



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART VI

#### OFFICIAL LISTING

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

- C1** Pt. 6 (ss. 72-103) applied (with modifications) (1.12.2001) by [S.I. 1995/1537, Sch. 4](#) (as amended (1.12.2001) by [S.I. 2001/3649, arts. 1, 511](#))

#### *The competent authority*

#### **72 The competent authority.**

- (1) On the coming into force of this section, the functions conferred on the competent authority by this Part are to be exercised by the Authority.
- (2) Schedule 7 modifies this Act in its application to the Authority when it acts as the competent authority.
- (3) But provision is made by Schedule 8 allowing some or all of those functions to be transferred by the Treasury so as to be exercisable by another person.

#### **73 General duty of the competent authority.**

- (1) In discharging its general functions the competent authority must have regard to—
  - (a) the need to use its resources in the most efficient and economic way;
  - (b) the principle that a burden or restriction which is imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to arise from the imposition of that burden or restriction;
  - <sup>[F1]</sup>(c) the desirability of facilitating innovation in respect of listed securities and in respect of financial instruments which have otherwise been admitted to

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trading on a regulated market or for which a request for admission to trading on such a market has been made;]

- (d) the international character of capital markets and the desirability of maintaining the competitive position of the United Kingdom;
- (e) the need to minimise the adverse effects on competition of anything done in the discharge of those functions;
- [<sup>F2</sup>(f) the desirability of facilitating competition in relation to listed securities and in relation to financial instruments which have otherwise been admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made.]

[<sup>F3</sup>(1A) To the extent that those general functions are functions under or relating to transparency rules, subsection (1)(c) and (f) have effect as if the references to a regulated market were references to a market.]

- (2) The competent authority’s general functions are—
  - (a) its function of making rules under this Part (considered as a whole);
  - (b) its functions in relation to the giving of general guidance in relation to this Part (considered as a whole);
  - (c) its function of determining the general policy and principles by reference to which it performs particular functions under this Part.

#### Textual Amendments

- F1** S. 73(1)(c) substituted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 4, [Sch. 1 para. 1\(2\)](#)
- F2** S. 73(1)(f) substituted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 4, [Sch. 1 para. 1\(3\)](#)
- F3** S. 73(1A) inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), [Sch. 15 para. 2](#)

#### [<sup>F4</sup> Part 6 Rules

<sup>F4</sup>73A

- (1) The competent authority may make rules (“Part 6 rules”) for the purposes of this Part.
- (2) Provisions of Part 6 rules expressed to relate to the official list are referred to in this Part as “listing rules”.
- (3) Provisions of Part 6 rules expressed to relate to disclosure of information in respect of financial instruments which have been admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made, are referred to in this Part as “disclosure rules”.

[ Provisions of Part 6 rules expressed to relate to transferable securities are referred to [<sup>F5</sup>(4) in this Part as “prospectus rules”.

- (5) In relation to prospectus rules, the purposes of this Part include the purposes of the prospectus directive.]

[ Transparency rules and corporate governance rules are not listing rules, disclosure [<sup>F6</sup>(6) rules or prospectus rules, but are Part 6 rules.]]]

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#### Textual Amendments

- F4** S. 73A inserted (17.3.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(3)(b), 4, **Sch. 1 para. 2**
- F5** S. 73A(4)(5) added (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 1**
- F6** S. 73A(6) inserted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1272, 1300(1)(a), **Sch. 15 para. 3**

### *The official list*

#### **74 The official list.**

- (1) The competent authority must maintain the official list.
- (2) The competent authority may admit to the official list such securities and other things as it considers appropriate.
- (3) But—
  - (a) nothing may be admitted to the official list except in accordance with this Part; and
  - (b) the Treasury may by order provide that anything which falls within a description or category specified in the order may not be admitted to the official list.
- (4) <sup>F7</sup> .....
- (5) In the following provisions of this Part—  
<sup>F8</sup> .....  
“listing” means being included in the official list in accordance with this Part.

#### Textual Amendments

- F7** S. 74(4) repealed (17.3.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(3)(b), 4, **Sch. 1 para. 3**
- F8** S. 74(5): definition of "security" omitted (1.7.2005) by virtue of The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 2**

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

- C2** S. 74(5) applied (1.12.2001) by S.I. 2001/2957, **arts. 1, 8(4)**; S.I. 2001/3538, **art. 2(1)**

#### Commencement Information

- I1** S. 74 wholly in force at 1.12.2001; s. 74 not in force at Royal Assent see s. 431(2); s. 74(4)(5) in force at 18.6.2001 by S.I. 2001/1820, **art. 2, Sch.**; s. 74 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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## Listing

### 75 Applications for listing.

- (1) Admission to the official list may be granted only on an application made to the competent authority in such manner as may be required by listing rules.
- (2) No application for listing may be entertained by the competent authority unless it is made by, or with the consent of, the issuer of the securities concerned.
- (3) No application for listing may be entertained by the competent authority in respect of securities which are to be issued by a body of a prescribed kind.
- (4) The competent authority may not grant an application for listing unless it is satisfied that—
  - (a) the requirements of listing rules (so far as they apply to the application), and
  - (b) any other requirements imposed by the authority in relation to the application, are complied with.
- (5) An application for listing may be refused if, for a reason relating to the issuer, the competent authority considers that granting it would be detrimental to the interests of investors.
- (6) An application for listing securities which are already officially listed in another EEA State may be refused if the issuer has failed to comply with any obligations to which he is subject as a result of that listing.

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

**C3** S. 75(1) extended (1.12.2001) by S.I. 2001/2957, arts. 1, 4(2); S.I. 2001/3538, art. 2(1)

#### Commencement Information

**I2** S. 75 wholly in force at 1.12.2001; s. 75 not in force at Royal Assent see s. 431(2); s. 75(3) in force for specified purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; s. 75(1) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 75 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

### 76 Decision on application.

- (1) The competent authority must notify the applicant of its decision on an application for listing—
  - (a) before the end of the period of six months beginning with the date on which the application is received; or
  - (b) if within that period the authority has required the applicant to provide further information in connection with the application, before the end of the period of six months beginning with the date on which that information is provided.
- (2) If the competent authority fails to comply with subsection (1), it is to be taken to have decided to refuse the application.
- (3) If the competent authority decides to grant an application for listing, it must give the applicant written notice.

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- (4) If the competent authority proposes to refuse an application for listing, it must give the applicant a warning notice.
- (5) If the competent authority decides to refuse an application for listing, it must give the applicant a decision notice.
- (6) If the competent authority decides to refuse an application for listing, the applicant may refer the matter to the Tribunal.
- (7) If securities are admitted to the official list, their admission may not be called in question on the ground that any requirement or condition for their admission has not been complied with.

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

C4 S. 76(1) modified (1.12.2001) by S.I. 2001/2957, arts. 1, 4(3); S.I. 2001/3538, art. 2(1)

**77 Discontinuance and suspension of listing.**

- (1) The competent authority may, in accordance with listing rules, discontinue the listing of any securities if satisfied that there are special circumstances which preclude normal regular dealings in them.
- (2) The competent authority may, in accordance with listing rules, suspend the listing of any securities.
- [<sup>F9</sup>(2A) The competent authority may discontinue under subsection (1) or suspend under subsection (2) the listing of any securities on its own initiative or on the application of the issuer of those securities.]
- (3) If securities are suspended under subsection (2) they are to be treated, for the purposes of sections 96 and 99, as still being listed.
- (4) This section applies to securities whenever they were admitted to the official list.
- (5) If the competent authority discontinues or suspends the listing of any securities, [<sup>F10</sup>on its own initiative,] the issuer may refer the matter to the Tribunal.

**Textual Amendments**

F9 S. 77(2A) inserted (12.7.2007) by The Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (S.I. 2007/1973), art. 5(a)

F10 Words in s. 77(5) inserted (12.7.2007) by The Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (S.I. 2007/1973), art. 5(b)

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

C5 S. 77(2) extended (1.12.2001) by S.I. 2001/2957, arts. 1, 8(3); S.I. 2001/3538, art. 2(1)

**Commencement Information**

I3 S. 77 wholly in force at 1.12.2001; s. 77 not in force at Royal Assent see s. 431(2); s. 77(1)(2)(4) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 77 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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## 78 Discontinuance or suspension: procedure.

- (1) A discontinuance or suspension [<sup>F11</sup>by the competent authority on its own initiative] takes effect—
  - (a) immediately, if the notice under subsection (2) states that that is the case;
  - (b) in any other case, on such date as may be specified in that notice.
- (2) If [<sup>F12</sup>on its own initiative] the competent authority—
  - (a) proposes to discontinue or suspend the listing of securities, or
  - (b) discontinues or suspends the listing of securities with immediate effect, it must give the issuer of the securities written notice.
- (3) The notice must—
  - (a) give details of the discontinuance or suspension;
  - (b) state the competent authority's reasons for the discontinuance or suspension and for choosing the date on which it took effect or takes effect;
  - (c) inform the issuer of the securities that he may make representations to the competent authority within such period as may be specified in the notice (whether or not he has referred the matter to the Tribunal);
  - (d) inform him of the date on which the discontinuance or suspension took effect or will take effect; and
  - (e) inform him of his right to refer the matter to the Tribunal.
- (4) The competent authority may extend the period within which representations may be made to it.
- (5) If, having considered any representations made by the issuer of the securities, the competent authority decides—
  - (a) to discontinue or suspend the listing of the securities, or
  - (b) if the discontinuance or suspension has taken effect, not to cancel it, the competent authority must give the issuer of the securities written notice.
- (6) A notice given under subsection (5) must inform the issuer of the securities of his right to refer the matter to the Tribunal.
- (7) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (8) If the competent authority decides—
  - (a) not to discontinue or suspend the listing of the securities, or
  - (b) if the discontinuance or suspension has taken effect, to cancel it, the competent authority must give the issuer of the securities written notice.
- (9) The effect of cancelling a discontinuance is that the securities concerned are to be readmitted, without more, to the official list.
- (10) If the competent authority has suspended the listing of securities [<sup>F13</sup>on its own initiative] and proposes to refuse an application by the issuer of the securities for the cancellation of the suspension, it must give him a warning notice.
- (11) The competent authority must, having considered any representations made in response to the warning notice—

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- (a) if it decides to refuse the application, give the issuer of the securities a decision notice;
  - (b) if it grants the application, give him written notice of its decision.
- (12) If the competent authority decides to refuse an application for the cancellation of the suspension of listed securities, the applicant may refer the matter to the Tribunal.
- (13) “Discontinuance” means a discontinuance of listing under section 77(1).
- (14) “Suspension” means a suspension of listing under section 77(2).

#### Textual Amendments

- F11** Words in s. 78(1) inserted (12.7.2007) by The Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (S.I. 2007/1973), art. 6(a)
- F12** Words in s. 78(2) inserted (12.7.2007) by The Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (S.I. 2007/1973), art. 6(b)
- F13** Words in s. 78(10) inserted (12.7.2007) by The Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (S.I. 2007/1973), art. 6(c)

#### <sup>F14</sup> F14 78A **Discontinuance or suspension at the request of the issuer: procedure**

- (1) A discontinuance or suspension by the competent authority on the application of the issuer of the securities takes effect—
- (a) immediately, if the notice under subsection (2) states that this is the case;
  - (b) in any other case, on such date as may be specified in that notice.
- (2) If the competent authority discontinues or suspends the listing of securities on the application of the issuer of the securities it must give him written notice.
- (3) The notice must—
- (a) give details of the discontinuance or suspension;
  - (b) inform the issuer of the securities of the date on which the discontinuance or suspension took effect or will take effect; and
  - (c) inform the issuer of his right to apply for the cancellation of the suspension.
- (4) If the competent authority proposes to refuse an application by the issuer of the securities for the discontinuance or suspension of the listing of the securities, it must give him a warning notice.
- (5) The competent authority must, having considered any representations made in response to the warning notice, if it decides to refuse the application, give the issuer of the securities a decision notice.
- (6) If the competent authority decides to refuse an application by the issuer of the securities for the discontinuance or suspension of the listing of the securities, the issuer may refer the matter to the Tribunal.
- (7) If the competent authority has suspended the listing of securities on the application of the issuer of the securities and proposes to refuse an application by the issuer for the cancellation of the suspension, it must give him a warning notice.
- (8) The competent authority must, having considered any representations made in response to the warning notice—

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- (a) if it decides to refuse the application for the cancellation of the suspension, give the issuer of the securities a decision notice;
  - (b) if it grants the application, give him written notice of its decision.
- (9) If the competent authority decides to refuse an application for the cancellation of the suspension of listed securities, the applicant may refer the matter to the Tribunal.
- (10) “Discontinuance” means a discontinuance of listing under section 77(1).
- (11) “Suspension” means a suspension of listing under section 77(2).]]

