



# 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** [<sup>F1</sup>FCA's] general duty.

(1) The [<sup>F2</sup>FCA] 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 [<sup>F2</sup>FCA] must keep under review the desirability of exercising any of its powers under this Part.

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Financial Services and Markets Act 2000, Part XX is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) Each designated professional body must co-operate with the [F2FCA], by the sharing of information and in other ways, in order to enable the [F2FCA] to perform its functions under this Part.

**Textual Amendments**

**F1** Word in s. 325 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 16 para. 1\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

**F2** Word in s. 325 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 16 para. 1\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

**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;
  - <sup>F3</sup>(d) .....
- (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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### Textual Amendments

**F3** S. 326(5)(d) omitted (31.12.2020) by virtue of [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **63**; 2020 c. 1, Sch. 5 para. 1(1)

## 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; <sup>F4</sup>...
    - <sup>F5</sup>(aa) where the activity is the provision of a service listed in [<sup>F6</sup>Part 3 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001] relating to a financial instrument, the condition set out in subsection (7A) is also 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).
- <sup>F7</sup>(7A) The condition mentioned in subsection (1)(aa) is that—
- (a) the service is provided in an incidental manner in the course of a professional activity <sup>F8</sup>...; and
  - (b) the professional activity concerned is the provision of professional services.
- (7B) In subsection (7A) a service is provided in an incidental manner in the course of a professional activity <sup>F9</sup>... if the applicable conditions are satisfied.

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(7C) The applicable conditions for the purposes of subsection (7B) are those set out in [F10 paragraph 6(a) to (c) of Schedule 3 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001].]

- (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.

[F11(9) The exemption in this section does not apply to the carrying on of a regulated claims management activity in Great Britain.]

#### Textual Amendments

- F4** Word in s. 327(1)(a) omitted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), [Sch. 2 para. 43\(2\)\(a\)](#) (with reg. 7)
- F5** S. 327(1)(aa) inserted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), [Sch. 2 para. 43\(2\)\(b\)](#) (with reg. 7)
- F6** Words in s. 327(1)(aa) substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), [64\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F7** S. 327(7A)-(7C) inserted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), [Sch. 2 para. 43\(3\)](#) (with reg. 7)
- F8** Words in s. 327(7A)(a) omitted (31.12.2020) by virtue of [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), [64\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in s. 327(7B) omitted (31.12.2020) by virtue of [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), [64\(c\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in s. 327(7C) substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), [64\(d\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F11** S. 327(9) inserted (E.W.S.) (29.11.2018 for specified purposes, 1.4.2019 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Claims Management Activity\) Order 2018 \(S.I. 2018/1253\)](#), arts. 1(2)(3), [91\(5\)](#)

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

- C2** S. 327 modified in part (E.W.S.) (29.11.2018 for specified purposes, 1.4.2019 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Claims Management Activity\) Order 2018 \(S.I. 2018/1253\)](#), arts. 1(2)(3), [83\(4\)](#)
- C3** 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\(1\)](#)

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

- (1) The [F12FCA] may direct that section 327(1) is not to apply to the extent specified in the direction.
- (2) A direction under subsection (1)—
  - (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 [F12FCA] to be best calculated to bring it to the attention of the public.
- (4) The [F12FCA] may charge a reasonable fee for providing a person with a copy of the direction.
- (5) The [F12FCA] must, without delay, give the Treasury a copy of any direction which it gives under this section.
- [F13](6) The [F12FCA] may exercise the power conferred by subsection (1) only if it is satisfied [F14]...—
  - (a) that it is desirable to do so in order to protect the interests of clients; [F15]...
  - [F16](b) .....]
- (7) In considering whether it is [F17]satisfied of the matter specified in subsection (6) (a), the [F12FCA] 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 [F12FCA] 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.

#### Textual Amendments

**F12** Word in s. 328 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 16 para. 2](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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- F13** S. 328(6) substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 9\(a\)](#)
- F14** Word in s. 328(6) omitted (31.12.2020) by virtue of [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), [65\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F15** Word in s. 328(6)(a) omitted (31.12.2020) by virtue of [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), [65\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F16** S. 328(6)(b) omitted (31.12.2020) by virtue of [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), [65\(c\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F17** Words in s. 328(7) substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 9\(b\)](#)

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

- C4** S. 328(8) modified by S.I. 2001/544, art. 60S(2)(3) (as inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), [2\(37\)](#))
- C5** S. 328(8) modified by S.I. 2001/544, art. 60LA(2)(3) (as inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), [2\(33\)](#))

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

- (1) Subsection (2) applies if it appears to the [<sup>F18</sup>FCA] 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 [<sup>F18</sup>FCA] may make an order disapplying section 327(1) in relation to that person to the extent specified in the order.
- (3) The [<sup>F18</sup>FCA] may, on the application of the person named in an order under subsection (1), vary or revoke it.
- (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.

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#### Textual Amendments

**F18** Word in s. 329 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 16 para. 3](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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

**C6** 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 [F<sup>19</sup>FCA] 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 [F<sup>19</sup>FCA] within a specified time.
- (3) Before giving the proposed direction, the [F<sup>19</sup>FCA] must have regard to any representations made to it in accordance with subsection (2)(b).
- (4) If the [F<sup>19</sup>FCA] 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 [F<sup>19</sup>FCA], significant—
  - (a) the [F<sup>19</sup>FCA] 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 [F<sup>19</sup>FCA] 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 [F<sup>19</sup>FCA] 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.
- (8) The [F<sup>19</sup>FCA] may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (9) When the [F<sup>19</sup>FCA] 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.
- [F<sup>20</sup>(10) Cost benefit analysis” means—
  - (a) an analysis of the costs together with an analysis of the benefits that will arise—
    - (i) if the proposed direction is given, or
    - (ii) if subsection (5)(b) applies, from the direction that has been given, and

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- (b) subject to subsection (10A), an estimate of those costs and of those benefits.
- (10A) If, in the opinion of the FCA—
- (a) the costs or benefits referred to in subsection (10) cannot reasonably be estimated, or
  - (b) it is not reasonably practicable to produce an estimate,
- the cost benefit analysis need not estimate them, but must include a statement of the FCA's opinion and an explanation of it.]
- (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.

#### **Textual Amendments**

- F19** Word in s. 330 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 16 para. 4\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F20** S. 330(10)(10A) substituted for s. 330(10) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 16 para. 4\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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

- (1) If the [F<sup>21</sup>FCA] 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 [F<sup>21</sup>FCA] 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 [F<sup>21</sup>FCA] decides to grant the application, it must give the applicant written notice of its decision.
- (7) If the [F<sup>21</sup>FCA] proposes to refuse the application, it must give the applicant a warning notice.
- (8) If the [F<sup>21</sup>FCA] decides to refuse the application, it must give the applicant a decision notice.
- (9) A person—
  - (a) against whom the [F<sup>21</sup>FCA] have decided to make an order under section 329, or



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- (b) whose application for the variation or revocation of such an order the [F21FCA] had decided to refuse,  
may refer the matter to the Tribunal.
- (10) The [F21FCA] 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
  - (b) if such a reference has been made, the reference has been determined.

#### Textual Amendments

**F21** Word in s. 331 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 16 para. 5](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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

- (1) The [F22FCA] 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 [F22FCA].

#### Textual Amendments

**F22** Word in s. 332 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 16 para. 6](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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

**C7** 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

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- (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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