EXPLANATORY NOTES

FINANCIAL SERVICES AND MARKETS ACT 2000

-	TE	-	-		* *			_	* T
10	UΉ	עויו	т	D	11/	"	г.	<i>(</i>)	
HI.	N J	LIN	w	u	U		ш	、 ,	1.4

SUMMARY

BACKGROUND

Financial Services Overview

Regulatory Framework

Consultation and scrutiny

INTERPRETATION

Notices

GLOSSARY OF TERMS USED IN THE EXPLANATORY NOTES

THE ACT

COMMENTARY ON SECTIONS

PART I: THE REGULATOR

Section 1: The Financial Services Authority

Section 2: The Authority's general duties

Section 5: The protection of consumers

Section 6: The reduction of financial crime

Section 7: Duty of Authority to follow principles of good governance

Section 8: The Authority's general duty to consult

Section 11: Duty to consider representations by the Panels

Section 12: Reviews

Section 13: Right to obtain documents and information

Section 14: Cases in which the Treasury may arrange independent inquiries

Section 15: Power to appoint person to hold an inquiry

- Section 16: Powers of appointed person and procedure
- Section 17: Conclusion of inquiry
- Section 18: Obstruction and contempt

PART II: REGULATED AND PROHIBITED ACTIVITIES

- Section 19: The general prohibition
- Section 20: Authorised persons acting without permission
- Section 21: Restrictions on financial promotion
- Section 22: The classes of activity and categories of investment
- Section 23: Contravention of the general prohibition
- Section 24: False claims to be authorised or exempt
- Section 25: Contravention of section 21
- Section 26: Agreements made by unauthorised persons
- Section 27: Agreements made through unauthorised persons
- Section 28: Agreements made unenforceable by section 26 or 27
- Section 29: Accepting deposits in breach of the general prohibition
- Section 30: Enforceability of agreements resulting from unlawful communications

PART III: AUTHORISATION AND EXEMPTION

- Section 32: Partnerships and unincorporated associations
- Section 33: Withdrawal of authorisation by the Authority
- Section 34: EEA firms
- Section 35: Treaty firms
- Section 36: Persons authorised as a result of paragraph 1(4) of Schedule 5
- Section 37: Exercise of EEA rights by UK firms
- Section 38: Exemption orders
- Section 39: Exemption of appointed representatives

PART IV: PERMISSION TO CARRY ON REGULATED ACTIVITIES

- Section 40: Application for permission
- Section 41: The threshold conditions
- Section 42: Giving permission

- Section 43: Imposition of requirements
- Section 44: Variation etc at request of authorised person
- Section 45: Variation etc on the Authority's own initiative
- Section 46: Variation of permission on acquisition of control
- Section 47: Exercise of power in support of overseas regulator
- Section 48: Prohibitions and restrictions
- Section 49: Persons connected with an applicant
- Section 50: Authority's duty to consider other permissions etc.
- Section 51: Applications under this Part
- Section 52: Determination of applications
- Section 53: Exercise of own initiative power: procedure
- Section 54: Cancellation of Part IV permission: procedure
- Section 55: Right to refer matters to the Tribunal

PART V: PERFORMANCE OF REGULATED ACTIVITIES

- Section 56: Prohibition orders
- Section 59: Approval for particular arrangements
- Section 60: Applications for approval
- Section 61: Determination of applications
- Section 63: Withdrawal of approval
- Section 64: Conduct: statements and code
- Section 65: Statements and codes: procedure
- Section 66: Disciplinary powers
- Section 69: Statement of policy
- Section 70: Statements of policy: procedure
- Section 71: Actions for damages

PART VI: OFFICIAL LISTING

- Section 72: The competent authority
- Section 73: General duty of the competent authority
- Section 74: The official list

Section 75: Applications for listing

Section 77: Discontinuance and suspension of listing

Section 78: Discontinuance and suspension: procedure

Section 79: Listing particulars and other documents

Section 80: General duty of disclosure in listing particulars

Section 81: Supplementary listing particulars

Section 82: Exemptions from disclosure

Section 83: Registration of listing particulars

Section 84: Prospectuses

Section 85: Publication of prospectuses

Section 87: Approval of prospectus where no application for listing

Section 88: Sponsors

Section 89: Public censure of sponsor

Section 90: Compensation for false or misleading particulars

Section 91: Penalties for breach of listing rules

Section 95: Competition scrutiny

Section 96: Obligations of issuers of listed securities

Section 97: Appointment by competent authority of persons to carry out investigations

