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Financial Services and Markets Act 2000

2000 CHAPTER 8

An Act to make provision about the regulation of financial services and markets; to provide for the transfer of certain statutory functions relating to building societies, friendly societies, industrial and provident societies and certain other mutual societies; and for connected purposes. [00th June 2000]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

THE REGULATOR

1.—(1) The body corporate known as the Financial Services Authority (“the Authority”) is to have the functions conferred on it by or under this Act. The Financial Services Authority.

(2) The Authority must comply with the requirements as to its constitution set out in Schedule 1.

(3) Schedule 1 also makes provision about the status of the Authority and the exercise of certain of its functions.

The Authority's general duties

2.—(1) In discharging its general functions the Authority must, so far as is reasonably possible, act in a way— The Authority's general duties.

- (a) which is compatible with the regulatory objectives; and
- (b) which the Authority considers most appropriate for the purpose of meeting those objectives.

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- (2) The regulatory objectives are—
- (a) market confidence;
 - (b) public awareness;
 - (c) the protection of consumers; and
 - (d) the reduction of financial crime.

(3) In discharging its general functions the Authority must have regard to—

- (a) the need to use its resources in the most efficient and economic way;
- (b) the responsibilities of those who manage the affairs of authorised persons;
- (c) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
- (d) the desirability of facilitating innovation in connection with regulated activities;
- (e) the international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom;
- (f) the need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions;
- (g) the desirability of facilitating competition between those who are subject to any form of regulation by the Authority.

(4) The Authority's general functions are—

- (a) its function of making rules under this Act (considered as a whole);
- (b) its function of preparing and issuing codes under this Act (considered as a whole);
- (c) its functions in relation to the giving of general guidance (considered as a whole); and
- (d) its function of determining the general policy and principles by reference to which it performs particular functions.

(5) "General guidance" has the meaning given in section 158(5).

The regulatory objectives

Market
confidence.

3.—(1) The market confidence objective is: maintaining confidence in the financial system.

(2) "The financial system" means the financial system operating in the United Kingdom and includes—

- (a) financial markets and exchanges;
- (b) regulated activities; and
- (c) other activities connected with financial markets and exchanges.

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4.—(1) The public awareness objective is: promoting public understanding of the financial system. Public awareness.

(2) It includes, in particular—

- (a) promoting awareness of the benefits and risks associated with different kinds of investment or other financial dealing; and
- (b) the provision of appropriate information and advice.

(3) “The financial system” has the same meaning as in section 3.

5.—(1) The protection of consumers objective is: securing the appropriate degree of protection for consumers. The protection of consumers.

(2) In considering what degree of protection may be appropriate, the Authority must have regard to—

- (a) the differing degrees of risk involved in different kinds of investment or other transaction;
- (b) the differing degrees of experience and expertise that different consumers may have in relation to different kinds of regulated activity;
- (c) the needs that consumers may have for advice and accurate information; and
- (d) the general principle that consumers should take responsibility for their decisions.

(3) “Consumers” means persons—

- (a) who are consumers for the purposes of section 138; or
- (b) who, in relation to regulated activities carried on otherwise than by authorised persons, would be consumers for those purposes if the activities were carried on by authorised persons.

6.—(1) The reduction of financial crime objective is: reducing the extent to which it is possible for a business carried on— The reduction of financial crime.

- (a) by a regulated person, or
- (b) in contravention of the general prohibition,

to be used for a purpose connected with financial crime.

(2) In considering that objective the Authority must, in particular, have regard to the desirability of—

- (a) regulated persons being aware of the risk of their businesses being used in connection with the commission of financial crime;
- (b) regulated persons taking appropriate measures (in relation to their administration and employment practices, the conduct of transactions by them and otherwise) to prevent financial crime, facilitate its detection and monitor its incidence;
- (c) regulated persons devoting adequate resources to the matters mentioned in paragraph (b).

(3) “Financial crime” includes any offence involving—

- (a) fraud or dishonesty;

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(b) misconduct in, or misuse of information relating to, a financial market; or

(c) handling the proceeds of crime.

(4) "Offence" includes an act or omission which would be an offence if it had taken place in the United Kingdom.

(5) "Regulated person" means an authorised person, a recognised investment exchange or a recognised clearing house.

Corporate governance

Duty of Authority to follow principles of good governance.

7. In managing its affairs, the Authority must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

Arrangements for consulting practitioners and consumers

The Authority's general duty to consult.

8. The Authority must make and maintain effective arrangements for consulting practitioners and consumers on the extent to which its general policies and practices are consistent with its general duties under section 2.

The Practitioner Panel.

9.—(1) Arrangements under section 8 must include the establishment and maintenance of a panel of persons (to be known as "the Practitioner Panel") to represent the interests of practitioners.

(2) The Authority must appoint one of the members of the Practitioner Panel to be its chairman.

(3) The Treasury's approval is required for the appointment or dismissal of the chairman.

(4) The Authority must have regard to any representations made to it by the Practitioner Panel.

(5) The Authority must appoint to the Practitioner Panel such—

(a) individuals who are authorised persons,

(b) persons representing authorised persons,

(c) persons representing recognised investment exchanges, and

(d) persons representing recognised clearing houses,

as it considers appropriate.

The Consumer Panel.

10.—(1) Arrangements under section 8 must include the establishment and maintenance of a panel of persons (to be known as "the Consumer Panel") to represent the interests of consumers.

(2) The Authority must appoint one of the members of the Consumer Panel to be its chairman.

(3) The Treasury's approval is required for the appointment or dismissal of the chairman.

(4) The Authority must have regard to any representations made to it by the Consumer Panel.

(5) The Authority must appoint to the Consumer Panel such consumers, or persons representing the interests of consumers, as it considers appropriate.

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(6) The Authority must secure that the membership of the Consumer Panel is such as to give a fair degree of representation to those who are using, or are or may be contemplating using, services otherwise than in connection with businesses carried on by them.

- (7) "Consumers" means persons, other than authorised persons—
- (a) who are consumers for the purposes of section 138; or
 - (b) who, in relation to regulated activities carried on otherwise than by authorised persons, would be consumers for those purposes if the activities were carried on by authorised persons.

11.—(1) This section applies to a representation made, in accordance with arrangements made under section 8, by the Practitioner Panel or by the Consumer Panel.

Duty to consider representations by the Panels.

- (2) The Authority must consider the representation.
- (3) If the Authority disagrees with a view expressed, or proposal made, in the representation, it must give the Panel a statement in writing of its reasons for disagreeing.

Reviews

12.—(1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the Authority has used its resources in discharging its functions.

Reviews.

(2) A review may be limited by the Treasury to such functions of the Authority (however described) as the Treasury may specify in appointing the person to conduct it.

(3) A review is not to be concerned with the merits of the Authority's general policy or principles in pursuing regulatory objectives or in exercising functions under Part VI.

(4) On completion of a review, the person conducting it must make a written report to the Treasury—

- (a) setting out the result of the review; and
- (b) making such recommendations (if any) as he considers appropriate.

(5) A copy of the report must be—

- (a) laid before each House of Parliament; and
- (b) published in such manner as the Treasury consider appropriate.

(6) Any expenses reasonably incurred in the conduct of a review are to be met by the Treasury out of money provided by Parliament.

(7) "Independent" means appearing to the Treasury to be independent of the Authority.

13.—(1) A person conducting a review under section 12—

- (a) has a right of access at any reasonable time to all such documents as he may reasonably require for purposes of the review; and
- (b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.

Right to obtain documents and information.

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(2) Subsection (1) applies only to documents in the custody or under the control of the Authority.

(3) An obligation imposed on a person as a result of the exercise of powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

1988 c. 36.

Inquiries

Cases in which the Treasury may arrange independent inquiries.

14.—(1) This section applies in two cases.

(2) The first is where it appears to the Treasury that—

(a) events have occurred in relation to—

(i) a collective investment scheme, or

(ii) a person who is, or was at the time of the events, carrying on a regulated activity (whether or not as an authorised person),

which posed or could have posed a grave risk to the financial system or caused or risked causing significant damage to the interests of consumers; and

(b) those events might not have occurred, or the risk or damage might have been reduced, but for a serious failure in—

(i) the system established by this Act for the regulation of such schemes or of such persons and their activities; or

(ii) the operation of that system.

(3) The second is where it appears to the Treasury that—

(a) events have occurred in relation to listed securities or an issuer of listed securities which caused or could have caused significant damage to holders of listed securities; and

(b) those events might not have occurred but for a serious failure in the regulatory system established by Part VI or in its operation.

(4) If the Treasury consider that it is in the public interest that there should be an independent inquiry into the events and the circumstances surrounding them, they may arrange for an inquiry to be held under section 15.

(5) “Consumers” means persons—

(a) who are consumers for the purposes of section 138; or

(b) who, in relation to regulated activities carried on otherwise than by authorised persons, would be consumers for those purposes if the activities were carried on by authorised persons.

(6) “The financial system” has the same meaning as in section 3.

(7) “Listed securities” means anything which has been admitted to the official list under Part VI.

Power to appoint person to hold an inquiry.

15.—(1) If the Treasury decide to arrange for an inquiry to be held under this section, they may appoint such person as they consider appropriate to hold the inquiry.

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(2) The Treasury may, by a direction to the appointed person, control—

- (a) the scope of the inquiry;
- (b) the period during which the inquiry is to be held;
- (c) the conduct of the inquiry; and
- (d) the making of reports.

(3) A direction may, in particular—

- (a) confine the inquiry to particular matters;
- (b) extend the inquiry to additional matters;
- (c) require the appointed person to discontinue the inquiry or to take only such steps as are specified in the direction;
- (d) require the appointed person to make such interim reports as are so specified.

16.—(1) The person appointed to hold an inquiry under section 15 may—

- (a) obtain such information from such persons and in such manner as he thinks fit;
- (b) make such inquiries as he thinks fit; and
- (c) determine the procedure to be followed in connection with the inquiry.

Powers of
appointed person
and procedure.

(2) The appointed person may require any person who, in his opinion, is able to provide any information, or produce any document, which is relevant to the inquiry to provide any such information or produce any such document.

(3) For the purposes of an inquiry, the appointed person has the same powers as the court in respect of the attendance and examination of witnesses (including the examination of witnesses abroad) and in respect of the production of documents.

(4) "Court" means—

- (a) the High Court; or
- (b) in Scotland, the Court of Session.

17.—(1) On completion of an inquiry under section 15, the person holding the inquiry must make a written report to the Treasury—

- (a) setting out the result of the inquiry; and
- (b) making such recommendations (if any) as he considers appropriate.

Conclusion of
inquiry.

(2) The Treasury may publish the whole, or any part, of the report and may do so in such manner as they consider appropriate.

(3) Subsection (4) applies if the Treasury propose to publish a report but consider that it contains material—

- (a) which relates to the affairs of a particular person whose interests would, in the opinion of the Treasury, be seriously prejudiced by publication of the material; or
- (b) the disclosure of which would be incompatible with an international obligation of the United Kingdom.

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(4) The Treasury must ensure that the material is removed before publication.

(5) The Treasury must lay before each House of Parliament a copy of any report or part of a report published under subsection (2).

(6) Any expenses reasonably incurred in holding an inquiry are to be met by the Treasury out of money provided by Parliament.

Obstruction and
contempt.

18.—(1) If a person (“A”)—

(a) fails to comply with a requirement imposed on him by a person holding an inquiry under section 15, or

(b) otherwise obstructs such an inquiry,

the person holding the inquiry may certify the matter to the High Court (or, in Scotland, the Court of Session).

(2) The court may enquire into the matter.

(3) If, after hearing—

(a) any witnesses who may be produced against or on behalf of A, and

(b) any statement made by or on behalf of A,

the court is satisfied that A would have been in contempt of court if the inquiry had been proceedings before the court, it may deal with him as if he were in contempt.

PART II

REGULATED AND PROHIBITED ACTIVITIES

The general prohibition

The general
prohibition.

19.—(1) No person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is—

(a) an authorised person; or

(b) an exempt person.

(2) The prohibition is referred to in this Act as the general prohibition.

Requirement for permission

Authorised
persons acting
without
permission.

20.—(1) If an authorised person carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission—

(a) given to him by the Authority under Part IV, or

(b) resulting from any other provision of this Act,

he is to be taken to have contravened a requirement imposed on him by the Authority under this Act.

(2) The contravention does not—

(a) make a person guilty of an offence;

(b) make any transaction void or unenforceable; or

(c) (subject to subsection (3)) give rise to any right of action for breach of statutory duty.

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(3) In prescribed cases the contravention is actionable at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

Financial promotion

21.—(1) A person (“A”) must not, in the course of business, communicate an invitation or inducement to engage in investment activity.

Restrictions on
financial
promotion.

(2) But subsection (1) does not apply if—

- (a) A is an authorised person; or
- (b) the content of the communication is approved for the purposes of this section by an authorised person.

(3) In the case of a communication originating outside the United Kingdom, subsection (1) applies only if the communication is capable of having an effect in the United Kingdom.

(4) The Treasury may by order specify circumstances in which a person is to be regarded for the purposes of subsection (1) as—

- (a) acting in the course of business;
- (b) not acting in the course of business.

(5) The Treasury may by order specify circumstances (which may include compliance with financial promotion rules) in which subsection (1) does not apply.

(6) An order under subsection (5) may, in particular, provide that subsection (1) does not apply in relation to communications—

- (a) of a specified description;
- (b) originating in a specified country or territory outside the United Kingdom;
- (c) originating in a country or territory which falls within a specified description of country or territory outside the United Kingdom; or
- (d) originating outside the United Kingdom.

(7) The Treasury may by order repeal subsection (3).

(8) “Engaging in investment activity” means—

- (a) entering or offering to enter into an agreement the making or performance of which by either party constitutes a controlled activity; or
- (b) exercising any rights conferred by a controlled investment to acquire, dispose of, underwrite or convert a controlled investment.

(9) An activity is a controlled activity if—

- (a) it is an activity of a specified kind or one which falls within a specified class of activity; and
- (b) it relates to an investment of a specified kind, or to one which falls within a specified class of investment.

(10) An investment is a controlled investment if it is an investment of a specified kind or one which falls within a specified class of investment.

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(11) Schedule 2 (except paragraph 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 powers conferred by subsection (9) or (10).

(13) "Communicate" includes causing a communication to be made.

(14) "Investment" includes any asset, right or interest.

(15) "Specified" means specified in an order made by the Treasury.

Regulated activities

The classes of activity and categories of investment.

22.—(1) An activity is a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and—

(a) relates to an investment of a specified kind; or

(b) in the case of an activity of a kind which is also specified for the purposes of this paragraph, is carried on in relation to property of any kind.

(2) Schedule 2 makes provision supplementing this section.