#### Textual Amendments

- F14** S. 78A inserted (12.7.2007) by [The Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), [art. 7](#)

### *Listing particulars*

#### **79 Listing particulars and other documents.**

- (1) Listing rules may provide that securities <sup>F15</sup> . . . of a kind specified in the rules may not be admitted to the official list unless—
- (a) listing particulars have been submitted to, and approved by, the competent authority and published; or
  - (b) in such cases as may be specified by listing rules, such document (other than listing particulars or a prospectus of a kind required by listing rules) as may be so specified has been published.
- (2) “Listing particulars” means a document in such form and containing such information as may be specified in listing rules.
- (3) For the purposes of this Part, the persons responsible for listing particulars are to be determined in accordance with regulations made by the Treasury.
- [<sup>F16</sup>(3A) Listing rules made under subsection (1) may not specify securities of a kind for which an approved prospectus is required as a result of section 85.]
- (4) Nothing in this section affects the competent authority’s general power to make listing rules.

#### Textual Amendments

- F15** Words in s. 79(1) repealed (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 3\(2\)](#)
- F16** S. 79(3A) inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 3\(3\)](#)

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

- C6** S. 79 extended (1.12.2001) by [S.I. 2001/2957](#), [arts. 1, 6\(1\)\(3\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)



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### Commencement Information

- I4** S. 79 wholly in force at 18.6.2001; s. 79 not in force at Royal Assent see s. 431(2); s. 79(3) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), Sch. Pt. 1; s. 79 in force so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.

## 80 General duty of disclosure in listing particulars.

- (1) Listing particulars submitted to the competent authority under section 79 must contain all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of—
  - (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
  - (b) the rights attaching to the securities.
- (2) That information is required in addition to any information required by—
  - (a) listing rules, or
  - (b) the competent authority,as a condition of the admission of the securities to the official list.
- (3) Subsection (1) applies only to information—
  - (a) within the knowledge of any person responsible for the listing particulars; or
  - (b) which it would be reasonable for him to obtain by making enquiries.
- (4) In determining what information subsection (1) requires to be included in listing particulars, regard must be had (in particular) to—
  - (a) the nature of the securities and their issuer;
  - (b) the nature of the persons likely to consider acquiring them;
  - (c) the fact that certain matters may reasonably be expected to be within the knowledge of professional advisers of a kind which persons likely to acquire the securities may reasonably be expected to consult; and
  - (d) any information available to investors or their professional advisers as a result of requirements imposed on the issuer of the securities by a recognised investment exchange, by listing rules or by or under any other enactment.

## 81 Supplementary listing particulars.

- (1) If at any time after the preparation of listing particulars which have been submitted to the competent authority under section 79 and before the commencement of dealings in the securities concerned following their admission to the official list—
  - (a) there is a significant change affecting any matter contained in those particulars the inclusion of which was required by—
    - (i) section 80,
    - (ii) listing rules, or
    - (iii) the competent authority, or
  - (b) a significant new matter arises, the inclusion of information in respect of which would have been so required if it had arisen when the particulars were prepared,

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the issuer must, in accordance with listing rules, submit supplementary listing particulars of the change or new matter to the competent authority, for its approval and, if they are approved, publish them.

- (2) “Significant” means significant for the purpose of making an informed assessment of the kind mentioned in section 80(1).
- (3) If the issuer of the securities is not aware of the change or new matter in question, he is not under a duty to comply with subsection (1) unless he is notified of the change or new matter by a person responsible for the listing particulars.
- (4) But it is the duty of any person responsible for those particulars who is aware of such a change or new matter to give notice of it to the issuer.
- (5) Subsection (1) applies also as respects matters contained in any supplementary listing particulars previously published under this section in respect of the securities in question.

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

**C7** S. 81 modified (1.12.2001) by S.I. 2001/2957, arts. 1, 6(1)(3)(4); S.I. 2001/3538, art. 2(1)

**C8** S. 81(1) extended (1.12.2001) by S.I. 2001/2957, arts. 1, 6(1)(3)(4); S.I. 2001/3538, art. 2(1)

#### **Commencement Information**

**I5** S. 81 wholly in force at 1.12.2001; s. 81 not in force at Royal Assent see s. 431(2); s. 81(1)(5) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 81 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

## **82 Exemptions from disclosure.**

- (1) The competent authority may authorise the omission from listing particulars of any information, the inclusion of which would otherwise be required by section 80 or 81, on the ground—
  - (a) that its disclosure would be contrary to the public interest;
  - (b) that its disclosure would be seriously detrimental to the issuer; or
  - (c) in the case of securities of a kind specified in listing rules, that its disclosure is unnecessary for persons of the kind who may be expected normally to buy or deal in securities of that kind.
- (2) But—
  - (a) no authority may be granted under subsection (1)(b) in respect of essential information; and
  - (b) no authority granted under subsection (1)(b) extends to any such information.
- (3) The Secretary of State or the Treasury may issue a certificate to the effect that the disclosure of any information (including information that would otherwise have to be included in listing particulars for which they are themselves responsible) would be contrary to the public interest.
- (4) The competent authority is entitled to act on any such certificate in exercising its powers under subsection (1)(a).

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- (5) This section does not affect any powers of the competent authority under listing rules made as a result of section 101(2).
- (6) “Essential information” means information which a person considering acquiring securities of the kind in question would be likely to need in order not to be misled about any facts which it is essential for him to know in order to make an informed assessment.
- (7) “Listing particulars” includes supplementary listing particulars.

#### Commencement Information

- I6** S. 82 wholly in force at 1.12.2001; s. 82 not in force at Royal Assent see s. 431(2); s. 82(1)(5)(7) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 82 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

### 83 Registration of listing particulars.

**F17** .....

#### Textual Amendments

- F17** S. 83 repealed (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 4

*[<sup>F18</sup>Transferable securities: public offers and admission to trading]*

#### Textual Amendments

- F18** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 5

### [<sup>F19</sup>84 Matters which may be dealt with by prospectus rules

- (1) Prospectus rules may make provision as to—
  - (a) the required form and content of a prospectus (including a summary);
  - (b) the cases in which a summary need not be included in a prospectus;
  - (c) the languages which may be used in a prospectus (including a summary);
  - (d) the determination of the persons responsible for a prospectus;
  - (e) the manner in which applications to the competent authority for the approval of a prospectus are to be made.
- (2) Prospectus rules may also make provision as to—
  - (a) the period of validity of a prospectus;
  - (b) the disclosure of the maximum price or of the criteria or conditions according to which the final offer price is to be determined, if that information is not contained in a prospectus;

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- (c) the disclosure of the amount of the transferable securities which are to be offered to the public or of the criteria or conditions according to which that amount is to be determined, if that information is not contained in a prospectus;
  - (d) the required form and content of other summary documents (including the languages which may be used in such a document);
  - (e) the ways in which a prospectus that has been approved by the competent authority may be made available to the public;
  - (f) the disclosure, publication or other communication of such information as the competent authority may reasonably stipulate;
  - (g) the principles to be observed in relation to advertisements in connection with an offer of transferable securities to the public or admission of transferable securities to trading on a regulated market and the enforcement of those principles;
  - (h) the suspension of trading in transferable securities where continued trading would be detrimental to the interests of investors;
  - (i) elections under section 87 or under Article 2.1(m)(iii) of the prospectus directive as applied for the purposes of this Part by section 102C.
- (3) Prospectus rules may also make provision as to—
- (a) access to the register of investors maintained under section 87R; and
  - (b) the supply of information from that register.
- (4) Prospectus rules may make provision for the purpose of dealing with matters arising out of or related to any provision of the prospectus directive.
- (5) In relation to cases where the home State in relation to an issuer of transferable securities is an EEA State other than the United Kingdom, prospectus rules may make provision for the recognition of elections made in relation to such securities under the law of that State in accordance with Article 1.3 or 2.1(m)(iii) of the prospectus directive.
- (6) In relation to a document relating to transferable securities issued by an issuer incorporated in a non-EEA State and drawn up in accordance with the law of that State, prospectus rules may make provision as to the approval of that document as a prospectus.
- (7) Nothing in this section affects the competent authority's general power to make prospectus rules.]

#### Textual Amendments

**F19** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 5](#)

#### [<sup>F20</sup>85] Prohibition of dealing etc. in transferable securities without approved prospectus

- (1) It is unlawful for transferable securities to which this subsection applies to be offered to the public in the United Kingdom unless an approved prospectus has been made available to the public before the offer is made.

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- (2) It is unlawful to request the admission of transferable securities to which this subsection applies to trading on a regulated market situated or operating in the United Kingdom unless an approved prospectus has been made available to the public before the request is made.
- (3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 3 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
- (4) A contravention of subsection (1) or (2) 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.
- (5) Subsection (1) applies to all transferable securities other than—
  - (a) those listed in Schedule 11A;
  - (b) such other transferable securities as may be specified in prospectus rules.
- (6) Subsection (2) applies to all transferable securities other than—
  - (a) those listed in Part 1 of Schedule 11A;
  - (b) such other transferable securities as may be specified in prospectus rules.
- (7) “Approved prospectus” means, in relation to transferable securities to which this section applies, a prospectus approved by the competent authority of the home State in relation to the issuer of the securities.]

#### Textual Amendments

**F20** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 5](#)

#### [<sup>F21</sup>86 Exempt offers to the public

- (1) A person does not contravene section 85(1) if—
  - (a) the offer is made to or directed at qualified investors only;
  - (b) the offer is made to or directed at fewer than 100 persons, other than qualified investors, per EEA State;
  - (c) the minimum consideration which may be paid by any person for transferable securities acquired by him pursuant to the offer is at least 50,000 euros (or an equivalent amount);
  - (d) the transferable securities being offered are denominated in amounts of at least 50,000 euros (or equivalent amounts); or
  - (e) the total consideration for the transferable securities being offered cannot exceed 100,000 euros (or an equivalent amount).
- (2) Where—
  - (a) a person who is not a qualified investor (“the client”) has engaged a qualified investor falling within Article 2.1(e)(i) of the prospectus directive to act as his agent, and

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- (b) the terms on which the qualified investor is engaged enable him to make decisions concerning the acceptance of offers of transferable securities on the client's behalf without reference to the client,  
an offer made to or directed at the qualified investor is not to be regarded for the purposes of subsection (1) as also having been made to or directed at the client.
- (3) For the purposes of subsection (1)(b), the making of an offer of transferable securities to—
- (a) trustees of a trust,
  - (b) members of a partnership in their capacity as such, or
  - (c) two or more persons jointly,
- is to be treated as the making of an offer to a single person.
- (4) In determining whether subsection (1)(e) is satisfied in relation to an offer (“offer A”), offer A is to be taken together with any other offer of transferable securities of the same class made by the same person which—
- (a) was open at any time within the period of 12 months ending with the date on which offer A is first made; and
  - (b) had previously satisfied subsection (1)(e).
- (5) For the purposes of this section, an amount (in relation to an amount denominated in euros) is an “equivalent amount” if it is an amount of equal value denominated wholly or partly in another currency or unit of account.
- (6) The equivalent is to be calculated at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made.
- (7) “Qualified investor” means—
- (a) an entity falling within Article 2.1(e)(i), (ii) or (iii) of the prospectus directive;
  - (b) an investor registered on the register maintained by the competent authority under section 87R;
  - (c) an investor authorised by an EEA State other than the United Kingdom to be considered as a qualified investor for the purposes of the prospectus directive.]

