



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XXV

INJUNCTIONS AND RESTITUTION

Modifications etc. (not altering text)

- C1** Pt. 25 amended (1.12.2001) by S.I. 2001/2657, arts. 1(1), 10(10), 11(10) (which was revoked (8.10.2001) by S.I. 2001/3083, arts. 1(2), 23); S.I. 2001/3538, art. 2(1)
Pt. 25 amended (1.12.2001) by S.I. 2001/3083, arts. 1(2), 10(10), 11(10); S.I. 2001/3538, art. 2(1)
Pt. 25 extended (1.12.2001) by S.I. 2001/3646, arts. 1(1), 3(1)(a)
- C2** Pt. 25 applied (with modifications) (E.W.) (9.7.2013) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (S.I. 2013/1635), regs. 1, 24(1)

Injunctions

380 Injunctions.

- (1) If, on the application of the [^{F1}appropriate regulator] or the Secretary of State, the court is satisfied—
- that there is a reasonable likelihood that any person will contravene a relevant requirement, or
 - that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,
- the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.
- (2) If on the application of the [^{F1}appropriate regulator] or the Secretary of State the court is satisfied—
- that any person has contravened a relevant requirement, and
 - that there are steps which could be taken for remedying the contravention,

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the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

- (3) If, on the application of the [^{F1}appropriate regulator] or the Secretary of State, the court is satisfied that any person may have—
- (a) contravened a relevant requirement, or
 - (b) been knowingly concerned in the contravention of such a requirement,
- it may make an order restraining (or in Scotland an interdict prohibiting) him from disposing of, or otherwise dealing with, any assets of his which it is satisfied he is reasonably likely to dispose of or otherwise deal with.
- (4) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.
- (5) In subsection (2), references to remedying a contravention include references to mitigating its effect.
- (6) “Relevant requirement”—
- (a) in relation to an application by the [^{F2}appropriate regulator], means a requirement—
 - (i) [^{F3}which is imposed by or under this Act or by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order]^{F4}...
 - (ii) which is imposed by or under any other Act and whose contravention constitutes an offence [^{F5}mentioned in section 402(1)]; [^{F6}or
 - (iii) which is imposed by the Alternative Investment Fund Managers Regulations 2013;]
 - (b) in relation to an application by the Secretary of State, means a requirement which is imposed by or under this Act and whose contravention constitutes an offence which the Secretary of State has power to prosecute under this Act.
- (7) In the application of subsection (6) to Scotland—
- ^{F7}(a)
 - (b) in paragraph (b) omit “which the Secretary of State has power to prosecute under this Act”.
- [^{F8}(8) The PRA is the “appropriate regulator” in the case of a contravention of—
- (a) a requirement that is imposed by the PRA under any provision of this Act,
 - (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA, or
 - (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA.
- (9) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.

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- (10) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is whichever of the PRA or the FCA has power to prosecute the offence (see section 401).
- (11) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.
- (12) The Treasury may by order amend the definition of “appropriate regulator”.]

Textual Amendments

- F1** Words in s. 380(1)-(3) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 19\(2\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(b), [Sch. Pt. 2](#); S.I. 2013/423, art. 3, [Sch.](#)
- F2** Words in s. 380(6)(a) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 19\(3\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(b), [Sch. Pt. 2](#); S.I. 2013/423, art. 3, [Sch.](#)
- F3** S. 380(6)(i) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 19\(3\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(b), [Sch. Pt. 2](#); S.I. 2013/423, art. 3, [Sch.](#)
- F4** Word in s. 380(6)(a) omitted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, [Sch. 1 para. 27\(a\)](#)
- F5** Words in s. 380(6)(ii) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 19\(3\)\(c\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(b), [Sch. Pt. 2](#); S.I. 2013/423, art. 3, [Sch.](#)
- F6** S. 380(6)(a)(iii) and word inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, [Sch. 1 para. 27\(b\)](#)
- F7** S. 380(7)(a) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 19\(4\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(b), [Sch. Pt. 2](#); S.I. 2013/423, art. 3, [Sch.](#)
- F8** S. 380(8)-(12) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 19\(5\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(b), [Sch. Pt. 2](#); S.I. 2013/423, art. 3, [Sch.](#)