(3) Nothing in Schedule 2 limits the powers conferred by subsection (1).

(4) "Investment" includes any asset, right or interest.

(5) "Specified" means specified in an order made by the Treasury.

Offences

Contravention of the general prohibition.

23.—(1) A person who contravenes the general prohibition is guilty of an offence and 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 two years or a fine, or both.

(2) In this Act "an authorisation offence" means an offence under this section.

(3) In proceedings for an authorisation offence it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

False claims to be authorised or exempt.

24.—(1) A person who is neither an authorised person nor, in relation to the regulated activity in question, an exempt person is guilty of an offence if he—

(a) describes himself (in whatever terms) as an authorised person;

(b) describes himself (in whatever terms) as an exempt person in relation to the regulated activity; or

(c) behaves, or otherwise holds himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is—

(i) an authorised person; or

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(ii) an exempt person in relation to the regulated activity.

(2) In proceedings for an offence under this section it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.

(4) But where the conduct constituting the offence involved or included the public display of any material, the maximum fine for the offence is level 5 on the standard scale multiplied by the number of days for which the display continued.

25.—(1) A person who contravenes section 21(1) is guilty of an offence and liable— Contravention of section 21.

(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 two years or a fine, or both.

(2) In proceedings for an offence under this section it is a defence for the accused to show—

(a) that he believed on reasonable grounds that the content of the communication was prepared, or approved for the purposes of section 21, by an authorised person; or

(b) that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Enforceability of agreements

26.—(1) An agreement made by a person in the course of carrying on a regulated activity in contravention of the general prohibition is unenforceable against the other party. Agreements made by unauthorised persons.

(2) The other party is entitled to recover—

(a) any money or other property paid or transferred by him under the agreement; and

(b) compensation for any loss sustained by him as a result of having parted with it.

(3) “Agreement” means an agreement—

(a) made after this section comes into force; and

(b) the making or performance of which constitutes, or is part of, the regulated activity in question.

(4) This section does not apply if the regulated activity is accepting deposits.

27.—(1) An agreement made by an authorised person (“the provider”)— Agreements made through unauthorised persons.

(a) in the course of carrying on a regulated activity (not in contravention of the general prohibition), but

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- (b) in consequence of something said or done by another person (“the third party”) in the course of a regulated activity carried on by the third party in contravention of the general prohibition,

is unenforceable against the other party.

(2) The other party is entitled to recover—

- (a) any money or other property paid or transferred by him under the agreement; and
 (b) compensation for any loss sustained by him as a result of having parted with it.

(3) “Agreement” means an agreement—

- (a) made after this section comes into force; and
 (b) the making or performance of which constitutes, or is part of, the regulated activity in question carried on by the provider.

(4) This section does not apply if the regulated activity is accepting deposits.

Agreements made unenforceable by section 26 or 27.

28.—(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.

(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

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- (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.

29.—(1) This section applies to an agreement between a person (“the depositor”) and another person (“the deposit-taker”) made in the course of the carrying on by the deposit-taker of accepting deposits in contravention of the general prohibition.

Accepting deposits in breach of general prohibition.

(2) If the depositor is not entitled under the agreement to recover without delay any money deposited by him, he may apply to the court for an order directing the deposit-taker to return the money to him.

(3) The court need not make such an order if it is satisfied that it would not be just and equitable for the money deposited to be returned, having regard to the issue mentioned in subsection (4).

(4) The issue is whether the deposit-taker reasonably believed that he was not contravening the general prohibition by making the agreement.

(5) “Agreement” means an agreement—

- (a) made after this section comes into force; and
(b) the making or performance of which constitutes, or is part of, accepting deposits.

30.—(1) In this section—

“unlawful communication” means a communication in relation to which there has been a contravention of section 21(1);

“controlled agreement” means an agreement the making or performance of which by either party constitutes a controlled activity for the purposes of that section; and

“controlled investment” has the same meaning as in section 21.

Enforceability of agreements resulting from unlawful communications.

(2) If in consequence of an unlawful communication a person enters as a customer into a controlled agreement, it is unenforceable against him and he is entitled to recover—

- (a) any money or other property paid or transferred by him under the agreement; and
(b) compensation for any loss sustained by him as a result of having parted with it.

(3) If in consequence of an unlawful communication a person exercises any rights conferred by a controlled investment, no obligation to which he is subject as a result of exercising them is enforceable against him and he is entitled to recover—

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- (a) any money or other property paid or transferred by him under the obligation; and
- (b) compensation for any loss sustained by him as a result of having parted with it.

(4) But the court may allow—

- (a) the agreement or obligation to be enforced, or
- (b) money or property paid or transferred under the agreement or obligation to be retained,

if it is satisfied that it is just and equitable in the circumstances of the case.

(5) In considering whether to allow the agreement or obligation 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 have regard to the issues mentioned in subsections (6) and (7).

(6) If the applicant made the unlawful communication, the issue is whether he reasonably believed that he was not making such a communication.

(7) If the applicant did not make the unlawful communication, the issue is whether he knew that the agreement was entered into in consequence of such a communication.

(8) “Applicant” means the person seeking to enforce the agreement or obligation or retain the money or property paid or transferred.

(9) Any reference to making a communication includes causing a communication to be made.

(10) The amount of compensation recoverable as a result of subsection (2) or (3) is—

- (a) the amount agreed between the parties; or
- (b) on the application of either party, the amount determined by the court.

(11) If a person elects not to perform an agreement or an obligation which (by virtue of subsection (2) or (3)) is unenforceable against him, he must repay any money and return any other property received by him under the agreement.

(12) If (by virtue of subsection (2) or (3)) a person recovers money paid or property transferred by him under an agreement or obligation, he must repay any money and return any other property received by him as a result of exercising the rights in question.

(13) If any property required to be returned under this section has passed to a third party, references to that property are to be read as references to its value at the time of its receipt by the person required to return it.

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PART III

AUTHORISATION AND EXEMPTION

Authorisation

31.—(1) The following persons are authorised for the purposes of this Act— Authorised persons.

- (a) a person who has a Part IV permission to carry on one or more regulated activities;
- (b) an EEA firm qualifying for authorisation under Schedule 3;
- (c) a Treaty firm qualifying for authorisation under Schedule 4;
- (d) a person who is otherwise authorised by a provision of, or made under, this Act.

(2) In this Act “authorised person” means a person who is authorised for the purposes of this Act.

32.—(1) If a firm is authorised—

- (a) it is authorised to carry on the regulated activities concerned in the name of the firm; and
- (b) its authorisation is not affected by any change in its membership.

Partnerships and unincorporated associations.

(2) If an authorised firm is dissolved, its authorisation continues to have effect in relation to any firm which succeeds to the business of the dissolved firm.

(3) For the purposes of this section, a firm is to be regarded as succeeding to the business of another firm only if—

- (a) the members of the resulting firm are substantially the same as those of the former firm; and
- (b) succession is to the whole or substantially the whole of the business of the former firm.

(4) “Firm” means—

- (a) a partnership; or
- (b) an unincorporated association of persons.

(5) “Partnership” does not include a partnership which is constituted under the law of any place outside the United Kingdom and is a body corporate.

Ending of authorisation

33.—(1) This section applies if—

- (a) an authorised person’s Part IV permission is cancelled; and
- (b) as a result, there is no regulated activity for which he has permission.

Withdrawal of authorisation by the Authority.

(2) The Authority must give a direction withdrawing that person’s status as an authorised person.

34.—(1) An EEA firm ceases to qualify for authorisation under Part II of Schedule 3 if it ceases to be an EEA firm as a result of— EEA firms.

- (a) having its EEA authorisation withdrawn; or

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(b) ceasing to have an EEA right in circumstances in which EEA authorisation is not required.

(2) At the request of an EEA firm, the Authority may give a direction cancelling its authorisation under Part II of Schedule 3.

(3) If an EEA firm has a Part IV permission, it does not cease to be an authorised person merely because it ceases to qualify for authorisation under Part II of Schedule 3.

Treaty firms.

35.—(1) A Treaty firm ceases to qualify for authorisation under Schedule 4 if its home State authorisation is withdrawn.

(2) At the request of a Treaty firm, the Authority may give a direction cancelling its Schedule 4 authorisation.

(3) If a Treaty firm has a Part IV permission, it does not cease to be an authorised person merely because it ceases to qualify for authorisation under Schedule 4.

Persons authorised as a result of paragraph 1(1) of Schedule 5.

36.—(1) At the request of a person authorised as a result of paragraph 1(1) of Schedule 5, the Authority may give a direction cancelling his authorisation as such a person.

(2) If a person authorised as a result of paragraph 1(1) of Schedule 5 has a Part IV permission, he does not cease to be an authorised person merely because he ceases to be a person so authorised.

Exercise of EEA rights by UK firms

Exercise of EEA rights by UK firms.

37. Part III of Schedule 3 makes provision in relation to the exercise outside the United Kingdom of EEA rights by UK firms.

Exemption

Exemption orders.

38.—(1) The Treasury may by order (“an exemption order”) provide for—

- (a) specified persons, or
- (b) persons falling within a specified class,

to be exempt from the general prohibition.

(2) But a person cannot be an exempt person as a result of an exemption order if he has a Part IV permission.

(3) An exemption order may provide for an exemption to have effect—

- (a) in respect of all regulated activities;
- (b) in respect of one or more specified regulated activities;
- (c) only in specified circumstances;
- (d) only in relation to specified functions;
- (e) subject to conditions.

(4) “Specified” means specified by the exemption order.

Exemption of appointed representatives.

39.—(1) If a person (other than an authorised person)—

- (a) is a party to a contract with an authorised person (“his principal”) which—

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(i) permits or requires him to carry on business of a prescribed description, and

(ii) complies with such requirements as may be prescribed, and

(b) is someone for whose activities in carrying on the whole or part of that business his principal has accepted responsibility in writing,

he is exempt from the general prohibition in relation to any regulated activity comprised in the carrying on of that business for which his principal has accepted responsibility.

(2) A person who is exempt as a result of subsection (1) is referred to in this Act as an appointed representative.

(3) The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility.

(4) In determining whether an authorised person has complied with a provision contained in or made under this Act, anything which a relevant person has done or omitted as respects business for which the authorised person has accepted responsibility is to be treated as having been done or omitted by the authorised person.

(5) "Relevant person" means a person who at the material time is or was an appointed representative by virtue of being a party to a contract with the authorised person.

(6) Nothing in subsection (4) is to cause the knowledge or intentions of an appointed representative to be attributed to his principal for the purpose of determining whether the principal has committed an offence, unless in all the circumstances it is reasonable for them to be attributed to him.

PART IV

PERMISSION TO CARRY ON REGULATED ACTIVITIES

Application for permission

40.—(1) An application for permission to carry on one or more regulated activities may be made to the Authority by— Application for permission.

- (a) an individual;
- (b) a body corporate;
- (c) a partnership; or
- (d) an unincorporated association.

(2) An authorised person may not apply for permission under this section if he has a permission—

- (a) given to him by the Authority under this Part, or
- (b) having effect as if so given,

which is in force.

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(3) An EEA firm may not apply for permission under this section to carry on a regulated activity which it is, or would be, entitled to carry on in exercise of an EEA right, whether through a United Kingdom branch or by providing services in the United Kingdom.

(4) A permission given by the Authority under this Part or having effect as if so given is referred to in this Act as “a Part IV permission”.

The threshold conditions.

41.—(1) “The threshold conditions”, in relation to a regulated activity, means the conditions set out in Schedule 6.

(2) In giving or varying permission, or imposing or varying any requirement, under this Part the Authority must ensure that the person concerned will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which he has or will have permission.

(3) But the duty imposed by subsection (2) does not prevent the Authority, having due regard to that duty, from taking such steps as it considers are necessary, in relation to a particular authorised person, in order to secure its regulatory objective of the protection of consumers.

Permission

Giving permission.

42.—(1) “The applicant” means an applicant for permission under section 40.

(2) The Authority may give permission for the applicant to carry on the regulated activity or activities to which his application relates or such of them as may be specified in the permission.

(3) If the applicant—

- (a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 39(1) or an order made under section 38(1), but
- (b) has applied for permission in relation to another regulated activity,

the application is to be treated as relating to all the regulated activities which, if permission is given, he will carry on.

(4) If the applicant—

- (a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 285(2) or (3), but
- (b) has applied for permission in relation to another regulated activity,

the application is to be treated as relating only to that other regulated activity.

(5) If the applicant—

- (a) is a person to whom, in relation to a particular regulated activity, the general prohibition does not apply as a result of Part XIX, but
- (b) has applied for permission in relation to another regulated activity,

the application is to be treated as relating only to that other regulated activity.

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(6) If it gives permission, the Authority must specify the permitted regulated activity or activities, described in such manner as the Authority considers appropriate.

(7) The Authority may—

- (a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;
- (b) specify a narrower or wider description of regulated activity than that to which the application relates;
- (c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates.

43.—(1) A Part IV permission may include such requirements as the Authority considers appropriate. Imposition of requirements.

(2) A requirement may, in particular, be imposed—

- (a) so as to require the person concerned to take specified action; or
- (b) so as to require him to refrain from taking specified action.

(3) A requirement may extend to activities which are not regulated activities.

(4) A requirement may be imposed by reference to the person's relationship with—

- (a) his group; or
- (b) other members of his group.

(5) A requirement expires at the end of such period as the Authority may specify in the permission.

(6) But subsection (5) does not affect the Authority's powers under section 44 or 45.

Variation and cancellation of Part IV permission

44.—(1) The Authority may, on the application of an authorised person with a Part IV permission, vary the permission by— Variation etc. at request of authorised person.

- (a) adding a regulated activity to those for which it gives permission;
- (b) removing a regulated activity from those for which it gives permission;
- (c) varying the description of a regulated activity for which it gives permission;
- (d) cancelling a requirement imposed under section 43; or
- (e) varying such a requirement.

(2) The Authority may, on the application of an authorised person with a Part IV permission, cancel the permission.

(3) The Authority may refuse an application under this section if it appears to it—

- (a) that the interests of consumers, or potential consumers, would be adversely affected if the application were to be granted; and

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(b) that it is desirable in the interests of consumers, or potential consumers, for the application to be refused.

(4) If, as a result of a variation of a Part IV permission under this section, there are no longer any regulated activities for which the authorised person concerned has permission, the Authority must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

(5) The Authority's power to vary a Part IV permission under this section extends to including any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40.

Variation etc. on the Authority's own initiative.

45.—(1) The Authority may exercise its power under this section in relation to an authorised person if it appears to it that—

- (a) he is failing, or is likely to fail, to satisfy the threshold conditions;
- (b) he has failed, during a period of at least 12 months, to carry on a regulated activity for which he has a Part IV permission; or
- (c) it is desirable to exercise that power in order to protect the interests of consumers or potential consumers.

