



# Financial Services Act 2010

## 2010 CHAPTER 28

### *FSA's disciplinary powers*

#### **11 Performance of controlled function without approval**

In the Financial Services and Markets Act 2000, after section 63 insert—

#### *“Performance of controlled functions without approval*

##### **63A Power to impose penalties**

- (1) If the Authority is satisfied that—
  - (a) a person (“P”) has at any time performed a controlled function without approval, and
  - (b) at that time P knew, or could reasonably be expected to have known, that P was performing a controlled function without approval,it may impose a penalty on P of such amount as it considers appropriate.
- (2) For the purposes of this section P performs a controlled function without approval at any time if at that time—
  - (a) P performs a controlled function under an arrangement entered into by an authorised person (“A”), or by a contractor of A, in relation to the carrying on by A of a regulated activity; and
  - (b) the performance by P of the function was not approved under section 59.
- (3) The Authority may not impose a penalty under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person concerned under section 63B(1).
- (4) “The limitation period” means the period of three years beginning with the first day on which the Authority knew that the person concerned had performed a controlled function without approval.

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*Changes to legislation: There are currently no known outstanding effects for the Financial Services Act 2010, Section 11. (See end of Document for details)*

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- (5) For this purpose the Authority is to be treated as knowing that a person has performed a controlled function without approval if it has information from which that can reasonably be inferred.
- (6) Any expression which is used both in this section and section 59 has the same meaning in this section as in that section.

### **63B Procedure and right to refer to Tribunal**

- (1) If the Authority proposes to impose a penalty on a person under section 63A, it must give the person a warning notice.
- (2) A warning notice must state the amount of the penalty.
- (3) If the Authority decides to impose a penalty on a person under section 63A, it must give the person a decision notice.
- (4) A decision notice must state the amount of the penalty.
- (5) If the Authority decides to impose a penalty on a person under section 63A, the person may refer the matter to the Tribunal.

### **63C Statement of policy**

- (1) The Authority must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties under section 63A; and
  - (b) the amount of penalties under that section.
- (2) The Authority's policy in determining whether a penalty should be imposed, and what the amount of a penalty should be, must include having regard to—
  - (a) the conduct of the person on whom the penalty is to be imposed;
  - (b) the extent to which the person could reasonably be expected to have known that a controlled function was performed without approval;
  - (c) the length of the period during which the person performed a controlled function without approval; and
  - (d) whether the person on whom the penalty is to be imposed is an individual.
- (3) The Authority's policy in determining whether a penalty should be imposed on a person must also include having regard to the appropriateness of taking action against the person instead of, or in addition to, taking action against an authorised person.
- (4) A statement issued under this section must include an indication of the circumstances in which the Authority would expect to be satisfied that a person could reasonably be expected to have known that the person was performing a controlled function without approval.
- (5) The Authority may at any time alter or replace a statement issued under this section.
- (6) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replaced statement.

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- (7) The Authority must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (8) A statement issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (9) The Authority may charge a reasonable fee for providing a person with a copy of the statement.
- (10) In exercising, or deciding whether to exercise, its power under section 63A in the case of any particular person, the Authority must have regard to any statement of policy published under this section and in force at a time when the person concerned performed a controlled function without approval.

#### **63D Statement of policy: procedure**

- (1) Before issuing a statement under section 63C, the Authority must publish a draft of the proposed statement in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the Authority within a specified time.
- (3) Before issuing the proposed statement, the Authority must have regard to any representations made to it in accordance with subsection (2).
- (4) If the Authority issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2); and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant, the Authority must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.”

**Changes to legislation:**

There are currently no known outstanding effects for the Financial Services Act 2010, Section 11.