



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### 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.

#### **Modifications etc. (not altering text)**

- C1 S. 19(1) excluded (temp.) by S.I. 2013/1773, reg. 72(6B)(a) (as inserted (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), arts. 1(2), **4(5)(b)**)(as amended by S.I. 2014/1313, arts. 1, 2(a))

##### *Requirement for permission*

#### **20 Authorised persons acting without permission.**

- (1) If an authorised person [<sup>F1</sup>other than a PRA-authorised person] carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission—
  - [<sup>F2</sup>(a) given to that person under Part 4A, or
  - (b) resulting from any other provision of this Act,

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he is to be taken to have contravened a requirement imposed on him by the <sup>F3</sup>FCA] under this Act.

<sup>F4</sup>(1A) If a PRA-authorised person carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission given to the person under Part 4A or resulting from any other provision of this Act, the person is to be taken to have contravened—

- (a) a requirement imposed by the FCA, and
- (b) a requirement imposed by the PRA.]

<sup>F5</sup>(2) A contravention within subsection (1) or (1A)—

- (a) does not, except as provided by section 23(1A), make a person guilty of an offence,
- (b) does not, except as provided by section 26A, make any transaction void or unenforceable, and
- (c) does not, except as provided by subsection (3), give rise to any right of action for breach of statutory duty.]

(3) In prescribed cases <sup>F6</sup>a contravention within subsection (1) or (1A)] 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.

<sup>F7</sup>(4) Subsections (1) and (1A) are subject to section 39(1D).

(5) References in this Act to an authorised person acting in contravention of this section are references to the person acting in a way that results in a contravention within subsection (1) or (1A).]

#### Textual Amendments

- F1** Words in s. 20(1) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 2(2)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F2** S. 20(1)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 2(2)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F3** Word in s. 20(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 2(2)(c)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F4** S. 20(1A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 2(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F5** S. 20(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 2(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F6** Words in s. 20(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 2(5)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F7** S. 20(4)(5) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 2(6)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

#### Modifications etc. (not altering text)

- C2** 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**
- C3** 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**
- C4** 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**

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- C5** 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**
- C6** 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)**
- C7** 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}
- C8** S. 20 modified (2.4.2013) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2013 \(S.I. 2013/655\)](#), arts. 1, **10(3)**
- C9** S. 20 modified (1.4.2015) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2015 \(S.I. 2015/369\)](#), arts. 1, **7(3)**
- C10** S. 20(1)(1A) excluded (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), regs. 1, **76(2)**, 78(4)
- C11** S. 20(1)(1A) excluded (temp.) by S.I. 2013/1773, reg. 72(6B)(a) (as inserted (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), arts. 1(2), **4(5)(b)**)(as amended by S.I. 2014/1313, arts. 1, 2(a))

#### **Commencement Information**

- II** 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;

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- (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
  - (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)**

- C12** S. 21(1) modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 6**
- C13** 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**
- C14** 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**
- C15** 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**
- C16** 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**
- C17** S. 21(1) excluded (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), regs. 1(2)(3)(4)(6), **14(1)** (with reg. 7)
- C18** 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)**

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- C19** 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}
- C20** S. 21(2) modified (26.7.2013 for specified purposes, 2.9.2013 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), **arts. 1(2)(5), 59(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 [<sup>F8</sup>Regulated activities]

- (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—
- relates to an investment of a specified kind; or
  - 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.

- [<sup>F9</sup>(1A) An activity is also 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 relates to—
- information about a person's financial standing, or
  - the setting of a specified benchmark.]

- (2) Schedule 2 makes provision supplementing this section.

- (3) Nothing in Schedule 2 limits the powers conferred by subsection (1) [<sup>F10</sup>or (1A)].

- (4) “Investment” includes any asset, right or interest.

- (5) “Specified” means specified in an order made by the Treasury.