(2) The Authority's power under this section is the power to vary a Part IV permission in any of the ways mentioned in section 44(1) or to cancel it.

(3) If, as a result of a variation of a Part IV permission under this section, there are no longer any regulated activities for which the authorised person concerned has permission, the Authority must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

(4) The Authority's power to vary a Part IV permission under this section extends to including any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40.

(5) The Authority's power under this section is referred to in this Part as its own-initiative power.

Variation of permission on acquisition of control.

46.—(1) This section applies if it appears to the Authority that—

- (a) a person has acquired control over a UK authorised person who has a Part IV permission; but
- (b) there are no grounds for exercising its own-initiative power.

(2) If it appears to the Authority that the likely effect of the acquisition of control on the authorised person, or on any of its activities, is uncertain the Authority may vary the authorised person's permission by—

- (a) imposing a requirement of a kind that could be imposed under section 43 on giving permission; or
- (b) varying a requirement included in the authorised person's permission under that section.

(3) Any reference to a person having acquired control is to be read in accordance with Part XII.

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Exercise of power
in support of
overseas
regulator.

47.—(1) The Authority's own-initiative power may be exercised in respect of an authorised person at the request of, or for the purpose of assisting, a regulator who is—

- (a) outside the United Kingdom; and
- (b) of a prescribed kind.

(2) Subsection (1) applies whether or not the Authority has powers which are exercisable in relation to the authorised person by virtue of any provision of Part XIII.

(3) If a request to the Authority for the exercise of its own-initiative power has been made by a regulator who is—

- (a) outside the United Kingdom,
- (b) of a prescribed kind, and
- (c) acting in pursuance of provisions of a prescribed kind,

the Authority must, in deciding whether or not to exercise that power in response to the request, consider whether it is necessary to do so in order to comply with a Community obligation.

(4) In deciding in any case in which the Authority does not consider that the exercise of its own-initiative power is necessary in order to comply with a Community obligation, it may take into account in particular—

- (a) whether in the country or territory of the regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;
- (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
- (c) the seriousness of the case and its importance to persons in the United Kingdom;
- (d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(5) The Authority may decide not to exercise its own-initiative power, in response to a request, unless the regulator concerned undertakes to make such contribution towards the cost of its exercise as the Authority considers appropriate.

(6) Subsection (5) does not apply if the Authority decides that it is necessary for it to exercise its own-initiative power in order to comply with a Community obligation.

(7) In subsections (4) and (5) "request" means a request of a kind mentioned in subsection (1).

48.—(1) This section applies if the Authority—

- (a) on giving a person a Part IV permission, imposes an assets requirement on him; or
- (b) varies an authorised person's Part IV permission so as to alter an assets requirement imposed on him or impose such a requirement on him.

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restrictions.

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(2) A person on whom an assets requirement is imposed is referred to in this section as “A”.

(3) “Assets requirement” means a requirement under section 43—

(a) prohibiting the disposal of, or other dealing with, any of A’s assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings; or

(b) that all or any of A’s assets, or all or any assets belonging to consumers but held by A or to his order, must be transferred to and held by a trustee approved by the Authority.

(4) If the Authority—

(a) imposes a requirement of the kind mentioned in subsection (3)(a), and

(b) gives notice of the requirement to any institution with whom A keeps an account,

the notice has the effects mentioned in subsection (5).

(5) Those effects are that—

(a) the institution does not act in breach of any contract with A if, having been instructed by A (or on his behalf) to transfer any sum or otherwise make any payment out of A’s account, it refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the requirement; and

(b) if the institution complies with such an instruction, it is liable to pay to the Authority an amount equal to the amount transferred from, or otherwise paid out of, A’s account in contravention of the requirement.

(6) If the Authority imposes a requirement of the kind mentioned in subsection (3)(b), no assets held by a person as trustee in accordance with the requirement may, while the requirement is in force, be released or dealt with except with the consent of the Authority.

(7) If, while a requirement of the kind mentioned in subsection (3)(b) is in force, A creates a charge over any assets of his held in accordance with the requirement, the charge is (to the extent that it confers security over the assets) void against the liquidator and any of A’s creditors.

(8) Assets held by a person as trustee (“T”) are to be taken to be held by T in accordance with a requirement mentioned in subsection (3)(b) only if—

(a) A has given T written notice that those assets are to be held by T in accordance with the requirement; or

(b) they are assets into which assets to which paragraph (a) applies have been transposed by T on the instructions of A.

(9) A person who contravenes subsection (6) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) “Charge” includes a mortgage (or in Scotland a security over property).

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(11) Subsections (6) and (8) do not affect any equitable interest or remedy in favour of a person who is a beneficiary of a trust as a result of a requirement of the kind mentioned in subsection (3)(b).

Connected persons

49.—(1) In considering—

- (a) an application for a Part IV permission, or
- (b) whether to vary or cancel a Part IV permission,

Persons connected with an applicant.

the Authority may have regard to any person appearing to it to be, or likely to be, in a relationship with the applicant or person given permission which is relevant.

(2) Before—

- (a) giving permission in response to an application made by a person who is connected with an EEA firm, or
- (b) cancelling or varying any permission given by the Authority to such a person,

the Authority must consult the firm's home state regulator.

(3) A person ("A") is connected with an EEA firm if—

- (a) A is a subsidiary undertaking of the firm; or
- (b) A is a subsidiary undertaking of a parent undertaking of the firm.

Additional permissions

50.—(1) "Additional Part IV permission" means a Part IV permission which is in force in relation to an EEA firm, a Treaty firm or a person authorised as a result of paragraph 1(1) of Schedule 5.

Authority's duty to consider other permissions etc.

(2) If the Authority is considering whether, and if so how, to exercise its own-initiative power under this Part in relation to an additional Part IV permission, it must take into account—

- (a) the home State authorisation of the authorised person concerned;
- (b) any relevant directive; and
- (c) relevant provisions of the Treaty.

Procedure

51.—(1) An application for a Part IV permission must—

- (a) contain a statement of the regulated activity or regulated activities which the applicant proposes to carry on and for which he wishes to have permission; and
- (b) give the address of a place in the United Kingdom for service on the applicant of any notice or other document which is required or authorised to be served on him under this Act.

Applications under this Part.

(2) An application for the variation of a Part IV permission must contain a statement—

- (a) of the desired variation; and
- (b) of the regulated activity or regulated activities which the applicant proposes to carry on if his permission is varied.

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- (3) Any application under this Part must—
- (a) be made in such manner as the Authority may direct; and
 - (b) contain, or be accompanied by, such other information as the Authority may reasonably require.

(4) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(6) The Authority may require an applicant to provide information which he is required to provide under this section in such form, or to verify it in such a way, as the Authority may direct.

Determination of applications.

52.—(1) An application under this Part must be determined by the Authority before the end of the period of six months beginning with the date on which it received the completed application.

(2) The Authority may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it received the application.

(3) The applicant may withdraw his application, by giving the Authority written notice, at any time before the Authority determines it.

(4) If the Authority grants an application for, or for variation of, a Part IV permission, it must give the applicant written notice.

(5) The notice must state the date from which the permission, or the variation, has effect.

(6) If the Authority proposes—

- (a) to give a Part IV permission but to exercise its power under section 42(7)(a) or (b) or 43(1), or
- (b) to vary a Part IV permission on the application of an authorised person but to exercise its power under any of those provisions (as a result of section 44(5)),

it must give the applicant a warning notice.

(7) If the Authority proposes to refuse an application made under this Part, it must (unless subsection (8) applies) give the applicant a warning notice.

(8) This subsection applies if it appears to the Authority that—

- (a) the applicant is an EEA firm; and
- (b) the application is made with a view to carrying on a regulated activity in a manner in which the applicant is, or would be, entitled to carry on that activity in the exercise of an EEA right whether through a United Kingdom branch or by providing services in the United Kingdom.

(9) If the Authority decides—

- (a) to give a Part IV permission but to exercise its power under section 42(7)(a) or (b) or 43(1),

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(b) to vary a Part IV permission on the application of an authorised person but to exercise its power under any of those provisions (as a result of section 44(5)), or

(c) to refuse an application under this Part,

it must give the applicant a decision notice.

53.—(1) This section applies to an exercise of the Authority's own-initiative power to vary an authorised person's Part IV permission.

Exercise of own-initiative power: procedure.

(2) A variation takes effect—

(a) immediately, if the notice given under subsection (4) states that that is the case;

(b) on such date as may be specified in the notice; or

(c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(3) A variation may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the variation to take effect immediately (or on that date).

(4) If the Authority proposes to vary the Part IV permission, or varies it with immediate effect, it must give the authorised person written notice.

(5) The notice must—

(a) give details of the variation;

(b) state the Authority's reasons for the variation and for its determination as to when the variation takes effect;

(c) inform the authorised person that he may make representations to the Authority within such period as may be specified in the notice (whether or not he has referred the matter to the Tribunal);

(d) inform him of when the variation takes effect; and

(e) inform him of his right to refer the matter to the Tribunal.

(6) The Authority may extend the period allowed under the notice for making representations.

(7) If, having considered any representations made by the authorised person, the Authority decides—

(a) to vary the permission in the way proposed, or

(b) if the permission has been varied, not to rescind the variation,

it must give him written notice.

(8) If, having considered any representations made by the authorised person, the Authority decides—

(a) not to vary the permission in the way proposed,

(b) to vary the permission in a different way, or

(c) to rescind a variation which has effect,

it must give him written notice.

(9) A notice given under subsection (7) must inform the authorised person of his right to refer the matter to the Tribunal.

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(10) A notice under subsection (8)(b) must comply with subsection (5).

(11) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(12) For the purposes of subsection (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

Cancellation of Part IV permission: procedure.

54.—(1) If the Authority proposes to cancel an authorised person's Part IV permission otherwise than at his request, it must give him a warning notice.

(2) If the Authority decides to cancel an authorised person's Part IV permission otherwise than at his request, it must give him a decision notice.

References to the Tribunal

Right to refer matters to the Tribunal.

55.—(1) An applicant who is aggrieved by the determination of an application made under this Part may refer the matter to the Tribunal.

(2) An authorised person who is aggrieved by the exercise of the Authority's own-initiative power may refer the matter to the Tribunal.

PART V

PERFORMANCE OF REGULATED ACTIVITIES

Prohibition orders

Prohibition orders.

56.—(1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

(2) The Authority may make an order ("a prohibition order") prohibiting the individual from performing a specified function, any function falling within a specified description or any function.

(3) A prohibition order may relate to—

- (a) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;
- (b) authorised persons generally or any person within a specified class of authorised person.

(4) An individual who performs or agrees to perform a function in breach of a prohibition order is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In proceedings for an offence under subsection (4) it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(6) An authorised person must take reasonable care to ensure that no function of his, in relation to the carrying on of a regulated activity, is performed by a person who is prohibited from performing that function by a prohibition order.

(7) The Authority may, on the application of the individual named in a prohibition order, vary or revoke it.

(8) This section applies to the performance of functions in relation to a regulated activity carried on by—

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- (a) a person who is an exempt person in relation to that activity, and
- (b) a person to whom, as a result of Part XX, the general prohibition does not apply in relation to that activity,

as it applies to the performance of functions in relation to a regulated activity carried on by an authorised person.

- (9) "Specified" means specified in the prohibition order.

57.—(1) If the Authority proposes to make a prohibition order it must give the individual concerned a warning notice.

Prohibition orders: procedure and right to refer to Tribunal.

- (2) The warning notice must set out the terms of the prohibition.

(3) If the Authority decides to make a prohibition order it must give the individual concerned a decision notice.

- (4) The decision notice must—

- (a) name the individual to whom the prohibition order applies;
- (b) set out the terms of the order; and
- (c) be given to the individual named in the order.

(5) A person against whom a decision to make a prohibition order is made may refer the matter to the Tribunal.

58.—(1) This section applies to an application for the variation or revocation of a prohibition order.

Applications relating to prohibitions: procedure and right to refer to Tribunal.

(2) If the Authority decides to grant the application, it must give the applicant written notice of its decision.

(3) If the Authority proposes to refuse the application, it must give the applicant a warning notice.

(4) If the Authority decides to refuse the application, it must give the applicant a decision notice.

(5) If the Authority gives the applicant a decision notice, he may refer the matter to the Tribunal.

Approval

59.—(1) An authorised person ("A") must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by A in relation to the carrying on by A of a regulated activity, unless the Authority approves the performance by that person of the controlled function to which the arrangement relates.

Approval for particular arrangements.

(2) An authorised person ("A") must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by a contractor of A in relation to the carrying on by A of a regulated activity, unless the Authority approves the performance by that person of the controlled function to which the arrangement relates.

(3) "Controlled function" means a function of a description specified in rules.

(4) The Authority may specify a description of function under subsection (3) only if, in relation to the carrying on of a regulated activity by an authorised person, it is satisfied that the first, second or third condition is met.

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(5) The first condition is that the function is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the authorised person's affairs, so far as relating to the regulated activity.

(6) The second condition is that the function will involve the person performing it in dealing with customers of the authorised person in a manner substantially connected with the carrying on of the regulated activity.

(7) The third condition is that the function will involve the person performing it in dealing with property of customers of the authorised person in a manner substantially connected with the carrying on of the regulated activity.

(8) Neither subsection (1) nor subsection (2) applies to an arrangement which allows a person to perform a function if the question of whether he is a fit and proper person to perform the function is reserved under any of the single market directives to an authority in a country or territory outside the United Kingdom.

(9) In determining whether the first condition is met, the Authority may take into account the likely consequences of a failure to discharge that function properly.

(10) "Arrangement"—

- (a) means any kind of arrangement for the performance of a function of A which is entered into by A or any contractor of his with another person; and
- (b) includes, in particular, that other person's appointment to an office, his becoming a partner or his employment (whether under a contract of service or otherwise).

(11) "Customer", in relation to an authorised person, means a person who is using, or who is or may be contemplating using, any of the services provided by the authorised person.

Applications for approval.

60.—(1) An application for the Authority's approval under section 59 may be made by the authorised person concerned.

(2) The application must—

- (a) be made in such manner as the Authority may direct; and
- (b) contain, or be accompanied by, such information as the Authority may reasonably require.

(3) At any time after receiving the application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) The Authority may require an applicant to present information which he is required to give under this section in such form, or to verify it in such a way, as the Authority may direct.

(5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(6) "The authorised person concerned" includes a person who has applied for permission under Part IV and will be the authorised person concerned if permission is given.

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PART V
Determination of
applications.

61.—(1) The Authority may grant an application made under section 60 only if it is satisfied that the person in respect of whom the application is made (“the candidate”) is a fit and proper person to perform the function to which the application relates.

