21/03/2009

422A Disregarded holdings

(1) For the purposes of section 422, shares and voting power that a person holds in an undertaking ("B") or in a parent undertaking of B ("P") are disregarded in the following circumstances.

(2) Shares held only for the purposes of clearing and settling within a short settlement cycle are disregarded.

(3) Shares held by a custodian or its nominee in a custodian capacity are disregarded, provided that the custodian or nominee is only able to exercise voting power attached to the shares in accordance with instructions given in writing.

(4) Shares representing no more than 5% of the total voting power in B or P held by an investment firm are disregarded, provided that it—

(a) holds the shares in the capacity of a market maker (as defined in article 4.1(8) of the markets in financial instruments directive);

(b) is authorised by its home state regulator under the markets in financial instruments directive; and

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(c) neither intervenes in the management of B or P nor exerts any influence on B or P to buy the shares or back the share price.

(5) Shares held by a credit institution or investment firm in its trading book are disregarded, provided that—

(a) the shares represent no more than 5% of the total voting power in B or P; and

(b) the credit institution or investment firm ensures that the voting power is not used to intervene in the management of B or P.

(6) Shares held by a credit institution or an investment firm are disregarded, provided that—

(a) the shares are held as a result of performing the investment services and activities of—

(i) underwriting shares; or

(ii) placing shares on a firm commitment basis in accordance with Annex I, section A.6 of the markets in financial instruments directive; and

(b) the credit institution or investment firm—

(i) does not exercise voting power represented by the shares or otherwise intervene in the management of the issuer; and

(ii) retains the holding for a period of less than one year.

(7) Where a management company (as defined in Article 1a.2 of the UCITS directive) and its parent undertaking both hold shares or voting power, each may disregard holdings of the other, provided that each exercises its voting power independently of the other.

(8) But subsection (7) does not apply if the management company—

(a) manages holdings for its parent undertaking or an undertaking in respect of which the parent undertaking is a controller;

(b) has no discretion to exercise the voting power attached to such holdings; and

(c) may only exercise the voting power in relation to such holdings under direct or indirect instruction from—

(i) its parent undertaking; or

(ii) an undertaking in respect of which of the parent undertaking is a controller.

(9) Where an investment firm and its parent undertaking both hold shares or voting power, the parent undertaking may disregard holdings managed by the investment firm on a client by client basis and the investment firm may disregard holdings of the parent undertaking, provided that the investment firm—

(a) has permission to provide portfolio management;

(b) exercises its voting power independently from the parent undertaking; and

(c) may only exercise the voting power under instructions given in writing, or has appropriate mechanisms in place for ensuring that individual portfolio management services are conducted independently of any other services.

(10) In this section "credit institution" means—

(a) a credit institution authorised under the banking consolidation directive; or

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(b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State.

423 Manager.

(1) 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) exercises managerial functions or is responsible for maintaining accounts or other records of his employer.

(2) If the employer is not an individual, references in subsection (1) to the authority of the employer are references to the authority—

(a) in the case of a body corporate, of the directors;

(b) in the case of a partnership, of the partners; and

(c) in the case of an unincorporated association, of its officers or the members of its governing body.

(3) "Manager", in relation to a body corporate, means a person (other than an employee of the body) who is appointed by the body to manage any part of its business and includes an employee of the body corporate (other than the chief executive) who, under the immediate authority of a director or chief executive of the body corporate, exercises managerial functions or is responsible for maintaining accounts or other records of the body corporate.

424 Insurance.

(1) In this Act, references to—

(a) contracts of insurance,

(b) reinsurance,

(c) contracts of long-term insurance,

(d) contracts of general insurance,

are to be read with section 22 and Schedule 2.

(2) In this Act "policy" and "policyholder", in relation to a contract of insurance, have such meaning as the Treasury may by order specify.

(3) The law applicable to a contract of insurance, the effecting of which constitutes the carrying on of a regulated activity, is to be determined, if it is of a prescribed description, in accordance with regulations made by the Treasury.