- [<sup>F11</sup>(6) “Benchmark” means an index, rate or price that—
- is determined from time to time by reference to the state of the market,
  - is made available to the public (whether free of charge or on payment), and
  - is used for reference for purposes that include one or more of the following—
    - determining the interest payable, or other sums due, under loan agreements or under other contracts relating to investments;
    - determining the price at which investments may be bought or sold or the value of investments;
    - measuring the performance of investments.]

#### Textual Amendments

- F8** S. 22 heading substituted (24.1.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 7(1)(d)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/113](#), **art. 2(1)(a)**, **Sch. Pt. 1**
- F9** S. 22(1A) inserted (24.1.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 7(1)(a)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/113](#), **art. 2(1)(a)**, **Sch. Pt. 1**

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- F10** Words in s. 22(3) inserted (24.1.2013) by Financial Services Act 2012 (c. 21), **ss. 7(1)(b)**, 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1
- F11** S. 22(6) inserted (24.1.2013) by Financial Services Act 2012 (c. 21), **ss. 7(1)(c)**, 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

**Modifications etc. (not altering text)**

- C21** 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))
- C22** S. 22 applied (E.W.) (7.6.2013) by The Energy Supply Company Administration Rules 2013 (S.I. 2013/1046), rules 1, **10(7)(a)** (with rules 3, 208)
- C23** S. 22 applied by S.S.I. 2011/141, Sch. 4 para. 1(2) (as substituted (26.7.2013 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) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 43(a)**)
- C24** S. 22 applied by 2009 c. 4, s. 502(1A) (as inserted (26.7.2013 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) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 16(b)**)
- C25** S. 22 applied by 2007 c. 3, s. 564B(1A) (as inserted (26.7.2013 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) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 12(b)**)
- C26** S. 22 applied by S.I. 2012/2079, reg. 2(1A) (as inserted (26.7.2013 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) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 44(a)(ii)**)
- C27** S. 22 applied by S.I. 2004/400, reg. 5(7) (as inserted (26.7.2013 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) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 25(b)**)
- C28** S. 22 applied by S.I. 2001/497, reg. 113(6) (as inserted (26.7.2013 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) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 23(b)**)
- C29** S. 22 applied by S.I. 2013/380, Sch. 6 para. 11(9) (as inserted (26.7.2013 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) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 45(b)**)
- C30** S. 22 applied by S.I. 2001/341, reg. 114(6) (as inserted (26.7.2013 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) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 22(b)**)
- C31** S. 22 applied by S.I. 2008/1741, reg. 112(5) (as inserted (26.7.2013 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) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 37(b)**)
- C32** S. 22 applied by S.I. 2008/570, Sch. para. 11(2) (as substituted (26.7.2013 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) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 35**)
- C33** S. 22 applied by 2003 c. 1, s. 554O(6) (as inserted (26.7.2013 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) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 9(c)**)
- C34** S. 22 applied by S.I. 2007/2157, reg. 23(6) (as inserted (26.7.2013 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) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 31(5)(b)**)
- C35** S. 22 applied by S.I. 2008/700, **Sch. para. 12(2)** (as substituted (26.7.2013 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) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 36**)
- C36** S. 22 applied (16.8.2013) by The Democratic People's Republic of Korea (European Union Financial Sanctions) Regulations 2013 (S.I. 2013/1877), regs. 1(1), **2(2)(a)** (with reg. 21)

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## **[<sup>F12</sup>22A Designation of activities requiring prudential regulation by PRA**

- (1) The Treasury may by order specify the regulated activities that are “PRA-regulated activities” for the purposes of this Act.
- (2) An order under subsection (1) may—
  - (a) provide for exceptions;
  - (b) confer powers on the Treasury or either regulator;
  - (c) authorise the making of rules or other instruments by either regulator for purposes of, or connected with, any relevant provision;
  - (d) make provision in respect of any information or document which in the opinion of the Treasury or either regulator is relevant for purposes of, or connected with, any relevant provision;
  - (e) make such consequential, transitional, or supplemental provision as the Treasury consider appropriate for purposes of, or connected with, any relevant provision.
- (3) Provision made as a result of subsection (2)(e) may amend any primary or subordinate legislation, including any provision of, or made under, this Act.
- (4) “Relevant provision” means this section or any provision made under this section.