#### Textual Amendments

**F21** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 5](#)

#### [<sup>F22</sup>87 Election to have prospectus

- (1) A person who proposes—
- (a) to issue transferable securities to which this section applies,
  - (b) to offer to the public transferable securities to which this section applies, or
  - (c) to request the admission to a regulated market of transferable securities to which this section applies,
- may elect, in accordance with prospectus rules, to have a prospectus in relation to the securities.

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- (2) If a person makes such an election, the provisions of this Part and of prospectus rules apply in relation to those transferable securities as if, in relation to an offer of the securities to the public or the admission of the securities to trading on a regulated market, they were transferable securities for which an approved prospectus would be required as a result of section 85.
- (3) Listing rules made under section 79 do not apply to securities which are the subject of an election.
- (4) The transferable securities to which this section applies are those which fall within any of the following paragraphs of Schedule 11A—
  - (a) paragraph 2,
  - (b) paragraph 4,
  - (c) paragraph 8, or
  - (d) paragraph 9,where the United Kingdom is the home State in relation to the issuer of the securities.]

#### Textual Amendments

**F22** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 5](#)

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

**C9** S. 87 extended (1.12.2001) by [S.I. 2001/2957](#), arts. 1, 6(4); [S.I. 2001/3538](#), art. 2(1)

### *[<sup>F23</sup> Approval of prospectus*

#### Textual Amendments

**F23** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 5](#)

## **87A Criteria for approval of prospectus by competent authority**

- (1) The competent authority may not approve a prospectus unless it is satisfied that—
  - (a) the United Kingdom is the home State in relation to the issuer of the transferable securities to which it relates,
  - (b) the prospectus contains the necessary information, and
  - (c) all of the other requirements imposed by or in accordance with this Part or the prospectus directive have been complied with (so far as those requirements apply to a prospectus for the transferable securities in question).
- (2) The necessary information is the information necessary to enable investors to make an informed assessment of—
  - (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the transferable securities and of any guarantor; and
  - (b) the rights attaching to the transferable securities.



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- (3) The necessary information must be presented in a form which is comprehensible and easy to analyse.
- (4) The necessary information must be prepared having regard to the particular nature of the transferable securities and their issuer.
- (5) The prospectus must include a summary (unless the transferable securities in question are ones in relation to which prospectus rules provide that a summary is not required).
- (6) The summary must, briefly and in non-technical language, convey the essential characteristics of, and risks associated with, the issuer, any guarantor and the transferable securities to which the prospectus relates.
- (7) Where the prospectus for which approval is sought does not include the final offer price or the amount of transferable securities to be offered to the public, the applicant must inform the competent authority in writing of that information as soon as that element is finalised.
- (8) “Prospectus” (except in subsection (5)) includes a supplementary prospectus.

## **87B Exemptions from disclosure**

- (1) The competent authority may authorise the omission from a prospectus of any information, the inclusion of which would otherwise be required, on the ground—
  - (a) that its disclosure would be contrary to the public interest;
  - (b) that its disclosure would be seriously detrimental to the issuer, provided that the omission would be unlikely to mislead the public with regard to any facts or circumstances which are essential for an informed assessment of the kind mentioned in section 87A(2); or
  - (c) that the information is only of minor importance for a specific offer to the public or admission to trading on a regulated market and unlikely to influence an informed assessment of the kind mentioned in section 87A(2).
- (2) The Secretary of State or the Treasury may issue a certificate to the effect that the disclosure of any information would be contrary to the public interest.
- (3) The competent authority is entitled to act on any such certificate in exercising its powers under subsection (1)(a).
- (4) This section does not affect any powers of the competent authority under prospectus rules.
- (5) “Prospectus” includes a supplementary prospectus.

## **87C Consideration of application for approval**

- (1) The competent authority must notify the applicant of its decision on an application for approval of a prospectus before the end of the period for consideration.
- (2) The period for consideration—



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- (a) begins with the first working day after the date on which the application is received; but
  - (b) if the competent authority gives a notice under subsection (4), is to be treated as beginning with the first working day after the date on which the notice is complied with.
- (3) The period for consideration is—
  - (a) except in the case of a new issuer, 10 working days; or
  - (b) in that case, 20 working days.
- (4) The competent authority may by notice in writing require a person who has applied for approval of a prospectus to provide—
  - (a) specified documents or documents of a specified description, or
  - (b) specified information or information of a specified description.
- (5) No notice under subsection (4) may be given after the end of the period, beginning with the first working day after the date on which the application is received, of—
  - (a) except in the case of a new issuer, 10 working days; or
  - (b) in that case, 20 working days.
- (6) Subsection (4) applies only to information and documents reasonably required in connection with the exercise by the competent authority of its functions in relation to the application.
- (7) The competent authority may require any information provided under this section to be provided in such form as it may reasonably require.
- (8) The competent authority may require—
  - (a) any information provided, whether in a document or otherwise, to be verified in such manner, or
  - (b) any document produced to be authenticated in such manner, as it may reasonably require.
- (9) The competent authority must notify the applicant of its decision on an application for approval of a supplementary prospectus before the end of the period of 7 working days beginning with the date on which the application is received; and subsections (4) and (6) to (8) apply to such an application as they apply to an application for approval of a prospectus.
- (10) The competent authority's failure to comply with subsection (1) or (9) does not constitute approval of the application in question.
- (11) “New issuer” means an issuer of transferable securities which—
  - (a) does not have transferable securities admitted to trading on any regulated market; and
  - (b) has not previously offered transferable securities to the public.

## **87D Procedure for decision on application for approval**

- (1) If the competent authority approves a prospectus, it must give the applicant written notice.

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- (2) If the competent authority proposes to refuse to approve a prospectus, it must give the applicant written notice.
- (3) The notice must state the competent authority's reasons for the proposed refusal.
- (4) If the competent authority decides to refuse to approve a prospectus, it must give the applicant written notice.
- (5) The notice must—
  - (a) give the competent authority's reasons for refusing the application; and
  - (b) inform the applicant of his right to refer the matter to the Tribunal.
- (6) If the competent authority refuses to approve a prospectus, the applicant may refer the matter to the Tribunal.
- (7) In this section “prospectus” includes a supplementary prospectus.

*Transfer of application for approval of a prospectus*

**87E Transfer by competent authority of application for approval**

- (1) The competent authority may transfer an application for the approval of a prospectus or a supplementary prospectus to the competent authority of another EEA State (“the transferee authority”).
- (2) Before doing so, the competent authority must obtain the agreement of the transferee authority.
- (3) The competent authority must inform the applicant of the transfer within 3 working days beginning with the first working day after the date of the transfer.
- (4) On making a transfer under subsection (1), the competent authority ceases to have functions under this Part in relation to the application transferred.

**87F Transfer to competent authority of application for approval**

- (1) Where the competent authority agrees to the transfer to it of an application for the approval of a prospectus made to the competent authority of another EEA State—
  - (a) the United Kingdom is to be treated for the purposes of this Part as the home State in relation to the issuer of the transferable securities to which the prospectus relates, and
  - (b) this Part applies to the application as if it had been made to the competent authority but with the modification in subsection (2).
- (2) Section 87C applies as if the date of the transfer were the date on which the application was received by the competent authority.

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### *Supplementary prospectus*

#### **87G Supplementary prospectus**

- (1) Subsection (2) applies if, during the relevant period, there arises or is noted a significant new factor, material mistake or inaccuracy relating to the information included in a prospectus approved by the competent authority.
- (2) The person on whose application the prospectus was approved must, in accordance with prospectus rules, submit a supplementary prospectus containing details of the new factor, mistake or inaccuracy to the competent authority for its approval.
- (3) The relevant period begins when the prospectus is approved and ends—
  - (a) with the closure of the offer of the transferable securities to which the prospectus relates; or
  - (b) when trading in those securities on a regulated market begins.
- (4) “Significant” means significant for the purposes of making an informed assessment of the kind mentioned in section 87A(2).
- (5) Any person responsible for the prospectus who is aware of any new factor, mistake or inaccuracy which may require the submission of a supplementary prospectus in accordance with subsection (2) must give notice of it to—
  - (a) the issuer of the transferable securities to which the prospectus relates, and
  - (b) the person on whose application the prospectus was approved.
- (6) A supplementary prospectus must provide sufficient information to correct any mistake or inaccuracy which gave rise to the need for it.
- (7) Subsection (1) applies also to information contained in any supplementary prospectus published under this section.

### *Passporting*

#### **87H Prospectus approved in another EEA State**

- (1) A prospectus approved by the competent authority of an EEA State other than the United Kingdom is not an approved prospectus for the purposes of section 85 unless that authority has provided the competent authority with—
  - (a) a certificate of approval;
  - (b) a copy of the prospectus as approved; and
  - (c) if requested by the competent authority, a translation of the summary of the prospectus.
- (2) A document is not a certificate of approval unless it states that the prospectus—
  - (a) has been drawn up in accordance with the prospectus directive; and
  - (b) has been approved, in accordance with that directive, by the competent authority providing the certificate.

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- (3) A document is not a certificate of approval unless it states whether (and, if so, why) the competent authority providing it authorised, in accordance with the prospectus directive, the omission from the prospectus of information which would otherwise have been required to be included.
- (4) “Prospectus” includes a supplementary prospectus.

## **87I Provision of information to host Member State**

- (1) The competent authority must, if requested to do so, supply the competent authority of a specified EEA State with—
  - (a) a certificate of approval;
  - (b) a copy of the specified prospectus (as approved by the competent authority); and
  - (c) a translation of the summary of the specified prospectus (if the request states that one has been requested by the other competent authority).
- (2) Only the following may make a request under this section—
  - (a) the issuer of the transferable securities to which the specified prospectus relates;
  - (b) a person who wishes to offer the transferable securities to which the specified prospectus relates to the public in an EEA State other than (or as well as) the United Kingdom;
  - (c) a person requesting the admission of the transferable securities to which the specified prospectus relates to a regulated market situated or operating in an EEA State other than (or as well as) the United Kingdom.
- (3) A certificate of approval must state that the prospectus—
  - (a) has been drawn up in accordance with this Part and the prospectus directive; and
  - (b) has been approved, in accordance with those provisions, by the competent authority.
- (4) A certificate of approval must state whether (and, if so, why) the competent authority authorised, in accordance with section 87B, the omission from the prospectus of information which would otherwise have been required to be included.
- (5) The competent authority must comply with a request under this section—
  - (a) if the prospectus has been approved before the request is made, within 3 working days beginning with the date of the request; or
  - (b) if the request is submitted with an application for the approval of the prospectus, on the first working day after the date on which it approves the prospectus.
- (6) “Prospectus” includes a supplementary prospectus.
- (7) “Specified” means specified in a request made for the purposes of this section.

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### *Transferable securities: powers of competent authority*

#### **87J Requirements imposed as condition of approval**

- (1) As a condition of approving a prospectus, the competent authority may by notice in writing—
  - (a) require the inclusion in the prospectus of such supplementary information necessary for investor protection as the competent authority may specify;
  - (b) require a person controlling, or controlled by, the applicant to provide specified information or documents;
  - (c) require an auditor or manager of the applicant to provide specified information or documents;
  - (d) require a financial intermediary commissioned to assist either in carrying out the offer to the public of the transferable securities to which the prospectus relates or in requesting their admission to trading on a regulated market, to provide specified information or documents.
- (2) “Specified” means specified in the notice.
- (3) “Prospectus” includes a supplementary prospectus.