Section 98: Advertisements etc in connection with listing applications

Section 100: Penalties

Section 102: Exemption from liability in damages

PART VII: CONTROL OF BUSINESS TRANSFERS

Section 104: Control of business transfers

Section 105: Insurance business transfer schemes

Section 106: Banking business transfer schemes

Section 107: Application for order sanctioning transfer scheme

Section 108: Requirements on applicants

Section 109: Scheme reports

Section 110: Right to participate in proceedings

- Section 107: Sanction of the court for business transfer schemes
- Section 112: Effect of order sanctioning business transfer scheme
- Section 113: Appointment of actuary in relation to reduction of benefits
- Section 114: Rights of certain policyholders
- Section 115: Certificate for the purpose of insurance business transfers overseas
- Section 116: Effect of insurance business transfers authorised in other EEA States
- Section 117: Power to modify this Part

PART VIII: PENALTIES FOR MARKET ABUSE

- Section 118: Market abuse
- Section 119: The code
- Section 120: Provisions included in the Authority's code by reference to the City Code
- Section 122: Effect of the code
- Section 123: Power to impose penalties in cases of market abuse
- Section 124: Statement of policy
- Section 128: Suspension of investigations
- Section 129: Power of court to impose penalty in cases of market abuse
- Section 130: Guidance

PART IX: HEARINGS AND APPEALS

- Section 132: The Financial Services and Markets Tribunal
- Section 133: Proceedings: general provision
- Section 134: Legal assistance scheme
- Section 135: Provisions of the legal assistance scheme
- Section 136: Funding of the legal assistance scheme
- Section 137: Appeal on a point of law

PART X: RULES AND GUIDANCE

Chapter I: Rule-Making Powers

- Section 138: General rule-making power
- Section 139: Miscellaneous ancillary matters
- Section 141: Insurance business rules

Section 142: Insurance business: regulations supplementing Authority's rules

Section 143: Endorsement of codes etc

Section 144: Price stabilising rules

Section 145: Financial promotion rules

Section 147: Control of information rules

Section 148: Modification or waiver of rules

Section 149: Evidential provisions

Section 150: Actions for damages

Section 151: Limits on effect of contravening rules

Section 152: Notification of rules to the Treasury

Section 153: Rule-making instruments

Section 155: Consultation

Section 156: General supplementary powers

Chapter II: Guidance

Section 157: Guidance

Chapter III: Competition Scrutiny

Section 160: Reports by the Director General of Fair Trading

Section 161: Power of Director to request information

Section 162: Consideration by the Competition Commission

Section 163: Role of the Treasury

Section 164: The Competition Act 1998

PART XI: INFORMATION GATHERING & INVESTIGATIONS

Section 165: Authority's power to require information

Section 166: Reports by skilled persons

Section 167: Appointment of persons to carry out general investigations

Section 168: Appointment of persons to carry out investigations in particular cases

Section 169: Investigations etc in support of overseas regulator

Section 170: Investigations: general

Section 171: Powers of persons appointed under section 167

Section 172: Additional power of persons appointed under section 168(1) or (4)

Section 173: Powers of persons appointed as a result of section 168(2)

Section 174: Admissibility of statements made to investigators

Section 175: Information and documents: supplemental provisions

Section 176: Entry of premises under warrant

Section 177: Offences

PART XII: CONTROL OVER AUTHORISED PERSONS

Section 178: Obligation to notify the Authority

Section 179: Acquiring control

Section 180: Increasing control

Section 181: Reducing control

Section 182: Notification

Section 183: Duty of Authority in relation to notice of control

Section 184: Approval of acquisition of control

Section 185: Conditions attached to approval

Section 186: Objection to acquisition of control

Section 187: Objection to existing control

Section 188: Notices of objection under section 187: procedure

Section 189: Improperly acquired shares

Section 190: Notification

Section 191: Offences under this Part

Section 192: Power to change definitions of control etc.

