



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXVII

#### OFFENCES

##### *Institution of proceedings*

#### **401 Proceedings for offences.**

[<sup>F1</sup>(1) In this section “offence” means—

- (a) an offence under this Act,
- (b) an offence under subordinate legislation made under this Act, or
- (c) an offence under Part 7 of the Financial Services Act 2012 (offences relating to financial services).]

(2) Proceedings for an offence may be instituted in England and Wales only—

- (a) by the [<sup>F2</sup>appropriate regulator] 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 [<sup>F3</sup>appropriate regulator] or the Secretary of State; or
- (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.

[<sup>F4</sup>(3A) For the purposes of subsections (2)(a) and (3)(a), the PRA is the “appropriate regulator” in respect of each of the following offences—

- (a) an offence under section 55P(10) where the contravention is of a requirement imposed by the PRA;
- (b) an offence under section 56(4) where the prohibition order is made by the PRA;
- (c) an offence under section 177(3) where the investigation is being, or is likely to be, conducted on behalf of the PRA;

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- (d) an offence under section 177(4) where the requirement is imposed by the PRA;
- (e) an offence under section 177(6) where the warrant is issued as a result of information on oath given by the PRA or a person appointed by the PRA to conduct an investigation on its behalf;
- (f) an offence under section 191F(1) where the notice should have been given to the PRA;
- (g) an offence under any of section 191F(2) to [F<sup>5</sup>(4) and (5) to] (7) where the notice, approval or information was given to or by the PRA;
- (h) an offence under section 366(3), unless the activity of effecting or carrying out long-term contracts of insurance is not to any extent a PRA-regulated activity;
- (i) an offence under section 398(1) where the information was given to the PRA.

[ For the purposes of subsections (2)(a) and (3)(a), the Bank of England is the F<sup>6</sup>(3AB) “appropriate regulator” in respect of an offence under section 191F(4A).]

(3B) For the purposes of subsections (2)(a) and (3)(a), the FCA is the “appropriate regulator” in respect of any other offence.]

F<sup>7</sup>(4) . . . . .

(5) In exercising its power to institute proceedings for an offence, the [F<sup>8</sup>appropriate regulator] 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.

#### Textual Amendments

- F1 S. 401(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 38\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F2 Words in s. 401(2)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 38\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F3 Words in s. 401(3)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 38\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F4 S. 401(3A)(3B) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 38\(4\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F5 Words in s. 401(3A)(g) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), [33\(6\)\(a\)](#)
- F6 S. 401(3AB) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), [33\(6\)\(b\)](#)
- F7 S. 401(4) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), [10\(14\)](#)
- F8 Words in s. 401(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 38\(5\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

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

- C1 Pt. 27 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services Act 2012 \(Consumer Credit\) Order 2013 \(S.I. 2013/1882\)](#), arts. 1(1), [3\(12\)](#)

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- C2** Pt. 27 applied (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), arts. 1(2)(6), **50(3)**
- C3** 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)**)
- C4** 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)**
- C5** 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))
- C6** S. 401 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 27**
- C7** S. 401 applied (with modifications) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013 (S.I. 2013/441), arts. 1(1), **34(2)**
- C8** S. 401 applied (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **57** (with regs. 52-58)
- C9** S. 401 applied (with modifications) (18.9.2016) by The Payment Accounts Regulations 2015 (S.I. 2015/2038), **reg. 1(2)(b), Sch. 7 para. 6**
- C10** S. 401 applied (with modifications) (1.1.2018) by The Packaged Retail and Insurance-based Investment Products Regulations 2017 (S.I. 2017/1127), **reg. 1, Sch. 1 para. 7(3)**
- C11** S. 401 applied (with modifications) (14.11.2018) by The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1184), regs. 1(3), **24**
- C12** 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 [F9FCA] to institute proceedings for certain other offences.**

- (1) Except in Scotland, the [F10FCA] may institute proceedings for an offence under—
  - (a) Part V of the M1Criminal Justice Act 1993 (insider dealing); F11 . . .
  - (b) prescribed regulations relating to money laundering. [F12 or
  - (c) Schedule 7 to the Counter-Terrorism Act 2008 (terrorist financing or money laundering).]
- (2) In exercising its power to institute proceedings for any such offence, the [F13FCA] 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.

### **Textual Amendments**

- F9** Word in s. 402 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 39(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F10** Word in s. 402(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 39(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F11** Word in s. 402(1) omitted (27.11.2008) by virtue of Counter-Terrorism Act 2008 (c. 28), ss. 62, 100(2), **Sch. 7 para. 33(4)** (with s. 101(2), Sch. 7 para. 43)

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**F12** S. 402(1)(c) and preceding word inserted (27.11.2008) by Counter-Terrorism Act 2008 (c. 28), ss. 62, 100(2), **Sch. 7 para. 33(4)** (with s. 101(2), Sch. 7 para. 43)

**F13** Word in s. 402(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 39(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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

**C13** S. 402(1) applied (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), arts. 1(2)(6), **49**

#### Commencement Information

**II** 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

**M1** 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.
- (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 <sup>M2</sup>Criminal Justice Act 1925 and Schedule 3 to the <sup>M3</sup>Magistrates' Courts Act 1980 (procedure) apply as they do in relation to a body corporate;
  - (b) section 70 of the <sup>M4</sup>Criminal Procedure (Scotland) Act 1995 (procedure) applies as if the association were a body corporate;
  - (c) section 18 of the <sup>M5</sup>Criminal Justice (Northern Ireland) Act 1945 and Schedule 4 to the <sup>M6</sup>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 [<sup>F14</sup>or an offence under Part 7 of the Financial Services Act 2012 (offences relating to financial services)].

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### Textual Amendments

- F14** Words in s. 403(7) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 40** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

### Modifications etc. (not altering text)

- C14** 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))
- C15** 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)**
- C16** 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\(2\)](#))
- C17** 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))
- C18** S. 403 applied (7.6.2010) by [The Credit Rating Agencies Regulations 2010 \(S.I. 2010/906\)](#), **reg. 28**
- C19** S. 403 applied (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), **regs. 1(2)**, **57** (with **regs. 52-58**)
- C20** S. 403 applied (8.12.2017) by [The Risk Transformation Regulations 2017 \(S.I. 2017/1212\)](#), **regs. 1(2)**, **187** (with [reg. 189](#))
- C21** S. 403 applied (with modifications) (1.1.2018) by [The Packaged Retail and Insurance-based Investment Products Regulations 2017 \(S.I. 2017/1127\)](#), **reg. 1**, **Sch. 1 para. 7(2)**

### Marginal Citations

- M2** 1925 c. 86.
- M3** 1980 c. 43.
- M4** 1995 c. 46.
- M5** 1945 c. 15 (N.I.)
- M6** [S.I. 1981/1675](#)

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