Commencement Information

I128 S. 424 wholly in force at 1.12.2001; s. 424 not in force at Royal Assent see s. 431(2); s. 424(1)(2) in force and s. 424(3) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(a)(b), Sch. Pts. 1, **2**; s. 424 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 01/07/2005. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 06/12/2006

424A Investment firm

(1) In this Act, "investment firm" has the meaning given in Article 4.1.1 of the markets in financial instruments directive.

(2) Subsection (1) is subject to subsections (3) to (5).

(3) References in this Act to an "investment firm" include references to a person who would be an investment firm (within the meaning of Article 4.1.1 of the markets in financial instruments directive) if—

(a) his registered office, or

(b) in the case of an individual or a body corporate with no registered office, his head office,

were in an EEA State.

(4) But subsection (3) does not apply if the person in question is one to whom the markets in financial instruments directive would not apply by virtue of Article 2 of that directive.

(5) References in this Act to an "investment firm" do not include references to—

(a) a person to whom the markets in financial instruments directive does not apply by virtue of Article 2 of the directive; or

(b) a person whose home Member State (within the meaning of Article 4.1.20 of the markets in financial instruments directive) is an EEA State and to whom, by reason of the fact that the State has given effect to Article 3 of that directive, that directive does not apply by virtue of that Article.

425 Expressions relating to authorisation elsewhere in the single market.

(1) In this Act—

[F198(a) "banking consolidation directive", **[**F199 "life assurance consolidation directive"**]** "EEA authorisation", "EEA firm", "EEA right", "EEA State", F200 . . . , "first non-life insurance directive", "insurance directives", **[**F201"insurance mediation directive",**]** "insurance mediation directive", "investment services directive", "single market directives" and "UCITS directive" have the meaning given in Schedule 3; and**]**

(b) "home state regulator", in relation to an EEA firm, has the meaning given in Schedule 3.

(2) In this Act—

(a) "home state authorisation" has the meaning given in Schedule 4;

(a) "Treaty firm" has the meaning given in Schedule 4; and

(c) "home state regulator", in relation to a Treaty firm, has the meaning given in Schedule 4.

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Textual Amendments

F198 S. 425(1)(a) substituted (13.2.2004) by The Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066), **reg. 2(1)**

F199 Words in s. 425(1)(a) inserted (11.1.2005) by The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), **reg. 6(5)(a)**

F200 Words in s. 425(1)(a) omitted (11.1.2005) by virtue of The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), **reg. 6(5)(b)**

F201 Words in s. 425(1)(a) inserted (14.1.2005) by virtue of The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), **reg. 2(1)**

VALID FROM 08/04/2010

[F202[F202425A Consumers: regulated activities etc carried on by authorised persons

(1) This section has effect for the purposes of the provisions of this Act which apply this section.

(2) "Consumers" means persons who—

(a) use, have used or may use any of the services within subsection (3); or

(b) have relevant rights or interests in relation to any of those services.

(3) The services within this subsection are services provided by—

(a) authorised persons in carrying on regulated activities;

(b) authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services; or

(c) persons acting as appointed representatives.

(4) A person ("P") has a "relevant right or interest" in relation to any services within subsection (3) if P has a right or interest—

(a) which is derived from, or is otherwise attributable to, the use of the services by others; or

(b) which may be adversely affected by the use of the services by persons acting on P's behalf or in a fiduciary capacity in relation to P.

(5) If a person is providing a service within subsection (3) as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service.

(6) A person who deals with another person ("A") in the course of A providing a service within subsection (3) is to be treated as using the service.

(7) In this section—

"credit institution" means—

(a) a credit institution authorised under the banking consolidation directive; or

(b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if does not have one, its head office) in an EEA State;

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"relevant ancillary service" means any service of a kind mentioned in Section B of Annex I to the markets in financial instruments directive the provision of which does not involve the carrying on of a regulated activity.**]**

Textual Amendments

F202 Ss. 425A, 425B inserted (8.4.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(1)(l), **Sch. 2 para. 32**

VALID FROM 08/04/2010

425B Consumers: regulated activities carried on by others

(1) This section has effect for the purposes of the provisions of this Act which apply this section.