(2) In deciding that question, the Authority may have regard (among other things) to whether the candidate, or any person who may perform a function on his behalf—

- (a) has obtained a qualification,
- (b) has undergone, or is undergoing, training, or
- (c) possesses a level of competence,

required by general rules in relation to persons performing functions of the kind to which the application relates.

(3) The Authority must, before the end of the period of three months beginning with the date on which it receives an application made under section 60 (“the period for consideration”), determine whether—

- (a) to grant the application; or
- (b) to give a warning notice under section 62(2).

(4) If the Authority imposes a requirement under section 60(3), the period for consideration stops running on the day on which the requirement is imposed but starts running again—

- (a) on the day on which the required information is received by the Authority; or
- (b) if the information is not provided on a single day, on the last of the days on which it is received by the Authority.

(5) A person who makes an application under section 60 may withdraw his application by giving written notice to the Authority at any time before the Authority determines it, but only with the consent of—

- (a) the candidate; and
- (b) the person by whom the candidate is to be retained to perform the function concerned, if not the applicant.

62.—(1) If the Authority decides to grant an application made under section 60 (“an application”), it must give written notice of its decision to each of the interested parties.

Applications for
approval:
procedure and
right to refer to
Tribunal.

(2) If the Authority proposes to refuse an application, it must give a warning notice to each of the interested parties.

(3) If the Authority decides to refuse an application, it must give a decision notice to each of the interested parties.

(4) If the Authority decides to refuse an application, each of the interested parties may refer the matter to the Tribunal.

(5) “The interested parties”, in relation to an application, are—

- (a) the applicant;
- (b) the person in respect of whom the application is made (“A”); and
- (c) the person by whom A’s services are to be retained, if not the applicant.

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PART V
Withdrawal of
approval.

63.—(1) The Authority may withdraw an approval given under section 59 if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.

(2) When considering whether to withdraw its approval, the Authority may take into account any matter which it could take into account if it were considering an application made under section 60 in respect of the performance of the function to which the approval relates.

(3) If the Authority proposes to withdraw its approval, it must give each of the interested parties a warning notice.

(4) If the Authority decides to withdraw its approval, it must give each of the interested parties a decision notice.

(5) If the Authority decides to withdraw its approval, each of the interested parties may refer the matter to the Tribunal.

(6) “The interested parties”, in relation to an approval, are—

- (a) the person on whose application it was given (“A”);
- (b) the person in respect of whom it was given (“B”); and
- (c) the person by whom B’s services are retained, if not A.

Conduct

Conduct:
statements and
codes.

64.—(1) The Authority may issue statements of principle with respect to the conduct expected of approved persons.

(2) If the Authority issues a statement of principle under subsection (1), it must also issue a code of practice for the purpose of helping to determine whether or not a person’s conduct complies with the statement of principle.

(3) A code issued under subsection (2) may specify—

- (a) descriptions of conduct which, in the opinion of the Authority, comply with a statement of principle;
- (b) descriptions of conduct which, in the opinion of the Authority, do not comply with a statement of principle;
- (c) factors which, in the opinion of the Authority, are to be taken into account in determining whether or not a person’s conduct complies with a statement of principle.

(4) The Authority may at any time alter or replace a statement or code issued under this section.

(5) If a statement or code is altered or replaced, the altered or replacement statement or code must be issued by the Authority.

(6) A statement or code 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.

(7) A code published under this section and in force at the time when any particular conduct takes place may be relied on so far as it tends to establish whether or not that conduct complies with a statement of principle.

(8) Failure to comply with a statement of principle under this section does not of itself give rise to any right of action by persons affected or affect the validity of any transaction.

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(9) A person is not to be taken to have failed to comply with a statement of principle if he shows that, at the time of the alleged failure, it or its associated code of practice had not been published.

(10) The Authority must, without delay, give the Treasury a copy of any statement or code which it publishes under this section.

(11) The power under this section to issue statements of principle and codes of practice—

- (a) includes power to make different provision in relation to persons, cases or circumstances of different descriptions; and
- (b) is to be treated for the purposes of section 2(4)(a) as part of the Authority's rule-making functions.

(12) The Authority may charge a reasonable fee for providing a person with a copy of a statement or code published under this section.

(13) "Approved person" means a person in relation to whom the Authority has given its approval under section 59.

65.—(1) Before issuing a statement or code under section 64, the Authority must publish a draft of it in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

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codes: procedure.

(2) The draft must be accompanied by —

- (a) a cost benefit analysis; and
- (b) notice that representations about the proposal may be made to the Authority within a specified time.

(3) Before issuing the proposed statement or code, the Authority must have regard to any representations made to it in accordance with subsection (2)(b).

(4) If the Authority issues the proposed statement or code it must publish an account, in general terms, of—

- (a) the representations made to it in accordance with subsection (2)(b); and
- (b) its response to them.

(5) If the statement or code differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant—

- (a) the Authority must (in addition to complying with subsection (4)) publish details of the difference; and
- (b) those details must be accompanied by a cost benefit analysis.

(6) Neither subsection (2)(a) nor subsection (5)(b) applies if the Authority considers—

- (a) that, making the appropriate comparison, there will be no increase in costs; or
- (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.

(7) Subsections (1) to (6) do not apply if the Authority considers that the delay involved in complying with them would prejudice the interests of consumers.

(8) A statement or code must state that it is issued under section 64.

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PART V

(9) The Authority may charge a reasonable fee for providing a copy of a draft published under subsection (1).

(10) This section also applies to a proposal to alter or replace a statement or code.

(11) "Cost benefit analysis" means an estimate of the costs together with an analysis of the benefits that will arise—

- (a) if the proposed statement or code is issued; or
- (b) if subsection (5)(b) applies, from the statement or code that has been issued.

(12) "The appropriate comparison" means—

- (a) in relation to subsection (2)(a), a comparison between the overall position if the statement or code is issued and the overall position if it is not issued;
- (b) in relation to subsection (5)(b), a comparison between the overall position after the issuing of the statement or code and the overall position before it was issued.

Disciplinary powers.

66.—(1) The Authority may take action against a person under this section if—

- (a) it appears to the Authority that he is guilty of misconduct; and
- (b) the Authority is satisfied that it is appropriate in all the circumstances to take action against him.

(2) A person is guilty of misconduct if, while an approved person—

- (a) he has failed to comply with a statement of principle issued under section 64; or
- (b) he has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under this Act.

(3) If the Authority is entitled to take action under this section against a person, it may—

- (a) impose a penalty on him of such amount as it considers appropriate; or
- (b) publish a statement of his misconduct.

(4) The Authority may not take action under this section after the end of the period of two years beginning with the first day on which the Authority knew of the misconduct, unless proceedings in respect of it against the person concerned were begun before the end of that period.

(5) For the purposes of subsection (4)—

- (a) the Authority is to be treated as knowing of misconduct if it has information from which the misconduct can reasonably be inferred; and
- (b) proceedings against a person in respect of misconduct are to be treated as begun when a warning notice is given to him under section 67(1).

(6) "Approved person" has the same meaning as in section 64.

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(7) “Relevant authorised person”, in relation to an approved person, means the person on whose application approval under section 59 was given.

67.—(1) If the Authority proposes to take action against a person under section 66, it must give him a warning notice.

Disciplinary measures:
procedure and
right to refer to
Tribunal.

(2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(4) If the Authority decides to take action against a person under section 66, it must give him a decision notice.

(5) A decision notice about the imposition of a penalty must state the amount of the penalty.

(6) A decision notice about the publication of a statement must set out the terms of the statement.

(7) If the Authority decides to take action against a person under section 66, he may refer the matter to the Tribunal.

68. After a statement under section 66 is published, the Authority must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given.

Publication.

69.—(1) The Authority must prepare and issue a statement of its policy with respect to—

Statement of
policy.

- (a) the imposition of penalties under section 66; and
- (b) the amount of penalties under that section.

(2) The Authority’s policy in determining what the amount of a penalty should be must include having regard to—

- (a) the seriousness of the misconduct in question in relation to the nature of the principle or requirement concerned;
- (b) the extent to which that misconduct was deliberate or reckless; and
- (c) whether the person on whom the penalty is to be imposed is an individual.

(3) The Authority may at any time alter or replace a statement issued under this section.

(4) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replacement statement.

(5) The Authority must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(6) 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.

(7) The Authority may charge a reasonable fee for providing a person with a copy of the statement.

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(8) In exercising, or deciding whether to exercise, its power under section 66 in the case of any particular misconduct, the Authority must have regard to any statement of policy published under this section and in force at the time when the misconduct in question occurred.

Statements of
policy: procedure.

70.—(1) Before issuing a statement under section 69, 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.

Breach of statutory duty

Actions for
damages.

71.—(1) A contravention of section 56(6) or 59(1) or (2) is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) In prescribed cases, a contravention of that kind which would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) “Private person” has such meaning as may be prescribed.

PART VI

OFFICIAL LISTING

The competent authority

The competent
authority.

72.—(1) On the coming into force of this section, the functions conferred on the competent authority by this Part are to be exercised by the Authority.

(2) Schedule 7 modifies this Act in its application to the Authority when it acts as the competent authority.

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(3) But provision is made by Schedule 8 allowing some or all of those functions to be transferred by the Treasury so as to be exercisable by another person.

73.—(1) In discharging its general functions the competent authority must have regard to—

General duty of the competent authority.

- (a) the need to use its resources in the most efficient and economic way;
 - (b) the principle that a burden or restriction which is imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to arise from the imposition of that burden or restriction;
 - (c) the desirability of facilitating innovation in respect of listed securities;
 - (d) the international character of capital markets and the desirability of maintaining the competitive position of the United Kingdom;
 - (e) the need to minimise the adverse effects on competition of anything done in the discharge of those functions;
 - (f) the desirability of facilitating competition in relation to listed securities.
- (2) The competent authority's general functions are—
- (a) its function of making rules under this Part (considered as a whole);
 - (b) its functions in relation to the giving of general guidance in relation to this Part (considered as a whole);
 - (c) its function of determining the general policy and principles by reference to which it performs particular functions under this Part.

The official list

74.—(1) The competent authority must maintain the official list.

The official list.

(2) The competent authority may admit to the official list such securities and other things as it considers appropriate.

(3) But—

- (a) nothing may be admitted to the official list except in accordance with this Part; and
- (b) the Treasury may by order provide that anything which falls within a description or category specified in the order may not be admitted to the official list.

(4) The competent authority may make rules (“listing rules”) for the purposes of this Part.

(5) In the following provisions of this Part—

“security” means anything which has been, or may be, admitted to the official list; and

“listing” means being included in the official list in accordance with this Part.

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PART VI

Listing

Applications for listing.

75.—(1) Admission to the official list may be granted only on an application made to the competent authority in such manner as may be required by listing rules.

(2) No application for listing may be entertained by the competent authority unless it is made by, or with the consent of, the issuer of the securities concerned.

(3) No application for listing may be entertained by the competent authority in respect of securities which are to be issued by a body of a prescribed kind.

(4) The competent authority may not grant an application for listing unless it is satisfied that—

- (a) the requirements of listing rules (so far as they apply to the application), and
- (b) any other requirements imposed by the authority in relation to the application,

are complied with.

(5) An application for listing may be refused if, for a reason relating to the issuer, the competent authority considers that granting it would be detrimental to the interests of investors.

(6) An application for listing securities which are already officially listed in another EEA State may be refused if the issuer has failed to comply with any obligations to which he is subject as a result of that listing.

Decision on application.

76.—(1) The competent authority must notify the applicant of its decision on an application for listing—

- (a) before the end of the period of six months beginning with the date on which the application is received; or
- (b) if within that period the authority has required the applicant to provide further information in connection with the application, before the end of the period of six months beginning with the date on which that information is provided.

(2) If the competent authority fails to comply with subsection (1), it is to be taken to have decided to refuse the application.

(3) If the competent authority decides to grant an application for listing, it must give the applicant written notice.

(4) If the competent authority proposes to refuse an application for listing, it must give the applicant a warning notice.

(5) If the competent authority decides to refuse an application for listing, it must give the applicant a decision notice.

(6) If the competent authority decides to refuse an application for listing, the applicant may refer the matter to the Tribunal.

(7) If securities are admitted to the official list, their admission may not be called in question on the ground that any requirement or condition for their admission has not been complied with.

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77.—(1) The competent authority may, in accordance with listing rules, discontinue the listing of any securities if satisfied that there are special circumstances which preclude normal regular dealings in them.

Discontinuance
and suspension of
listing.

(2) The competent authority may, in accordance with listing rules, suspend the listing of any securities.

(3) If securities are suspended under subsection (2) they are to be treated, for the purposes of sections 96 and 99, as still being listed.

(4) This section applies to securities whenever they were admitted to the official list.

(5) If the competent authority discontinues or suspends the listing of any securities, the issuer may refer the matter to the Tribunal.

78.—(1) A discontinuance or suspension takes effect—

- (a) immediately, if the notice under subsection (2) states that that is the case;
- (b) in any other case, on such date as may be specified in that notice.

Discontinuance or
suspension:
procedure.

(2) If the competent authority—

- (a) proposes to discontinue or suspend the listing of securities, or
- (b) discontinues or suspends the listing of securities with immediate effect,

it must give the issuer of the securities written notice.

(3) The notice must—

- (a) give details of the discontinuance or suspension;
- (b) state the competent authority's reasons for the discontinuance or suspension and for choosing the date on which it took effect or takes effect;
- (c) inform the issuer of the securities that he may make representations to the competent authority within such period as may be specified in the notice (whether or not he has referred the matter to the Tribunal);
- (d) inform him of the date on which the discontinuance or suspension took effect or will take effect; and
- (e) inform him of his right to refer the matter to the Tribunal.

(4) The competent authority may extend the period within which representations may be made to it.

(5) If, having considered any representations made by the issuer of the securities, the competent authority decides—

- (a) to discontinue or suspend the listing of the securities, or
- (b) if the discontinuance or suspension has taken effect, not to cancel it,

the competent authority must give the issuer of the securities written notice.

(6) A notice given under subsection (5) must inform the issuer of the securities of his right to refer the matter to the Tribunal.

(7) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

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(8) If the competent authority decides—

- (a) not to discontinue or suspend the listing of the securities, or
 - (b) if the discontinuance or suspension has taken effect, to cancel it,
- the competent authority must give the issuer of the securities written notice.

(9) The effect of cancelling a discontinuance is that the securities concerned are to be readmitted, without more, to the official list.

(10) If the competent authority has suspended the listing of securities and proposes to refuse an application by the issuer of the securities for the cancellation of the suspension, it must give him a warning notice.

