
STATUTORY INSTRUMENTS

2001 No. 3083

The Financial Services and Markets Act 2000
(Transitional Provisions and Savings) (Civil Remedies,
Discipline, Criminal Offences etc.) (No. 2) Order 2001

PART 2

CIVIL REMEDIES

Unenforceable contracts

5.—(1) Subsections (1) and (2) of section 26 (agreements made by unauthorised persons) apply to an agreement of the kind specified by paragraph (4) as they apply to an agreement of the kind specified in subsection (1) of that section (and so an agreement of the kind specified by paragraph (4) is unenforceable against the other party).

(2) Subsections (1) and (2) of section 27 (agreements made through unauthorised persons) apply to an agreement of the kind specified by paragraph (5) as they apply to an agreement of the kind specified in subsection (1) of that section (and so an agreement of the kind specified by paragraph (5) is unenforceable against the other party).

(3) In this article, a “regulated agreement” means an agreement made before commencement, the making or performance of which by one party (“the relevant party”) constituted an activity which fell within any paragraph of Part II of Schedule 1 to the Financial Services Act and which was not excluded by Part III or IV of that Schedule (or the performance of which would have constituted such an activity but for the repeal of that Act).

(4) The kind of agreement specified by this paragraph is any agreement which—

- (a) is a regulated agreement which was entered into by the relevant party in the course of carrying on investment business in contravention of section 3 of the Financial Services Act; or
- (b) is a contract of insurance, other than a regulated agreement, which was entered into by a person before commencement in the course of carrying on insurance business (within the meaning of the Insurance Companies Act) in contravention of section 2 of that Act.

(5) The kind of agreement specified by this paragraph is any regulated agreement where—

- (a) the relevant party was, at the time the agreement was made, an authorised person (within the meaning of the Financial Services Act) or an exempted person (within the meaning of that Act) in respect of the investment business in the course of which he entered into the agreement; and
- (b) the agreement was entered into in consequence of anything said or done by a person (“the third party”) in the course of investment business carried on by the third party in contravention of section 3 of that Act.

(6) Section 28 (amount of compensation recoverable) applies to an agreement of the kind specified by paragraph (4) or (5) which is unenforceable because of section 26 or 27 (as applied by this Order) subject to the following modifications—

(a) for subsection (5), substitute—

“(5) The issue is whether the person carrying on investment business (within the meaning of the Financial Services Act 1986) reasonably believed that his entering into the agreement did not constitute a contravention of section 3 of that Act, or, as the case may be, that the person carrying on insurance business (within the meaning of the Insurance Companies Act 1982) reasonably believed that his entering into the contract did not constitute a contravention of section 2 of that Act.”; and

(b) for subsection (6), substitute—

“(6) The issue is whether the person who was, at the time the agreement was made, an authorised person or exempted person (within the meaning of the Financial Services Act 1986) knew that the agreement was entered into in consequence of anything said or done by the third party in contravention of section 3 of that Act.”.