(2) "Consumers" means persons who, in relation to regulated activities carried on otherwise than by authorised persons, would be consumers as defined by section 425A if the activities were carried on by authorised persons.**]**

Textual Amendments

F202 Ss. 425A, 425B inserted (8.4.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(1)(l), **Sch. 2 para. 32**

Modifications etc. (not altering text)

C641 S. 425B applied (31.3.2012) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 11**

PART XXX

SUPPLEMENTAL

426 Consequential and supplementary provision.

(1) A Minister of the Crown may by order make such incidental, consequential, transitional or supplemental provision as he considers necessary or expedient for the general purposes, or any particular purpose, of this Act or in consequence of any provision made by or under this Act or for giving full effect to this Act or any such provision.

(2) An order under subsection (1) may, in particular, make provision—

(a) for enabling any person by whom any powers will become exercisable, on a date set by or under this Act, by virtue of any provision made by or under this Act to take before that date any steps which are necessary as a preliminary to the exercise of those powers;

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(b) for applying (with or without modifications) or amending, repealing or revoking any provision of or made under an Act passed before this Act or in the same Session;

(c) dissolving any body corporate established by any Act passed, or instrument made, before the passing of this Act;

(d) for making savings, or additional savings, from the effect of any repeal or revocation made by or under this Act.

(3) Amendments made under this section are additional, and without prejudice, to those made by or under any other provision of this Act.

(4) No other provision of this Act restricts the powers conferred by this section.

Modifications etc. (not altering text)
C642 S. 426 modified (1.10.2001) by 2001 c. 16, s. 70, **Sch. 2 Pt. 2 para. 26**; S.I. 2001/3150, **art. 2(d)**

427 Transitional provisions.

(1) Subsections (2) and (3) apply to an order under section 426 which makes transitional provisions or savings.

(2) The order may, in particular—

(a) if it makes provision about the authorisation and permission of persons who before commencement were entitled to carry on any activities, also include provision for such persons not to be treated as having any authorisation or permission (whether on an application to the Authority or otherwise);

(b) make provision enabling the Authority to require persons of such descriptions as it may direct to re-apply for permissions having effect by virtue of the order;

(c) make provision for the continuation as rules of such provisions (including primary and subordinate legislation) as may be designated in accordance with the order by the Authority, including provision for the modification by the Authority of provisions designated;

(d) make provision about the effect of requirements imposed, liabilities incurred and any other things done before commencement, including provision for and about investigations, penalties and the taking or continuing of any other action in respect of contraventions;

(e) make provision for the continuation of disciplinary and other proceedings begun before commencement, including provision about the decisions available to bodies before which such proceedings take place and the effect of their decisions;

(f) make provision as regards the Authority's obligation to maintain a record under section 347 as respects persons in relation to whom provision is made by the order.

(3) The order may—

(a) confer functions on the Treasury, the Secretary of State, the Authority, the scheme manager, the scheme operator, members of the panel established under paragraph 4 of Schedule 17, the Competition Commission or **[**F203the Office of Fair Trading**]**;

(b) confer jurisdiction on the Tribunal;

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(c) provide for fees to be charged in connection with the carrying out of functions conferred under the order;

(d) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act).

(4) In subsection (2) "commencement" means the commencement of such provisions of this Act as may be specified by the order.

Textual Amendments

F203 Words in s. 427(3)(a) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(18)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

428 Regulations and orders.

(1) Any power to make an order which is conferred on a Minister of the Crown by this Act and any power to make regulations which is conferred by this Act is exercisable by statutory instrument.

(2) The Lord Chancellor's power to make rules under section 132 is exercisable by statutory instrument.

(3) Any statutory instrument made under this Act may—

(a) contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate; and

(b) make different provision for different cases.

429 Parliamentary control of statutory instruments.

(1) No order is to be made under—

(a) section 144(4), 192(b) or (e), 236(5), 404 or 419, or

(b) paragraph 1 of Schedule 8,

unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(2) No regulations are to be made under section 262 unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.

