



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXVII

#### OFFENCES

##### *Miscellaneous offences*

#### **397 Misleading statements and practices.**

- (1) This subsection applies to a person who—
  - (a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive in a material particular;
  - (b) dishonestly conceals any material facts whether in connection with a statement, promise or forecast made by him or otherwise; or
  - (c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive in a material particular.
- (2) A person to whom subsection (1) applies is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made)—
  - (a) to enter or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement; or
  - (b) to exercise, or refrain from exercising, any rights conferred by a relevant investment.
- (3) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any relevant investments is guilty of an offence if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.

*Status: Point in time view as at 01/12/2001.*

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- (4) In proceedings for an offence under subsection (2) brought against a person to whom subsection (1) applies as a result of paragraph (a) of that subsection, it is a defence for him to show that the statement, promise or forecast was made in conformity with price stabilising rules or control of information rules.
- (5) In proceedings brought against any person for an offence under subsection (3) it is a defence for him to show—
- (a) that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the matters mentioned in that subsection;
  - (b) that he acted or engaged in the conduct—
    - (i) for the purpose of stabilising the price of investments; and
    - (ii) in conformity with price stabilising rules; or
  - (c) that he acted or engaged in the conduct in conformity with control of information rules.
- (6) Subsections (1) and (2) do not apply unless—
- (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the United Kingdom or arrangements are made in or from the United Kingdom for the statement, promise or forecast to be made or the facts to be concealed;
  - (b) the person on whom the inducement is intended to or may have effect is in the United Kingdom; or
  - (c) the agreement is or would be entered into or the rights are or would be exercised in the United Kingdom.
- (7) Subsection (3) does not apply unless—
- (a) the act is done, or the course of conduct is engaged in, in the United Kingdom; or
  - (b) the false or misleading impression is created there.
- (8) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.
- (9) “Relevant agreement” means an agreement—
- (a) the entering into or performance of which by either party constitutes an activity of a specified kind or one which falls within a specified class of activity; and
  - (b) which relates to a relevant investment.
- (10) “Relevant investment” means an investment of a specified kind or one which falls within a prescribed class of investment.
- (11) Schedule 2 (except paragraphs 25 and 26) applies for the purposes of subsections (9) and (10) with references to section 22 being read as references to each of those subsections.
- (12) Nothing in Schedule 2, as applied by subsection (11), limits the power conferred by subsection (9) or (10).

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(13) “Investment” includes any asset, right or interest.

(14) “Specified” means specified in an order made by the Treasury.

#### Commencement Information

- II** S. 397 wholly in force at 1.12.2001; s. 397 not in force at Royal Assent see s. 431(2); s. 397(9)-(14) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 397 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

### 398 Misleading the Authority: residual cases.

- (1) A person who, in purported compliance with any requirement imposed by or under this Act, knowingly or recklessly gives the Authority information which is false or misleading in a material particular is guilty of an offence.
- (2) Subsection (1) applies only to a requirement in relation to which no other provision of this Act creates an offence in connection with the giving of information.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

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

- C1** S. 398 extended (1.12.2001) by S.I. 2001/3646, **arts. 1(2), 3(3)(b)(4)**  
S. 398 excluded (1.12.2001) by S.I. 2001/3646, **arts. 1(2), 2(6)**
- C2** S. 398 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)**
- C3** S. 398 applied (with modifications) (7.6.2010) by [The Credit Rating Agencies Regulations 2010 \(S.I. 2010/906\)](#), **reg. 25**
- C4** S. 398(1)(3) applied (1.12.2001) by S.I. 1995/1537, **reg. 23(5)** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1, 509(f)**)
- C5** S. 398(1)(3) applied (6.3.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\)](#), **reg. 38(1)**

### 399 Misleading the Director General of Fair Trading.

Section 44 of the <sup>M1</sup>Competition Act 1998 (offences connected with the provision of false or misleading information) applies in relation to any function of the Director General of Fair Trading under this Act as if it were a function under Part I of that Act.

#### Marginal Citations

- M1** 1998 c. 41.

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### *Bodies corporate and partnerships*

#### **400 Offences by bodies corporate etc.**

- (1) If an offence under this Act committed by a body corporate is shown—
  - (a) to have been committed with the consent or connivance of an officer, or
  - (b) to be attributable to any neglect on his part,
 the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.
- (3) If an offence under this Act committed by a partnership is shown—
  - (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to any neglect on his part,
 the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) In subsection (3) “partner” includes a person purporting to act as a partner.
- (5) “Officer”, in relation to a body corporate, means—
  - (a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; and
  - (b) an individual who is a controller of the body.
- (6) If an offence under this Act committed by an unincorporated association (other than a partnership) is shown—
  - (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
  - (b) to be attributable to any neglect on the part of such an officer or member,
 that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.
- (7) Regulations may provide for the application of any provision of this section, with such modifications as the Treasury consider appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside the United Kingdom.