#### **87K Power to suspend or prohibit offer to the public**

- (1) This section applies where a person (“the offeror”) has made an offer of transferable securities to the public in the United Kingdom (“the offer”).
- (2) If the competent authority has reasonable grounds for suspecting that an applicable provision has been infringed, it may—
  - (a) require the offeror to suspend the offer for a period not exceeding 10 working days;
  - (b) require a person not to advertise the offer, or to take such steps as the authority may specify to suspend any existing advertisement of the offer, for a period not exceeding 10 working days.
- (3) If the competent authority has reasonable grounds for suspecting that it is likely that an applicable provision will be infringed, it may require the offeror to withdraw the offer.
- (4) If the competent authority finds that an applicable provision has been infringed, it may require the offeror to withdraw the offer.
- (5) “An applicable provision” means—
  - (a) a provision of this Part,
  - (b) a provision contained in prospectus rules,
  - (c) any other provision made in accordance with the prospectus directive, applicable in relation to the offer.

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## **87L Power to suspend or prohibit admission to trading on a regulated market**

- (1) This section applies where a person has requested the admission of transferable securities to trading on a regulated market situated or operating in the United Kingdom.
- (2) If the competent authority has reasonable grounds for suspecting that an applicable provision has been infringed and the securities have not yet been admitted to trading on the regulated market in question, it may—
  - (a) require the person requesting admission to suspend the request for a period not exceeding 10 working days;
  - (b) require a person not to advertise the securities to which it relates, or to take such steps as the authority may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.
- (3) If the competent authority has reasonable grounds for suspecting that an applicable provision has been infringed and the securities have been admitted to trading on the regulated market in question, it may—
  - (a) require the market operator to suspend trading in the securities for a period not exceeding 10 working days;
  - (b) require a person not to advertise the securities, or to take such steps as the authority may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.
- (4) If the competent authority finds that an applicable provision has been infringed, it may require the market operator to prohibit trading in the securities on the regulated market in question.
- (5) “An applicable provision” means—
  - (a) a provision of this Part,
  - (b) a provision contained in prospectus rules,
  - (c) any other provision made in accordance with the prospectus directive,applicable in relation to the admission of the transferable securities to trading on the regulated market in question.

## **87M Public censure of issuer**

- (1) If the competent authority finds that—
  - (a) an issuer of transferable securities,
  - (b) a person offering transferable securities to the public, or
  - (c) a person requesting the admission of transferable securities to trading on a regulated market,is failing or has failed to comply with his obligations under an applicable provision, it may publish a statement to that effect.
- (2) If the competent authority proposes to publish a statement, it must give the person a warning notice setting out the terms of the proposed statement.

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- (3) If, after considering any representations made in response to the warning notice, the competent authority decides to make the proposed statement, it must give the person a decision notice setting out the terms of the statement.
- (4) “An applicable provision” means—
  - (a) a provision of this Part,
  - (b) a provision contained in prospectus rules,
  - (c) any other provision made in accordance with the prospectus directive, applicable to a prospectus in relation to the transferable securities in question.
- (5) “Prospectus” includes a supplementary prospectus.

#### **87N Right to refer matters to the Tribunal**

- (1) A person to whom a decision notice is given under section 87M may refer the matter to the Tribunal.>
- (2) A person to whom a notice is given under section 87O may refer the matter to the Tribunal.

#### **87O Procedure under sections 87K and 87L**

- (1) A requirement under section 87K or 87L takes effect—
  - (a) immediately, if the notice under subsection (2) states that that is the case;
  - (b) in any other case, on such date as may be specified in that notice.
- (2) If the competent authority—
  - (a) proposes to exercise the powers in section 87K or 87L in relation to a person, or
  - (b) exercises any of those powers in relation to a person with immediate effect,it must give that person written notice.
- (3) The notice must—
  - (a) give details of the competent authority's action or proposed action;
  - (b) state the competent authority's reasons for taking the action in question and choosing the date on which it took effect or takes effect;
  - (c) inform the recipient that he may make representations to the competent authority within such period as may be specified by the notice (whether or not he has referred the matter to the Tribunal);
  - (d) inform him of the date on which the action took effect or takes effect; and
  - (e) inform him of his right to refer the matter to the Tribunal.
- (4) The competent authority may extend the period within which representations may be made to it.
- (5) If, having considered any representations made to it, the competent authority decides to maintain, vary or revoke its earlier decision, it must give written notice to that effect to the person mentioned in subsection (2).

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- (6) A notice given under subsection (5) must inform that person, where relevant, of his right to refer the matter to the Tribunal.
- (7) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (8) If a notice under this section relates to the exercise of the power conferred by section 87L(3), the notice must also be given to the person at whose request the transferable securities were admitted to trading on the regulated market.

## **87P Exercise of powers at request of competent authority of another EEA State**

- (1) This section applies if—
  - (a) the competent authority of an EEA State other than the United Kingdom has approved a prospectus,
  - (b) the transferable securities to which the prospectus relates have been offered to the public in the United Kingdom or their admission to trading on a regulated market has been requested, and
  - (c) that competent authority makes a request that the competent authority assist it in the performance of its functions under the law of that State in connection with the prospectus directive.
- (2) For the purpose of complying with the request mentioned in subsection (1)(c), the powers conferred by sections 87K and 87L may be exercised as if the prospectus were one which had been approved by the competent authority.
- (3) Section 87N does not apply to an exercise of those powers as a result of this section.
- (4) Section 87O does apply to such an exercise of those powers but with the omission of subsections (3)(e), (6) and (7).

### *Rights of investors*

## **87Q Right of investor to withdraw**

- (1) Where a person agrees to buy or subscribe for transferable securities in circumstances where the final offer price or the amount of transferable securities to be offered to the public is not included in the prospectus, he may withdraw his acceptance before the end of the withdrawal period.
- (2) The withdrawal period—
  - (a) begins with the investor's acceptance; and
  - (b) ends at the end of the second working day after the date on which the competent authority is informed of the information in accordance with section 87A(7).
- (3) Subsection (1) does not apply if the prospectus contains—



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- (a) in the case of the amount of transferable securities to be offered to the public, the criteria or conditions (or both) according to which that element will be determined, or
  - (b) in the case of price, the criteria or conditions (or both) according to which that element will be determined or the maximum price.
- (4) Where a supplementary prospectus has been published and, prior to the publication, a person agreed to buy or subscribe for transferable securities to which it relates, he may withdraw his acceptance before the end of the period of 2 working days beginning with the first working day after the date on which the supplementary prospectus was published.

### *Registered investors*

## **87R Register of investors**

- (1) The competent authority must establish and maintain, in accordance with this section and prospectus rules, a register of investors for the purposes of section 86.
- (2) An individual may not be entered in the register unless—
  - (a) he is resident in the United Kingdom; and
  - (b) he meets at least two of the criteria mentioned in Article 2.2 of the prospectus directive.
- (3) A company may not be entered in the register unless—
  - (a) it falls within the meaning of “small and medium-sized enterprises” in Article 2.1 of the prospectus directive; and
  - (b) its registered office is in the United Kingdom.
- (4) A person who does not fall within subsection (2) or (3) may not be entered in the register.]

### *Sponsors*

## **88 Sponsors.**

- (1) Listing rules may require a person to make arrangements with a sponsor for the performance by the sponsor of such services in relation to him as may be specified in the rules.
- (2) “Sponsor” means a person approved by the competent authority for the purposes of the rules.
- (3) Listing rules made by virtue of subsection (1) may—
  - (a) provide for the competent authority to maintain a list of sponsors;
  - (b) specify services which must be performed by a sponsor;
  - (c) impose requirements on a sponsor in relation to the provision of services or specified services;
  - (d) specify the circumstances in which a person is qualified for being approved as a sponsor.

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- (4) If the competent authority proposes—
  - (a) to refuse a person’s application for approval as a sponsor, or
  - (b) to cancel a person’s approval as a sponsor [<sup>F24</sup>otherwise than at his request],
 it must give him a warning notice.
- (5) If, after considering any representations made in response to the warning notice, the competent authority decides—
  - (a) to grant the application for approval, or
  - (b) not to cancel the approval,
 it must give the person concerned, and any person to whom a copy of the warning notice was given, written notice of its decision.
- (6) If, after considering any representations made in response to the warning notice, the competent authority decides—
  - (a) to refuse to grant the application for approval, or
  - (b) to cancel the approval,
 it must give the person concerned a decision notice.
- (7) A person to whom a decision notice is given under this section may refer the matter to the Tribunal.

#### Textual Amendments

**F24** Words in s. 88(4)(b) inserted (12.7.2007) by [The Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), **art. 9**

#### Commencement Information

**I7** S. 88 wholly in force at 1.12.2001; s. 88 not in force at Royal Assent see s. 431(2); s. 88(1)-(3) in force at 18.6.2001 by [S.I. 2001/1820](#), **art. 2, Sch.**; s. 88 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

## 89 Public censure of sponsor.

- (1) Listing rules may make provision for the competent authority, if it considers that a sponsor has contravened a requirement imposed on him by rules made as a result of section 88(3)(c), to publish a statement to that effect.
- (2) If the competent authority proposes to publish a statement it must give the sponsor a warning notice setting out the terms of the proposed statement.
- (3) If, after considering any representations made in response to the warning notice, the competent authority decides to make the proposed statement, it must give the sponsor a decision notice setting out the terms of the statement.
- (4) A sponsor to whom a decision notice is given under this section may refer the matter to the Tribunal.

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

**C10** S. 89(2)-(4) applied (with modifications) (1.12.2001) by [S.I. 2001/2957](#), **arts. 1, 10(3), 12, 13**; [S.I. 2001/3538](#), **art. 2(1)**

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### Commencement Information

- I8** S. 89 wholly in force at 1.12.2001; s. 89 not in force at Royal Assent see s. 431(2); s. 89(1) in force at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); s. 89 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

## <sup>F25</sup> Transparency obligations

### Textual Amendments

- F25** Ss. 89A-89G and cross-heading inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), [ss. 1266\(1\)](#), [1300\(1\)\(a\)](#) (with [s. 1266\(2\)](#))

## 89A Transparency rules

- (1) The competent authority may make rules for the purposes of the transparency obligations directive.
- (2) The rules may include provision for dealing with any matters arising out of or related to any provision of the transparency obligations directive.
- (3) The competent authority may also make rules—
  - (a) for the purpose of ensuring that voteholder information in respect of voting shares traded on a UK market other than a regulated market is made public or notified to the competent authority;
  - (b) providing for persons who hold comparable instruments (see section 89F(1)(c)) in respect of voting shares to be treated, in the circumstances specified in the rules, as holding some or all of the voting rights in respect of those shares.
- (4) Rules under this section may, in particular, make provision—
  - (a) specifying how the proportion of—
    - (i) the total voting rights in respect of shares in an issuer, or
    - (ii) the total voting rights in respect of a particular class of shares in an issuer,held by a person is to be determined;
  - (b) specifying the circumstances in which, for the purposes of any determination of the voting rights held by a person (“P”) in respect of voting shares in an issuer, any voting rights held, or treated by virtue of subsection (3)(b) as held, by another person in respect of voting shares in the issuer are to be regarded as held by P;
  - (c) specifying the nature of the information which must be included in any notification;
  - (d) about the form of any notification;
  - (e) requiring any notification to be given within a specified period;
  - (f) specifying the manner in which any information is to be made public and the period within which it must be made public;
  - (g) specifying circumstances in which any of the requirements imposed by rules under this section does not apply.
- (5) Rules under this section are referred to in this Part as “transparency rules”.

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- (6) Nothing in sections 89B to 89G affects the generality of the power to make rules under this section.