(3) An order to which, if it is made, subsection (4) or (5) will apply is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(4) This subsection applies to an order under section 21 if—

(a) it is the first order to be made, or to contain provisions made, under section 21(4);

(b) it varies an order made under section 21(4) so as to make section 21(1) apply in circumstances in which it did not previously apply;

(c) it is the first order to be made, or to contain provision made, under section 21(5);

(d) it varies a previous order made under section 21(5) so as to make section 21(1) apply in circumstances in which it did not, as a result of that previous order, apply;

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(e) it is the first order to be made, or to contain provisions made, under section 21(9) or (10);

(f) it adds one or more activities to those that are controlled activities for the purposes of section 21; or

(g) it adds one or more investments to those which are controlled investments for the purposes of section 21.

(5) This subsection applies to an order under section 38 if—

(a) it is the first order to be made, or to contain provisions made, under that section; or

(b) it contains provisions restricting or removing an exemption provided by an earlier order made under that section.

(6) An order containing a provision to which, if the order is made, subsection (7) will apply is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(7) This subsection applies to a provision contained in an order if—

(a) it is the first to be made in the exercise of the power conferred by subsection (1) of section 326 or it removes a body from those for the time being designated under that subsection; or

(b) it is the first to be made in the exercise of the power conferred by subsection (6) of section 327 or it adds a description of regulated activity or investment to those for the time being specified for the purposes of that subsection.

(8) Any other statutory instrument made under this Act, apart from one made under section 431(2) or to which paragraph 26 of Schedule 2 applies, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

430 Extent.

(1) This Act, except Chapter IV of Part XVII, extends to Northern Ireland.

(2) Except where Her Majesty by Order in Council provides otherwise, the extent of any amendment or repeal made by or under this Act is the same as the extent of the provision amended or repealed.

(3) Her Majesty may by Order in Council provide for any provision of or made under this Act relating to a matter which is the subject of other legislation which extends to any of the Channel Islands or the Isle of Man to extend there with such modifications (if any) as may be specified in the Order.

431 Commencement.

(1) The following provisions come into force on the passing of this Act—

(a) this section;

(b) sections 428, 430 and 433;

(c) paragraphs 1 and 2 of Schedule 21.

(2) The other provisions of this Act come into force on such day as the Treasury may by order appoint; and different days may be appointed for different purposes.

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Subordinate Legislation Made

P1 S. 431(2) power partly exercised: 25.2.2001 appointed for specified provisions by S.I. 2001/516, **art. 2 Sch.**
S. 431(2) power partly exercised: 30.4.2001 appointed for specified provisions by S.I. 2001/1282, **art. 2**
S. 431(2) power partly exercised: 18.6.2001 appointed for specified provisions by S.I. 2001/1820, **art. 2 Sch.**
S. 431(2) power partly exercised: 20.7.2001 and 3.9.2001 appointed for specified provisions by S.I. 2001/2632, **art. 2 Sch.**
S. 431(2) power partly exercised: 19.10.2001 appointed for specified provisions by S.I. 2001/3436, **art. 2**
S. 431(2) power partly exercised: different dates appointed for specified provisions by S.I. 2001/3538, **art. 2**

432 Minor and consequential amendments, transitional provisions and repeals.

(1) Schedule 20 makes minor and consequential amendments.

(2) Schedule 21 makes transitional provisions.

(3) The enactments set out in Schedule 22 are repealed.

Commencement Information

I129 S. 432 wholly in force at 1.12.2001; s. 432 not in force at Royal Assent see s. 431(2); s. 432(3) in force for specified purposes at 30.4.2001 by S.I. 2001/1282, **art. 2**; s. 432(1) in force for specified purposes at 2.7.2001 by S.I. 2001/2364, **art. 2(1)(b)**; s. 432(1) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 432 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

433 Short title.

This Act may be cited as the Financial Services and Markets Act 2000.

Status:
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Changes to legislation:
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