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

- C6** S. 400 applied (3.9.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/1228, regs. 1\(2\)\(b\)\(c\), 81](#) (with [reg. 1\(2\)\(3\)](#)); [S.I. 2001/2632, art. 2\(2\)](#), [Sch. Pt. 2](#); [S.I. 2001/3538, art. 2\(1\)](#)
- S. 400 applied (1.12.2001) by [S.I. 1995/1537, reg. 23\(6\)](#) (as amended (1.12.2001) by [S.I. 2001/3649, arts. 1, 509\(g\)](#))
- S. 400 amended (1.12.2001) by [S.I. 2001/2657, arts. 1\(1\), 10\(8\), 11\(8\)](#) (which was revoked (8.10.2001) by [S.I. 2001/3083, arts. 1\(2\), 23](#)); [S.I. 2001/3538, art. 2\(1\)](#)
- S. 400 amended (1.12.2001) by [S.I. 2001/3083, arts. 1\(2\), 10\(8\), 11\(8\)](#); [S.I. 2001/3538, art. 2\(1\)](#)
- S. 400 modified (1.12.2001) by [S.I. 2001/3646, arts. 1\(1\), 12\(2\), 13\(3\)](#)

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- C7 S. 400 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **80** (with reg. 1(2))
- C8 S. 400 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 38(2)**
- C9 S. 400 applied by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), s. 15A(7) (as substituted (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. 232(2)** (with arts. 6, 11, 12))
- C10 S. 400 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 26**

### *Institution of proceedings*

#### **401 Proceedings for offences.**

- (1) In this section “offence” means an offence under this Act or subordinate legislation made under this Act.
- (2) Proceedings for an offence may be instituted in England and Wales only—
  - (a) by the Authority or the Secretary of State; or
  - (b) by or with the consent of the Director of Public Prosecutions.
- (3) Proceedings for an offence may be instituted in Northern Ireland only—
  - (a) by the Authority or the Secretary of State; or
  - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (4) Except in Scotland, proceedings for an offence under section 203 may also be instituted by the Director General of Fair Trading.
- (5) In exercising its power to institute proceedings for an offence, the Authority must comply with any conditions or restrictions imposed in writing by the Treasury.
- (6) Conditions or restrictions may be imposed under subsection (5) in relation to—
  - (a) proceedings generally; or
  - (b) such proceedings, or categories of proceedings, as the Treasury may direct.

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

- C11 S. 401 applied (1.12.2001) by S.I. 1995/1537, **reg. 23(6)** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1, 509(g)**)
- C12 S. 401 amended (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 10(8), 11(8), 13(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. 401 amended (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 10(8), 11(8), 13(1)**; S.I. 2001/3538, **art. 2(1)**  
S. 401 modified (1.12.2001) by S.I. 2001/3646, **arts. 1(1), 12(2), 13(3)**

#### **402 Power of the Authority to institute proceedings for certain other offences.**

- (1) Except in Scotland, the Authority may institute proceedings for an offence under—
  - (a) Part V of the <sup>M2</sup>Criminal Justice Act 1993 (insider dealing); or
  - (b) prescribed regulations relating to money laundering.

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- (2) In exercising its power to institute proceedings for any such offence, the Authority must comply with any conditions or restrictions imposed in writing by the Treasury.
- (3) Conditions or restrictions may be imposed under subsection (2) in relation to—
  - (a) proceedings generally; or
  - (b) such proceedings, or categories of proceedings, as the Treasury may direct.

#### Commencement Information

**I2** S. 402 wholly in force at 1.12.2001; s. 402 not in force at Royal Assent see s. 431(2); s. 402(1)(b) in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)](#), [Sch. Pt. 2](#); s. 402 in force for specified purposes at 19.10.2001 by [S.I. 2001/3436](#), [art. 2](#); s. 402 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

#### Marginal Citations

**M2** 1993 c. 36.

### 403 Jurisdiction and procedure in respect of offences.

- (1) A fine imposed on an unincorporated association on its conviction of an offence is to be paid out of the funds of the association.
- (2) Proceedings for an offence alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members).
- (3) Rules of court relating to the service of documents are to have effect as if the association were a body corporate.
- (4) In proceedings for an offence brought against an unincorporated association—
  - (a) section 33 of the <sup>M3</sup>Criminal Justice Act 1925 and Schedule 3 to the <sup>M4</sup>Magistrates' Courts Act 1980 (procedure) apply as they do in relation to a body corporate;
  - (b) section 70 of the <sup>M5</sup>Criminal Procedure (Scotland) Act 1995 (procedure) applies as if the association were a body corporate;
  - (c) section 18 of the <sup>M6</sup>Criminal Justice (Northern Ireland) Act 1945 and Schedule 4 to the <sup>M7</sup>Magistrates' Courts (Northern Ireland) Order 1981 (procedure) apply as they do in relation to a body corporate.
- (5) Summary proceedings for an offence may be taken—
  - (a) against a body corporate or unincorporated association at any place at which it has a place of business;
  - (b) against an individual at any place where he is for the time being.
- (6) Subsection (5) does not affect any jurisdiction exercisable apart from this section.
- (7) "Offence" means an offence under this Act.

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

**C13** S. 403 applied (1.12.2001) by [S.I. 1995/1537](#), [reg. 23\(6\)](#) (as amended (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 509\(g\)](#))

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- C14** S. 403 amended (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 10(8), 11(8), 13(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. 403 amended (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 10(8), 11(8), 13(1); S.I. 2001/3538, **art. 2(1)**  
S. 403 modified (1.12.2001) by S.I. 2001/3646, **arts. 1(1)**, 12(2), 13(3)  
S. 403 applied (3.9.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/1228, **regs. 1(2)(b)(c)**, 82 (with **reg. 1(2)(3)**); S.I. 2001/2632, **art. 2(2)**, **Sch. Pt. 2**; S.I. 2001/3538, **art. 2(1)**
- C15** S. 403 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b)**, **81** (with **reg. 1(2)**)
- C16** S. 403 applied by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), s. 15A(7) (as substituted (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. 232(2)** (with **arts. 6**, 11, 12))
- C17** S. 403 applied (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 28**

#### **Marginal Citations**

- M3** 1925 c. 86.  
**M4** 1980 c. 43.  
**M5** 1995 c. 46.  
**M6** 1945 c. 15 (N.I.)  
**M7** S.I. 1981/1675

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