### **Textual Amendments**

**F12** Ss. 22A, 22B inserted (24.1.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 9, 122(3)** (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(a\)](#), [Sch. Pt. 1](#)

## **22B Parliamentary control in relation to certain orders under section 22A**

- (1) This section applies to the first order made under section 22A(1).
- (2) This section also applies to any subsequent order made under section 22A(1) which—
  - (a) contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be—
    - (i) that an activity would become a PRA-regulated activity, or
    - (ii) that a PRA-regulated activity would become a regulated activity that is not a PRA-regulated activity, or
  - (b) amends primary legislation.
- (3) No order to which this section applies may be made unless—
  - (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
  - (b) subsection (5) applies.
- (4) Subsection (5) applies if an order to which this section applies contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (5) Where this subsection applies 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 the order is approved by a resolution of each House of Parliament

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(but without that affecting anything done under the order or the power to make a new order).

- (6) The “relevant period” is 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 4 days.]

#### Textual Amendments

**F12** Ss. 22A, 22B inserted (24.1.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 9, 122(3)** (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(a\)](#), [Sch. Pt. 1](#)

### Offences

#### 23 Contravention of the general prohibition [<sup>F13</sup>or section 20(1) or (1A)].

- (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.
- [<sup>F14</sup>(1A) An authorised person (“A”) is guilty of an offence if A carries on a credit-related regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission—
- (a) given to that person under Part 4A, or
  - (b) resulting from any other provision of this Act.
- (1B) In this Act “credit-related regulated activity” means a regulated activity of a kind designated by the Treasury by order.
- (1C) The Treasury may designate a regulated activity under subsection (1B) only if the activity involves a person—
- (a) entering into or administering an agreement under which the person provides another person with credit,
  - (b) exercising or being able to exercise the rights of the lender under an agreement under which another person provides a third party with credit, or
  - (c) taking steps to procure payment of debts due under an agreement under which another person is provided with credit.
- (1D) But a regulated activity may not be designated under subsection (1B) if the agreement in question is one under which the obligation of the borrower is secured on land.
- (1E) “Credit” includes any cash loan or other financial accommodation.
- (1F) A person guilty of an offence under subsection (1A) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding the applicable maximum term or a fine not exceeding the statutory maximum, or both;



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

(1G) The “applicable maximum term” is—

- (a) in England and Wales, 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003);  
(b) in Scotland, 12 months;  
(c) in Northern Ireland, 6 months.]

(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.

[<sup>F15</sup>(4) Subsection (1A) is subject to section 39(1D).

(5) No proceedings may be brought against a person in respect of an offence under subsection (1A) in a case where either regulator has taken action under section 205, 206 or 206A in relation to the alleged contravention within section 20(1) or (1A).]

#### Textual Amendments

**F13** Words in s. 23 heading inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 3\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

**F14** S. 23(1A)-(1G) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 3\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

**F15** S. 23(4)(5) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 3\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

#### [<sup>F16</sup>23A Parliamentary control in relation to certain orders under section 23

- (1) This section applies to the first order made under section 23(1B).
- (2) This section also applies to any subsequent order made under section 23(1B) which contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be that an activity would become a credit-related regulated activity.
- (3) An order to which this section applies may not be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.]

#### Textual Amendments

**F16** S. 23A inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 4](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

#### 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;

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- (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) <sup>F17</sup>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.]

