



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXIX

#### INTERPRETATION

#### 417 Definitions.

(1) In this Act—

“appointed representative” has the meaning given in section 39(2);

“auditors and actuaries rules” means rules made under section 340;

“authorisation offence” has the meaning given in section 23(2);

“authorised open-ended investment company” has the meaning given in section 237(3);

“authorised person” has the meaning given in section 31(2);

“the Authority” means the Financial Services Authority;

“body corporate” includes a body corporate constituted under the law of a country or territory outside the United Kingdom;

“chief executive”—

(a) in relation to a body corporate whose principal place of business is within the United Kingdom, means an employee of that body who, alone or jointly with one or more others, is responsible under the immediate authority of the directors, for the conduct of the whole of the business of that body; and

(b) in relation to a body corporate whose principal place of business is outside the United Kingdom, means the person who, alone or jointly with one or more others, is responsible for the conduct of its business within the United Kingdom;

“collective investment scheme” has the meaning given in section 235;

“the Commission” means the European Commission (except in provisions relating to the Competition Commission);

“the compensation scheme” has the meaning given in section 213(2);

“control of information rules” has the meaning given in section 147(1);

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“director”, in relation to a body corporate, includes—

- (a) a person occupying in relation to it the position of a director (by whatever name called); and
- (b) a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act;

“documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“exempt person”, in relation to a regulated activity, means a person who is exempt from the general prohibition in relation to that activity as a result of an exemption order made under section 38(1) or as a result of section 39(1) or 285(2) or (3);

“financial promotion rules” means rules made under section 145;

“friendly society” means an incorporated or registered friendly society;

“general prohibition” has the meaning given in section 19(2);

“general rules” has the meaning given in section 138(2);

“incorporated friendly society” means a society incorporated under the <sup>M1</sup>Friendly Societies Act 1992;

“industrial and provident society” means a society registered or deemed to be registered under the <sup>M2</sup>Industrial and Provident Societies Act 1965 or the <sup>M3</sup>Industrial and Provident Societies Act (Northern Ireland) 1969;

“market abuse” has the meaning given in section 118;

“Minister of the Crown” has the same meaning as in the Ministers of the <sup>M4</sup>Crown Act 1975;

“money laundering rules” means rules made under section 146;

“notice of control” has the meaning given in section 178(5);

“the ombudsman scheme” has the meaning given in section 225(3);

“open-ended investment company” has the meaning given in section 236;

“Part IV permission” has the meaning given in section 40(4);

“partnership” includes a partnership constituted under the law of a country or territory outside the United Kingdom;

“prescribed” (where not otherwise defined) means prescribed in regulations made by the Treasury;

“price stabilising rules” means rules made under section 144;

“private company” has the meaning given in section 1(3) of the <sup>M5</sup>Companies Act 1985 or in Article 12(3) of the <sup>M6</sup>Companies (Northern Ireland) Order 1986;

“prohibition order” has the meaning given in section 56(2);

“recognised clearing house” and “recognised investment exchange” have the meaning given in section 285;

“registered friendly society” means a society which is—

- (a) a friendly society within the meaning of section 7(1)(a) of the <sup>M7</sup>Friendly Societies Act 1974; and
- (b) registered within the meaning of that Act;

“regulated activity” has the meaning given in section 22;

“regulating provisions” has the meaning given in section 159(1);

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“regulatory objectives” means the objectives mentioned in section 2;  
“regulatory provisions” has the meaning given in section 302;  
“rule” means a rule made by the Authority under this Act;  
“rule-making instrument” has the meaning given in section 153;  
“the scheme manager” has the meaning given in section 212(1);  
“the scheme operator” has the meaning given in section 225(2);  
“scheme particulars rules” has the meaning given in section 248(1);  
“Seventh Company Law Directive” means the European Council Seventh Company Law Directive of 13 June 1983 on consolidated accounts (No.83/349/EEC);  
“threshold conditions”, in relation to a regulated activity, has the meaning given in section 41;  
“the Treaty” means the treaty establishing the European Community;  
“trust scheme rules” has the meaning given in section 247(1);  
“UK authorised person” has the meaning given in section 178(4); and  
“unit trust scheme” has the meaning given in section 237.

- (2) In the application of this Act to Scotland, references to a matter being actionable at the suit of a person are to be read as references to the matter being actionable at the instance of that person.
- (3) For the purposes of any provision of this Act authorising or requiring a person to do anything within a specified number of days no account is to be taken of any day which is a public holiday in any part of the United Kingdom.

