



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XX

#### PROVISION OF FINANCIAL SERVICES BY MEMBERS OF THE PROFESSIONS

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

- C1** Pt. 20 modified (E.W.S.) by S.I. 2000/119, Sch. 4 para. 11 (as substituted (1.7.2009 in accordance with art. 1(1)(c) of S.I. 2009/1587) by S.I. 2009/1587, art. 3(11))

#### **325 Authority's general duty.**

- (1) The Authority must keep itself informed about—
- (a) the way in which designated professional bodies supervise and regulate the carrying on of exempt regulated activities by members of the professions in relation to which they are established;
  - (b) the way in which such members are carrying on exempt regulated activities.
- (2) In this Part—
- “exempt regulated activities” means regulated activities which may, as a result of this Part, be carried on by members of a profession which is supervised and regulated by a designated professional body without breaching the general prohibition; and
- “members”, in relation to a profession, means persons who are entitled to practise the profession in question and, in practising it, are subject to the rules of the body designated in relation to that profession, whether or not they are members of that body.
- (3) The Authority must keep under review the desirability of exercising any of its powers under this Part.

*Status: Point in time view as at 01/04/2002.*

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- (4) Each designated professional body must co-operate with the Authority, by the sharing of information and in other ways, in order to enable the Authority to perform its functions under this Part.

**Commencement Information**

- II** S. 325 wholly in force at 1.12.2001; s. 325 not in force at Royal Assent see s. 431(2); s. 325(4) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 325 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**326 Designation of professional bodies.**

- (1) The Treasury may by order designate bodies for the purposes of this Part.
- (2) A body designated under subsection (1) is referred to in this Part as a designated professional body.
- (3) The Treasury may designate a body under subsection (1) only if they are satisfied that—
- (a) the basic condition, and
  - (b) one or more of the additional conditions,
- are met in relation to it.
- (4) The basic condition is that the body has rules applicable to the carrying on by members of the profession in relation to which it is established of regulated activities which, if the body were to be designated, would be exempt regulated activities.
- (5) The additional conditions are that—
- (a) the body has power under any enactment to regulate the practice of the profession;
  - (b) being a member of the profession is a requirement under any enactment for the exercise of particular functions or the holding of a particular office;
  - (c) the body has been recognised for the purpose of any enactment other than this Act and the recognition has not been withdrawn;
  - (d) the body is established in an EEA State other than the United Kingdom and in that State—
    - (i) the body has power corresponding to that mentioned in paragraph (a);
    - (ii) there is a requirement in relation to the body corresponding to that mentioned in paragraph (b); or
    - (iii) the body is recognised in a manner corresponding to that mentioned in paragraph (c).
- (6) “Enactment” includes an Act of the Scottish Parliament, Northern Ireland legislation and subordinate legislation (whether made under an Act, an Act of the Scottish Parliament or Northern Ireland legislation).
- (7) “Recognised” means recognised by—
- (a) a Minister of the Crown;
  - (b) the Scottish Ministers;
  - (c) a Northern Ireland Minister;
  - (d) a Northern Ireland department or its head.

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### **327 Exemption from the general prohibition.**

- (1) The general prohibition does not apply to the carrying on of a regulated activity by a person (“P”) if—
  - (a) the conditions set out in subsections (2) to (7) are satisfied; and
  - (b) there is not in force—
    - (i) a direction under section 328, or
    - (ii) an order under section 329,which prevents this subsection from applying to the carrying on of that activity by him.
- (2) P must be—
  - (a) a member of a profession; or
  - (b) controlled or managed by one or more such members.
- (3) P must not receive from a person other than his client any pecuniary reward or other advantage, for which he does not account to his client, arising out of his carrying on of any of the activities.
- (4) The manner of the provision by P of any service in the course of carrying on the activities must be incidental to the provision by him of professional services.
- (5) P must not carry on, or hold himself out as carrying on, a regulated activity other than—
  - (a) one which rules made as a result of section 332(3) allow him to carry on; or
  - (b) one in relation to which he is an exempt person.
- (6) The activities must not be of a description, or relate to an investment of a description, specified in an order made by the Treasury for the purposes of this subsection.
- (7) The activities must be the only regulated activities carried on by P (other than regulated activities in relation to which he is an exempt person).
- (8) “Professional services” means services—
  - (a) which do not constitute carrying on a regulated activity, and
  - (b) the provision of which is supervised and regulated by a designated professional body.