### **89B Provision of voteholder information**

- (1) Transparency rules may make provision for voteholder information in respect of voting shares to be notified, in circumstances specified in the rules—
- (a) to the issuer, or
  - (b) to the public,
- or to both.
- (2) Transparency rules may make provision for voteholder information notified to the issuer to be notified at the same time to the competent authority.
- (3) In this Part “voteholder information” in respect of voting shares means information relating to the proportion of voting rights held by a person in respect of the shares.
- (4) Transparency rules may require notification of voteholder information relating to a person—
- (a) initially, not later than such date as may be specified in the rules for the purposes of the first indent of Article 30.2 of the transparency obligations directive, and
  - (b) subsequently, in accordance with the following provisions.
- (5) Transparency rules under subsection (4)(b) may require notification of voteholder information relating to a person only where there is a notifiable change in the proportion of—
- (a) the total voting rights in respect of shares in the issuer, or
  - (b) the total voting rights in respect of a particular class of share in the issuer, held by the person.
- (6) For this purpose there is a “notifiable change” in the proportion of voting rights held by a person when the proportion changes—
- (a) from being a proportion less than a designated proportion to a proportion equal to or greater than that designated proportion,
  - (b) from being a proportion equal to a designated proportion to a proportion greater or less than that designated proportion, or
  - (c) from being a proportion greater than a designated proportion to a proportion equal to or less than that designated proportion.
- (7) In subsection (6) “designated” means designated by the rules.

### **89C Provision of information by issuers of transferable securities**

- (1) Transparency rules may make provision requiring the issuer of transferable securities, in circumstances specified in the rules—
- (a) to make public information to which this section applies, or
  - (b) to notify to the competent authority information to which this section applies,
- or to do both.
- (2) In the case of every issuer, this section applies to—

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- (a) information required by Article 4 of the transparency obligations directive;
  - (b) information relating to the rights attached to the transferable securities, including information about the terms and conditions of those securities which could indirectly affect those rights; and
  - (c) information about new loan issues and about any guarantee or security in connection with any such issue.
- (3) In the case of an issuer of debt securities, this section also applies to information required by Article 5 of the transparency obligations directive.
- (4) In the case of an issuer of shares, this section also applies to—
- (a) information required by Article 5 of the transparency obligations directive;
  - (b) information required by Article 6 of that directive;
  - (c) voteholder information—
    - (i) notified to the issuer, or
    - (ii) relating to the proportion of voting rights held by the issuer in respect of shares in the issuer;
  - (d) information relating to the issuer's capital; and
  - (e) information relating to the total number of voting rights in respect of shares or shares of a particular class.

#### **89D Notification of voting rights held by issuer**

- (1) Transparency rules may require notification of voteholder information relating to the proportion of voting rights held by an issuer in respect of voting shares in the issuer—
- (a) initially, not later than such date as may be specified in the rules for the purposes of the second indent of Article 30.2 of the transparency obligations directive, and
  - (b) subsequently, in accordance with the following provisions.
- (2) Transparency rules under subsection (1)(b) may require notification of voteholder information relating to the proportion of voting rights held by an issuer in respect of voting shares in the issuer only where there is a notifiable change in the proportion of—
- (a) the total voting rights in respect of shares in the issuer, or
  - (b) the total voting rights in respect of a particular class of share in the issuer, held by the issuer.
- (3) For this purpose there is a “notifiable change” in the proportion of voting rights held by a person when the proportion changes—
- (a) from being a proportion less than a designated proportion to a proportion equal to or greater than that designated proportion,
  - (b) from being a proportion equal to a designated proportion to a proportion greater or less than that designated proportion, or
  - (c) from being a proportion greater than a designated proportion to a proportion equal to or less than that designated proportion.
- (4) In subsection (3) “designated” means designated by the rules.

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## 89E Notification of proposed amendment of issuer's constitution

Transparency rules may make provision requiring an issuer of transferable securities that are admitted to trading on a regulated market to notify a proposed amendment to its constitution—

- (a) to the competent authority, and
  - (b) to the market on which the issuer's securities are admitted,
- at times and in circumstances specified in the rules.

## 89F Transparency rules: interpretation etc

(1) For the purposes of sections 89A to 89G—

- (a) the voting rights in respect of any voting shares are the voting rights attached to those shares,
- (b) a person is to be regarded as holding the voting rights in respect of the shares—
  - (i) if, by virtue of those shares, he is a shareholder within the meaning of Article 2.1(e) of the transparency obligations directive;
  - (ii) if, and to the extent that, he is entitled to acquire, dispose of or exercise those voting rights in one or more of the cases mentioned in Article 10(a) to (h) of the transparency obligations directive;
  - (iii) if he holds, directly or indirectly, a financial instrument which results in an entitlement to acquire the shares and is an Article 13 instrument, and
- (c) a person holds a “comparable instrument” in respect of voting shares if he holds, directly or indirectly, a financial instrument in relation to the shares which has similar economic effects to an Article 13 instrument (whether or not the financial instrument results in an entitlement to acquire the shares).

(2) Transparency rules under section 89A(3)(b) may make different provision for different descriptions of comparable instrument.

(3) For the purposes of sections 89A to 89G two or more persons may, at the same time, each be regarded as holding the same voting rights.

(4) In those sections—

“Article 13 instrument” means a financial instrument of a type determined by the European Commission under Article 13.2 of the transparency obligations directive;

[<sup>F26</sup>“financial instrument” has the meaning given in Article 4.1(17) of Directive 2004/39/EC on markets in financial instruments;]

“UK market” means a market that is situated or operating in the United Kingdom;

“voting shares” means shares of an issuer to which voting rights are attached.

### Textual Amendments

- F26** S. 89F(4): definition of “financial instrument” inserted (31.1.2009) by [The Definition of Financial Instrument Order 2008 \(S.I. 2008/3053\)](#), [art. 2\(2\)](#)

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## 89G Transparency rules: other supplementary provisions

- (1) Transparency rules may impose the same obligations on a person who has applied for the admission of transferable securities to trading on a regulated market without the issuer's consent as they impose on an issuer of transferable securities.
- (2) Transparency rules that require a person to make information public may include provision authorising the competent authority to make the information public in the event that the person fails to do so.
- (3) The competent authority may make public any information notified to the authority in accordance with transparency rules.
- (4) Transparency rules may make provision by reference to any provision of any rules made by the Panel on Takeovers and Mergers under Part 28 of the Companies Act 2006.
- (5) Sections 89A to 89F and this section are without prejudice to any other power conferred by this Part to make Part 6 rules.]

*[<sup>F27</sup>Power of competent authority to call for information*

### Textual Amendments

**F27** Ss. 89H-89J and cross-heading inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1267, 1300(1)  
(a)

## 89H Competent authority's power to call for information

- (1) The competent authority may by notice in writing given to a person to whom this section applies require him—
  - (a) to provide specified information or information of a specified description, or
  - (b) to produce specified documents or documents of a specified description.
- (2) This section applies to—
  - (a) an issuer in respect of whom transparency rules have effect;
  - (b) a voteholder;
  - (c) an auditor of—
    - (i) an issuer to whom this section applies, or
    - (ii) a voteholder;
  - (d) a person who controls a voteholder;
  - (e) a person controlled by a voteholder;
  - (f) a director or other similar officer of an issuer to whom this section applies;
  - (g) a director or other similar officer of a voteholder or, where the affairs of a voteholder are managed by its members, a member of the voteholder.
- (3) This section applies only to information and documents reasonably required in connection with the exercise by the competent authority of functions conferred on it by or under sections 89A to 89G (transparency rules).
- (4) Information or documents required under this section must be provided or produced—
  - (a) before the end of such reasonable period as may be specified, and

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(b) at such place as may be specified.

(5) If a person claims a lien on a document, its production under this section does not affect the lien.

### **89I Requirements in connection with call for information**

(1) The competent authority may require any information provided under section 89H to be provided in such form as it may reasonably require.

(2) The competent authority may require—

(a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require;

(b) any document produced to be authenticated in such manner as it may reasonably require.

(3) If a document is produced in response to a requirement imposed under section 89H, the competent authority may—

(a) take copies of or extracts from the document; or

(b) require the person producing the document, or any relevant person, to provide an explanation of the document.

(4) In subsection (3)(b) “relevant person”, in relation to a person who is required to produce a document, means a person who—

(a) has been or is a director or controller of that person;

(b) has been or is an auditor of that person;

(c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or

(d) has been or is an employee of that person.

(5) If a person who is required under section 89H to produce a document fails to do so, the competent authority may require him to state, to the best of his knowledge and belief, where the document is.

### **89J Power to call for information: supplementary provisions**

(1) The competent authority may require an issuer to make public any information provided to the authority under section 89H.

(2) If the issuer fails to comply with a requirement under subsection (1), the competent authority may, after seeking representations from the issuer, make the information public.

(3) In sections 89H and 89I (power of competent authority to call for information)—

“control” and “controlled” have the meaning given by subsection (4) below;

“specified” means specified in the notice;

“voteholder” means a person who—

(a) holds voting rights in respect of any voting shares for the purposes of sections 89A to 89G (transparency rules), or

(b) is treated as holding such rights by virtue of rules under section 89A(3) (b).

(4) For the purposes of those sections a person (“A”) controls another person (“B”) if—



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- (a) A holds a majority of the voting rights in B,
  - (b) A is a member of B and has the right to appoint or remove a majority of the members of the board of directors (or, if there is no such board, the equivalent management body) of B,
  - (c) A is a member of B and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in B, or
  - (d) A has the right to exercise, or actually exercises, dominant influence or control over B.
- (5) For the purposes of subsection (4)(b)—
- (a) any rights of a person controlled by A, and
  - (b) any rights of a person acting on behalf of A or a person controlled by A,
- are treated as held by A.]

*<sup>F28</sup>Powers exercisable in case of infringement of transparency obligation*

#### Textual Amendments

**F28** Ss. 89K-89N and cross-heading inserted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1268, 1300(1)  
(a)

### 89K Public censure of issuer

- (1) If the competent authority finds that an issuer of securities admitted to trading on a regulated market is failing or has failed to comply with an applicable transparency obligation, it may publish a statement to that effect.
- (2) If the competent authority proposes to publish a statement, it must give the issuer a warning notice setting out the terms of the proposed statement.
- (3) If, after considering any representations made in response to the warning notice, the competent authority decides to make the proposed statement, it must give the issuer a decision notice setting out the terms of the statement.
- (4) A notice under this section must inform the issuer of his right to refer the matter to the Tribunal (see section 89N) and give an indication of the procedure on such a reference.
- (5) In this section “transparency obligation” means an obligation under—
  - (a) a provision of transparency rules, or
  - (b) any other provision made in accordance with the transparency obligations directive.
- (6) In relation to an issuer whose home State is a member State other than the United Kingdom, any reference to an applicable transparency obligation must be read subject to section 100A(2).

### 89L Power to suspend or prohibit trading of securities

- (1) This section applies to securities admitted to trading on a regulated market.
- (2) If the competent authority has reasonable grounds for suspecting that an applicable transparency obligation has been infringed by an issuer, it may—

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- (a) suspend trading in the securities for a period not exceeding 10 days,
  - (b) prohibit trading in the securities, or
  - (c) make a request to the operator of the market on which the issuer's securities are traded—
    - (i) to suspend trading in the securities for a period not exceeding 10 days, or
    - (ii) to prohibit trading in the securities.
- (3) If the competent authority has reasonable grounds for suspecting that a provision required by the transparency obligations directive has been infringed by a voteholder of an issuer, it may—
- (a) prohibit trading in the securities, or
  - (b) make a request to the operator of the market on which the issuer's securities are traded to prohibit trading in the securities.
- (4) If the competent authority finds that an applicable transparency obligation has been infringed, it may require the market operator to prohibit trading in the securities.
- (5) In this section “transparency obligation” means an obligation under—
- (a) a provision contained in transparency rules, or
  - (b) any other provision made in accordance with the transparency obligations directive.
- (6) In relation to an issuer whose home State is a member State other than the United Kingdom, any reference to an applicable transparency obligation must be read subject to section 100A(2).

