

# **FINANCIAL SERVICES AND MARKETS ACT 2000**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part Xxii: Auditors and Actuaries**

599. This Part concerns the appointment, on a continuing, periodic or ad hoc basis, of auditors and actuaries by authorised persons. It imposes certain requirements, including a duty to disclose to the Authority information relevant to its functions under the Act. These provisions carry forward a number of similar provisions in existing legislation.
600. There are some similarities between the roles of auditors and actuaries, and they are therefore dealt with together in this part of the Act. However, there are also important differences, and these sections will give the Authority the power to act in ways which will recognise the difference in the detailed roles and responsibilities of the two professions.
601. Part XI of the Act gives the Authority various powers to gather information and investigate authorised persons, with section 166 in particular providing a power to require an authorised person to provide the Authority with a report by an accountant or other expert on a particular aspect of his business. Part XXII deals primarily with the duties and responsibilities of auditors and actuaries in respect of their work for authorised persons.

#### ***Section 340: Appointment***

602. *Subsection (1)* gives the Authority the power to make rules to require authorised persons to appoint an auditor or actuary, where they are not already under a statutory obligation to do so (for example under Companies Act requirements). *Subsection (4)* allows the Authority to make rules concerning the terms, conditions, qualifications for, and notification of such appointments. The Authority will also be able to make an appointment itself if one is not made or if it has not received any notification.
603. *Subsection (2)* allows the Authority to make rules requiring any authorised person to produce periodic financial reports on its business, and to submit these for analysis and comment by an auditor or actuary.
604. *Subsection (5)* provides that an auditor or actuary appointed to act on a continuing basis or to produce a periodic report must comply with the relevant rules made by the Authority. These rules may also give the auditor or actuary such powers as the Authority judges necessary for them to carry out their duties.

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

605. This section concerns the duties and powers of auditors and actuaries of authorised persons to pass on information of regulatory importance to the Authority.

606. Auditors and actuaries of authorised persons will be members of professional bodies and will therefore be subject to rules made by their respective bodies as to how they treat confidential information. *Subsections (3) and (4)* ensure that auditors or actuaries who, in good faith, pass on information or express their opinion to the Authority will not be in breach of any duty of confidentiality to which they might otherwise be subject. This protection applies whether or not the auditor or actuary acts in response to a request from the Authority.
607. *Subsections (5), (6) and (7)* give the Treasury a power to set out the circumstances in which auditors and actuaries must pass on information to the Authority. This information may relate to the affairs of either the authorised person concerned, or other persons. So far as auditors are concerned, the Treasury are required by EC directives to set out the circumstances in which such reports must be made, and it is intended to use this power to re-enact the rules necessary to comply with this requirement.

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

608. This section concerns the duties and powers of auditors and actuaries to pass on information of regulatory significance to the Authority about persons having “close links” with authorised persons, including parent and subsidiary companies of an authorised person.
609. *Subsections (3) and (4)* ensure that auditors or actuaries of persons with close links to an authorised person, who, in good faith, pass on information or express their opinion to the Authority will not be in breach of any duty of confidentiality to which they might otherwise be subject. This protection applies whether or not the auditor or actuary acts in response to a request from the Authority.
610. *Subsections (5), (6) and (7)* give the Treasury a power under which they can make rules setting out the circumstances in which auditors and actuaries must pass on information to the Authority. This information may relate to the affairs of either the authorised person concerned, or other persons.

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

611. This section places a duty upon all auditors and actuaries of authorised persons appointed as a result of statute to notify the Authority of certain events, for example where they resign before the end of the period for which they were appointed. *Subsection (3)* also requires an auditor or actuary to pass on any facts connected with his ceasing to act for the authorised person which he thinks ought to be brought to the Authority’s attention, or to make a positive statement to the Authority that he is not aware of any such facts.

***Section 345: Disqualification***

612. Where the Authority believes that an auditor or actuary has failed to comply with any obligations under this Act, it may disqualify that auditor or actuary from acting for any particular authorised person, or class of authorised person. Any such disqualification may be lifted if the Authority is satisfied that the person concerned will in future comply with the obligations.
613. *Subsections (2) and (3)* require the Authority to serve a warning notice and decision notice, whilst *subsection (5)* confers a right to refer to the Tribunal any decision to disqualify.

*These notes refer to the Financial Services and Markets Act  
2000 (c.8) which received Royal Assent on 14 June 2000*

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

614. This section makes it a criminal offence for an authorised person, or an officer, controller or manager of an authorised person knowingly or recklessly to mislead an auditor or actuary appointed under the Act or as a result of provision contained in rules.