



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART II

#### REGULATED AND PROHIBITED ACTIVITIES

##### *The general prohibition*

#### **19 The general prohibition.**

- (1) No person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is—
  - (a) an authorised person; or
  - (b) an exempt person.
- (2) The prohibition is referred to in this Act as the general prohibition.

##### *Requirement for permission*

#### **20 Authorised persons acting without permission.**

- (1) If an authorised person carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission—
  - (a) given to him by the Authority under Part IV, or
  - (b) resulting from any other provision of this Act,he is to be taken to have contravened a requirement imposed on him by the Authority under this Act.
- (2) The contravention does not—
  - (a) make a person guilty of an offence;
  - (b) make any transaction void or unenforceable; or
  - (c) (subject to subsection (3)) give rise to any right of action for breach of statutory duty.

*Status: Point in time view as at 09/12/2011.*

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- (3) In prescribed cases the contravention is actionable at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

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

- C1** S. 20 excluded (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 62(1)-(4); S.I. 2001/3538, **art. 2(1)**  
S. 20 applied (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 62(5); S.I. 2001/3538, **art. 2(1)**  
S. 20 modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 2**
- C2** S. 20 modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 2**
- C3** S. 20 modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 2**
- C4** S. 20 modified (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(3), 7, **Sch. para. 2**
- C5** S. 20 modified (30.6.2008 for certain purposes, otherwise 1.1.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **7(1)(2)**
- C6** S. 20 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 2}

#### Commencement Information

- II** S. 20 wholly in force at 1.12.2001; s. 20 not in force at Royal Assent see s. 431(2); s. 20(3) in force for certain purposes at 25.2.2001 by S.I. 2001/516, **art. 2(b)**, **Sch. Pt. 2**; s. 20 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

### *Financial promotion*

#### **21 Restrictions on financial promotion.**

- (1) A person (“A”) must not, in the course of business, communicate an invitation or inducement to engage in investment activity.
- (2) But subsection (1) does not apply if—
- A is an authorised person; or
  - the content of the communication is approved for the purposes of this section by an authorised person.
- (3) In the case of a communication originating outside the United Kingdom, subsection (1) applies only if the communication is capable of having an effect in the United Kingdom.
- (4) The Treasury may by order specify circumstances in which a person is to be regarded for the purposes of subsection (1) as—
- acting in the course of business;
  - not acting in the course of business.
- (5) The Treasury may by order specify circumstances (which may include compliance with financial promotion rules) in which subsection (1) does not apply.

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- (6) An order under subsection (5) may, in particular, provide that subsection (1) does not apply in relation to communications—
- (a) of a specified description;
  - (b) originating in a specified country or territory outside the United Kingdom;
  - (c) originating in a country or territory which falls within a specified description of country or territory outside the United Kingdom; or
  - (d) originating outside the United Kingdom.
- (7) The Treasury may by order repeal subsection (3).
- (8) “Engaging in investment activity” means—
- (a) entering or offering to enter into an agreement the making or performance of which by either party constitutes a controlled activity; or
  - (b) exercising any rights conferred by a controlled investment to acquire, dispose of, underwrite or convert a controlled investment.
- (9) An activity is a controlled activity if—
- (a) it is an activity of a specified kind or one which falls within a specified class of activity; and
  - (b) it relates to an investment of a specified kind, or to one which falls within a specified class of investment.
- (10) An investment is a controlled investment if it is an investment of a specified kind or one which falls within a specified class of investment.
- (11) Schedule 2 (except paragraph 26) applies for the purposes of subsections (9) and (10) with references to section 22 being read as references to each of those subsections.
- (12) Nothing in Schedule 2, as applied by subsection (11), limits the powers conferred by subsection (9) or (10).
- (13) “Communicate” includes causing a communication to be made.
- (14) “Investment” includes any asset, right or interest.
- (15) “Specified” means specified in an order made by the Treasury.

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

- C7** S. 21(1) modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 6**
- C8** S. 21(1) modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 6**
- C9** S. 21(1) modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 6**
- C10** S. 21(1) modified (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(3), 7, **Sch. para. 6**
- C11** S. 21(1) excluded (3.7.2002) by Welsh Development Agency Act 1975 (c. 70), **Sch. 1 para. 21** (as substituted) by The Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002 (S.I. 2002/1555), **arts. 1, 6**
- C12** S. 21(2) modified (30.6.2008 for certain purposes, otherwise 1.1.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **8(1)(3)**

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**C13** S. 21(2) modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), **arts. 1(2), 34**, {Sch. paras. 1, 3}

