



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART V

#### PERFORMANCE OF REGULATED ACTIVITIES

##### *Approval*

#### **59 Approval for particular arrangements.**

- (1) An authorised person (“A”) must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by A in relation to the carrying on by A of a regulated activity, unless the Authority approves the performance by that person of the controlled function to which the arrangement relates.
- (2) An authorised person (“A”) must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by a contractor of A in relation to the carrying on by A of a regulated activity, unless the Authority approves the performance by that person of the controlled function to which the arrangement relates.
- (3) “Controlled function” means a function of a description specified in rules.
- (4) The Authority may specify a description of function under subsection (3) only if, in relation to the carrying on of a regulated activity by an authorised person, it is satisfied that the first, second or third condition is met.
- (5) The first condition is that the function is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the authorised person’s affairs, so far as relating to the regulated activity.
- (6) The second condition is that the function will involve the person performing it in dealing with customers of the authorised person in a manner substantially connected with the carrying on of the regulated activity.

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- (7) The third condition is that the function will involve the person performing it in dealing with property of customers of the authorised person in a manner substantially connected with the carrying on of the regulated activity.
- (8) Neither subsection (1) nor subsection (2) applies to an arrangement which allows a person to perform a function if the question of whether he is a fit and proper person to perform the function is reserved under any of the single market directives to an authority in a country or territory outside the United Kingdom.
- (9) In determining whether the first condition is met, the Authority may take into account the likely consequences of a failure to discharge that function properly.
- (10) “Arrangement”—
- (a) means any kind of arrangement for the performance of a function of A which is entered into by A or any contractor of his with another person; and
  - (b) includes, in particular, that other person’s appointment to an office, his becoming a partner or his employment (whether under a contract of service or otherwise).
- (11) “Customer”, in relation to an authorised person, means a person who is using, or who is or may be contemplating using, any of the services provided by the authorised person.

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

- C1 S. 59 extended (1.12.2001) by [S.I. 2001/2636](#), [arts. 1\(2\)\(b\)](#), 74(2), 76(2); [S.I. 2001/3538](#), [art. 2\(1\)](#)  
S. 59 extended (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 49(1) (with [art. 23\(2\)](#))
- C2 S. 59 modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), [art. 15\(1\)](#)
- C3 S. 59 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}
- C4 S. 59 modified (1.1.2010) by The Northern Rock plc [Transfer Order 2009 \(S.I. 2009/3226\)](#), [arts. 1\(2\)\(b\)](#), [10](#)
- C5 S. 59(1) extended (1.12.2001) by [S.I. 2001/2636](#), [arts. 1\(2\)\(b\)](#), 75(2); [S.I. 2001/3538](#), [art. 2\(1\)](#)

#### Commencement Information

- II S. 59 wholly in force at 1.12.2001; s. 59 not in force at Royal Assent see s. 431(2); s. 59 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); s. 59 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#); s. 59 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

## 60 Applications for approval.

- (1) An application for the Authority’s approval under section 59 may be made by the authorised person concerned.
- (2) The application must—
- (a) be made in such manner as the Authority may direct; and
  - (b) contain, or be accompanied by, such information as the Authority may reasonably require.

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- (3) At any time after receiving the application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- (4) The Authority may require an applicant to present information which he is required to give under this section in such form, or to verify it in such a way, as the Authority may direct.
- (5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.
- (6) “The authorised person concerned” includes a person who has applied for permission under Part IV and will be the authorised person concerned if permission is given.

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

- C6** S. 60 amended (*temp.* from 3.9.2001 to 1.12.2001) by [S.I. 2001/2659](#), [arts. 1\(2\)](#), 3(3); [S.I. 2001/3538](#), [art. 2\(1\)](#)  
S. 60 modified (*temp.* from 31.10.2001) by [S.I. 2001/3374](#), [arts. 1](#), 11  
S. 60: “the authorised person concerned” extended (1.12.2001) by [S.I. 2001/2511](#), [regs. 1\(1\)](#), 10; [S.I. 2001/3538](#), [art. 2\(1\)](#)  
S. 60 extended (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 50(1), 51(1), 53(1) (with [art. 23\(2\)](#))
- C7** Ss. 56, 60 modified (*temp.*) (8.4.2002) by [The Financial Services and Markets Act 2000 \(Permission and Applications\) \(Credit Unions etc.\) Order 2002](#) ([S.I. 2002/704](#)), [art. 7](#)
- C8** S. 60 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}
- C9** Ss. 60-63 applied (with modifications) (31.12.2011) by [The Financial Services and Markets Act 2000 \(Permissions, Transitional Provisions and Consequential Amendments\) \(Northern Ireland Credit Unions\) Order 2011](#) ([S.I. 2011/2832](#)), [art. 8](#)
- C10** S. 60(3) extended (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 50(5) (with [art. 23\(2\)](#))

#### Commencement Information

- I2** S. 60 wholly in force at 1.12.2001; s. 60 not in force at Royal Assent see s. 431(2); s. 60(2)(4) in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); s. 60 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#); s. 60 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

VALID FROM 03/09/2001

#### 61 Determination of applications.

- (1) The Authority may grant an application made under section 60 only if it is satisfied that the person in respect of whom the application is made (“the candidate”) is a fit and proper person to perform the function to which the application relates.
- (2) In deciding that question, the Authority may have regard (among other things) to whether the candidate, or any person who may perform a function on his behalf—
  - (a) has obtained a qualification,
  - (b) has undergone, or is undergoing, training, or
  - (c) possesses a level of competence,

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required by general rules in relation to persons performing functions of the kind to which the application relates.