#### **89M Procedure under section 89L**

- (1) A requirement under section 89L takes effect—
- (a) immediately, if the notice under subsection (2) states that that is the case;
  - (b) in any other case, on such date as may be specified in the notice.
- (2) If the competent authority—
- (a) proposes to exercise the powers in section 89L in relation to a person, or
  - (b) exercises any of those powers in relation to a person with immediate effect,
- it must give that person written notice.
- (3) The notice must—
- (a) give details of the competent authority's action or proposed action;
  - (b) state the competent authority's reasons for taking the action in question and choosing the date on which it took effect or takes effect;
  - (c) inform the recipient that he may make representations to the competent authority within such period as may be specified by the notice (whether or not he had referred the matter to the Tribunal);
  - (d) inform him of the date on which the action took effect or takes effect;
  - (e) inform him of his right to refer the matter to the Tribunal (see section 89N) and give an indication of the procedure on such a reference.
- (4) The competent authority may extend the period within which representations may be made to it.

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- (5) If, having considered any representations made to it, the competent authority decides to maintain, vary or revoke its earlier decision, it must give written notice to that effect to the person mentioned in subsection (2).

## 89N Right to refer matters to the Tribunal

A person—

- (a) to whom a decision notice is given under section 89K (public censure), or
- (b) to whom a notice is given under section 89M (procedure in connection with suspension or prohibition of trading),

may refer the matter to the Tribunal.]

*[<sup>F29</sup>Corporate governance]*

### Textual Amendments

**F29** S. 89O and cross-heading inserted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1269, 1300(1)(a)

## 89O Corporate governance rules

- (1) The competent authority may make rules (“corporate governance rules”)—
- (a) for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any Community obligation relating to the corporate governance of issuers who have requested or approved admission of their securities to trading on a regulated market;
  - (b) about corporate governance in relation to such issuers for the purpose of implementing, or dealing with matters arising out of or related to, any Community obligation.
- (2) “Corporate governance”, in relation to an issuer, includes—
- (a) the nature, constitution or functions of the organs of the issuer;
  - (b) the manner in which organs of the issuer conduct themselves;
  - (c) the requirements imposed on organs of the issuer;
  - (d) the relationship between the different organs of the issuer;
  - (e) the relationship between the organs of the issuer and the members of the issuer or holders of the issuer's securities.
- (3) The burdens and restrictions imposed by rules under this section on foreign-traded issuers must not be greater than the burdens and restrictions imposed on UK-traded issuers by—
- (a) rules under this section, and
  - (b) listing rules.
- (4) For this purpose—
- “foreign-traded issuer” means an issuer who has requested or approved admission of the issuer's securities to trading on a regulated market situated or operating outside the United Kingdom;

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“UK-traded issuer” means an issuer who has requested or approved admission of the issuer's securities to trading on a regulated market situated or operating in the United Kingdom.

- (5) This section is without prejudice to any other power conferred by this Part to make Part 6 rules.

*[<sup>F30</sup>Compensation for false or misleading statements etc<sup>F31</sup>]*

**Textual Amendments**

**F30** S. 90 cross-heading substituted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), [Sch. 15 para. 4](#)

**F31** Ss. 90A, 90B inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1270, 1300(1)(a)

**90** *[<sup>F32</sup>Compensation for statements in listing particulars or prospectus]*

- (1) Any person responsible for listing particulars is liable to pay compensation to a person who has—
- (a) acquired securities to which the particulars apply; and
  - (b) suffered loss in respect of them as a result of—
    - (i) any untrue or misleading statement in the particulars; or
    - (ii) the omission from the particulars of any matter required to be included by section 80 or 81.
- (2) Subsection (1) is subject to exemptions provided by Schedule 10.
- (3) If listing particulars are required to include information about the absence of a particular matter, the omission from the particulars of that information is to be treated as a statement in the listing particulars that there is no such matter.
- (4) Any person who fails to comply with section 81 is liable to pay compensation to any person who has—
- (a) acquired securities of the kind in question; and
  - (b) suffered loss in respect of them as a result of the failure.
- (5) Subsection (4) is subject to exemptions provided by Schedule 10.
- (6) This section does not affect any liability which may be incurred apart from this section.
- (7) References in this section to the acquisition by a person of securities include references to his contracting to acquire them or any interest in them.
- (8) No person shall, by reason of being a promoter of a company or otherwise, incur any liability for failing to disclose information which he would not be required to disclose in listing particulars in respect of a company's securities—
- (a) if he were responsible for those particulars; or
  - (b) if he is responsible for them, which he is entitled to omit by virtue of section 82.
- (9) The reference in subsection (8) to a person incurring liability includes a reference to any other person being entitled as against that person to be granted any civil remedy or to rescind or repudiate an agreement.

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- (10) “Listing particulars”, in subsection (1) and Schedule 10, includes supplementary listing particulars.
- [<sup>F33</sup>(11) This section applies in relation to a prospectus as it applies to listing particulars, with the following modifications—
- (a) references in this section or in Schedule 10 to listing particulars, supplementary listing particulars or sections 80, 81 or 82 are to be read, respectively, as references to a prospectus, supplementary prospectus and sections 87A, 87G and 87B;
  - (b) references in Schedule 10 to admission to the official list are to be read as references to admission to trading on a regulated market;
  - (c) in relation to a prospectus, “securities” means “transferable securities”.
- (12) A person is not to be subject to civil liability solely on the basis of a summary in a prospectus unless the summary is misleading, inaccurate or inconsistent when read with the rest of the prospectus; and, in this subsection, a summary includes any translation of it.]

#### Textual Amendments

**F32** S. 90 words in heading substituted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), [Sch. 15 para. 5](#)

**F33** S. 90(11)(12) inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 6\(2\)](#)

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

**C11** S. 90 restricted (1.12.2001) by [S.I. 2001/2957](#), [arts. 1, 7\(3\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

VALID FROM 01/07/2011

#### [<sup>F34</sup>] [<sup>F34</sup>90ZA] **Liability for key investor information**

- (1) A person is not to be subject to civil liability solely on the basis of the key investor information produced in relation to a collective investment scheme or a sub-fund of such a scheme in accordance with rules or other provisions implementing Chapter IX of the UCITS directive, or of any translation of that information, unless the key investor information is misleading, inaccurate or inconsistent with the relevant parts of the prospectus published for that collective investment scheme or sub-fund in accordance with rules made by the Authority under section 248 of this Act.
- (2) In this section, a reference to a sub-fund of a collective investment scheme is a reference to a part of the property of the collective investment scheme which forms a separate pool where—
- (a) the collective investment scheme provides arrangements for separate pooling of the contributions of the participants and the profits and income out of which payments are made to them; and
  - (b) the participants are entitled to exchange rights in one pool for rights in another.]]

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#### Textual Amendments

**F34** S. 90ZA inserted (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), **reg. 2(3)**

#### <sup>F31</sup><sub>F31</sub><sup>F35</sup>**90A Liability of issuers in connection with published information**

Schedule 10A makes provision about the liability of issuers of securities to pay compensation to persons who have suffered loss as a result of—

- (a) a misleading statement or dishonest omission in certain published information relating to the securities, or
- (b) a dishonest delay in publishing such information.]]

#### Textual Amendments

**F35** S. 90A substituted (1.10.2010 with effect in accordance with reg. 3(1) of the amending S.I.) by [The Financial Services and Markets Act 2000 \(Liability of Issuers\) Regulations 2010 \(S.I. 2010/1192\)](#), **reg. 2(2)** (with reg. 3(2))

#### **90B Power to make further provision about liability for published information**

- (1) The Treasury may by regulations make provision about the liability of issuers of securities traded on a regulated market, and other persons, in respect of information published to holders of securities, to the market or to the public generally.
- (2) Regulations under this section may amend any primary or subordinate legislation, including any provision of, or made under, this Act.]

#### *Penalties*

#### **91** [<sup>F36</sup>**Penalties for breach of Part 6 rules**]

[<sup>F37</sup><sub>F38</sub>(1) If the competent authority considers that—

- (a) an issuer of listed securities, or
- (b) an applicant for listing,

has contravened any provision of listing rules, it may impose on him a penalty of such amount as it considers appropriate.

(1ZA) If the competent authority considers that—

- (a) an issuer who has requested or approved the admission of a financial instrument to trading on a regulated market,
- (b) a person discharging managerial responsibilities within such an issuer, or
- (c) a person connected with such a person discharging managerial responsibilities,

has contravened any provision of disclosure rules, it may impose on him a penalty of such amount as it considers appropriate.]

[<sup>F39</sup>(1A) If the competent authority considers that—

- (a) an issuer of transferable securities,

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- (b) a person offering transferable securities to the public or requesting their admission to trading on a regulated market,
- (c) an applicant for the approval of a prospectus in relation to transferable securities,
- (d) a person on whom a requirement has been imposed under section 87K or 87L, or
- (e) any other person to whom a provision of the prospectus directive applies,

has contravened a provision of this Part or of prospectus rules, or a provision otherwise made in accordance with the prospectus directive or a requirement imposed on him under such a provision, it may impose on him a penalty of such amount as it considers appropriate.]

[<sup>F40</sup>(1B) If the competent authority considers—

- (a) that a person has contravened—
  - (i) a provision of transparency rules or a provision otherwise made in accordance with the transparency obligations directive, or
  - (ii) a provision of corporate governance rules, or
- (b) that a person on whom a requirement has been imposed under section 89L (power to suspend or prohibit trading of securities in case of infringement of applicable transparency obligation), has contravened that requirement,

it may impose on the person a penalty of such amount as it considers appropriate.]

- (2) If, in the case of a contravention [<sup>F41</sup>by a person] referred to in subsection [<sup>F42</sup>(1), (1ZA)(a), (1A) or (1B)] [<sup>F43</sup>(“P”)], the competent authority considers that [<sup>F44</sup>another person] who was at the material time a director of [<sup>F45</sup>P] was knowingly concerned in the contravention, it may impose upon him a penalty of such amount as it considers appropriate.]
- (3) If the competent authority is entitled to impose a penalty on a person under this section in respect of a particular matter it may, instead of imposing a penalty on him in respect of that matter, publish a statement censuring him.
- (4) Nothing in this section prevents the competent authority from taking any other steps which it has power to take under this Part.
- (5) A penalty under this section is payable to the competent authority.
- (6) The competent authority may not take action against a person under this section after the end of the period of two years beginning with the first day on which it knew of the contravention unless proceedings against that person, in respect of the contravention, were begun before the end of that period.
- (7) For the purposes of subsection (6)—
  - (a) the competent authority is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred; and
  - (b) proceedings against a person in respect of a contravention are to be treated as begun when a warning notice is given to him under section 92.

#### Textual Amendments

**F36** S. 91 heading substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 7\(4\)](#)



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- F37** S. 91(1)(2) substituted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 4, **Sch. 1 para. 4**
- F38** S. 91(1)(1ZA) substituted for s. 91(1) (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), **Sch. 15 para. 6(2)**
- F39** S. 91(1A) inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 7(2)**
- F40** S. 91(1B) inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), **Sch. 15 para. 6(3)**
- F41** Words in s. 91(2) substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 7(3)(a)**
- F42** Words in s. 91(2) substituted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), **Sch. 15 para. 6(4)**
- F43** Words in s. 91(2) substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 7(3)(b)**
- F44** Words in s. 91(2) substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 7(3)(c)**
- F45** Word in s. 91(2) substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 7(3)(d)**

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

- C12** S. 91(6)(7) applied (with modifications) (1.12.2001) by [S.I. 2001/2957](#), **arts. 1, 11(4)-(6)**; [S.I. 2001/3538](#), **art. 2(1)**

**92 Procedure.**

- (1) If the competent authority proposes to take action against a person under section 91, it must give him a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.
- (4) If the competent authority decides to take action against a person under section 91, it must give him a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the competent authority decides to take action against a person under section 91, he may refer the matter to the Tribunal.