#### **Commencement Information**

**I2** S. 21 wholly in force at 1.12.2001; s. 21 not in force at Royal Assent see s. 431(2); s. 21 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), **art. 2(b)**, **Sch. Pt. 2**; s. 21 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

### *Regulated activities*

## **22 The classes of activity and categories of investment.**

- (1) An activity is a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and—
  - (a) relates to an investment of a specified kind; or
  - (b) in the case of an activity of a kind which is also specified for the purposes of this paragraph, is carried on in relation to property of any kind.
- (2) Schedule 2 makes provision supplementing this section.
- (3) Nothing in Schedule 2 limits the powers conferred by subsection (1).
- (4) “Investment” includes any asset, right or interest.
- (5) “Specified” means specified in an order made by the Treasury.

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

**C14** S. 22 applied (1.9.2002) by [1974 c. 39, s. 16\(6E\)\(a\)](#) (as inserted (1.9.2002) by [2001/544](#), **arts. 2(2)(b), 90(2)**)

### *Offences*

## **23 Contravention of the general prohibition.**

- (1) A person who contravenes the general prohibition is guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (2) In this Act “an authorisation offence” means an offence under this section.
- (3) In proceedings for an authorisation offence 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.

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## **24 False claims to be authorised or exempt.**

- (1) A person who is neither an authorised person nor, in relation to the regulated activity in question, an exempt person is guilty of an offence if he—
  - (a) describes himself (in whatever terms) as an authorised person;
  - (b) describes himself (in whatever terms) as an exempt person in relation to the regulated activity; or
  - (c) behaves, or otherwise holds himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is—
    - (i) an authorised person; or
    - (ii) an exempt person in relation to the regulated activity.
- (2) 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.
- (3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.
- (4) But where the conduct constituting the offence involved or included the public display of any material, the maximum fine for the offence is level 5 on the standard scale multiplied by the number of days for which the display continued.

## **25 Contravention of section 21.**

- (1) A person who contravenes section 21(1) is guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (2) In proceedings for an offence under this section it is a defence for the accused to show—
  - (a) that he believed on reasonable grounds that the content of the communication was prepared, or approved for the purposes of section 21, by an authorised person; or
  - (b) that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

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

**C15** S. 25(2)(a) modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 6**

**C16** S. 25(2)(a) modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 6**

**C17** S. 25(2)(a) modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 6**

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### *Enforceability of agreements*

#### **26 Agreements made by unauthorised persons.**

- (1) An agreement made by a person in the course of carrying on a regulated activity in contravention of the general prohibition is unenforceable against the other party.
- (2) The other party is entitled to recover—
  - (a) any money or other property paid or transferred by him under the agreement; and
  - (b) compensation for any loss sustained by him as a result of having parted with it.
- (3) “Agreement” means an agreement—
  - (a) made after this section comes into force; and
  - (b) the making or performance of which constitutes, or is part of, the regulated activity in question.
- (4) This section does not apply if the regulated activity is accepting deposits.

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

**C18** S. 26(1)(2) applied (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 5(1)(4)** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**  
S. 26(1)(2) applied (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 5(1)**; S.I. 2001/3538, **art. 2(1)**

#### **27 Agreements made through unauthorised persons.**

- (1) An agreement made by an authorised person (“the provider”)—
  - (a) in the course of carrying on a regulated activity (not in contravention of the general prohibition), but
  - (b) in consequence of something said or done by another person (“the third party”) in the course of a regulated activity carried on by the third party in contravention of the general prohibition,
 is unenforceable against the other party.
- (2) The other party is entitled to recover—
  - (a) any money or other property paid or transferred by him under the agreement; and
  - (b) compensation for any loss sustained by him as a result of having parted with it.
- (3) “Agreement” means an agreement—
  - (a) made after this section comes into force; and
  - (b) the making or performance of which constitutes, or is part of, the regulated activity in question carried on by the provider.
- (4) This section does not apply if the regulated activity is accepting deposits.

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

**C19** S. 27(1)(2) applied (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 5(2)(5)** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**

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S. 27(1)(2) applied (1.12.2001) by S.I. 2001/3083, arts. 1(2), 5(2); S.I. 2001/3538, art. 2(1)

