



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART II

#### REGULATED AND PROHIBITED ACTIVITIES

##### *Enforceability of agreements*

#### **28 Agreements made unenforceable by section 26 or 27.**

- (1) This section applies to an agreement which is unenforceable because of section 26 or 27.
- (2) The amount of compensation recoverable as a result of that section is—
  - (a) the amount agreed by the parties; or
  - (b) on the application of either party, the amount determined by the court.
- (3) If the court is satisfied that it is just and equitable in the circumstances of the case, it may allow—
  - (a) the agreement to be enforced; or
  - (b) money and property paid or transferred under the agreement to be retained.
- (4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the court must—
  - (a) if the case arises as a result of section 26, have regard to the issue mentioned in subsection (5); or
  - (b) if the case arises as a result of section 27, have regard to the issue mentioned in subsection (6).
- (5) The issue is whether the person carrying on the regulated activity concerned reasonably believed that he was not contravening the general prohibition by making the agreement.

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*Status: Point in time view as at 08/11/2006. This version of this provision has been superseded.*

*Changes to legislation: Financial Services and Markets Act 2000, Section 28 is up to date with all changes known to be in force on or before 05 June 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)*

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- (6) The issue is whether the provider knew that the third party was (in carrying on the regulated activity) contravening the general prohibition.
- (7) If the person against whom the agreement is unenforceable—
- (a) elects not to perform the agreement, or
  - (b) as a result of this section, recovers money paid or other property transferred by him under the agreement,
- he must repay any money and return any other property received by him under the agreement.
- (8) If property transferred under the agreement has passed to a third party, a reference in section 26 or 27 or this section to that property is to be read as a reference to its value at the time of its transfer under the agreement.
- (9) The commission of an authorisation offence does not make the agreement concerned illegal or invalid to any greater extent than is provided by section 26 or 27.

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

- C1** S. 28 applied (with modifications) (1.12.2001) by S.I. 2001/2657, arts. 1(1), 5(6) (which was revoked (8.10.2001) by S.I. 2001/3083, arts. 1(2), 23); S.I. 2001/3538, art. 2(1)
- S. 28 applied (with modifications) (1.12.2001) by S.I. 2001/3083, arts. 1(2), 5(6); S.I. 2001/3538, art. 2(1)

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