(11) The competent authority must, having considered any representations made in response to the warning notice—

- (a) if it decides to refuse the application, give the issuer of the securities a decision notice;
- (b) if it grants the application, give him written notice of its decision.

(12) If the competent authority decides to refuse an application for the cancellation of the suspension of listed securities, the applicant may refer the matter to the Tribunal.

(13) “Discontinuance” means a discontinuance of listing under section 77(1).

(14) “Suspension” means a suspension of listing under section 77(2).

Listing particulars

Listing particulars
and other
documents.

79.—(1) Listing rules may provide that securities (other than new securities) of a kind specified in the rules may not be admitted to the official list unless—

- (a) listing particulars have been submitted to, and approved by, the competent authority and published; or
- (b) in such cases as may be specified by listing rules, such document (other than listing particulars or a prospectus of a kind required by listing rules) as may be so specified has been published.

(2) “Listing particulars” means a document in such form and containing such information as may be specified in listing rules.

(3) For the purposes of this Part, the persons responsible for listing particulars are to be determined in accordance with regulations made by the Treasury.

(4) Nothing in this section affects the competent authority’s general power to make listing rules.

General duty of
disclosure in
listing particulars.

80.—(1) Listing particulars submitted to the competent authority under section 79 must contain all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of—

- (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
- (b) the rights attaching to the securities.

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(2) That information is required in addition to any information required by—

- (a) listing rules, or
- (b) the competent authority,

as a condition of the admission of the securities to the official list.

(3) Subsection (1) applies only to information—

- (a) within the knowledge of any person responsible for the listing particulars; or
- (b) which it would be reasonable for him to obtain by making enquiries.

(4) In determining what information subsection (1) requires to be included in listing particulars, regard must be had (in particular) to—

- (a) the nature of the securities and their issuer;
- (b) the nature of the persons likely to consider acquiring them;
- (c) the fact that certain matters may reasonably be expected to be within the knowledge of professional advisers of a kind which persons likely to acquire the securities may reasonably be expected to consult; and
- (d) any information available to investors or their professional advisers as a result of requirements imposed on the issuer of the securities by a recognised investment exchange, by listing rules or by or under any other enactment.

81.—(1) If at any time after the preparation of listing particulars which have been submitted to the competent authority under section 79 and before the commencement of dealings in the securities concerned following their admission to the official list—

Supplementary
listing particulars.

- (a) there is a significant change affecting any matter contained in those particulars the inclusion of which was required by—
 - (i) section 80,
 - (ii) listing rules, or
 - (iii) the competent authority, or
- (b) a significant new matter arises, the inclusion of information in respect of which would have been so required if it had arisen when the particulars were prepared,

the issuer must, in accordance with listing rules, submit supplementary listing particulars of the change or new matter to the competent authority, for its approval and, if they are approved, publish them.

(2) “Significant” means significant for the purpose of making an informed assessment of the kind mentioned in section 80(1).

(3) If the issuer of the securities is not aware of the change or new matter in question, he is not under a duty to comply with subsection (1) unless he is notified of the change or new matter by a person responsible for the listing particulars.

(4) But it is the duty of any person responsible for those particulars who is aware of such a change or new matter to give notice of it to the issuer.

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(5) Subsection (1) applies also as respects matters contained in any supplementary listing particulars previously published under this section in respect of the securities in question.

Exemptions from disclosure.

82.—(1) The competent authority may authorise the omission from listing particulars of any information, the inclusion of which would otherwise be required by section 80 or 81, on the ground—

- (a) that its disclosure would be contrary to the public interest;
- (b) that its disclosure would be seriously detrimental to the issuer; or
- (c) in the case of securities of a kind specified in listing rules, that its disclosure is unnecessary for persons of the kind who may be expected normally to buy or deal in securities of that kind.

(2) But—

- (a) no authority may be granted under subsection (1)(b) in respect of essential information; and
- (b) no authority granted under subsection (1)(b) extends to any such information.

(3) The Secretary of State or the Treasury may issue a certificate to the effect that the disclosure of any information (including information that would otherwise have to be included in listing particulars for which they are themselves responsible) would be contrary to the public interest.

(4) The competent authority is entitled to act on any such certificate in exercising its powers under subsection (1)(a).

(5) This section does not affect any powers of the competent authority under listing rules made as a result of section 101(2).

(6) “Essential information” means information which a person considering acquiring securities of the kind in question would be likely to need in order not to be misled about any facts which it is essential for him to know in order to make an informed assessment.

(7) “Listing particulars” includes supplementary listing particulars.

Registration of listing particulars.

83.—(1) On or before the date on which listing particulars are published as required by listing rules, a copy of the particulars must be delivered for registration to the registrar of companies.

(2) A statement that a copy has been delivered to the registrar must be included in the listing particulars when they are published.

(3) If there has been a failure to comply with subsection (1) in relation to listing particulars which have been published—

- (a) the issuer of the securities in question, and
- (b) any person who is a party to the publication and aware of the failure,

is guilty of an offence.

(4) A person guilty of an offence under subsection (3) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(5) “Listing particulars” includes supplementary listing particulars.

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- (6) “The registrar of companies” means—
- (a) if the securities are, or are to be, issued by a company incorporated in Great Britain whose registered office is in England and Wales, the registrar of companies in England and Wales;
 - (b) if the securities are, or are to be, issued by a company incorporated in Great Britain whose registered office is in Scotland, the registrar of companies in Scotland;
 - (c) if the securities are, or are to be, issued by a company incorporated in Northern Ireland, the registrar of companies for Northern Ireland; and
 - (d) in any other case, any of those registrars.

Prospectuses

84.—(1) Listing rules must provide that no new securities for which an application for listing has been made may be admitted to the official list unless a prospectus has been submitted to, and approved by, the competent authority and published. Prospectuses.

(2) “New securities” means securities which are to be offered to the public in the United Kingdom for the first time before admission to the official list.

(3) “Prospectus” means a prospectus in such form and containing such information as may be specified in listing rules.

(4) Nothing in this section affects the competent authority’s general power to make listing rules.

85.—(1) If listing rules made under section 84 require a prospectus to be published before particular new securities are admitted to the official list, it is unlawful for any of those securities to be offered to the public in the United Kingdom before the required prospectus is published. Publication of prospectus.

(2) A person who contravenes subsection (1) is guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(3) A person is not to be regarded as contravening subsection (1) merely because a prospectus does not fully comply with the requirements of listing rules as to its form or content.

(4) But subsection (3) does not affect the question whether any person is liable to pay compensation under section 90.

(5) Any contravention of subsection (1) is actionable, at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

86.—(1) The provisions of this Part apply in relation to a prospectus required by listing rules as they apply in relation to listing particulars. Application of this Part to prospectuses.

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(2) In this Part—

- (a) any reference to listing particulars is to be read as including a reference to a prospectus; and
- (b) any reference to supplementary listing particulars is to be read as including a reference to a supplementary prospectus.

Approval of prospectus where no application for listing.

87.—(1) Listing rules may provide for a prospectus to be submitted to and approved by the competent authority if—

- (a) securities are to be offered to the public in the United Kingdom for the first time;
- (b) no application for listing of the securities has been made under this Part; and
- (c) the prospectus is submitted by, or with the consent of, the issuer of the securities.

(2) “Non-listing prospectus” means a prospectus submitted to the competent authority as a result of any listing rules made under subsection (1).

(3) Listing rules made under subsection (1) may make provision—

- (a) as to the information to be contained in, and the form of, a non-listing prospectus; and
- (b) as to the timing and manner of publication of a non-listing prospectus.

(4) The power conferred by subsection (3)(b) is subject to such provision made by or under any other enactment as the Treasury may by order specify.

(5) Schedule 9 modifies provisions of this Part as they apply in relation to non-listing prospectuses.

Sponsors

Sponsors.

88.—(1) Listing rules may require a person to make arrangements with a sponsor for the performance by the sponsor of such services in relation to him as may be specified in the rules.

(2) “Sponsor” means a person approved by the competent authority for the purposes of the rules.

(3) Listing rules made by virtue of subsection (1) may—

- (a) provide for the competent authority to maintain a list of sponsors;
- (b) specify services which must be performed by a sponsor;
- (c) impose requirements on a sponsor in relation to the provision of services or specified services;
- (d) specify the circumstances in which a person is qualified for being approved as a sponsor.

(4) If the competent authority proposes—

- (a) to refuse a person’s application for approval as a sponsor, or
- (b) to cancel a person’s approval as a sponsor,

it must give him a warning notice.

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(5) If, after considering any representations made in response to the warning notice, the competent authority decides—

- (a) to grant the application for approval, or
- (b) not to cancel the approval,

it must give the person concerned, and any person to whom a copy of the warning notice was given, written notice of its decision.

(6) If, after considering any representations made in response to the warning notice, the competent authority decides—

- (a) to refuse to grant the application for approval, or
- (b) to cancel the approval,

it must give the person concerned a decision notice.

(7) A person to whom a decision notice is given under this section may refer the matter to the Tribunal.

89.—(1) Listing rules may make provision for the competent authority, if it considers that a sponsor has contravened a requirement imposed on him by rules made as a result of section 88(3)(c), to publish a statement to that effect.

Public censure of sponsor.

(2) If the competent authority proposes to publish a statement it must give the sponsor a warning notice setting out the terms of the proposed statement.

(3) If, after considering any representations made in response to the warning notice, the competent authority decides to make the proposed statement, it must give the sponsor a decision notice setting out the terms of the statement.

(4) A sponsor to whom a decision notice is given under this section may refer the matter to the Tribunal.

Compensation

90.—(1) Any person responsible for listing particulars is liable to pay compensation to a person who has—

Compensation for false or misleading particulars.

- (a) acquired securities to which the particulars apply; and
- (b) suffered loss in respect of them as a result of—
 - (i) any untrue or misleading statement in the particulars; or
 - (ii) the omission from the particulars of any matter required to be included by section 80 or 81.

(2) Subsection (1) is subject to exemptions provided by Schedule 10.

(3) If listing particulars are required to include information about the absence of a particular matter, the omission from the particulars of that information is to be treated as a statement in the listing particulars that there is no such matter.

(4) Any person who fails to comply with section 81 is liable to pay compensation to any person who has—

- (a) acquired securities of the kind in question; and
- (b) suffered loss in respect of them as a result of the failure.

(5) Subsection (4) is subject to exemptions provided by Schedule 10.

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(6) This section does not affect any liability which may be incurred apart from this section.

(7) References in this section to the acquisition by a person of securities include references to his contracting to acquire them or any interest in them.

(8) No person shall, by reason of being a promoter of a company or otherwise, incur any liability for failing to disclose information which he would not be required to disclose in listing particulars in respect of a company's securities—

- (a) if he were responsible for those particulars; or
- (b) if he is responsible for them, which he is entitled to omit by virtue of section 82.

(9) The reference in subsection (8) to a person incurring liability includes a reference to any other person being entitled as against that person to be granted any civil remedy or to rescind or repudiate an agreement.

(10) "Listing particulars", in subsection (1) and Schedule 10, includes supplementary listing particulars.

Penalties

Penalties for
breach of listing
rules.

91.—(1) If the competent authority considers that—

- (a) an issuer of listed securities, or
- (b) an applicant for listing,

has contravened any provision of listing rules, it may impose on him a penalty of such amount as it considers appropriate.

(2) If, in such a case, the competent authority considers that a person who was at the material time a director of the issuer or applicant was knowingly concerned in the contravention, it may impose on him a penalty of such amount as it considers appropriate.

(3) If the competent authority is entitled to impose a penalty on a person under this section in respect of a particular matter it may, instead of imposing a penalty on him in respect of that matter, publish a statement censuring him.

(4) Nothing in this section prevents the competent authority from taking any other steps which it has power to take under this Part.

(5) A penalty under this section is payable to the competent authority.

(6) The competent authority may not take action against a person under this section after the end of the period of two years beginning with the first day on which it knew of the contravention unless proceedings against that person, in respect of the contravention, were begun before the end of that period.

(7) For the purposes of subsection (6)—

- (a) the competent authority is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred; and
- (b) proceedings against a person in respect of a contravention are to be treated as begun when a warning notice is given to him under section 92.

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Procedure.

92.—(1) If the competent authority proposes to take action against a person under section 91, it must give him a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.

(4) If the competent authority decides to take action against a person under section 91, it must give him a decision notice.

(5) A decision notice about the imposition of a penalty must state the amount of the penalty.

(6) A decision notice about the publication of a statement must set out the terms of the statement.

(7) If the competent authority decides to take action against a person under section 91, he may refer the matter to the Tribunal.

93.—(1) The competent authority must prepare and issue a statement (“its policy statement”) of its policy with respect to—

Statement of policy.

- (a) the imposition of penalties under section 91; and
- (b) the amount of penalties under that section.

(2) The competent authority’s policy in determining what the amount of a penalty should be must include having regard to—

- (a) the seriousness of the contravention in question in relation to the nature of the requirement contravened;
- (b) the extent to which that contravention was deliberate or reckless; and
- (c) whether the person on whom the penalty is to be imposed is an individual.

(3) The competent authority may at any time alter or replace its policy statement.

(4) If its policy statement is altered or replaced, the competent authority must issue the altered or replacement statement.

(5) In exercising, or deciding whether to exercise, its power under section 91 in the case of any particular contravention, the competent authority must have regard to any policy statement published under this section and in force at the time when the contravention in question occurred.

(6) The competent authority must publish a statement issued under this section in the way appearing to the competent authority to be best calculated to bring it to the attention of the public.

(7) The competent authority may charge a reasonable fee for providing a person with a copy of the statement.

(8) The competent authority must, without delay, give the Treasury a copy of any policy statement which it publishes under this section.

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*Financial Services and Markets Act 2000***PART VI**Statements of
policy: procedure.

94.—(1) Before issuing a statement under section 93, the competent authority must publish a draft of the proposed statement in the way appearing to the competent 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 competent authority within a specified time.

(3) Before issuing the proposed statement, the competent authority must have regard to any representations made to it in accordance with subsection (2).

(4) If the competent 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 competent authority, significant, the competent authority must (in addition to complying with subsection (4)) publish details of the difference.

(6) The competent 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.

*Competition*Competition
scrutiny.

95.—(1) The Treasury may by order provide for—

- (a) regulating provisions, and
- (b) the practices of the competent authority in exercising its functions under this Part (“practices”),

to be kept under review.

(2) Provision made as a result of subsection (1) must require the person responsible for keeping regulating provisions and practices under review to consider—

- (a) whether any regulating provision or practice has a significantly adverse effect on competition; or
- (b) whether two or more regulating provisions or practices taken together have, or a particular combination of regulating provisions and practices has, such an effect.

(3) An order under this section may include provision corresponding to that made by any provision of Chapter III of Part X.

(4) Subsection (3) is not to be read as in any way restricting the power conferred by subsection (1).