PART XIII: INCOMING FIRMS: INTERVENTION BY AUTHORITY

Section 194: General grounds on which power of intervention is exercisable

Section 195: Exercise of power in support of overseas regulator

Section 196: The power of intervention

Section 197: Procedure on exercise of power of intervention

Section 198: Power to apply to the court for injunction in respect of certain overseas insurance companies

Section 199: Additional procedure for EEA firms in certain cases

Section 200: Rescission and variation of requirements

Section 201: Effect of certain requirements on other persons

Section 202: Contravention of a requirement imposed under this Part

Section 203: Powers to prohibit the carrying on of Consumer Credit Act business

PART XIV: DISCIPLINARY MEASURES

Section 205: Public censure

Section 206: Financial penalties

Section 207: Proposal to take disciplinary measures

Section 208: Decision notice

Section 209: Publication

Section 210: Statements of policy

Section 211: Statements of policy: procedure

PART XV: THE FINANCIAL SERVICES COMPENSATION SCHEME

Section 212: The scheme manager

Section 213: The compensation scheme

Section 214: General

Section 215: Rights of the scheme in relevant person's insolvency

Section 216: Continuity of long-term insurance policies

Section 217: Insurers in financial difficulties

Section 219: Scheme manager's power to require information

Section 220: Scheme manager's power to inspect information held by liquidator

Section 221: Powers of court where information required

Section 222: Statutory immunity

Section 223: Management expenses

PART XVI: THE OMBUDSMAN SCHEME

Section 225: The scheme and the scheme operator

Section 226: Compulsory jurisdiction

Section 227: Voluntary jurisdiction

Section 228: Determination under the compulsory jurisdiction

Section 229: Awards

Section 230: Costs

Section 231: Ombudsman's power to require information

Section 232: Powers of court where information required

Section 233: Data protection

Section 234: Industry funding

PART XVII: COLLECTIVE INVESTMENT SCHEMES

Chapter I: Interpretation

Section 236: Open-ended investment companies

Chapter II: Restrictions on promotion

Section 238: Restrictions on promotion

Section 239: Single property schemes

Section 240: Restriction on approval of promotion

Section 241: Actions for damages

Chapter III: Authorised unit trust schemes

Section 242: Applications for authorisation of unit trust schemes

Section 243: Authorisation orders

Section 244: Determination of applications

Section 245: Procedure when refusing an application

Section 246: Certificates

Section 247: Trust scheme rules

Section 248: Scheme particulars rules

Section 249: Disqualification of auditor for breach of trust scheme rules

Section 250: Modification or waiver of rules

Section 251: Alteration of schemes and changes of manager or trustee

Section 252: Procedure when refusing approval of change of manager or trustee

Section 253: Avoidance of exclusion clauses

Section 254: Revocation of authorisation order otherwise than by consent

Section 255: Procedure

Section 256: Requests for revocation of authorisation order

Section 257: Directions

Section 258: Applications to the court

Section 259: Procedure in giving directions under section 257 and varying them on Authority's own initiative

Section 260: Procedure: refusal to revoke or vary direction

Section 261: Procedure: revocation of direction and grant of request for variation

Chapter IV: Open-ended investment companies

Section 262: Open-ended investment companies

Section 263: Amendment of section 716 Companies Act 1985

Chapter V: Recognised overseas schemes

Section 264: Schemes constituted in other EEA States

Section 265: Representations and references to the Tribunal

Section 266: Disapplication of rules

Section 267: Power of authority to suspend promotion of scheme

Section 268: Procedure in giving directions under section 267 and varying them on Authority's own initiative

Section 269: Procedure on application for variation or revocation of direction

Section 270: Schemes authorised in designated countries or territories

Section 271: Procedure

Section 272: Individually recognised overseas schemes

Section 273: Matters that may be taken into account

Section 274: Applications for recognition of individual schemes

Section 275: Determination of applications

Section 276: Procedure when refusing an application

Section 277: Alteration of schemes and changes of operator, trustee or depository

Section 278: Rules as to scheme particulars

Section 279: Revocation of recognition

Section 280: Procedure

Section 281: Directions

Section 282: Procedure on giving directions under section 281 and varying them otherwise than as requested

Section 283: Facilities and information in the UK

Chapter VI: Investigations

Section 284: Power to investigate

PART XVIII: RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES

Chapter I: Exemption

Section 285: Exemption for recognised investment exchanges and clearing houses

Section 286: Qualification for recognition

Section 287: Application by an investment exchange

Section 288: Application by a clearing house

Section 289: Applications: supplementary

Section 290: Recognition orders

Section 291: Liability in relation to recognised body's regulatory functions

Section 292: Overseas investment exchanges and overseas clearing houses

Section 293: Notification requirements

Section 294: Modification or waiver of rules

Section 295: Notification: overseas investment exchanges and overseas clearing houses