#### Textual Amendments

- F17** S. 24(4) omitted (E.W.) (12.3.2015) by virtue of [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 5 para. 7** (with reg. 5(1))

## 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)

- C37** S. 25 applied (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), regs. 1, **52(2)(3)**
- C38** S. 25(2)(a) modified (31.10.2001) by [S.I. 2001/3374](#), art. 1, **Sch. para. 6**
- C39** 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**
- C40** 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**

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### *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)**

- C41** 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)**

## **[<sup>F18</sup>26A Agreements relating to credit**

- (1) An agreement that is made by an authorised person in contravention of section 20 is unenforceable against the other party if the agreement is entered into in the course of carrying on a credit-related regulated activity involving matters falling within section 23(1C)(a).
- (2) The other party is entitled to recover—
  - (a) any money or other property paid or transferred by that party under the agreement, and
  - (b) compensation for any loss sustained by that party as a result of having parted with it.
- (3) In subsections (1) and (2) “agreement” means an agreement—
  - (a) which is made after this section comes into force, and
  - (b) the making or performance of which constitutes, or is part of, the credit-related regulated activity.
- (4) If the administration of an agreement involves the carrying on of a credit-related regulated activity, the agreement may not be enforced by a person for the time being exercising the rights of the lender under the agreement unless that person
  - <sup>F19</sup>(a) [ has permission, given under Part 4A or resulting from any other provision of this Act, in relation to that activity
  - <sup>F20</sup>(b) [ is an appointed representative in relation to that activity,
  - (c) is an exempt person in relation to that activity, or

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- (d) is a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity].
- (5) If the taking of steps to procure payment of debts due under an agreement involves the carrying on of a credit-related regulated activity, the agreement may not be enforced by a person for the time being exercising the rights of the lender under the agreement unless
- [<sup>F21</sup>(a) the agreement is enforced in accordance with permission—
- [<sup>F22</sup>(i) given under Part 4A to the person enforcing the agreement, or
- [<sup>F22</sup>(ii) resulting from any other provision of this Act.
- [<sup>F23</sup>(b) that person is an appointed representative in relation to that activity,
- (c) that person is an exempt person in relation to that activity, or
- (d) that person is a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.]]

#### Textual Amendments

- F18** S. 26A inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 5** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F19** Words in s. 26A(4) renumbered as s. 26A(4)(a) (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), **ss. 27(2)(a)**, 41(3); [S.I. 2016/627](#), reg. 2(1)(u)
- F20** S. 26A(4)(b)-(d) inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), **ss. 27(2)(b)**, 41(3); [S.I. 2016/627](#), reg. 2(1)(u)
- F21** Words in s. 26A(5) renumbered as s. 26A(5)(a) (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), **ss. 27(3)(a)**, 41(3); [S.I. 2016/627](#), reg. 2(1)(u)
- F22** Words in s. 26A(5) renumbered as s. 26A(5)(a)(i)(ii) (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), **ss. 27(3)(a)**, 41(3); [S.I. 2016/627](#), reg. 2(1)(u)
- F23** S. 26A(5)(b)-(d) inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), **ss. 27(3)(b)**, 41(3); [S.I. 2016/627](#), reg. 2(1)(u)

## 27 Agreements made through unauthorised persons.

[<sup>F24</sup>(1) This section applies to an agreement that—

- (a) is made by an authorised person (“the provider”) in the course of carrying on a regulated activity,
- (b) is not made in contravention of the general prohibition,
- (c) if it relates to a credit-related regulated activity, is not made in contravention of section 20, and
- (d) is made in consequence of something said or done by another person (“the third party”) in the course of—
- (i) a regulated activity carried on by the third party in contravention of the general prohibition, or
- (ii) a credit-related regulated activity carried on by the third party in contravention of section 20.

[<sup>F25</sup>(1ZA) But this section does not apply to a regulated credit agreement or a regulated consumer hire agreement unless the provider knows before the agreement is made that the third

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party had some involvement in the making of the agreement or matters preparatory to its making.]

(1A) [<sup>F26</sup>An agreement to which this section applies] 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.

[<sup>F27</sup>(5) For the purposes of subsection (1ZA)—

“regulated consumer hire agreement” has the meaning given by article 60N of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);

“regulated credit agreement” has the meaning given by article 60B of that Order.]