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

- C13** S. 92(1)(3)(4)(6)(7) applied (with modifications) (1.12.2001) by [S.I. 2001/2957](#), **arts. 1, 11(3), 12, 13**; [S.I. 2001/3538](#), **art. 2(1)**



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### **93 Statement of policy.**

- (1) The competent authority must prepare and issue a statement (“its policy statement”) of its policy with respect to—
  - (a) the imposition of penalties under section 91; and
  - (b) the amount of penalties under that section.
- (2) The competent authority’s policy in determining what the amount of a penalty should be must include having regard to—
  - (a) the seriousness of the contravention in question in relation to the nature of the requirement contravened;
  - (b) the extent to which that contravention was deliberate or reckless; and
  - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) The competent authority may at any time alter or replace its policy statement.
- (4) If its policy statement is altered or replaced, the competent authority must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, its power under section 91 in the case of any particular contravention, the competent authority must have regard to any policy statement published under this section and in force at the time when the contravention in question occurred.
- (6) The competent authority must publish a statement issued under this section in the way appearing to the competent authority to be best calculated to bring it to the attention of the public.
- (7) The competent authority may charge a reasonable fee for providing a person with a copy of the statement.
- (8) The competent authority must, without delay, give the Treasury a copy of any policy statement which it publishes under this section.

### **94 Statements of policy: procedure.**

- (1) Before issuing a statement under section 93, the competent authority must publish a draft of the proposed statement in the way appearing to the competent authority to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the competent authority within a specified time.
- (3) Before issuing the proposed statement, the competent authority must have regard to any representations made to it in accordance with subsection (2).
- (4) If the competent authority issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2); and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the competent authority, significant, the competent authority must (in addition to complying with subsection (4)) publish details of the difference.

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- (6) The competent authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.

### *Competition*

#### **95 Competition scrutiny.**

- (1) The Treasury may by order provide for—
  - (a) regulating provisions, and
  - (b) the practices of the competent authority in exercising its functions under this Part (“practices”),
 to be kept under review.
- (2) Provision made as a result of subsection (1) must require the person responsible for keeping regulating provisions and practices under review to consider—
  - (a) whether any regulating provision or practice has a significantly adverse effect on competition; or
  - (b) whether two or more regulating provisions or practices taken together have, or a particular combination of regulating provisions and practices has, such an effect.
- (3) An order under this section may include provision corresponding to that made by any provision of Chapter III of Part X.
- (4) Subsection (3) is not to be read as in any way restricting the power conferred by subsection (1).
- (5) Subsections (6) to (8) apply for the purposes of provision made by or under this section.
- (6) Regulating provisions or practices have a significantly adverse effect on competition if—
  - (a) they have, or are intended or likely to have, that effect; or
  - (b) the effect that they have, or are intended or likely to have, is to require or encourage behaviour which has, or is intended or likely to have, a significantly adverse effect on competition.
- (7) If regulating provisions or practices have, or are intended or likely to have, the effect of requiring or encouraging exploitation of the strength of a market position they are to be taken to have, or be intended or be likely to have, an adverse effect on competition.
- (8) In determining whether any of the regulating provisions or practices have, or are intended or likely to have, a particular effect, it may be assumed that the persons to whom the provisions concerned are addressed will act in accordance with them.
- (9) “Regulating provisions” means—
  - (a) [F46Part 6 rules]
  - (b) general guidance given by the competent authority in connection with its functions under this Part.

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### Textual Amendments

**F46** Words in s. 95(9)(a) substituted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 4, [Sch. 1 para. 5](#)

### Miscellaneous

## 96 Obligations of issuers of listed securities.

- (1) Listing rules may—
  - (a) specify requirements to be complied with by issuers of listed securities; and
  - (b) make provision with respect to the action that may be taken by the competent authority in the event of non-compliance.
- (2) If the rules require an issuer to publish information, they may include provision authorising the competent authority to publish it in the event of his failure to do so.
- (3) This section applies whenever the listed securities were admitted to the official list.

### <sup>F47</sup> [ Disclosure of information requirements

<sup>F47</sup> 96A

- (1) Disclosure rules must include provision specifying the disclosure of information requirements to be complied with by—
  - (a) issuers who have requested or approved admission of their financial instruments to trading on a regulated market in the United Kingdom;
  - (b) persons acting on behalf of or for the account of such issuers;
  - (c) persons discharging managerial responsibilities within an issuer—
    - (i) who is registered in the United Kingdom and who has requested or approved admission of its shares to trading on a regulated market; or
    - (ii) who is not registered in the United Kingdom or any other EEA State but who has requested or approved admission of its shares to trading on a regulated market and who is required to file annual information in relation to the shares in the United Kingdom in accordance with Article 10 of the prospectus directive;
  - (d) persons connected to such persons discharging managerial responsibilities.
- (2) The rules must in particular—
  - (a) require an issuer to publish specified inside information;
  - (b) require an issuer to publish any significant change concerning information it has already published in accordance with paragraph (a);
  - (c) allow an issuer to delay the publication of inside information in specified circumstances;
  - (d) require an issuer (or a person acting on his behalf or for his account) who discloses inside information to a third party to publish that information without delay in specified circumstances;
  - (e) require an issuer (or person acting on his behalf or for his account) to draw up a list of those persons working for him who have access to inside information relating directly or indirectly to that issuer; and

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- (f) require persons discharging managerial responsibilities within an issuer falling within subsection (1)(c)(i) or (ii), and persons connected to such persons discharging managerial responsibilities, to disclose transactions conducted on their own account in shares of the issuer, or derivatives or any other financial instrument relating to those shares.
- (3) Disclosure rules may make provision with respect to the action that may be taken by the competent authority in respect of non-compliance.]

#### Textual Amendments

**F47** Ss. 96A-96C inserted (17.3.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(3)(b), 4, **Sch. 1 para. 6**

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

**C14** S. 96A modified (22.2.2008) by [The Northern Rock plc Transfer Order 2008 \(S.I. 2008/432\)](#), art. 17(1), **Sch. para. 4(a)**

**C15** S. 96A 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. 13(1)(3), **Sch. 1 para. 4(a)**

**C16** S. 96A modified (7.10.2008 at 9.30 a.m.) by [The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), art. 26, **Sch. 2 para. 4(a)**

**C17** S. 96A modified (30.3.2009 at 8.00 a.m.) by [The Amendments to Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), art. 7, **Sch. para. 4(a)**

### 96B [F48]Disclosure rules: persons responsible for compliance]

- (1) [F49]For the purposes of the provisions of this Part relating to disclosure rules], a “person discharging managerial responsibilities within an issuer” means—
- (a) a director of an issuer falling within section 96A(1)(c)(i) or (ii); or
  - (b) a senior executive of such an issuer who—
    - (i) has regular access to inside information relating, directly or indirectly, to the issuer, and
    - (ii) has power to make managerial decisions affecting the future development and business prospects of the issuer.

[F50](2) Schedule 11B (connected persons) has effect for the purposes of the provisions of this Part relating to disclosure rules.]

#### Textual Amendments

**F47** Ss. 96A-96C inserted (17.3.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(3)(b), 4, **Sch. 1 para. 6**

**F48** Words in s. 96B heading substituted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), **Sch. 15 para. 7(a)**

**F49** Words in s. 96B(1) substituted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), **Sch. 15 para. 7(b)**

**F50** S. 96B(2) substituted (1.10.2009) by [The Financial Services and Markets Act 2000 \(Amendment\) Regulations 2009 \(S.I. 2009/2461\)](#), **reg. 2(1)(3)** (this amendment supersedes the amendment in para. 181(2) of Sch. 1 to the [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#))

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

- C18** S. 96B modified (22.2.2008) by The Northern Rock plc Transfer Order 2008 (S.I. 2008/432), art. 17(1), **Sch. para. 4(b)**
- C19** S. 96B 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. 13(1)(3), **Sch. 1 para. 4(b)**
- C20** S. 96B modified (7.10.2008 at 9.30 a.m.) by The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2644), art. 26, **Sch. 2 para. 4(b)**
- C21** S. 96B modified (30.3.2009 at 8.00 a.m.) by The Amendments to Law (Resolution of Dunfermline Building Society) Order 2009 (S.I. 2009/814), art. 7, **Sch. para. 4(b)**

### 96C Suspension of trading

- (1) The competent authority may, in accordance with disclosure rules, suspend trading in a financial instrument.
- (2) If the competent authority does so, the issuer of that financial instrument may refer the matter to the Tribunal.
- (3) The provisions relating to suspension of listing of securities in section 78 apply to the suspension of trading in a financial instrument and the references to listing and securities are to be read as references to trading and financial instruments respectively for the purposes of this section.]

#### Textual Amendments

- F47** Ss. 96A-96C inserted (17.3.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(3)(b), 4, **Sch. 1 para. 6**

### 97 Appointment by competent authority of persons to carry out investigations.

- (1) Subsection (2) applies if it appears to the competent authority that there are circumstances suggesting that—
  - [<sup>F51</sup>(a) there may have been a contravention of—
    - (i) a provision of this Part or of Part 6 rules, or
    - (ii) a provision otherwise made in accordance with the prospectus directive or the transparency obligations directive;
  - (b) a person who was at the material time a director of a person mentioned in section 91(1), (1ZA)(a), (1A) or (1B) has been knowingly concerned in a contravention by that person of—
    - (i) a provision of this Part or of Part 6 rules, or
    - (ii) a provision otherwise made in accordance with the prospectus directive or the transparency obligations directive;]
  - (c) <sup>F52</sup> .....
  - (d) there may have been a contravention of section 83, 85 [<sup>F53</sup>, 87G] or 98.
- (2) The competent authority may appoint one or more competent persons to conduct an investigation on its behalf.
- (3) Part XI applies to an investigation under subsection (2) as if—
  - (a) the investigator were appointed under section 167(1);

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- (b) references to the investigating authority in relation to him were to the competent authority;
- (c) references to the offences mentioned in section 168 were to those mentioned in subsection (1)(d);
- (d) references to an authorised person were references to the person under investigation.

#### Textual Amendments

- F51** S. 97(1)(a)(b) substituted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), **Sch. 15 para. 8**
- F52** S. 97(1)(c) repealed (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 4, **Sch. 1 para. 7(c)**
- F53** Words in s. 97(1)(d) inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 8(c)**

## 98 Advertisements etc. in connection with listing applications.

**F54** .....

#### Textual Amendments

- F54** S. 98 repealed (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 9**

## 99 Fees.

- (1) Listing rules may require the payment of fees to the competent authority in respect of—
- (a) applications for listing;
  - (b) the continued inclusion of securities in the official list;
  - (c) applications under section 88 for approval as a sponsor; and
  - (d) continued inclusion of sponsors in the list of sponsors.

[<sup>F55</sup>(1A) Disclosure rules may require the payment of fees to the competent authority in respect of the continued admission of financial instruments to trading on a regulated market.]

[<sup>F56</sup>(1B) Prospectus rules may require the payment of fees to the competent authority in respect of—

- (a) applications for approval of a prospectus or a supplementary prospectus;
- (b) applications for inclusion in the register of investors;
- (c) the continued inclusion of investors in that register;
- (d) access to that register.]

[<sup>F57</sup>(1C) Transparency rules may require the payment of fees to the competent authority in respect of the continued admission of financial instruments to trading on a regulated market.]

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- (2) In exercising its powers under subsection (1), the competent authority may set such fees as it considers will (taking account of the income it expects as the competent authority) enable it—
  - (a) to meet expenses incurred in carrying out its functions under this Part or for any incidental purpose;
  - (b) to maintain adequate reserves; and
  - (c) in the case of the Authority, to repay the principal of, and pay any interest on, any money which it has borrowed and which has been used for the purpose of meeting expenses incurred in relation to—
    - (i) its assumption of functions from the London Stock Exchange Limited in relation to the official list; and
    - (ii) its assumption of functions under this Part.
- (3) In fixing the amount of any fee which is to be payable to the competent authority, no account is to be taken of any sums which it receives, or expects to receive, by way of penalties imposed by it under this Part.
- (4) Subsection (2)(c) applies whether expenses were incurred before or after the coming into force of this Part.
- (5) Any fee which is owed to the competent authority under any provision made by or under this Part may be recovered as a debt due to it.