Modifications etc. (not altering text)

- C3** S. 380 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, [12\(2\)](#) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 77\(7\)\(a\)\(ii\)](#))
- C4** S. 380 applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), [15\(2\)](#)
- C5** S. 380 applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), [18\(3\)](#)
- C6** S. 380 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services Act 2012 \(Consumer Credit\) Order 2013 \(S.I. 2013/1882\)](#), arts. 1(1), [3\(8\)](#)
- C7** S. 380(1)(2) modified (1.12.2001) by S.I. 2001/2657, [arts. 1\(1\), 20\(3\)](#) (which was revoked (8.10.2001) by S.I. 2001/3083, [arts. 1\(2\), 23](#)); S.I. 2001/3538, [art. 2\(1\)](#)
- S. 380(1)(2) modified (1.12.2001) by S.I. 2001/3083, [arts. 1\(2\), 20\(3\)](#); S.I. 2001/3538, [art. 2\(1\)](#)
- C8** S. 380(2) extended (with modifications) (1.12.2001) by S.I. 2001/2657, [arts. 1\(1\), 2](#) (which was revoked (8.10.2001) by S.I. 2001/3083, [arts. 1\(2\), 23](#)); S.I. 2001/3538, [art. 2\(1\)](#)

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- S. 380(2) extended (with modifications) (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 2**; S.I. 2001/3538, **art. 2(1)**
- S. 380(2) extended (1.12.2001) by S.I. 2001/3646, **arts. 1(2), 3(3)(a)**
- C9** S. 380(3)(a) extended (with modifications) (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 4** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**
- S. 380(3)(a) extended (with modifications) (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 4**; S.I. 2001/3538, **art. 2(1)**

381 Injunctions in cases of market abuse.

- (1) If, on the application of the [^{F9}FCA], the court is satisfied—
- (a) that there is a reasonable likelihood that any person will engage in market abuse, or
 - (b) that any person is or has engaged in market abuse and that there is a reasonable likelihood that the market abuse will continue or be repeated,
- the court may make an order restraining (or in Scotland an interdict prohibiting) the market abuse.
- (2) If on the application of the [^{F9}FCA] the court is satisfied—
- (a) that any person is or has engaged in market abuse, and
 - (b) that there are steps which could be taken for remedying the market abuse,
- the court may make an order requiring him to take such steps as the court may direct to remedy it.
- (3) Subsection (4) applies if, on the application of the [^{F9}FCA], the court is satisfied that any person—
- (a) may be engaged in market abuse; or
 - (b) may have been engaged in market abuse.
- (4) The court [^{F10}may] make an order restraining (or in Scotland an interdict prohibiting) the person concerned from disposing of, or otherwise dealing with, any assets of his which it is satisfied that he is reasonably likely to dispose of, or otherwise deal with.
- (5) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.
- (6) In subsection (2), references to remedying any market abuse include references to mitigating its effect.

Textual Amendments

- F9** Word in s. 381(1)-(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 20(2)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F10** Word in s. 381(4) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 20(3)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