(5) Subsections (6) to (8) apply for the purposes of provision made by or under this section.

(6) Regulating provisions or practices have a significantly adverse effect on competition if—

- (a) they have, or are intended or likely to have, that effect; or

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- (b) the effect that they have, or are intended or likely to have, is to require or encourage behaviour which has, or is intended or likely to have, a significantly adverse effect on competition.

(7) If regulating provisions or practices have, or are intended or likely to have, the effect of requiring or encouraging exploitation of the strength of a market position they are to be taken to have, or be intended or be likely to have, an adverse effect on competition.

(8) In determining whether any of the regulating provisions or practices have, or are intended or likely to have, a particular effect, it may be assumed that the persons to whom the provisions concerned are addressed will act in accordance with them.

(9) "Regulating provisions" means—

- (a) listing rules,
 (b) general guidance given by the competent authority in connection with its functions under this Part.

Miscellaneous

96.—(1) Listing rules may—

- (a) specify requirements to be complied with by issuers of listed securities; and
 (b) make provision with respect to the action that may be taken by the competent authority in the event of non-compliance.

Obligations of issuers of listed securities.

(2) If the rules require an issuer to publish information, they may include provision authorising the competent authority to publish it in the event of his failure to do so.

(3) This section applies whenever the listed securities were admitted to the official list.

97.—(1) Subsection (2) applies if it appears to the competent authority that there are circumstances suggesting that—

- (a) there may have been a breach of listing rules;
 (b) a person who was at the material time a director of an issuer of listed securities has been knowingly concerned in a breach of listing rules by that issuer;
 (c) a person who was at the material time a director of a person applying for the admission of securities to the official list has been knowingly concerned in a breach of listing rules by that applicant;
 (d) there may have been a contravention of section 83, 85 or 98.

Appointment by competent authority of persons to carry out investigations.

(2) The competent authority may appoint one or more competent persons to conduct an investigation on its behalf.

(3) Part XI applies to an investigation under subsection (2) as if—

- (a) the investigator were appointed under section 167(1);
 (b) references to the investigating authority in relation to him were to the competent authority;
 (c) references to the offences mentioned in section 168 were to those mentioned in subsection (1)(d);

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- (d) references to an authorised person were references to the person under investigation.

Advertisements
etc. in connection
with listing
applications.

98.—(1) If listing particulars are, or are to be, published in connection with an application for listing, no advertisement or other information of a kind specified by listing rules may be issued in the United Kingdom unless the contents of the advertisement or other information have been submitted to the competent authority and that authority has—

- (a) approved those contents; or
(b) authorised the issue of the advertisement or information without such approval.

(2) A person who contravenes subsection (1) is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(3) A person who issues an advertisement or other information to the order of another person is not guilty of an offence under subsection (2) if he shows that he believed on reasonable grounds that the advertisement or information had been approved, or its issue authorised, by the competent authority.

(4) If information has been approved, or its issue has been authorised, under this section, neither the person issuing it nor any person responsible for, or for any part of, the listing particulars incurs any civil liability by reason of any statement in or omission from the information if that information and the listing particulars, taken together, would not be likely to mislead persons of the kind likely to consider acquiring the securities in question.

(5) The reference in subsection (4) to a person incurring civil liability includes a reference to any other person being entitled as against that person to be granted any civil remedy or to rescind or repudiate an agreement.

Fees.

99.—(1) Listing rules may require the payment of fees to the competent authority in respect of—

- (a) applications for listing;
(b) the continued inclusion of securities in the official list;
(c) applications under section 88 for approval as a sponsor; and
(d) continued inclusion of sponsors in the list of sponsors.

(2) In exercising its powers under subsection (1), the competent authority may set such fees as it considers will (taking account of the income it expects as the competent authority) enable it—

- (a) to meet expenses incurred in carrying out its functions under this Part or for any incidental purpose;
(b) to maintain adequate reserves; and

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(c) in the case of the Authority, to repay the principal of, and pay any interest on, any money which it has borrowed and which has been used for the purpose of meeting expenses incurred in relation to—

- (i) its assumption of functions from the London Stock Exchange Limited in relation to the official list; and
- (ii) its assumption of functions under this Part.

(3) In fixing the amount of any fee which is to be payable to the competent authority, no account is to be taken of any sums which it receives, or expects to receive, by way of penalties imposed by it under this Part.

(4) Subsection (2)(c) applies whether expenses were incurred before or after the coming into force of this Part.

(5) Any fee which is owed to the competent authority under any provision made by or under this Part may be recovered as a debt due to it.

100.—(1) In determining its policy with respect to the amount of penalties to be imposed by it under this Part, the competent authority must take no account of the expenses which it incurs, or expects to incur, in discharging its functions under this Part. Penalties.

(2) The competent authority must prepare and operate a scheme for ensuring that the amounts paid to it by way of penalties imposed under this Part are applied for the benefit of issuers of securities admitted to the official list.

(3) The scheme may, in particular, make different provision with respect to different classes of issuer.

(4) Up to date details of the scheme must be set out in a document (“the scheme details”).

(5) The scheme details must be published by the competent authority in the way appearing to it to be best calculated to bring them to the attention of the public.

(6) Before making the scheme, the competent authority must publish a draft of the proposed scheme in the way appearing to it to be best calculated to bring it to the attention of the public.

(7) The draft must be accompanied by notice that representations about the proposals may be made to the competent authority within a specified time.

(8) Before making the scheme, the competent authority must have regard to any representations made to it under subsection (7).

(9) If the competent authority makes the proposed scheme, it must publish an account, in general terms, of—

- (a) the representations made to it in accordance with subsection (7); and
- (b) its response to them.

(10) If the scheme differs from the draft published under subsection (6) in a way which is, in the opinion of the competent authority, significant the competent authority must (in addition to complying with subsection (9)) publish details of the difference.

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(11) The competent authority must, without delay, give the Treasury a copy of any scheme details published by it.

(12) The competent authority may charge a reasonable fee for providing a person with a copy of—

- (a) a draft published under subsection (6);
- (b) scheme details.

(13) Subsections (6) to (10) and (12) apply also to a proposal to alter or replace the scheme.

Listing rules:
general
provisions.

101.—(1) Listing rules may make different provision for different cases.

(2) Listing rules may authorise the competent authority to dispense with or modify the application of the rules in particular cases and by reference to any circumstances.

(3) Listing rules must be made by an instrument in writing.

(4) Immediately after an instrument containing listing rules is made, it must be printed and made available to the public with or without payment.

(5) A person is not to be taken to have contravened any listing rule if he shows that at the time of the alleged contravention the instrument containing the rule had not been made available as required by subsection (4).

(6) The production of a printed copy of an instrument purporting to be made by the competent authority on which is endorsed a certificate signed by an officer of the authority authorised by it for that purpose and stating—

- (a) that the instrument was made by the authority,
- (b) that the copy is a true copy of the instrument, and
- (c) that on a specified date the instrument was made available to the public as required by subsection (4),

is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.

(7) A certificate purporting to be signed as mentioned in subsection (6) is to be treated as having been properly signed unless the contrary is shown.

(8) A person who wishes in any legal proceedings to rely on a rule-making instrument may require the Authority to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (6).

Exemption from
liability in
damages.

102.—(1) Neither the competent authority nor any person who is, or is acting as, a member, officer or member of staff of the competent authority is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the authority's functions.

(2) Subsection (1) does not apply—

- (a) if the act or omission is shown to have been in bad faith; or
- (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

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Interpretation of
this Part.**103.—(1)** In this Part—

- “application” means an application made under section 75;
- “issuer”, in relation to anything which is or may be admitted to the official list, has such meaning as may be prescribed by the Treasury;
- “listing” has the meaning given in section 74(5);
- “listing particulars” has the meaning given in section 79(2);
- “listing rules” has the meaning given in section 74(4);
- “new securities” has the meaning given in section 84(2);
- “the official list” means the list maintained as the official list by the Authority immediately before the coming into force of section 74, as that list has effect for the time being;
- “security” (except in section 74(2)) has the meaning given in section 74(5).

(2) In relation to any function conferred on the competent authority by this Part, any reference in this Part to the competent authority is to be read as a reference to the person by whom that function is for the time being exercisable.

(3) If, as a result of an order under Schedule 8, different functions conferred on the competent authority by this Part are exercisable by different persons, the powers conferred by section 91 are exercisable by such person as may be determined in accordance with the provisions of the order.

(4) For the purposes of this Part, a person offers securities if, and only if, as principal—

- (a) he makes an offer which, if accepted, would give rise to a contract for their issue or sale by him or by another person with whom he has made arrangements for their issue or sale; or
- (b) he invites a person to make such an offer.

(5) “Offer” and “offeror” are to be read accordingly.

(6) For the purposes of this Part, the question whether a person offers securities to the public in the United Kingdom is to be determined in accordance with Schedule 11.

(7) For the purposes of subsection (4) “sale” includes any disposal for valuable consideration.

PART VII

CONTROL OF BUSINESS TRANSFERS

104. No insurance business transfer scheme or banking business transfer scheme is to have effect unless an order has been made in relation to it under section 111(1). Control of business transfers.

105.—(1) A scheme is an insurance business transfer scheme if it— Insurance business transfer schemes.

- (a) satisfies one of the conditions set out in subsection (2);
- (b) results in the business transferred being carried on from an establishment of the transferee in an EEA State; and
- (c) is not an excluded scheme.

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(2) The conditions are that—

- (a) the whole or part of the business carried on in one or more member States by a UK authorised person who has permission to effect or carry out contracts of insurance (“the authorised person concerned”) is to be transferred to another body (“the transferee”);
- (b) the whole or part of the business, so far as it consists of reinsurance, carried on in the United Kingdom through an establishment there by an EEA firm qualifying for authorisation under Schedule 3 which has permission to effect or carry out contracts of insurance (“the authorised person concerned”) is to be transferred to another body (“the transferee”);
- (c) the whole or part of the business carried on in the United Kingdom by an authorised person who is neither a UK authorised person nor an EEA firm but who has permission to effect or carry out contracts of insurance (“the authorised person concerned”) is to be transferred to another body (“the transferee”).

(3) A scheme is an excluded scheme for the purposes of this section if it falls within any of the following cases:

CASE 1

Where the authorised person concerned is a friendly society.

CASE 2

Where—

- (a) the authorised person concerned is a UK authorised person;
- (b) the business to be transferred under the scheme is business which consists of the effecting or carrying out of contracts of reinsurance in one or more EEA States other than the United Kingdom; and
- (c) the scheme has been approved by a court in an EEA State other than the United Kingdom or by the host state regulator.

CASE 3

Where—

- (a) the authorised person concerned is a UK authorised person;
- (b) the business to be transferred under the scheme is carried on in one or more countries or territories (none of which is an EEA State) and does not include policies of insurance (other than reinsurance) against risks arising in an EEA State; and
- (c) the scheme has been approved by a court in a country or territory other than an EEA State or by the authority responsible for the supervision of that business in a country or territory in which it is carried on.

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CASE 4

Where the business to be transferred under the scheme is the whole of the business of the authorised person concerned and—

- (a) consists solely of the effecting or carrying out of contracts of reinsurance, or
- (b) all the policyholders are controllers of the firm or of firms within the same group as the firm which is the transferee,

and, in either case, all of the policyholders who will be affected by the transfer have consented to it.

(4) The parties to a scheme which falls within Case 2, 3 or 4 may apply to the court for an order sanctioning the scheme as if it were an insurance business transfer scheme.

(5) Subsection (6) applies if the scheme involves a compromise or arrangement falling within section 427A of the Companies Act 1985 (or Article 420A of the Companies (Northern Ireland) Order 1986).

1985 c. 6.
S.I. 1986/1032
(N.I. 6).

(6) Sections 425 to 427 of that Act (or Articles 418 to 420 of that Order) have effect as modified by section 427A of that Act (or Article 420A of that Order) in relation to that compromise or arrangement.

(7) But subsection (6) does not affect the operation of this Part in relation to the scheme.

(8) “UK authorised person” means a body which is an authorised person and which—

- (a) is incorporated in the United Kingdom; or
- (b) is an unincorporated association formed under the law of any part of the United Kingdom.

(9) “Establishment” means, in relation to a person, his head office or a branch of his.

106.—(1) A scheme is a banking business transfer scheme if it—

- (a) satisfies one of the conditions set out in subsection (2);
- (b) is one under which the whole or part of the business to be transferred includes the accepting of deposits; and
- (c) is not an excluded scheme.

Banking business
transfer schemes.

(2) The conditions are that—

- (a) the whole or part of the business carried on by a UK authorised person who has permission to accept deposits (“the authorised person concerned”) is to be transferred to another body (“the transferee”);
- (b) the whole or part of the business carried on in the United Kingdom by an authorised person who is not a UK authorised person but who has permission to accept deposits (“the authorised person concerned”) is to be transferred to another body which will carry it on in the United Kingdom (“the transferee”).

(3) A scheme is an excluded scheme for the purposes of this section if—

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1985 c. 6.
S.I. 1986/1032
(N.I. 6).

- (a) the authorised person concerned is a building society or a credit union; or
- (b) the scheme is a compromise or arrangement to which section 427A(1) of the Companies Act 1985 or Article 420A of the Companies (Northern Ireland) Order 1986 (mergers and divisions of public companies) applies.

(4) For the purposes of subsection (2)(a) it is immaterial whether or not the business to be transferred is carried on in the United Kingdom.

(5) "UK authorised person" has the same meaning as in section 105.

1986 c. 53.

(6) "Building society" has the meaning given in the Building Societies Act 1986.

1979 c. 34.

S.I. 1985/1205
(N.I. 12).

(7) "Credit union" means a credit union within the meaning of—

- (a) the Credit Unions Act 1979;
- (b) the Credit Unions (Northern Ireland) Order 1985.

Application for
order sanctioning
transfer scheme.

107.—(1) An application may be made to the court for an order sanctioning an insurance business transfer scheme or a banking business transfer scheme.

(2) An application may be made by—

- (a) the authorised person concerned;
- (b) the transferee; or
- (c) both.

(3) The application must be made—

- (a) if the authorised person concerned and the transferee are registered or have their head offices in the same jurisdiction, to the court in that jurisdiction;
- (b) if the authorised person concerned and the transferee are registered or have their head offices in different jurisdictions, to the court in either jurisdiction;
- (c) if the transferee is not registered in the United Kingdom and does not have his head office there, to the court which has jurisdiction in relation to the authorised person concerned.

(4) "Court" means—

- (a) the High Court; or
- (b) in Scotland, the Court of Session.

Requirements on
applicants.

108.—(1) The Treasury may by regulations impose requirements on applicants under section 107.

(2) The court may not determine an application under that section if the applicant has failed to comply with a prescribed requirement.