#### Marginal Citations

- M1 1992 c. 40.
- M2 1965 c. 12.
- M3 1969 c. 24. (N.I.)
- M4 1975 c. 26.
- M5 1985 c. 6.
- M6 S.I. 1986/1032 (N.I. 6).
- M7 1992 c. 40.

#### 418 Carrying on regulated activities in the United Kingdom.

- (1) In the four cases described in this section, a person who—
  - (a) is carrying on a regulated activity, but
  - (b) would not otherwise be regarded as carrying it on in the United Kingdom,is, for the purposes of this Act, to be regarded as carrying it on in the United Kingdom.
- (2) The first case is where—
  - (a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;
  - (b) he is entitled to exercise rights under a single market directive as a UK firm; and
  - (c) he is carrying on in another EEA State a regulated activity to which that directive applies.

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- (3) The second case is where—
- (a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;
  - (b) he is the manager of a scheme which is entitled to enjoy the rights conferred by an instrument which is a relevant Community instrument for the purposes of section 264; and
  - (c) persons in another EEA State are invited to become participants in the scheme.
- (4) The third case is where—
- (a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;
  - (b) the day-to-day management of the carrying on of the regulated activity is the responsibility of—
    - (i) his registered office (or head office); or
    - (ii) another establishment maintained by him in the United Kingdom.
- (5) The fourth case is where—
- (a) his head office is not in the United Kingdom; but
  - (b) the activity is carried on from an establishment maintained by him in the United Kingdom.
- (6) For the purposes of subsections (2) to (5) it is irrelevant where the person with whom the activity is carried on is situated.

#### **419 Carrying on regulated activities by way of business.**

- (1) The Treasury may by order make provision—
- (a) as to the circumstances in which a person who would otherwise not be regarded as carrying on a regulated activity by way of business is to be regarded as doing so;
  - (b) as to the circumstances in which a person who would otherwise be regarded as carrying on a regulated activity by way of business is to be regarded as not doing so.
- (2) An order under subsection (1) may be made so as to apply—
- (a) generally in relation to all regulated activities;
  - (b) in relation to a specified category of regulated activity; or
  - (c) in relation to a particular regulated activity.
- (3) An order under subsection (1) may be made so as to apply—
- (a) for the purposes of all provisions;
  - (b) for a specified group of provisions; or
  - (c) for a specified provision.
- (4) “Provision” means a provision of, or made under, this Act.
- (5) Nothing in this section is to be read as affecting the provisions of section 428(3).

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## 420 Parent and subsidiary undertaking.

- (1) In this Act, except in relation to an incorporated friendly society, “parent undertaking” and “subsidiary undertaking” have the same meaning as in Part VII of the <sup>M8</sup>Companies Act 1985 (or Part VIII of the <sup>M9</sup>Companies (Northern Ireland) Order 1986).
- (2) But—
  - (a) “parent undertaking” also includes an individual who would be a parent undertaking for the purposes of those provisions if he were taken to be an undertaking (and “subsidiary undertaking” is to be read accordingly);
  - (b) “subsidiary undertaking” also includes, in relation to a body incorporated in or formed under the law of an EEA State other than the United Kingdom, an undertaking which is a subsidiary undertaking within the meaning of any rule of law in force in that State for purposes connected with implementation of the Seventh Company Law Directive (and “parent undertaking” is to be read accordingly).
- (3) In this Act “subsidiary undertaking”, in relation to an incorporated friendly society, means a body corporate of which the society has control within the meaning of section 13(9)(a) or (aa) of the <sup>M10</sup>Friendly Societies Act 1992 (and “parent undertaking” is to be read accordingly).

### Marginal Citations

- M8** 1985 c. 6.  
**M9** S.I. 1986/1032 (N.I. 6).  
**M10** 1992 c. 40.

## 421 Group.

- (1) In this Act “group”, in relation to a person (“A”), means A and any person who is—
  - (a) a parent undertaking of A;
  - (b) a subsidiary undertaking of A;
  - (c) a subsidiary undertaking of a parent undertaking of A;
  - (d) a parent undertaking of a subsidiary undertaking of A;
  - (e) an undertaking in which A or an undertaking mentioned in paragraph (a), (b), (c) or (d) has a participating interest;
  - (f) if A or an undertaking mentioned in paragraph (a) or (d) is a building society, an associated undertaking of the society; or
  - (g) if A or an undertaking mentioned in paragraph (a) or (d) is an incorporated friendly society, a body corporate of which the society has joint control (within the meaning of section 13(9)(c) or (cc) of the <sup>M11</sup>Friendly Societies Act 1992).
- (2) “Participating interest” has the same meaning as in Part VII of the <sup>M12</sup>Companies Act 1985 or Part VIII of the <sup>M13</sup>Companies (Northern Ireland) Order 1986; but also includes an interest held by an individual which would be a participating interest for the purposes of those provisions if he were taken to be an undertaking.
- (3) “Associated undertaking” has the meaning given in section 119(1) of the <sup>M14</sup>Building Societies Act 1986.