#### Textual Amendments

- F55** S. 99(1A) inserted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 4, **Sch. 1 para. 8**
- F56** S. 99(1B) inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 10**
- F57** S. 99(1C) inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), **Sch. 15 para. 9**

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

- C22** S. 99(2) modified (1.12.2001) by [S.I. 2001/3650](#), **arts. 1(a), 25(3)**

## 100 Penalties.

- (1) In determining its policy with respect to the amount of penalties to be imposed by it under this Part, the competent authority must take no account of the expenses which it incurs, or expects to incur, in discharging its functions under this Part.
- (2) The competent authority must prepare and operate a scheme for ensuring that the amounts paid to it by way of penalties imposed under this Part are applied for the benefit of issuers of securities admitted to the official list <sup>[F58]</sup>, and issuers who have requested or approved the admission of financial instruments to trading on a regulated market.]
- (3) The scheme may, in particular, make different provision with respect to different classes of issuer.
- (4) Up to date details of the scheme must be set out in a document (“the scheme details”).
- (5) The scheme details must be published by the competent authority in the way appearing to it to be best calculated to bring them to the attention of the public.

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- (6) Before making the scheme, the competent authority must publish a draft of the proposed scheme in the way appearing to it to be best calculated to bring it to the attention of the public.
- (7) The draft must be accompanied by notice that representations about the proposals may be made to the competent authority within a specified time.
- (8) Before making the scheme, the competent authority must have regard to any representations made to it under subsection (7).
- (9) If the competent authority makes the proposed scheme, it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (7); and
  - (b) its response to them.
- (10) If the scheme differs from the draft published under subsection (6) in a way which is, in the opinion of the competent authority, significant the competent authority must (in addition to complying with subsection (9)) publish details of the difference.
- (11) The competent authority must, without delay, give the Treasury a copy of any scheme details published by it.
- (12) The competent authority may charge a reasonable fee for providing a person with a copy of—
  - (a) a draft published under subsection (6);
  - (b) scheme details.
- (13) Subsections (6) to (10) and (12) apply also to a proposal to alter or replace the scheme.

#### Textual Amendments

**F58** Words in s. 100(2) inserted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 4, [Sch. 1 para. 9](#)

#### <sup>F59</sup>[ <sup>F59</sup>100A] **Exercise of powers where UK is host member state**

- (1) This section applies to the exercise by the competent authority of any power under this Part exercisable in case of infringement of—
  - (a) a provision of prospectus rules or any other provision made in accordance with the prospectus directive, or
  - (b) a provision of transparency rules or any other provision made in accordance with the transparency obligations directive,
 in relation to an issuer whose home State is a member State other than the United Kingdom.
- (2) The competent authority may act in such a case only in respect of the infringement of a provision required by the relevant directive.
 

Any reference to an applicable provision or applicable transparency obligation shall be read accordingly.
- (3) If the authority finds that there has been such an infringement, it must give a notice to that effect to the competent authority of the person's home State requesting it—



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- (a) to take all appropriate measures for the purpose of ensuring that the person remedies the situation that has given rise to the notice, and
  - (b) to inform the authority of the measures it proposes to take or has taken or the reasons for not taking such measures.
- (4) The authority may not act further unless satisfied—
- (a) that the competent authority of the person's home State has failed or refused to take measures for the purpose mentioned in subsection (3)(a), or
  - (b) that the measures taken by that authority have proved inadequate for that purpose.
- This does not affect exercise of the powers under section 87K(2), 87L(2) or (3) or 89L(2) or (3) (powers to protect market).
- (5) If the authority is so satisfied, it must, after informing the competent authority of the person's home State, take all appropriate measures to protect investors.
- (6) In such a case the authority must inform the Commission of the measures at the earliest opportunity.]]

#### Textual Amendments

**F59** S. 100A inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. **1271**, **1300(1)(a)**

### 101 Listing rules: general provisions.

- (1) [F60Part 6 rules] may make different provision for different cases.
- (2) [F60Part 6 rules] may authorise the competent authority to dispense with or modify the application of the rules in particular cases and by reference to any circumstances.
- (3) [F60Part 6 rules] must be made by an instrument in writing.
- (4) Immediately after an instrument containing [F60Part 6 rules] is made, it must be printed and made available to the public with or without payment.
- (5) A person is not to be taken to have contravened [F61any Part 6 rule] if he shows that at the time of the alleged contravention the instrument containing the rule had not been made available as required by subsection (4).
- (6) The production of a printed copy of an instrument purporting to be made by the competent authority on which is endorsed a certificate signed by an officer of the authority authorised by it for that purpose and stating—
  - (a) that the instrument was made by the authority,
  - (b) that the copy is a true copy of the instrument, and
  - (c) that on a specified date the instrument was made available to the public as required by subsection (4),is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (7) A certificate purporting to be signed as mentioned in subsection (6) is to be treated as having been properly signed unless the contrary is shown.

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- (8) A person who wishes in any legal proceedings to rely on a rule-making instrument may require the Authority to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (6).

#### Textual Amendments

**F60** Words in s. 101(1)-(4) substituted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 4, **Sch. 1 para. 10(a)**

**F61** Words in s. 101(5) substituted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 4, **Sch. 1 para. 10(b)**

### 102 Exemption from liability in damages.

- (1) Neither the competent authority nor any person who is, or is acting as, a member, officer or member of staff of the competent authority is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the authority's functions.
- (2) Subsection (1) does not apply—
- (a) if the act or omission is shown to have been in bad faith; or
  - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the <sup>M1</sup>Human Rights Act 1998.

#### Marginal Citations

**M1** 1998 c. 42.

#### <sup>F62</sup>Interpretative provisions

#### Textual Amendments

**F62** Ss. 102A-103 substituted for s. 103 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 11**

### 102A Meaning of “securities” etc.

- (1) This section applies for the purposes of this Part.
- (2) “Securities” means (except in section 74(2) and the expression “transferable securities”) anything which has been, or may be, admitted to the official list.
- (3) “Transferable securities” means anything which is a transferable security for the purposes of [<sup>F63</sup>Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments], other than money-market instruments for the purposes of that directive which have a maturity of less than 12 months.

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[“Debt securities” has the meaning given in Article 2.1(b) of the transparency  
F64(3A) obligations directive.]

(4) “Financial instrument” has [F65(except in section 89F) ]the meaning given in Article 1.3 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation [F66(as modified by Article 69 of Directive 2004/39/EC on markets in financial instruments)].

(5) “Non-equity transferable securities” means all transferable securities that are not equity securities; and for this purpose “equity securities” has the meaning given in Article 2.1(b) of the prospectus directive.

(6) “Issuer”—

(a) in relation to an offer of transferable securities to the public or admission of transferable securities to trading on a regulated market for which an approved prospectus is required as a result of section 85, means a legal person who issues or proposes to issue the transferable securities in question,

[  
F67(aa) in relation to transparency rules, means a legal person whose securities are admitted to trading on a regulated market or whose voting shares are admitted to trading on a UK market other than a regulated market, and in the case of depository receipts representing securities, the issuer is the issuer of the securities represented;]

(b) in relation to anything else which is or may be admitted to the official list, has such meaning as may be prescribed by the Treasury, and

(c) in any other case, means a person who issues financial instruments.

#### Textual Amendments

F63 Words in s. 102A(3) substituted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1272, 1300(1)(a), Sch. 15 para. 10(3)

F64 S. 102A(3A) inserted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1272, 1300(1)(a), Sch. 15 para. 10(2)

F65 Words in s. 102A(4) inserted (31.1.2009) by The Definition of Financial Instrument Order 2008 (S.I. 2008/3053), art. 3(2)(a)

F66 Words in s. 102A(4) inserted (31.1.2009) by The Definition of Financial Instrument Order 2008 (S.I. 2008/3053), art. 3(2)(b)

F67 S. 102A(6)(aa) inserted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1272, 1300(1)(a), Sch. 15 para. 10(4)

#### 102B Meaning of “offer of transferable securities to the public” etc.

(1) For the purposes of this Part there is an offer of transferable securities to the public if there is a communication to any person which presents sufficient information on—

- (a) the transferable securities to be offered, and
- (b) the terms on which they are offered,

to enable an investor to decide to buy or subscribe for the securities in question.

(2) For the purposes of this Part, to the extent that an offer of transferable securities is made to a person in the United Kingdom it is an offer of transferable securities to the public in the United Kingdom.

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- (3) The communication may be made—
- (a) in any form;
  - (b) by any means.
- (4) Subsection (1) includes the placing of securities through a financial intermediary.
- (5) Subsection (1) does not include a communication in connection with trading on—
- (a) a regulated market;
  - (b) a multilateral trading facility; or
  - (c) a market prescribed by an order under section 130A(3).
- (6) “Multilateral trading facility” means a multilateral system, operated by an investment firm<sup>F68</sup> . . . or a market operator, which brings together multiple third-party buying and selling interests in financial instruments in accordance with non-discretionary rules so as to result in a contract.

#### Textual Amendments

**F68** Words in s. 102B(6) omitted (1.4.2007 for certain purposes, 1.11.2007 otherwise) by virtue of [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), [Sch. 5 para. 6](#)

### 102C Meaning of “home State” in relation to transferable securities

In this Part, in relation to an issuer of transferable securities, the “home-State” is the EEA State which is the “home Member State” for the purposes of the prospectus directive (which is to be determined in accordance with Article 2.1(m) of that directive).

### <sup>x1</sup>103 Interpretation of this Part

- (1) In this Part, save where the context otherwise requires—
- “disclosure rules” has the meaning given in section 73A;
  - “inside information” has the meaning given in section 118C;
  - “listed securities” means anything which has been admitted to the official list;
  - “listing” has the meaning given in section 74(5);
  - “listing particulars” has the meaning given in section 79(2);
  - “listing rules” has the meaning given in section 73A;
  - “market operator” means a person who manages or operates the business of a regulated market;
  - “offer of transferable securities to the public” has the meaning given in section 102B;
  - “the official list” means the list maintained by the competent authority as that list has effect for the time being;
  - “Part 6 rules” has the meaning given in section 73A;

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“the prospectus directive” means Directive [2003/71/EC](#) of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading;

“prospectus rules” has the meaning given in section 73A;

“regulated market” has the meaning given in [<sup>F69</sup>Article 4.1(14) of Directive [2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments];

“supplementary prospectus” has the meaning given in section 87G;

[<sup>F70</sup>“the transparency obligations directive” means Directive [2004/109/EC](#) of the European Parliament and of the Council relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market;

[<sup>F71</sup>“transparency rules” has the meaning given by section 89A(5);

“votesholder information” has the meaning given by section 89B(3);]

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom.

- (2) In relation to any function conferred on the competent authority by this Part, any reference in this Part to the competent authority is to be read as a reference to the person by whom that function is for the time being exercisable.
- (3) If, as a result of an order under Schedule 8, different functions conferred on the competent authority by this Part are exercisable by different persons, the powers conferred by section 91 are exercisable by such person as may be determined in accordance with the provisions of the order.]]

#### Editorial Information

- X1** The insertion of the new heading "Interpretative provisions" in Pt. VI on 1.7.2005 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

#### Textual Amendments

- F69** S. 103(1): words in entry substituted (1.10.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1272(1), 1300(2), [Sch. 15 para. 11\(2\)](#); S.I. 2008/1886, [art. 2\(g\)](#) (with arts. 6, 7)
- F70** S. 103(1): entry inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), [ss. 1265](#), 1300(1)(a)
- F71** S. 103(1): entries inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), [Sch. 15 para. 11\(3\)](#)

**Status:**

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