



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART II

REGULATED AND PROHIBITED ACTIVITIES

VALID FROM 01/12/2001

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)

- C1** S. 26(1)(2) applied (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 5(1)(4)** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**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)**

Status: Point in time view as at 21/06/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Enforceability of agreements is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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)

- C2** 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)**
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).

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- (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)

- C3** 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)**

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—

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“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).
- (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

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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.

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