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### Marginal Citations

- M11 1992 c. 40.
- M12 1985 c. 6.
- M13 S.I. 1986/1032 (N.I. 6).
- M14 1986 c. 53.

VALID FROM 06/04/2008

### <sup>F1</sup> <sup>F1</sup>421A Meaning of “participating interest”

- (1) In section 421 a “participating interest” means an interest held by an undertaking in the shares of another undertaking which it holds on a long-term basis for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.
- (2) A holding of 20% or more of the shares of an undertaking is presumed to be a participating interest unless the contrary is shown.
- (3) The reference in subsection (1) to an interest in shares includes—
  - (a) an interest which is convertible into an interest in shares, and
  - (b) an option to acquire shares or any such interest;
 and an interest or option falls within paragraph (a) or (b) notwithstanding that the shares to which it relates are, until the conversion or the exercise of the option, unissued.
- (4) For the purposes of this section an interest held on behalf of an undertaking shall be treated as held by it.
- (5) In this section “undertaking” has the same meaning as in the Companies Acts (see section 1161(1) of the Companies Act 2006).]]

### Textual Amendments

- F1 S. 421A inserted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008](#) (S.I. 2008/948), arts. 2(2), 3(1), [Sch. 1 para. 212\(3\)](#) (with arts. 6, 11, 12)

### 422 Controller.

- (1) In this Act “controller”, in relation to an undertaking (“A”), means a person who falls within any of the cases in subsection (2).
- (2) The cases are where the person—
  - (a) holds 10% or more of the shares in A;
  - (b) is able to exercise significant influence over the management of A by virtue of his shareholding in A;
  - (c) holds 10% or more of the shares in a parent undertaking (“P”) of A;
  - (d) is able to exercise significant influence over the management of P by virtue of his shareholding in P;

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- (e) is entitled to exercise, or control the exercise of, 10% or more of the voting power in A;
  - (f) is able to exercise significant influence over the management of A by virtue of his voting power in A;
  - (g) is entitled to exercise, or control the exercise of, 10% or more of the voting power in P; or
  - (h) is able to exercise significant influence over the management of P by virtue of his voting power in P.
- (3) In subsection (2) “the person” means—
- (a) the person;
  - (b) any of the person’s associates; or
  - (c) the person and any of his associates.
- (4) “Associate”, in relation to a person (“H”) holding shares in an undertaking (“C”) or entitled to exercise or control the exercise of voting power in relation to another undertaking (“D”), means—
- (a) the spouse of H;
  - (b) a child or stepchild of H (if under 18);
  - (c) the trustee of any settlement under which H has a life interest in possession (or in Scotland a life interest);
  - (d) an undertaking of which H is a director;
  - (e) a person who is an employee or partner of H;
  - (f) if H is an undertaking—
    - (i) a director of H;
    - (ii) a subsidiary undertaking of H;
    - (iii) a director or employee of such a subsidiary undertaking; and
  - (g) if H has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in C or D or under which they undertake to act together in exercising their voting power in relation to C or D, that other person.
- (5) “Settlement”, in subsection (4)(c), includes any disposition or arrangement under which property is held on trust (or subject to a comparable obligation).
- (6) “Shares”—
- (a) in relation to an undertaking with a share capital, means allotted shares;
  - (b) in relation to an undertaking with capital but no share capital, means rights to share in the capital of the undertaking;
  - (c) in relation to an undertaking without capital, means interests—
    - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the undertaking; or
    - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.
- (7) “Voting power”, in relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, means the right under the constitution of the undertaking to direct the overall policy of the undertaking or alter the terms of its constitution.