- (3) The Authority must, before the end of the period of three months beginning with the date on which it receives an application made under section 60 (“the period for consideration”), determine whether—
  - (a) to grant the application; or
  - (b) to give a warning notice under section 62(2).
- (4) If the Authority imposes a requirement under section 60(3), the period for consideration stops running on the day on which the requirement is imposed but starts running again—
  - (a) on the day on which the required information is received by the Authority; or
  - (b) if the information is not provided on a single day, on the last of the days on which it is received by the Authority.
- (5) A person who makes an application under section 60 may withdraw his application by giving written notice to the Authority at any time before the Authority determines it, but only with the consent of—
  - (a) the candidate; and
  - (b) the person by whom the candidate is to be retained to perform the function concerned, if not the applicant.

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

- C11** S. 61 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}
- C12** Ss. 60-63 applied (with modifications) (31.12.2011) by [The Financial Services and Markets Act 2000 \(Permissions, Transitional Provisions and Consequential Amendments\) \(Northern Ireland Credit Unions\) Order 2011 \(S.I. 2011/2832\)](#), **art. 8**
- C13** S. 61(3) modified (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2), 49(3), 53(2)** (with art. 23(2))
- C14** S. 61(3) excluded (1.1.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 1\) Order 2003 \(S.I. 2003/1475\)](#), **arts. 1(2), 28(2)**
- C15** S. 61(3) excluded (1.1.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), **arts. 1(2), 24(2), 26(2)**

#### Commencement Information

- I3** S. 61 wholly in force at 1.12.2001; s. 61 not in force at Royal Assent see s. 431(2); s. 61 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), **art. 2(2), Sch. Pt. 2**; s. 61 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

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## 62 Applications for approval: procedure and right to refer to Tribunal.

- (1) If the Authority decides to grant an application made under section 60 (“an application”), it must give written notice of its decision to each of the interested parties.

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- (2) If the Authority proposes to refuse an application, it must give a warning notice to each of the interested parties.
- (3) If the Authority decides to refuse an application, it must give a decision notice to each of the interested parties.
- (4) If the Authority decides to refuse an application, each of the interested parties may refer the matter to the Tribunal.
- (5) “The interested parties”, in relation to an application, are—
  - (a) the applicant;
  - (b) the person in respect of whom the application is made (“A”); and
  - (c) the person by whom A’s services are to be retained, if not the applicant.

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

- C16** S. 62 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}
- C17** Ss. 60-63 applied (with modifications) (31.12.2011) by [The Financial Services and Markets Act 2000 \(Permissions, Transitional Provisions and Consequential Amendments\) \(Northern Ireland Credit Unions\) Order 2011 \(S.I. 2011/2832\)](#), **art. 8**

#### **Commencement Information**

- I4** S. 62 wholly in force at 1.12.2001; s. 62 not in force at Royal Assent see s. 431(2); s. 62 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), **art. 2(2), Sch. Pt. 2**; s. 62 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

VALID FROM 03/09/2001

### **63 Withdrawal of approval.**

- (1) The Authority may withdraw an approval given under section 59 if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.
- (2) When considering whether to withdraw its approval, the Authority may take into account any matter which it could take into account if it were considering an application made under section 60 in respect of the performance of the function to which the approval relates.
- (3) If the Authority proposes to withdraw its approval, it must give each of the interested parties a warning notice.
- (4) If the Authority decides to withdraw its approval, it must give each of the interested parties a decision notice.
- (5) If the Authority decides to withdraw its approval, each of the interested parties may refer the matter to the Tribunal.
- (6) “The interested parties”, in relation to an approval, are—

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- (a) the person on whose application it was given (“A”);
- (b) the person in respect of whom it was given (“B”); and
- (c) the person by whom B’s services are retained, if not A.

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

- C18** S. 63 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](#)
- C19** Ss. 60-63 applied (with modifications) (31.12.2011) by [The Financial Services and Markets Act 2000 \(Permissions, Transitional Provisions and Consequential Amendments\) \(Northern Ireland Credit Unions\) Order 2011 \(S.I. 2011/2832\)](#), [art. 8](#)
- C20** S. 63 applied (with modifications) (31.12.2011) by [The Financial Services and Markets Act 2000 \(Permissions, Transitional Provisions and Consequential Amendments\) \(Northern Ireland Credit Unions\) Order 2011 \(S.I. 2011/2832\)](#), [art. 6\(3\)](#)
- C21** S. 63(1)(3)-(6) excluded (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 61(2) (with [art. 23\(2\)](#))
- C22** S. 63(3) extended (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 52(2) (with [art. 23\(2\)](#))
- C23** S. 63(4) modified (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 75(2) (with [art. 23\(2\)](#))

#### **Commencement Information**

- I5** S. 63 wholly in force at 1.12.2001; s. 63 not in force at Royal Assent see s. 431(2); s. 63 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#); s. 63 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

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