## 28 Agreements made unenforceable by section 26 or 27.

- (1) This section applies to an agreement which is unenforceable because of section 26 or 27.
- (2) The amount of compensation recoverable as a result of that section is—
  - (a) the amount agreed by the parties; or
  - (b) on the application of either party, the amount determined by the court.
- (3) If the court is satisfied that it is just and equitable in the circumstances of the case, it may allow—
  - (a) the agreement to be enforced; or
  - (b) money and property paid or transferred under the agreement to be retained.
- (4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the court must—
  - (a) if the case arises as a result of section 26, have regard to the issue mentioned in subsection (5); or
  - (b) if the case arises as a result of section 27, have regard to the issue mentioned in subsection (6).
- (5) The issue is whether the person carrying on the regulated activity concerned reasonably believed that he was not contravening the general prohibition by making the agreement.
- (6) The issue is whether the provider knew that the third party was (in carrying on the regulated activity) contravening the general prohibition.
- (7) If the person against whom the agreement is unenforceable—
  - (a) elects not to perform the agreement, or
  - (b) as a result of this section, recovers money paid or other property transferred by him under the agreement,he must repay any money and return any other property received by him under the agreement.
- (8) If property transferred under the agreement has passed to a third party, a reference in section 26 or 27 or this section to that property is to be read as a reference to its value at the time of its transfer under the agreement.
- (9) The commission of an authorisation offence does not make the agreement concerned illegal or invalid to any greater extent than is provided by section 26 or 27.

### Modifications etc. (not altering text)

- C20** S. 28 applied (with modifications) (1.12.2001) by S.I. 2001/2657, arts. 1(1), 5(6) (which was revoked (8.10.2001) by S.I. 2001/3083, arts. 1(2), 23); S.I. 2001/3538, art. 2(1)  
S. 28 applied (with modifications) (1.12.2001) by S.I. 2001/3083, arts. 1(2), 5(6); S.I. 2001/3538, art. 2(1)

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## **29 Accepting deposits in breach of general prohibition.**

- (1) This section applies to an agreement between a person (“the depositor”) and another person (“the deposit-taker”) made in the course of the carrying on by the deposit-taker of accepting deposits in contravention of the general prohibition.
- (2) If the depositor is not entitled under the agreement to recover without delay any money deposited by him, he may apply to the court for an order directing the deposit-taker to return the money to him.
- (3) The court need not make such an order if it is satisfied that it would not be just and equitable for the money deposited to be returned, having regard to the issue mentioned in subsection (4).
- (4) The issue is whether the deposit-taker reasonably believed that he was not contravening the general prohibition by making the agreement.
- (5) “Agreement” means an agreement—
  - (a) made after this section comes into force; and
  - (b) the making or performance of which constitutes, or is part of, accepting deposits.

## **30 Enforceability of agreements resulting from unlawful communications.**

- (1) In this section—
  - “unlawful communication” means a communication in relation to which there has been a contravention of section 21(1);
  - “controlled agreement” means an agreement the making or performance of which by either party constitutes a controlled activity for the purposes of that section; and
  - “controlled investment” has the same meaning as in section 21.
- (2) If in consequence of an unlawful communication a person enters as a customer into a controlled agreement, it is unenforceable against him and he is entitled to recover—
  - (a) any money or other property paid or transferred by him under the agreement; and
  - (b) compensation for any loss sustained by him as a result of having parted with it.
- (3) If in consequence of an unlawful communication a person exercises any rights conferred by a controlled investment, no obligation to which he is subject as a result of exercising them is enforceable against him and he is entitled to recover—
  - (a) any money or other property paid or transferred by him under the obligation; and
  - (b) compensation for any loss sustained by him as a result of having parted with it.
- (4) But the court may allow—
  - (a) the agreement or obligation to be enforced, or
  - (b) money or property paid or transferred under the agreement or obligation to be retained,if it is satisfied that it is just and equitable in the circumstances of the case.
- (5) In considering whether to allow the agreement or obligation to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the court must have regard to the issues mentioned in subsections (6) and (7).



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- (6) If the applicant made the unlawful communication, the issue is whether he reasonably believed that he was not making such a communication.
- (7) If the applicant did not make the unlawful communication, the issue is whether he knew that the agreement was entered into in consequence of such a communication.
- (8) “Applicant” means the person seeking to enforce the agreement or obligation or retain the money or property paid or transferred.
- (9) Any reference to making a communication includes causing a communication to be made.
- (10) The amount of compensation recoverable as a result of subsection (2) or (3) is—
  - (a) the amount agreed between the parties; or
  - (b) on the application of either party, the amount determined by the court.
- (11) If a person elects not to perform an agreement or an obligation which (by virtue of subsection (2) or (3)) is unenforceable against him, he must repay any money and return any other property received by him under the agreement.
- (12) If (by virtue of subsection (2) or (3)) a person recovers money paid or property transferred by him under an agreement or obligation, he must repay any money and return any other property received by him as a result of exercising the rights in question.
- (13) If any property required to be returned under this section has passed to a third party, references to that property are to be read as references to its value at the time of its receipt by the person required to return it.

**Status:**

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