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VALID FROM 21/03/2009

#### 422A Disregarded holdings

- (1) For the purposes of section 422, shares and voting power that a person holds in an undertaking (“B”) or in a parent undertaking of B (“P”) are disregarded in the following circumstances.
- (2) Shares held only for the purposes of clearing and settling within a short settlement cycle are disregarded.
- (3) Shares held by a custodian or its nominee in a custodian capacity are disregarded, provided that the custodian or nominee is only able to exercise voting power attached to the shares in accordance with instructions given in writing.
- (4) Shares representing no more than 5% of the total voting power in B or P held by an investment firm are disregarded, provided that it—
  - (a) holds the shares in the capacity of a market maker (as defined in article 4.1(8) of the markets in financial instruments directive);
  - (b) is authorised by its home state regulator under the markets in financial instruments directive; and
  - (c) neither intervenes in the management of B or P nor exerts any influence on B or P to buy the shares or back the share price.
- (5) Shares held by a credit institution or investment firm in its trading book are disregarded, provided that—
  - (a) the shares represent no more than 5% of the total voting power in B or P; and
  - (b) the credit institution or investment firm ensures that the voting power is not used to intervene in the management of B or P.
- (6) Shares held by a credit institution or an investment firm are disregarded, provided that—
  - (a) the shares are held as a result of performing the investment services and activities of—
    - (i) underwriting shares; or
    - (ii) placing shares on a firm commitment basis in accordance with Annex I, section A.6 of the markets in financial instruments directive; and
  - (b) the credit institution or investment firm—
    - (i) does not exercise voting power represented by the shares or otherwise intervene in the management of the issuer; and
    - (ii) retains the holding for a period of less than one year.
- (7) Where a management company (as defined in Article 1a.2 of the UCITS directive) and its parent undertaking both hold shares or voting power, each may disregard holdings of the other, provided that each exercises its voting power independently of the other.
- (8) But subsection (7) does not apply if the management company—
  - (a) manages holdings for its parent undertaking or an undertaking in respect of which the parent undertaking is a controller;
  - (b) has no discretion to exercise the voting power attached to such holdings; and



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- (c) may only exercise the voting power in relation to such holdings under direct or indirect instruction from—
  - (i) its parent undertaking; or
  - (ii) an undertaking in respect of which of the parent undertaking is a controller.
- (9) Where an investment firm and its parent undertaking both hold shares or voting power, the parent undertaking may disregard holdings managed by the investment firm on a client by client basis and the investment firm may disregard holdings of the parent undertaking, provided that the investment firm—
  - (a) has permission to provide portfolio management;
  - (b) exercises its voting power independently from the parent undertaking; and
  - (c) may only exercise the voting power under instructions given in writing, or has appropriate mechanisms in place for ensuring that individual portfolio management services are conducted independently of any other services.
- (10) In this section “credit institution” means—
  - (a) a credit institution authorised under the banking consolidation directive; or
  - (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State.

#### **423    Manager.**

- (1) In this Act, except in relation to a unit trust scheme or a registered friendly society, “manager” means an employee who—
  - (a) under the immediate authority of his employer is responsible, either alone or jointly with one or more other persons, for the conduct of his employer’s business; or
  - (b) under the immediate authority of his employer or of a person who is a manager by virtue of paragraph (a) exercises managerial functions or is responsible for maintaining accounts or other records of his employer.
- (2) If the employer is not an individual, references in subsection (1) to the authority of the employer are references to the authority—
  - (a) in the case of a body corporate, of the directors;
  - (b) in the case of a partnership, of the partners; and
  - (c) in the case of an unincorporated association, of its officers or the members of its governing body.
- (3) “Manager”, in relation to a body corporate, means a person (other than an employee of the body) who is appointed by the body to manage any part of its business and includes an employee of the body corporate (other than the chief executive) who, under the immediate authority of a director or chief executive of the body corporate, exercises managerial functions or is responsible for maintaining accounts or other records of the body corporate.

#### **424    Insurance.**

- (1) In this Act, references to—
  - (a) contracts of insurance,

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- (b) reinsurance,
  - (c) contracts of long-term insurance,
  - (d) contracts of general insurance,
- are to be read with section 22 and Schedule 2.
- (2) In this Act “policy” and “policyholder”, in relation to a contract of insurance, have such meaning as the Treasury may by order specify.
- (3) The law applicable to a contract of insurance, the effecting of which constitutes the carrying on of a regulated activity, is to be determined, if it is of a prescribed description, in accordance with regulations made by the Treasury.