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

**C2** S. 327(5)(7) restricted (1.12.2001) by [S.I. 2001/544](#), [arts. 2\(1\)](#), [13\(1\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

#### **Commencement Information**

**I2** S. 327 wholly in force at 1.12.2001; s. 327 not in force at Royal Assent see s. 431(2); s. 327(6) in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)](#), [Sch. Pt. 2](#); s. 327 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

### **328 Directions in relation to the general prohibition.**

- (1) The Authority may direct that section 327(1) is not to apply to the extent specified in the direction.
- (2) A direction under subsection (1)—

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- (a) must be in writing;
  - (b) may be given in relation to different classes of person or different descriptions of regulated activity.
- (3) A direction under subsection (1) must be published in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (4) The Authority may charge a reasonable fee for providing a person with a copy of the direction.
- (5) The Authority must, without delay, give the Treasury a copy of any direction which it gives under this section.
- (6) The Authority may exercise the power conferred by subsection (1) only if it is satisfied that it is desirable in order to protect the interests of clients.
- (7) In considering whether it is so satisfied, the Authority must have regard amongst other things to the effectiveness of any arrangements made by any designated professional body—
- (a) for securing compliance with rules made under section 332(1);
  - (b) for dealing with complaints against its members in relation to the carrying on by them of exempt regulated activities;
  - (c) in order to offer redress to clients who suffer, or claim to have suffered, loss as a result of misconduct by its members in their carrying on of exempt regulated activities;
  - (d) for co-operating with the Authority under section 325(4).
- (8) In this Part “clients” means—
- (a) persons who use, have used or are or may be contemplating using, any of the services provided by a member of a profession in the course of carrying on exempt regulated activities;
  - (b) persons who have rights or interests which are derived from, or otherwise attributable to, the use of any such services by other persons; or
  - (c) persons who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them.
- (9) If a member of a profession is carrying on an exempt regulated activity in his capacity as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or are or may be contemplating using services provided by that person in his carrying on of that activity.

### **329 Orders in relation to the general prohibition.**

- (1) Subsection (2) applies if it appears to the Authority that a person to whom, as a result of section 327(1), the general prohibition does not apply is not a fit and proper person to carry on regulated activities in accordance with that section.
- (2) The Authority may make an order disapplying section 327(1) in relation to that person to the extent specified in the order.
- (3) The Authority may, on the application of the person named in an order under subsection (1), vary or revoke it.

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- (4) “Specified” means specified in the order.
- (5) If a partnership is named in an order under this section, the order is not affected by any change in its membership.
- (6) If a partnership named in an order under this section is dissolved, the order continues to have effect in relation to any partnership which succeeds to the business of the dissolved partnership.
- (7) For the purposes of subsection (6), a partnership is to be regarded as succeeding to the business of another partnership only if—
  - (a) the members of the resulting partnership are substantially the same as those of the former partnership; and
  - (b) succession is to the whole or substantially the whole of the business of the former partnership.