(3) The regulations may, in particular, include provision—

- (a) as to the persons to whom, and periods within which, notice of an application must be given;
- (b) enabling the court to waive a requirement of the regulations in prescribed circumstances.

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Scheme reports.

109.—(1) An application under section 107 in respect of an insurance business transfer scheme must be accompanied by a report on the terms of the scheme (“a scheme report”).

(2) A scheme report may be made only by a person—

- (a) appearing to the Authority to have the skills necessary to enable him to make a proper report; and
- (b) nominated or approved for the purpose by the Authority.

(3) A scheme report must be made in a form approved by the Authority.

110. On an application under section 107, the following are also entitled to be heard—

- (a) the Authority, and
- (b) any person (including an employee of the authorised person concerned or of the transferee) who alleges that he would be adversely affected by the carrying out of the scheme.

Right to participate in proceedings.

111.—(1) This section sets out the conditions which must be satisfied before the court may make an order under this section sanctioning an insurance business transfer scheme or a banking business transfer scheme.

Sanction of the court for business transfer schemes.

(2) The court must be satisfied that—

- (a) the appropriate certificates have been obtained (as to which see Parts I and II of Schedule 12);
- (b) the transferee has the authorisation required (if any) to enable the business, or part, which is to be transferred to be carried on in the place to which it is to be transferred (or will have it before the scheme takes effect).

(3) The court must consider that, in all the circumstances of the case, it is appropriate to sanction the scheme.

112.—(1) If the court makes an order under section 111(1), it may by that or any subsequent order make such provision (if any) as it thinks fit—

- (a) for the transfer to the transferee of the whole or any part of the undertaking concerned and of any property or liabilities of the authorised person concerned;
- (b) for the allotment or appropriation by the transferee of any shares, debentures, policies or other similar interests in the transferee which under the scheme are to be allotted or appropriated to or for any other person;
- (c) for the continuation by (or against) the transferee of any pending legal proceedings by (or against) the authorised person concerned;
- (d) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the scheme is fully and effectively carried out.

Effect of order sanctioning business transfer scheme.

(2) An order under subsection (1)(a) may—

- (a) transfer property or liabilities whether or not the authorised person concerned otherwise has the capacity to effect the transfer in question;

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1988 c. 1.

- (b) make provision in relation to property which was held by the authorised person concerned as trustee;
- (c) make provision as to future or contingent rights or liabilities of the authorised person concerned, including provision as to the construction of instruments (including wills) under which such rights or liabilities may arise;
- (d) make provision as to the consequences of the transfer in relation to any retirement benefits scheme (within the meaning of section 611 of the Income and Corporation Taxes Act 1988) operated by or on behalf of the authorised person concerned.

(3) If an order under subsection (1) makes provision for the transfer of property or liabilities—

- (a) the property is transferred to and vests in, and
 - (b) the liabilities are transferred to and become liabilities of,
- the transferee as a result of the order.

(4) But if any property or liability included in the order is governed by the law of any country or territory outside the United Kingdom, the order may require the authorised person concerned, if the transferee so requires, to take all necessary steps for securing that the transfer to the transferee of the property or liability is fully effective under the law of that country or territory.

(5) Property transferred as the result of an order under subsection (1) may, if the court so directs, vest in the transferee free from any charge which is (as a result of the scheme) to cease to have effect.

(6) An order under subsection (1) which makes provision for the transfer of property is to be treated as an instrument of transfer for the purposes of the provisions mentioned in subsection (7) and any other enactment requiring the delivery of an instrument of transfer for the registration of property.

(7) The provisions are—

1985 c. 6.

(a) section 183(1) of the Companies Act 1985;

S.I. 1986/1032
(N.I. 6).

(b) Article 193(1) and (2) of the Companies (Northern Ireland) Order 1986.

(8) If the court makes an order under section 111(1) in relation to an insurance business transfer scheme, it may by that or any subsequent order make such provision (if any) as it thinks fit—

- (a) for dealing with the interests of any person who, within such time and in such manner as the court may direct, objects to the scheme;
- (b) for the dissolution, without winding up, of the authorised person concerned;
- (c) for the reduction, on such terms and subject to such conditions (if any) as it thinks fit, of the benefits payable under—
 - (i) any description of policy, or
 - (ii) policies generally,

entered into by the authorised person concerned and transferred as a result of the scheme.

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(9) If, in the case of an insurance business transfer scheme, the authorised person concerned is not an EEA firm, it is immaterial for the purposes of subsection (1)(a), (c) or (d) or subsection (2), (3) or (4) that the law applicable to any of the contracts of insurance included in the transfer is the law of an EEA State other than the United Kingdom.

(10) The transferee must, if an insurance or banking business transfer scheme is sanctioned by the court, deposit two office copies of the order made under subsection (1) with the Authority within 10 days of the making of the order.

(11) But the Authority may extend that period.

(12) "Property" includes property, rights and powers of any description.

(13) "Liabilities" includes duties.

(14) "Shares" and "debentures" have the same meaning as in—

(a) the Companies Act 1985; or

(b) in Northern Ireland, the Companies (Northern Ireland) Order 1986.

1985 c. 6.

S.I. 1986/1032
(N.I. 6).

(15) "Charge" includes a mortgage (or, in Scotland, a security over property).

113.—(1) This section applies if an order has been made under section 111(1).

Appointment of
actuary in relation
to reduction of
benefits.

(2) The court making the order may, on the application of the Authority, appoint an independent actuary—

(a) to investigate the business transferred under the scheme; and

(b) to report to the Authority on any reduction in the benefits payable under policies entered into by the authorised person concerned that, in the opinion of the actuary, ought to be made.

114.—(1) This section applies in relation to an insurance business transfer scheme if—

Rights of certain
policyholders.

(a) the authorised person concerned is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;

(b) the court has made an order under section 111 in relation to the scheme; and

(c) an EEA State other than the United Kingdom is, as regards any policy included in the transfer which evidences a contract of insurance, the State of the commitment or the EEA State in which the risk is situated ("the EEA State concerned").

(2) The court must direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the EEA State concerned.

(3) A notice under subsection (2) must specify such period as the court may direct as the period during which the policyholder may exercise any right which he has to cancel the policy.

(4) The order or instrument mentioned in subsection (2) does not bind the policyholder if—

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- (a) the notice required under that subsection is not published; or
 - (b) the policyholder cancels the policy during the period specified in the notice given under that subsection.
- (5) The law of the EEA State concerned governs—
- (a) whether the policyholder has a right to cancel the policy; and
 - (b) the conditions, if any, subject to which any such right may be exercised.
- (6) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

Business transfers outside the United Kingdom

Certificates for purposes of insurance business transfers overseas.

115. Part III of Schedule 12 makes provision about certificates which the Authority may issue in relation to insurance business transfers taking place outside the United Kingdom.

Effect of insurance business transfers authorised in other EEA States.

116.—(1) This section applies if, as a result of an authorised transfer, an EEA firm falling within paragraph 5(d) of Schedule 3 transfers to another body all its rights and obligations under any UK policies.

(2) This section also applies if, as a result of an authorised transfer, a company authorised in an EEA State other than the United Kingdom under Article 27 of the first life insurance directive, or Article 23 of the first non-life insurance directive, transfers to another body all its rights and obligations under any UK policies.

(3) If appropriate notice of the execution of an instrument giving effect to the transfer is published, the instrument has the effect in law—

- (a) of transferring to the transferee all the transferor's rights and obligations under the UK policies to which the instrument applies, and
- (b) if the instrument so provides, of securing the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights and obligations.

(4) No agreement or consent is required before subsection (3) has the effects mentioned.

(5) "Authorised transfer" means—

- (a) in subsection (1), a transfer authorised in the home State of the EEA firm in accordance with—
 - (i) Article 11 of the third life directive; or
 - (ii) Article 12 of the third non-life directive; and
- (b) in subsection (2), a transfer authorised in an EEA State other than the United Kingdom in accordance with—
 - (i) Article 31a of the first life directive; or
 - (ii) Article 28a of the first non-life directive.

(6) "UK policy" means a policy evidencing a contract of insurance (other than a contract of reinsurance) to which the applicable law is the law of any part of the United Kingdom.

(7) "Appropriate notice" means—

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- (a) if the UK policy evidences a contract of insurance in relation to which an EEA State other than the United Kingdom is the State of the commitment, notice given in accordance with the law of that State;
 - (b) if the UK policy evidences a contract of insurance where the risk is situated in an EEA State other than the United Kingdom, notice given in accordance with the law of that EEA State;
 - (c) in any other case, notice given in accordance with the applicable law.
- (8) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

Modifications

117. The Treasury may by regulations—

- (a) provide for prescribed provisions of this Part to have effect in relation to prescribed cases with such modifications as may be prescribed;
- (b) make such amendments to any provision of this Part as they consider appropriate for the more effective operation of that or any other provision of this Part.

Power to modify this Part.

PART VIII

PENALTIES FOR MARKET ABUSE

Market abuse

118.—(1) For the purposes of this Act, market abuse is behaviour (whether by one person alone or by two or more persons jointly or in concert)—

Market abuse.

- (a) which occurs in relation to qualifying investments traded on a market to which this section applies;
- (b) which satisfies any one or more of the conditions set out in subsection (2); and
- (c) which is likely to be regarded by a regular user of that market who is aware of the behaviour as a failure on the part of the person or persons concerned to observe the standard of behaviour reasonably expected of a person in his or their position in relation to the market.

(2) The conditions are that—

- (a) the behaviour is based on information which is not generally available to those using the market but which, if available to a regular user of the market, would or would be likely to be regarded by him as relevant when deciding the terms on which transactions in investments of the kind in question should be effected;
- (b) the behaviour is likely to give a regular user of the market a false or misleading impression as to the supply of, or demand for, or as to the price or value of, investments of the kind in question;
- (c) a regular user of the market would, or would be likely to, regard the behaviour as behaviour which would, or would be likely to, distort the market in investments of the kind in question.

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(3) The Treasury may by order prescribe (whether by name or by description)—

- (a) the markets to which this section applies; and
- (b) the investments which are qualifying investments in relation to those markets.

(4) The order may prescribe different investments or descriptions of investment in relation to different markets or descriptions of market.

(5) Behaviour is to be disregarded for the purposes of subsection (1) unless it occurs—

- (a) in the United Kingdom; or
- (b) in relation to qualifying investments traded on a market to which this section applies which is situated in the United Kingdom or which is accessible electronically in the United Kingdom.

(6) For the purposes of this section, the behaviour which is to be regarded as occurring in relation to qualifying investments includes behaviour which—

- (a) occurs in relation to anything which is the subject matter, or whose price or value is expressed by reference to the price or value, of those qualifying investments; or
- (b) occurs in relation to investments (whether qualifying or not) whose subject matter is those qualifying investments.

(7) Information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded for the purposes of this section as being generally available to them.

(8) Behaviour does not amount to market abuse if it conforms with a rule which includes a provision to the effect that behaviour conforming with the rule does not amount to market abuse.

(9) Any reference in this Act to a person engaged in market abuse is a reference to a person engaged in market abuse whether alone or with one or more other persons.

(10) In this section—

- “behaviour” includes action or inaction;
- “investment” is to be read with section 22 and Schedule 2;
- “regular user”, in relation to a particular market, means a reasonable person who regularly deals on that market in investments of the kind in question.

The code

The code.

119.—(1) The Authority must prepare and issue a code containing such provisions as the Authority considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse.

(2) The code may among other things specify—

- (a) descriptions of behaviour that, in the opinion of the Authority, amount to market abuse;
- (b) descriptions of behaviour that, in the opinion of the Authority, do not amount to market abuse;

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- (c) factors that, in the opinion of the Authority, are to be taken into account in determining whether or not behaviour amounts to market abuse.
- (3) The code may make different provision in relation to persons, cases or circumstances of different descriptions.
- (4) The Authority may at any time alter or replace the code.
- (5) If the code is altered or replaced, the altered or replacement code must be issued by the Authority.
- (6) A code 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.
- (7) The Authority must, without delay, give the Treasury a copy of any code published under this section.
- (8) The Authority may charge a reasonable fee for providing a person with a copy of the code.

120.—(1) The Authority may include in a code issued by it under section 119 (“the Authority’s code”) provision to the effect that in its opinion behaviour conforming with the City Code—

- (a) does not amount to market abuse;
- (b) does not amount to market abuse in specified circumstances; or
- (c) does not amount to market abuse if engaged in by a specified description of person.

Provisions included in the Authority’s code by reference to the City Code.

(2) But the Treasury’s approval is required before any such provision may be included in the Authority’s code.

(3) If the Authority’s code includes provision of a kind authorised by subsection (1), the Authority must keep itself informed of the way in which the Panel on Takeovers and Mergers interprets and administers the relevant provisions of the City Code.

(4) “City Code” means the City Code on Takeovers and Mergers issued by the Panel as it has effect at the time when the behaviour occurs.

(5) “Specified” means specified in the Authority’s code.

121.—(1) Before issuing a code under section 119, the Authority must publish a draft of the proposed code in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

Codes: procedure.

(2) The draft must be accompanied by—

- (a) a cost benefit analysis; and
- (b) notice that representations about the proposal may be made to the Authority within a specified time.

(3) Before issuing the proposed code, the Authority must have regard to any representations made to it in accordance with subsection (2)(b).

(4) If the Authority issues the proposed code it must publish an account, in general terms, of—

- (a) the representations made to it in accordance with subsection (2)(b); and

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(b) its response to them.

(5) If the code differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant—

- (a) the Authority must (in addition to complying with subsection (4)) publish details of the difference; and
- (b) those details must be accompanied by a cost benefit analysis.

(6) Subsections (1) to (5) do not apply if the Authority considers that there is an urgent need to publish the code.

(7) Neither subsection (2)(a) nor subsection (5)(b) applies if the Authority considers—

- (a) that, making the appropriate comparison, there will be no increase in costs; or
- (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.

(8) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(9) This section also applies to a proposal to alter or replace a code.

(10) “Cost benefit analysis” means an estimate of the costs together with an analysis of the benefits that will arise—

- (a) if the proposed code is issued; or
- (b) if subsection (5)(b) applies, from the code that has been issued.

(11) “The appropriate comparison” means—

- (a) in relation to subsection (2)(a), a comparison between the overall position if the code is issued and the overall position if it is not issued;
- (b) in relation to subsection (5)(b), a comparison between the overall position after the issuing of the code and the overall position before it was issued.

Effect of the code. **122.**—(1) If a person behaves in a way which is described (in the code in force under section 119 at the time of the behaviour) as behaviour that, in the Authority’s opinion, does not amount to market abuse that behaviour of his is to be taken, for the purposes of this Act, as not amounting to market abuse.