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Restitution orders

382 Restitution orders.

- (1) The court may, on the application of the [F11appropriate regulator] or the Secretary of State, make an order under subsection (2) if it is satisfied that a person has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—
 - (a) that profits have accrued to him as a result of the contravention; or
 - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.
- (2) The court may order the person concerned to pay to the [F12regulator concerned] such sum as appears to the court to be just having regard—
 - (a) in a case within paragraph (a) of subsection (1), to the profits appearing to the court to have accrued;
 - (b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect;
 - (c) in a case within both of those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.
- (3) Any amount paid to the [F13regulator concerned] in pursuance of an order under subsection (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.
- (4) On an application under subsection (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes—
 - (a) establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of that subsection;
 - (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in paragraph (b) of that subsection and, if so, the extent of that loss or adverse effect; and
 - (c) determining how any amounts are to be paid or distributed under subsection (3).
- (5) The court may require any accounts or other information supplied under subsection (4) to be verified in such manner as it may direct.
- (6) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.
- (7) Nothing in this section affects the right of any person other than the [F14appropriate regulator] or the Secretary of State to bring proceedings in respect of the matters to which this section applies.
- (8) “Qualifying person” means a person appearing to the court to be someone—
 - (a) to whom the profits mentioned in subsection (1)(a) are attributable; or
 - (b) who has suffered the loss or adverse effect mentioned in subsection (1)(b).
- (9) “Relevant requirement”—
 - (a) in relation to an application by the [F15appropriate regulator], means a requirement—

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- (i) [^{F16}which is imposed by or under this Act or by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order]; ^{F17}...
 - (ii) which is imposed by or under any other Act and whose contravention constitutes an offence [^{F18}mentioned in section 402(1)]; [^{F19}or
 - (iii) which is imposed by the Alternative Investment Fund Managers Regulations 2013;]
 - (b) in relation to an application by the Secretary of State, means a requirement which is imposed by or under this Act and whose contravention constitutes an offence which the Secretary of State has power to prosecute under this Act.
- (10) In the application of subsection (9) to Scotland—
- ^{F20}(a)
 - (b) in paragraph (b) omit “which the Secretary of State has power to prosecute under this Act”.
- [^{F21}(11) The PRA is the “appropriate regulator” in the case of a contravention of—
- (a) a requirement that is imposed by the PRA under any provision of this Act,
 - (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA, or
 - (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA.
- (12) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.
- (13) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is the regulator which has power to prosecute the offence (see section 401).
- (14) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.
- (15) The Treasury may by order amend the definition of “appropriate regulator”.]

Textual Amendments

- F11** Words in s. 382(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by *Financial Services Act 2012* (c. 21), s. 122(3), **Sch. 9 para. 21(2)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F12** Words in s. 382(2) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by *Financial Services Act 2012* (c. 21), s. 122(3), **Sch. 9 para. 21(3)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F13** Words in s. 382(3) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by *Financial Services Act 2012* (c. 21), s. 122(3), **Sch. 9 para. 21(3)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F14** Words in s. 382(7) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by *Financial Services Act 2012* (c. 21), s. 122(3), **Sch. 9 para. 21(4)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

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- F15** Words in s. 382(9)(a) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 21(5)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F16** S. 382(9)(a)(i) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 21(5)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F17** Word in s. 382(9)(a) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 28(a)**
- F18** Words in s. 382(9)(a)(ii) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 21(5)(c)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F19** S. 382(9)(a)(iii) and word inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 28(b)**
- F20** S. 382(10)(a) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 21(6)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F21** S. 382(11)-(15) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 21(7)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

- C10** S. 382 extended (with modifications) (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 2** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**
S. 382 extended (with modifications) (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 2**; S.I. 2001/3538, **art. 2(1)**
- C11** S. 382 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(2)**
- C12** S. 382 applied (with modifications) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013 (S.I. 2013/441), arts. 1(1), **16(2)**
- C13** S. 382 applied (with modifications) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013 (S.I. 2013/441), arts. 1(1), **18(3)**
- C14** S. 382 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882), arts. 1(1), **3(9)**
- C15** S. 382(3)-(5)(8) applied (with modifications) (26.11.2001) by S.I. 2001/3755, **regs. 1, 9(7)(9)** (with regs. 39, 45)

383 Restitution orders in cases of market abuse.

- (1) The court may, on the application of the [F22FCA], make an order under subsection (4) if it is satisfied that a person (“the person concerned”)—
- (a) has engaged in market abuse, or
 - (b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by the person concerned, would amount to market abuse,
- and the condition mentioned in subsection (2) is fulfilled.
- (2) The condition is—
- (a) that profits have accrued to the person concerned as a result; or

