

FINANCIAL SERVICES AND MARKETS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part Xxv: Injunctions and Restitution

Section 380: Injunctions

659. This section sets out the powers of the court to make injunctive orders on the application of the Authority or Secretary of State and the grounds on which they may exercise those powers. The court may make three types of order: an order restraining the contravention of certain requirements (*subsection (1)*), an order directing remedial action to be taken when there has been such a contravention (*subsection (2)*) and an order freezing the assets of someone who has contravened certain requirements or been knowingly involved in a contravention (*subsection (3)*).
660. The first of these is a preventative measure. Under *subsection (1)(a)* an order can be made restraining a person from contravening a requirement where the court believes they are reasonably likely to do so. Where a contravention has already occurred, under *subsection (1)(b)* the courts can restrain a person from doing so again.
661. Where there are clear steps that can be taken either by the person who has contravened a requirement or by a person knowingly concerned in the contravention, under *subsection (2)* the court may order a person to take those steps. This is a corrective power. For example, an order may simply require a person to meet commitments they have entered into but so far failed to discharge. *Subsection (5)* provides that the remedial action that the court may order under *subsection (2)* may include orders to mitigate the impact of a contravention even if it is not, strictly speaking, possible to remedy it. For example where a person has published a misleading advertisement, the Authority could apply to the court for an order requiring the person to publish a correction. This would not be of use to anyone who had taken action on the basis of the original advertisement but would prevent others doing so in the future.
662. An order made under *subsection (3)* to freeze a person's assets is similar to a Mareva injunction¹ apart from its timing: a Mareva injunction may only be applied for where court proceedings have been commenced or are imminent whereas this section gives the Authority or Secretary of State an independent power to apply to the court for an asset-freezing order on the grounds that they believe a breach may have occurred. The power does not prevent separate applications for Mareva injunctions.
663. *Subsection (6)* sets out the range of requirements the contravention or likely contravention of which may be grounds for an order under this section. These are requirements imposed by or under the Act, including the Authority's rules made under Part X, plus the various requirements a breach of which constitutes an offence under

¹ A Mareva injunction (now known as a 'freezing order') is a remedy a court may use to prevent assets being removed, charged or otherwise dealt with in a way that could prejudice a legal action that is otherwise being, or about to be, pursued.

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

the Act, such as the general prohibition under Part II. In addition, the powers may be exercised for breaches of requirements imposed by other Acts which constitute offences which the Authority has power to prosecute. The Authority's power in that respect is set out in section 402.