Section 296: Authority's power to give directions

Section 297: Revoking recognition

Section 298: Directions and revocation: procedure

Section 299: Complaints about recognised bodies

Section 300: Extension of functions of Tribunal

Section 301: Supervision of certain contracts

Chapter II: Competition Scrutiny

Section 302: Interpretation

Section 303: Initial report by Director

Section 304: Further reports by Director

Section 305: Investigations by Director

Section 306: Consideration by Competition Commission

Section 307: Recognition orders: role of the Treasury

Section 308: Directions by the Treasury

Section 309: Statements by the Treasury

Chapter III: Exclusion from the Competition Act 1998

Section 311: The Chapter I prohibition

Section 312: The Chapter II prohibition

PART XIX: LLOYD'S

Section 314: Authority's general duty

Section 315: The Society: authorisation and permission

Section 316: Direction by Authority

Section 317: The core provisions

Section 318: Exercise of powers through the Council

Section 319: Consultation

Section 320: Former underwriting members

Section 321: Requirements imposed under 320

Section 322: Rules applicable to former underwriting members

Section 323: Transfer schemes

PART XX: PROVISION OF FINANCIAL SERVICES BY MEMBERS OF THE PROFESSIONS

Section 325: Authority's general duty

Section 326: Designation of professional bodies

Section 327: Exemption from the general prohibition

Section 328: Directions in relation to the general prohibition

Section 329: Orders in relation to the general prohibition

Section 330: Consultation

Section 331: Procedure on making or varying orders under section 329

Section 332: Rules in relation to persons to whom the general prohibition does not apply

Section 333: False claims to be a person to whom the general prohibition does not apply

PART XXI: MUTUAL SOCIETIES

PART XXII: AUDITORS AND ACTUARIES

Section 340: Appointment

Section 342: Information given by auditor or actuary to the Authority

Section 343: Information given by auditor or actuary to the Authority: persons with close links

Section 344: Duty of auditor or actuary resigning etc. to give notice

Section 345: Disqualification

Section 346: Provision of false or misleading information to auditor or actuary

PART XXIII: PUBLIC RECORD, DISCLOSURE OF INFORMATION AND CO-OPERATION

Section 347: The record of authorised persons etc.

Section 348: Restrictions on disclosure of confidential information by Authority etc.

Section 349: Exceptions from section 348

Section 350: Disclosure of information by the Inland Revenue

Section 350: Competition information

Section 352: Offences

Section 353: Removal of other restrictions on disclosure

Section 354: Authority's duty to cooperate with others

PART XXIV: INSOLVENCY

Voluntary arrangements

Section 356: Authority's powers to participate in proceedings: company voluntary arrangements

Section 357: Authority's powers to participate in proceedings: individual voluntary arrangements

Section 358: Authority's powers to participate in proceedings: trust deeds for creditors in Scotland

Administration orders

Section 359: Petitions

Section 360: Insurers

Section 362: Authority's powers to participate in proceedings

Receivership

Section 363: Authority's powers to participate in proceedings

Voluntary winding up

Section 365: Authority's powers to participate in proceedings

Section 366: Insurers carrying on long-term business

Winding up by the court

Section 367: Winding-up petitions

Section 368: Winding-up petitions: EEA and Treaty firms

Section 371: Authority's powers to participate in proceedings

Bankruptcy

Section 372: Petitions

Section 374: Authority's powers to participate in proceedings

Provisions against debt avoidance

Section 375: Authority's right to apply for an order

Supplemental provisions concerning insurers

Section 376: Continuation of contracts of long-term insurance where insurer in liquidation

Section 377: Reducing the value of contracts instead of winding up

Section 378: Treatment of assets on winding up

Section 379: Winding-up rules

PART XXV: INJUNCTIONS AND RESTITUTION

Section 380: Injunctions

Section 381: Injunctions in cases of market abuse

Section 382: Restitution orders

Section 383: Restitution orders in cases of market abuse

Section 384: Power of Authority to require restitution

Section 385: Warning notices

Section 386: Decision notices

PART XXVI: NOTICES

Section 387: Warning notices

Section 388: Decision notices

Section 389: Notices of discontinuance

Section 390: Final notices

Section 391: Publication

Section 392: Application of sections 393 and 394

Section 393: Third party rights

Section 394: Access to Authority material

Section 395: The Authority's procedures

Section 396: Statements under section 395

PART XXVII: OFFENCES

Section 397: Misleading statements and practices

Section 398: Misleading the Authority: residual cases

Section 399: Misleading the Director General of Fair Trading

Section 400: Offences by bodies corporate etc.