#### Textual Amendments

**F24** S. 27(1)(1A) substituted for s. 27(1) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 6](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)

**F25** S. 27(1ZA) inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), [ss. 28\(2\)](#), 41(3); S.I. 2016/627, [reg. 2\(1\)\(v\)](#)

**F26** Words in s. 27(1A) substituted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), [ss. 28\(3\)](#), 41(3); S.I. 2016/627, [reg. 2\(1\)\(v\)](#)

**F27** S. 27(5) inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), [ss. 28\(4\)](#), 41(3); S.I. 2016/627, [reg. 2\(1\)\(v\)](#)

#### Modifications etc. (not altering text)

**C42** 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<sup>F28</sup>: general cases].

(1) This section applies to an agreement which is unenforceable because of section 26 or 27<sup>F29</sup>, other than an agreement entered into in the course of carrying on a credit-related regulated activity].

(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—

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- (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).
- (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.

#### Textual Amendments

**F28** Words in s. 28 heading inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 7\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

**F29** Words in s. 28(1) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 7\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

#### Modifications etc. (not altering text)

**C43** 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\(1\)](#)

### [<sup>F30</sup>28A Credit-related agreements made unenforceable by section 26, 26A or 27

- (1) This section applies to an agreement that—
- (a) is entered into in the course of carrying on a credit-related regulated activity, and
  - (b) is unenforceable because of section 26, 26A or 27.

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- (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 specified in a written notice given by the FCA to the applicant.
- (3) If on application by the relevant firm the FCA is satisfied that it is just and equitable in the circumstances of the case, it may by written notice to the applicant allow—
  - (a) the agreement to be enforced, or
  - (b) money paid or property 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 FCA must—
  - (a) if the case arises as a result of section 26 or 26A, 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).
- (5) The issue is whether the relevant firm reasonably believed that by making the agreement the relevant firm was neither contravening the general prohibition nor contravening section 20.
- (6) The issue is whether the provider knew that the third party was (in carrying on the credit-related regulated activity) either contravening the general prohibition or contravening section 20.
- (7) An application to the FCA under this section by the relevant firm may relate to specified agreements or to agreements of a specified description or made at a specified time.
- (8) “The relevant firm” means—
  - (a) in a case falling within section 26, the person in breach of the general prohibition;
  - (b) in a case falling within section 26A or 27, the authorised person concerned.
- (9) If the FCA thinks fit, it may when acting under subsection (2)(b) or (3)—
  - (a) limit the determination in its notice to specified agreements, or agreements of a specified description or made at a specified time;
  - (b) make the determination in its notice conditional on the doing of specified acts by the applicant.

#### **Textual Amendments**

**F30** Ss. 28A, 28B inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 8](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

#### **Modifications etc. (not altering text)**

**C44** S. 28A applied (with modifications) (26.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Consumer Credit\) \(Miscellaneous Provisions\) Order 2014 \(S.I. 2014/208\)](#), arts. 1(3)(4), [2\(2\)](#)

*Status: Point in time view as at 03/01/2018.*

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## **28B Decisions under section 28A: procedure**

- (1) A notice under section 28A(2)(b) or (3) must—
  - (a) give the FCA's reasons for its determination, and
  - (b) give an indication of—
    - (i) the right to have the matter referred to the Tribunal that is conferred by subsection (3), and
    - (ii) the procedure on such a reference.
- (2) The FCA must, so far as it is reasonably practicable to do so, give a copy of the notice to any other person who appears to it to be affected by the determination to which the notice relates.
- (3) A person who is aggrieved by the determination of an application under section 28A(2)(b) or (3) may refer the matter to the Tribunal.]

### **Textual Amendments**

**F30** Ss. 28A, 28B inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 8](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

## **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—
  - “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.



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- (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.
- (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.

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**Modifications etc. (not altering text)**

**C45** S. 30 applied (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), regs. 1, **52(5)**

**Status:**

Point in time view as at 03/01/2018.

**Changes to legislation:**

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