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- (b) that one or more persons have suffered loss or been otherwise adversely affected as a result.
- (3) But the court may not make an order under subsection (4) if it is satisfied that—
 - (a) the person concerned believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1); or
 - (b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of subsection (1).
- (4) The court may order the person concerned to pay to the [F²³FCA] such sum as appears to the court to be just having regard—
 - (a) in a case within paragraph (a) of subsection (2), to the profits appearing to the court to have accrued;
 - (b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect;
 - (c) in a case within both of those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.
- (5) Any amount paid to the [F²⁴FCA] in pursuance of an order under subsection (4) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.
- (6) On an application under subsection (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes—
 - (a) establishing whether any and, if so, what profits have accrued to him as mentioned in subsection (2)(a);
 - (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in subsection (2)(b) and, if so, the extent of that loss or adverse effect; and
 - (c) determining how any amounts are to be paid or distributed under subsection (5).
- (7) The court may require any accounts or other information supplied under subsection (6) to be verified in such manner as it may direct.
- (8) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.
- (9) Nothing in this section affects the right of any person other than the [F²⁵FCA] to bring proceedings in respect of the matters to which this section applies.
- (10) “Qualifying person” means a person appearing to the court to be someone—
 - (a) to whom the profits mentioned in paragraph (a) of subsection (2) are attributable; or
 - (b) who has suffered the loss or adverse effect mentioned in paragraph (b) of that subsection.

Textual Amendments

F22 Word in s. 383(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 22](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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- F23** Word in s. 383(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 22](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F24** Word in s. 383(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 22](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F25** Word in s. 383(9) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 22](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

Restitution required by [F26FCA or PRA]

Textual Amendments

- F26** Words in s. 384 cross-heading substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 23\(10\)](#) (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(b), [Sch. Pt. 2](#); [S.I. 2013/423](#), art. 3, Sch.

384 Power of [F27FCA or PRA] to require restitution.

- (1) [F28The appropriate regulator] may exercise the power in subsection (5) if it is satisfied that an authorised person [F29or recognised investment exchange] (“the person concerned”) has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—
- that profits have accrued to him as a result of the contravention; or
 - that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.
- (2) The [F30FCA] may exercise the power in subsection (5) if it is satisfied that a person (“the person concerned”)—
- has engaged in market abuse, or
 - by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by the person concerned, would amount to market abuse,
- and the condition mentioned in subsection (3) is fulfilled,
- (3) The condition is—
- that profits have accrued to the person concerned as a result of the market abuse; or
 - that one or more persons have suffered loss or been otherwise adversely affected as a result of the market abuse.
- (4) But the [F31FCA] may not exercise that power as a result of subsection (2) if, having considered any representations made to it in response to a warning notice, there are reasonable grounds for it to be satisfied that—
- the person concerned believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of that subsection; or
 - he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection.
- (5) The power referred to in subsections (1) and (2) is a power to require the person concerned, in accordance with such arrangements as the [F32regulator exercising the power (“the regulator concerned”)] considers appropriate, to pay to the appropriate

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- person or distribute among the appropriate persons such amount as appears to the [^{F33}regulator concerned] to be just having regard—
- (a) in a case within paragraph (a) of subsection (1) or (3), to the profits appearing to the [^{F33}regulator concerned] to have accrued;
 - (b) in a case within paragraph (b) of subsection (1) or (3), to the extent of the loss or other adverse effect;
 - (c) in a case within paragraphs (a) and (b) of subsection (1) or (3), to the profits appearing to the [^{F33}regulator concerned] to have accrued and to the extent of the loss or other adverse effect.
- (6) “Appropriate person” means a person appearing to the [^{F34}regulator concerned] to be someone—
- (a) to whom the profits mentioned in paragraph (a) of subsection (1) or (3) are attributable; or
 - (b) who has suffered the loss or adverse effect mentioned in paragraph (b) of subsection (1) or (3).
- (7) “Relevant requirement” means—
- (a) a requirement imposed by or under this Act [^{F35}or by [^{F36}a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order]]; [^{F37} ...
 - (b) a requirement which is imposed by or under any other Act and whose contravention constitutes an offence [^{F38}mentioned in section 402(1)] [^{F39}; and
 - (c) a requirement imposed by the Alternative Investment Fund Managers Regulations 2013].
- ^{F40}(8)
- [^{F41}(9) The PRA is the “appropriate regulator” in the case of a contravention of—
- (a) a requirement that is imposed by the PRA under any provision of this Act,
 - (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA, or
 - (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA.
- (10) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.
- (11) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is the regulator which has power to prosecute the offence (see section 401).
- (12) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.
- (13) The Treasury may by order amend the definition of “appropriate regulator”.]