Section 401: Proceedings for offences

Section 402: Power of the Authority to institute proceedings for certain other

offences

Section 403: Jurisdiction and procedure in respect of certain offences

PART XXVIII: MISCELLANEOUS

Section 404: Schemes for reviewing past business

Reciprocity powers

Section 405: Directions

Section 407: Consequences of a direction under section 405

Section 408: EFTA firms

Section 409: Gibraltar

Section 410: International obligations

Section 411: Tax treatment of levies and repayments

Section 412: Gaming contracts

Section 413: Protected items

Section 414: Service of notices

Section 415: Jurisdiction in civil proceedings

Section 416: Provisions relating to industrial assurance and certain other enactments

PART XXIX: INTERPRETATION

Section 418: Carrying on regulated activities in the United Kingdom

Section 419: Carrying on regulated activities by way of business

Section 420: Parent and subsidiary undertaking

PART XXX: SUPPLEMENTAL

Section 426: Consequential and supplementary provision

Section 427: Transitional provisions

Section 429: Parliamentary control of statutory instruments

Schedule 1: the Financial Services Authority

PART I: GENERAL

Paragraph 2: Constitution

Paragraph 3: Non-executive members of the governing body

Paragraph 4: Functions of the non-executive committee

Paragraph 5: Arrangements for discharging functions

Paragraph 6: Monitoring and enforcement

Paragraph 7: Arrangements for the investigation of complaints

Paragraph 8: Investigation of complaints

Paragraph 9: Records

Paragraph 10: Annual report

Paragraph 11: Annual public meeting

PART II: STATUS

Paragraphs 14 and 15: Exemption from requirement of "limited" in Authority's name

PART III: FEES

Paragraph 16: Penalties

Paragraph 17: Fees

Paragraph 18: Services for which fees may not be charged

PART IV: MISCELLANEOUS

Paragraph 19: Exemption from liability in damages

Paragraph 20: Disqualification for membership of House of Commons

Schedule 2: Regulated Activities

Schedule 3: Eea Passport Rights

Schedule 4: Treaty Rights

Schedule 5: Persons Concerned in Collective Investment Schemes

Schedule 6: Threshold Conditions

PART I: PART IV PERMISSION

Paragraph 1: Legal Status

Paragraph 2: Location of offices

Paragraph 3: Close links

Paragraph 4: Adequate resources

Paragraph 5: Suitability

PART II: AUTHORISATION

PART III: ADDITIONAL CONDITIONS

Schedule 7: the Authority as Competent Authority for Part Vi

Paragraph 1: General

Paragraph 2: The Authority's general functions

Paragraph 3: Duty to consult

Paragraph 4: Rules

Paragraph 5: Statements of policy

Paragraphs 6 and 7: Penalties and fees

Paragraph 8: Exemption from liability in damages

Schedule 8: Transfer of Functions under Part Vi

Schedule 9: Non-Listing Prospectuses

Schedule 10: Compensation: Exemptions

Schedule 11: Offers of Securities

Schedule 12: Transfer Schemes: Certificates

Schedule 13: the Financial Services and Markets Tribunal

Paragraph 2: President

Paragraph 3: Panels

Paragraph 4: Terms of office

Paragraphs 8 to 10: Sittings and procedure

Paragraph 11: Evidence

Paragraph 12: Decisions of Tribunal

Paragraph 13: Costs

Schedule 14: Role of the Competition Commission

Paragraph 1: Provision of information by Treasury

Paragraph 2: Consideration of matters arising on a report

Paragraph 3: Applied provisions

Paragraph 4: Publication of reports

Schedule 15: Information and Investigations: Connected Persons

Schedule 16: Prohibitions and Restrictions Imposed by the Director General of Fair Trading

Schedule 17: the Ombudsman Scheme

Paragraph 3: Constitution

Paragraph 6: Status

Paragraph 7: Annual Report

Paragraph 8: Guidance

Paragraph 9: Budget

Paragraph 10: Exemption from liability in damages

Paragraph 11: Privilege

Paragraph 13: Authority's procedural rules

Paragraph 14: The scheme operator's rules

Paragraph 18: Terms of reference to the scheme

Paragraph 19: Delegation by and to other schemes

Schedule 20: Transitional Provisions and Savings

COMMENCEMENT

HANSARD REFERENCES