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

C3 S. 329(1) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, arts. 1(2), 3(4); S.I. 2001/3538, art. 2(1)

**330 Consultation.**

- (1) Before giving a direction under section 328(1), the Authority must publish a draft of the proposed direction.
- (2) The draft must be accompanied by—
  - (a) a cost benefit analysis; and
  - (b) notice that representations about the proposed direction may be made to the Authority within a specified time.
- (3) Before giving the proposed direction, the Authority must have regard to any representations made to it in accordance with subsection (2)(b).
- (4) If the Authority gives the proposed direction it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2)(b); and
  - (b) its response to them.
- (5) If the direction differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant—
  - (a) the Authority must (in addition to complying with subsection (4)) publish details of the difference; and
  - (b) those details must be accompanied by a cost benefit analysis.
- (6) Subsections (1) to (5) do not apply if the Authority considers that the delay involved in complying with them would prejudice the interests of consumers.
- (7) Neither subsection (2)(a) nor subsection (5)(b) applies if the Authority considers—
  - (a) that, making the appropriate comparison, there will be no increase in costs; or
  - (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.

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- (8) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (9) When the Authority is required to publish a document under this section it must do so in the way appearing to it to be best calculated to bring it to the attention of the public.
- (10) “Cost benefit analysis” means an estimate of the costs together with an analysis of the benefits that will arise—
  - (a) if the proposed direction is given; or
  - (b) if subsection (5)(b) applies, from the direction that has been given.
- (11) “The appropriate comparison” means—
  - (a) in relation to subsection (2)(a), a comparison between the overall position if the direction is given and the overall position if it is not given;
  - (b) in relation to subsection (5)(b), a comparison between the overall position after the giving of the direction and the overall position before it was given.

### **331 Procedure on making or varying orders under section 329.**

- (1) If the Authority proposes to make an order under section 329, it must give the person concerned a warning notice.
- (2) The warning notice must set out the terms of the proposed order.
- (3) If the Authority decides to make an order under section 329, it must give the person concerned a decision notice.
- (4) The decision notice must—
  - (a) name the person to whom the order applies;
  - (b) set out the terms of the order; and
  - (c) be given to the person named in the order.
- (5) Subsections (6) to (8) apply to an application for the variation or revocation of an order under section 329.
- (6) If the Authority decides to grant the application, it must give the applicant written notice of its decision.
- (7) If the Authority proposes to refuse the application, it must give the applicant a warning notice.
- (8) If the Authority decides to refuse the application, it must give the applicant a decision notice.
- (9) A person—
  - (a) against whom the Authority have decided to make an order under section 329, or
  - (b) whose application for the variation or revocation of such an order the Authority had decided to refuse,
 may refer the matter to the Tribunal.
- (10) The Authority may not make an order under section 329 unless—
  - (a) the period within which the decision to make to the order may be referred to the Tribunal has expired and no such reference has been made; or

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- (b) if such a reference has been made, the reference has been determined.

### **332 Rules in relation to persons to whom the general prohibition does not apply.**

- (1) The Authority may make rules applicable to persons to whom, as a result of section 327(1), the general prohibition does not apply.
- (2) The power conferred by subsection (1) is to be exercised for the purpose of ensuring that clients are aware that such persons are not authorised persons.
- (3) A designated professional body must make rules—
  - (a) applicable to members of the profession in relation to which it is established who are not authorised persons; and
  - (b) governing the carrying on by those members of regulated activities (other than regulated activities in relation to which they are exempt persons).
- (4) Rules made in compliance with subsection (3) must be designed to secure that, in providing a particular professional service to a particular client, the member carries on only regulated activities which arise out of, or are complementary to, the provision by him of that service to that client.
- (5) Rules made by a designated professional body under subsection (3) require the approval of the Authority.

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

C4 S. 332(3)(b) restricted (1.12.2001) by S.I. 2001/544, arts. 2(1), 13(1); S.I. 2001/3538, art. 2(1)

### **333 False claims to be a person to whom the general prohibition does not apply.**

- (1) A person who—
  - (a) describes himself (in whatever terms) as a person to whom the general prohibition does not apply, in relation to a particular regulated activity, as a result of this Part, or
  - (b) behaves, or otherwise holds himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is such a person,is guilty of an offence if he is not such a person.
- (2) In proceedings for an offence under this section it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.
- (4) But where the conduct constituting the offence involved or included the public display of any material, the maximum fine for the offence is level 5 on the standard scale multiplied by the number of days for which the display continued.

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