

FINANCIAL SERVICES AND MARKETS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part Xx: Provision of Financial Services by Members of the Professions

579. This Part makes arrangements whereby professionals (such as solicitors, actuaries and accountants) who:
- are not carrying on mainstream regulated activities but
 - are members of designated professional bodies,
- will be exempt from the requirement to obtain permission from the Authority in order to carry out certain regulated activities. Additional tests are set out in section 327 which must be met in order for the professional to qualify for the exemption.
580. The arrangements under this Part include the safeguard of arms-length oversight by the Authority of the way in which the professional bodies supervise and regulate exempt professionals, and the way in which such professionals carry on regulated activities. This will involve, amongst other things, the Authority monitoring the effectiveness of the complaints and redress arrangements of designated professional bodies.
581. In addition, the Authority will be able to ban members of the professions who benefit from the exemption from carrying on regulated activities, where the circumstances justify this. The Authority can also direct that the exemption be cut back on a more general class basis (so that, for example, certain categories of professional, carrying on certain types of activities, will no longer benefit from the exemption).
582. The Authority is also empowered to make rules requiring exempt professionals to disclose to their clients the fact that they are not regulated by the Authority.

Section 325: Authority's general duty

583. This section obliges the Authority to keep itself informed about the way in which designated professional bodies supervise and regulate the carrying on of regulated activities by their members. It also requires the professional bodies to cooperate with the Authority so as to enable the Authority to fulfil its duty of arms-length oversight.

Section 326: Designation of professional bodies

584. This section gives the Treasury the power to designate bodies for the purpose of section 325. Bodies will only be designated where they actively regulate the provision of financial services by their members.

Section 327: Exemption from the general prohibition

585. This section sets out the tests which need to be met in order for a professional to qualify for the exemption, including:
- the professional must be a member of a professional body which is designated by the Treasury;
 - the professional must not receive a commission from a third party in respect of the regulated activities unless he accounts to his client for it;
 - the regulated activities must be provided in a way that is incidental and complementary to the provision of professional (for example, legal, actuarial or accountancy) services;
 - the regulated activities must not relate to sensitive products (for example, life insurance). What amounts to a “sensitive product” is to be specified by the Treasury in regulations.

Section 328: Directions in relation to the general prohibition

586. This section allows the Authority to direct that the exemption from the general prohibition is not to apply to certain classes of professional. The Authority may exercise this power, however, only where it is satisfied that it is desirable to do so in the interests of clients. A non-exhaustive list of factors to which the Authority must have regard in reaching that judgement is set out in the section.

Section 329: Orders in relation to the general prohibition

587. This section enables the Authority to make an order which would have the effect of banning specified persons who are not fit and proper to carry on regulated activities. This is consistent with the arrangements for prohibition orders in relation to individuals under section 56.

Section 330: Consultation

588. This section sets out the procedure for consulting on a direction. The procedure is consistent with that applying to similar arrangements in other parts of the Act.

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

589. This section sets out the procedure which will apply when the Authority makes an order under section 329. The warning and decision notice procedure applied throughout the Act must be followed, and the person who is subject to an order can refer matters to the Tribunal.

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

590. This section allows the Authority to make rules requiring professionals carrying on exempt regulated activities to disclose to their clients that they are not authorised. It also requires the professional bodies to make rules designed to ensure that those members who benefit from the exemption will not carry on regulated activities which are not complementary to the provision of particular professional services to a particular client, although this does not extend to regulated activities conducted by professional firms as exempt persons under the Act. In order to be effective, those rules must be approved by the Authority.

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

591. This section makes it an offence for a person to describe himself (in whatever terms) as a person who has the benefit of the Part XX exemption in relation to a particular regulated activity, or 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, when he is not.
592. *Subsection (2)* provides that 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.
593. Under *subsection (3)*, a person found guilty of this offence is liable on conviction to a maximum of 6 months imprisonment and a fine not exceeding level 5 on the standard scale (currently £5,000). If the offence results from the public display of material, *subsection (4)* a fine of level 5 is to multiplied by the number of days for which any material giving rise to the offence was on public display.