#### Commencement Information

- II** S. 424 wholly in force at 1.12.2001; s. 424 not in force at Royal Assent see s. 431(2); s. 424(1)(2) in force and s. 424(3) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(a)(b), Sch. Pts. 1, 2; s. 424 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

VALID FROM 06/12/2006

#### 424A Investment firm

- (1) In this Act, “investment firm” has the meaning given in Article 4.1.1 of the markets in financial instruments directive.
- (2) Subsection (1) is subject to subsections (3) to (5).
- (3) References in this Act to an “investment firm” include references to a person who would be an investment firm (within the meaning of Article 4.1.1 of the markets in financial instruments directive) if—
- (a) his registered office, or
  - (b) in the case of an individual or a body corporate with no registered office, his head office,
- were in an EEA State.
- (4) But subsection (3) does not apply if the person in question is one to whom the markets in financial instruments directive would not apply by virtue of Article 2 of that directive.
- (5) References in this Act to an “investment firm” do not include references to—
- (a) a person to whom the markets in financial instruments directive does not apply by virtue of Article 2 of the directive; or
  - (b) a person whose home Member State (within the meaning of Article 4.1.20 of the markets in financial instruments directive) is an EEA State and to whom, by reason of the fact that the State has given effect to Article 3 of that directive, that directive does not apply by virtue of that Article.

#### 425 Expressions relating to authorisation elsewhere in the single market.

- (1) In this Act—

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- (a) “EEA authorisation”, “EEA firm”, “EEA right”, “EEA State”, “first life insurance directive”, “first non-life insurance directive”, “insurance directives”, “investment services directive”, “single market directives” and [<sup>F2</sup>“banking consolidation directive”] have the meaning given in Schedule 3; and
  - (b) “home state regulator”, in relation to an EEA firm, has the meaning given in Schedule 3.
- (2) In this Act—
- (a) “home state authorisation” has the meaning given in Schedule 4;
  - (a) “Treaty firm” has the meaning given in Schedule 4; and
  - (c) “home state regulator”, in relation to a Treaty firm, has the meaning given in Schedule 4.

#### Textual Amendments

**F2** Words in s. 425(1)(a) substituted (22.11.2000) by S.I. 2000/2952, reg. 8(4)

VALID FROM 08/04/2010

#### <sup>F3</sup> **Consumers: regulated activities etc carried on by authorised persons**

<sup>F3</sup> 425A

- (1) This section has effect for the purposes of the provisions of this Act which apply this section.
- (2) “Consumers” means persons who—
  - (a) use, have used or may use any of the services within subsection (3); or
  - (b) have relevant rights or interests in relation to any of those services.
- (3) The services within this subsection are services provided by—
  - (a) authorised persons in carrying on regulated activities;
  - (b) authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services; or
  - (c) persons acting as appointed representatives.
- (4) A person (“P”) has a “relevant right or interest” in relation to any services within subsection (3) if P has a right or interest—
  - (a) which is derived from, or is otherwise attributable to, the use of the services by others; or
  - (b) which may be adversely affected by the use of the services by persons acting on P's behalf or in a fiduciary capacity in relation to P.
- (5) If a person is providing a service within subsection (3) 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 may use the service.
- (6) A person who deals with another person (“A”) in the course of A providing a service within subsection (3) is to be treated as using the service.
- (7) In this section—
  - “credit institution” means—

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- (a) a credit institution authorised under the banking consolidation directive; or
- (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if does not have one, its head office) in an EEA State;
- “relevant ancillary service” means any service of a kind mentioned in Section B of Annex I to the markets in financial instruments directive the provision of which does not involve the carrying on of a regulated activity.]

#### Textual Amendments

**F3** Ss. 425A, 425B inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(1)(l), [Sch. 2 para. 32](#)

VALID FROM 08/04/2010

#### **425B Consumers: regulated activities carried on by others**

- (1) This section has effect for the purposes of the provisions of this Act which apply this section.
- (2) “Consumers” means persons who, in relation to regulated activities carried on otherwise than by authorised persons, would be consumers as defined by section 425A if the activities were carried on by authorised persons.]

#### Textual Amendments

**F3** Ss. 425A, 425B inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(1)(l), [Sch. 2 para. 32](#)

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

**C1** S. 425B applied (31.3.2012) by [The Financial Services and Markets Act 2000 \(Permissions, Transitional Provisions and Consequential Amendments\) \(Northern Ireland Credit Unions\) Order 2011 \(S.I. 2011/2832\)](#), [art. 11](#)

**Status:**

Point in time view as at 01/04/2002. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

Financial Services and Markets Act 2000, Part XXIX is up to date with all changes known to be in force on or before 26 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.