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Textual Amendments

- F27** Words in s. 384 heading substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 23\(9\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F28** Words in s. 384(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 23\(2\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F29** Words in s. 384(1) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 23\(2\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F30** Word in s. 384(2) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 23\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F31** Word in s. 384(4) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 23\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F32** Words in s. 384(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 23\(4\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F33** Words in s. 384(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 23\(4\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F34** Words in s. 384(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 23\(5\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F35** Words in s. 384(7)(a) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [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. 15](#)
- F36** Words in s. 384(7)(a) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 23\(6\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F37** Word in s. 384(7) omitted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), [reg. 1](#), [Sch. 1 para. 29\(a\)](#)
- F38** Words in s. 384(7)(b) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 23\(6\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F39** S. 384(7)(c) and word inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), [reg. 1](#), [Sch. 1 para. 29\(b\)](#)
- F40** S. 384(8) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 23\(7\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F41** S. 384(9)-(13) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 23\(8\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)

Modifications etc. (not altering text)

- C16** S. 384 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), [regs. 1, 12\(1\)](#)
- C17** S. 384 applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), [arts. 1\(1\), 18\(3\)](#)

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- C18** S. 384 applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), **17(2)**
- C19** S. 384 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services Act 2012 \(Consumer Credit\) Order 2013 \(S.I. 2013/1882\)](#), arts. 1(1), **3(10)**
- C20** S. 384(5) extended (with modifications) (1.12.2001) by [S.I. 2001/2657](#), arts. **1(1)**, 3 (which was revoked (8.10.2001) by [S.I. 2001/3083](#), arts. **1(2)**, 23); [S.I. 2001/3538](#), art. **2(1)**
S. 384(5) extended (with modifications) (1.12.2001) by [S.I. 2001/3083](#), arts. **1(2)**, 3; [S.I. 2001/3538](#), art. **2(1)**

385 Warning notices.

- (1) If [^{F42}a regulator] proposes to exercise the power under section 384(5) in relation to a person, it must give him a warning notice.
- (2) A warning notice under this section must specify the amount which [^{F43}the regulator] proposes to require the person concerned to pay or distribute as mentioned in section 384(5).

Textual Amendments

- F42** Words in s. 385(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 24(2)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F43** Words in s. 385(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 24(3)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

Modifications etc. (not altering text)

- C21** S. 385 excluded (1.12.2001) by [S.I. 2001/3592](#), arts. **1(2)**, 61(6) (with art. 23(2))

386 Decision notices.

- (1) If the [^{F44}regulator] decides to exercise the power under section 384(5), it must give a decision notice to the person in relation to whom the power is exercised.
- (2) The decision notice must—
 - (a) state the amount that he is to pay or distribute as mentioned in section 384(5);
 - (b) identify the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and
 - (c) state the arrangements in accordance with which the payment or distribution is to be made.
- (3) If the [^{F45}regulator] decides to exercise the power under section 384(5), the person in relation to whom it is exercised may refer the matter to the Tribunal.

Textual Amendments

- F44** Word in s. 386(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 25** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F45** Word in s. 386(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 25** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

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Modifications etc. (not altering text)

C22 S. 386 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 61(6) (with **art. 23(2)**)

C23 S. 386(1) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 70(2) (with **art. 23(2)**)

Status:

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Changes to legislation:

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