(2) Otherwise, the code in force under section 119 at the time when particular behaviour occurs may be relied on so far as it indicates whether or not that behaviour should be taken to amount to market abuse.

Power to impose penalties

Power to impose penalties in cases of market abuse.

123.—(1) If the Authority is satisfied that a person (“A”)—

- (a) is or 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 A, would amount to market abuse,

it may impose on him a penalty of such amount as it considers appropriate.

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(2) But the Authority may not impose a penalty on a person if, having considered any representations made to it in response to a warning notice, there are reasonable grounds for it to be satisfied that—

- (a) he 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 that subsection.

(3) If the Authority is entitled to impose a penalty on a person under this section it may, instead of imposing a penalty on him, publish a statement to the effect that he has engaged in market abuse.

Statement of policy

124.—(1) The Authority must prepare and issue a statement of its policy with respect to— Statement of policy.

- (a) the imposition of penalties under section 123; and
- (b) the amount of penalties under that section.

(2) The Authority's policy in determining what the amount of a penalty should be must include having regard to—

- (a) whether the behaviour in respect of which the penalty is to be imposed had an adverse effect on the market in question and, if it did, how serious that effect was;
- (b) the extent to which that behaviour was deliberate or reckless; and
- (c) whether the person on whom the penalty is to be imposed is an individual.

(3) A statement issued under this section must include an indication of the circumstances in which the Authority is to be expected to regard a person as—

- (a) having a reasonable belief that his behaviour did not amount to market abuse; or
- (b) having taken reasonable precautions and exercised due diligence to avoid engaging in market abuse.

(4) The Authority may at any time alter or replace a statement issued under this section.

(5) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replacement statement.

(6) In exercising, or deciding whether to exercise, its power under section 123 in the case of any particular behaviour, the Authority must have regard to any statement published under this section and in force at the time when the behaviour concerned occurred.

(7) 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.

(8) The Authority may charge a reasonable fee for providing a person with a copy of a statement published under this section.

(9) The Authority must, without delay, give the Treasury a copy of any statement which it publishes under this section.

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*Financial Services and Markets Act 2000***PART VIII**Statement of
policy: procedure.

125.—(1) Before issuing a statement of policy under section 124, 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.

Procedure

Warning notices.

126.—(1) If the Authority proposes to take action against a person under section 123, it must give him a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.

Decision notices
and right to refer
to Tribunal.

127.—(1) If the Authority decides to take action against a person under section 123, it must give him a decision notice.

(2) A decision notice about the imposition of a penalty must state the amount of the penalty.

(3) A decision notice about the publication of a statement must set out the terms of the statement.

(4) If the Authority decides to take action against a person under section 123, that person may refer the matter to the Tribunal.

*Miscellaneous*Suspension of
investigations.

128.—(1) If the Authority considers it desirable or expedient because of the exercise or possible exercise of a power relating to market abuse, it may direct a recognised investment exchange or recognised clearing house—

(a) to terminate, suspend or limit the scope of any inquiry which the exchange or clearing house is conducting under its rules; or

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(b) not to conduct an inquiry which the exchange or clearing house proposes to conduct under its rules.

(2) A direction under this section—

(a) must be given to the exchange or clearing house concerned by notice in writing; and

(b) is enforceable, on the application of the Authority, by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988. 1988 c. 36.

(3) The Authority's powers relating to market abuse are its powers—

(a) to impose penalties under section 123; or

(b) to appoint a person to conduct an investigation under section 168 in a case falling within subsection (2)(d) of that section.

129.—(1) The Authority may on an application to the court under section 381 or 383 request the court to consider whether the circumstances are such that a penalty should be imposed on the person to whom the application relates. Power of court to impose penalty in cases of market abuse.

(2) The court may, if it considers it appropriate, make an order requiring the person concerned to pay to the Authority a penalty of such amount as it considers appropriate.

130.—(1) The Treasury may from time to time issue written guidance for the purpose of helping relevant authorities to determine the action to be taken in cases where behaviour occurs which is behaviour— Guidance.

(a) with respect to which the power in section 123 appears to be exercisable; and

(b) which appears to involve the commission of an offence under section 397 of this Act or Part V of the Criminal Justice Act 1993 (insider dealing). 1993 c. 36.

(2) The Treasury must obtain the consent of the Attorney General and the Secretary of State before issuing any guidance under this section.

(3) In this section “relevant authorities”—

(a) in relation to England and Wales, means the Secretary of State, the Authority, the Director of the Serious Fraud Office and the Director of Public Prosecutions;

(b) in relation to Northern Ireland, means the Secretary of State, the Authority, the Director of the Serious Fraud Office and the Director of Public Prosecutions for Northern Ireland.

(4) Subsections (1) to (3) do not apply to Scotland.

(5) In relation to Scotland, the Lord Advocate may from time to time, after consultation with the Treasury, issue written guidance for the purpose of helping the Authority to determine the action to be taken in cases where behaviour mentioned in subsection (1) occurs.

131. The imposition of a penalty under this Part does not make any transaction void or unenforceable. Effect on transactions.

PART IX

HEARINGS AND APPEALS

The Financial
Services and
Markets Tribunal.

132.—(1) For the purposes of this Act, there is to be a tribunal known as the Financial Services and Markets Tribunal (but referred to in this Act as “the Tribunal”).

(2) The Tribunal is to have the functions conferred on it by or under this Act.

(3) The Lord Chancellor may by rules make such provision as appears to him to be necessary or expedient in respect of the conduct of proceedings before the Tribunal.

(4) Schedule 13 is to have effect as respects the Tribunal and its proceedings (but does not limit the Lord Chancellor’s powers under this section).

Proceedings:
general provision.

133.—(1) A reference to the Tribunal under this Act must be made before the end of—

- (a) the period of 28 days beginning with the date on which the decision notice or supervisory notice in question is given; or
- (b) such other period as may be specified in rules made under section 132.

(2) Subject to rules made under section 132, the Tribunal may allow a reference to be made after the end of that period.

(3) On a reference the Tribunal may consider any evidence relating to the subject-matter of the reference, whether or not it was available to the Authority at the material time.

(4) On a reference the Tribunal must determine what (if any) is the appropriate action for the Authority to take in relation to the matter referred to it.

(5) On determining a reference, the Tribunal must remit the matter to the Authority with such directions (if any) as the Tribunal considers appropriate for giving effect to its determination.

(6) In determining a reference made as a result of a decision notice, the Tribunal may not direct the Authority to take action which the Authority would not, as a result of section 388(2), have had power to take when giving the decision notice.

(7) In determining a reference made as a result of a supervisory notice, the Tribunal may not direct the Authority to take action which would have otherwise required the giving of a decision notice.

(8) The Tribunal may, on determining a reference, make recommendations as to the Authority’s regulating provisions or its procedures.

(9) The Authority must not take the action specified in a decision notice—

- (a) during the period within which the matter to which the decision notice relates may be referred to the Tribunal; and
- (b) if the matter is so referred, until the reference, and any appeal against the Tribunal’s determination, has been finally disposed of.

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(10) The Authority must act in accordance with the determination of, and any direction given by, the Tribunal.

(11) An order of the Tribunal may be enforced—

- (a) as if it were an order of a county court; or
- (b) in Scotland, as if it were an order of the Court of Session.

(12) “Supervisory notice” has the same meaning as in section 395.

Legal assistance before the Tribunal

134.—(1) The Lord Chancellor may by regulations establish a scheme governing the provision of legal assistance in connection with proceedings before the Tribunal. Legal assistance scheme.

(2) If the Lord Chancellor establishes a scheme under subsection (1), it must provide that a person is eligible for assistance only if—

- (a) he falls within subsection (3); and
- (b) he fulfils such other criteria (if any) as may be prescribed as a result of section 135(1)(d).

(3) A person falls within this subsection if he is an individual who has referred a matter to the Tribunal under section 127(4).

(4) In this Part of this Act “the legal assistance scheme” means any scheme in force under subsection (1).

135.—(1) The legal assistance scheme may, in particular, make provision as to— Provisions of the legal assistance scheme.

- (a) the kinds of legal assistance that may be provided;
- (b) the persons by whom legal assistance may be provided;
- (c) the manner in which applications for legal assistance are to be made;
- (d) the criteria on which eligibility for legal assistance is to be determined;
- (e) the persons or bodies by whom applications are to be determined;
- (f) appeals against refusals of applications;
- (g) the revocation or variation of decisions;
- (h) its administration and the enforcement of its provisions.

(2) Legal assistance under the legal assistance scheme may be provided subject to conditions or restrictions, including conditions as to the making of contributions by the person to whom it is provided.

136.—(1) The Authority must pay to the Lord Chancellor such sums at such times as he may, from time to time, determine in respect of the anticipated or actual cost of legal assistance provided in connection with proceedings before the Tribunal under the legal assistance scheme. Funding of the legal assistance scheme.

(2) In order to enable it to pay any sum which it is obliged to pay under subsection (1), the Authority must make rules requiring the payment to it by authorised persons or any class of authorised person of specified amounts or amounts calculated in a specified way.

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(3) Sums received by the Lord Chancellor under subsection (1) must be paid into the Consolidated Fund.

(4) The Lord Chancellor must, out of money provided by Parliament fund the cost of legal assistance provided in connection with proceedings before the Tribunal under the legal assistance scheme.

(5) Subsection (6) applies if, as respects a period determined by the Lord Chancellor, the amount paid to him under subsection (1) as respects that period exceeds the amount he has expended in that period under subsection (4).

(6) The Lord Chancellor must—

- (a) repay, out of money provided by Parliament, the excess to the Authority; or
- (b) take the excess into account on the next occasion on which he makes a determination under subsection (1).

(7) The Authority must make provision for any sum repaid to it under subsection (6)(a)—

- (a) to be distributed among—
 - (i) the authorised persons on whom a levy was imposed in the period in question as a result of rules made under subsection (2); or
 - (ii) such of those persons as it may determine;
- (b) to be applied in order to reduce any amounts which those persons, or such of them as it may determine, are or will be liable to pay to the Authority, whether under rules made under subsection (2) or otherwise; or
- (c) to be partly so distributed and partly so applied.

(8) If the Authority considers that it is not practicable to deal with any part of a sum repaid to it under subsection (6)(a) in accordance with provision made by it as a result of subsection (7), it may, with the consent of the Lord Chancellor, apply or dispose of that part of that sum in such manner as it considers appropriate.

(9) “Specified” means specified in the rules.

Appeals

Appeal on a point of law.

137.—(1) A party to a reference to the Tribunal may with permission appeal—

- (a) to the Court of Appeal, or
- (b) in Scotland, to the Court of Session,

on a point of law arising from a decision of the Tribunal disposing of the reference.

(2) “Permission” means permission given by the Tribunal or by the Court of Appeal or (in Scotland) the Court of Session.

(3) If, on an appeal under subsection (1), the court considers that the decision of the Tribunal was wrong in law, it may—

- (a) remit the matter to the Tribunal for rehearing and determination by it; or
- (b) itself make a determination.

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(4) An appeal may not be brought from a decision of the Court of Appeal under subsection (3) except with the leave of—

- (a) the Court of Appeal; or
- (b) the House of Lords.

(5) An appeal lies, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given on such terms as to costs, expenses or otherwise as the Court of Session or the House of Lords may determine.

(6) Rules made under section 132 may make provision for regulating or prescribing any matters incidental to or consequential on an appeal under this section.

PART X

RULES AND GUIDANCE

CHAPTER I

RULE-MAKING POWERS

138.—(1) The Authority may make such rules applying to authorised persons—

General rule-making power.

- (a) with respect to the carrying on by them of regulated activities, or
- (b) with respect to the carrying on by them of activities which are not regulated activities,

as appear to it to be necessary or expedient for the purpose of protecting the interests of consumers.

(2) Rules made under this section are referred to in this Act as the Authority's general rules.

(3) The Authority's power to make general rules is not limited by any other power which it has to make regulating provisions.

(4) The Authority's general rules may make provision applying to authorised persons even though there is no relationship between the authorised persons to whom the rules will apply and the persons whose interests will be protected by the rules.

(5) General rules may contain requirements which take into account, in the case of an authorised person who is a member of a group, any activity of another member of the group.

(6) General rules may not—

- (a) make provision prohibiting an EEA firm from carrying on, or holding itself out as carrying on, any activity which it has permission conferred by Part II of Schedule 3 to carry on in the United Kingdom;
- (b) make provision, as respects an EEA firm, about any matter responsibility for which is, under any of the single market directives, reserved to the firm's home state regulator.

(7) "Consumers" means persons—

- (a) who use, have used, or are or may be contemplating using, any of the services provided by—
 - (i) authorised persons in carrying on regulated activities;
- or

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(ii) persons acting as appointed representatives;

- (b) who have rights or interests which are derived from, or are otherwise attributable to, the use of any such services by other persons; or
- (c) who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them.

(8) If an authorised person is carrying on a regulated activity in his capacity as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or are or may be contemplating using services provided by the authorised person in his carrying on of that activity.

(9) For the purposes of subsection (7) a person who deals with an authorised person in the course of the authorised person's carrying on of a regulated activity is to be treated as using services provided by the authorised person in carrying on those activities.

Miscellaneous
ancillary matters.

139.—(1) Rules relating to the handling of money held by an authorised person in specified circumstances (“clients’ money”) may—

- (a) make provision which results in that clients’ money being held on trust in accordance with the rules;
- (b) treat two or more accounts as a single account for specified purposes (which may include the distribution of money held in the accounts);
- (c) authorise the retention by the authorised person of interest accruing on the clients’ money; and
- (d) make provision as to the distribution of such interest which is not to be retained by him.

(2) An institution with which an account is kept in pursuance of rules relating to the handling of clients’ money does not incur any liability as constructive trustee if money is wrongfully paid from the account, unless the institution permits the payment—

- (a) with knowledge that it is wrongful; or
- (b) having deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.

(3) In the application of subsection (1) to Scotland, the reference to money being held on trust is to be read as a reference to its being held as agent for the person who is entitled to call for it to be paid over to him or to be paid on his direction or to have it otherwise credited to him.

(4) Rules may—

- (a) confer rights on persons to rescind agreements with, or withdraw offers to, authorised persons within a specified period; and
- (b) make provision, in respect of authorised persons and persons exercising those rights, for the restitution of property and the making or recovery of payments where those rights are exercised.

(5) “Rules” means general rules.

(6) “Specified” means specified in the rules.

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140.—(1) The Authority may make rules prohibiting an authorised person who has permission to act as the manager of an authorised unit trust scheme from carrying on a specified activity.

Restriction on managers of authorised unit trust schemes.

(2) Such rules may specify an activity which is not a regulated activity.

141.—(1) The Authority may make rules prohibiting an authorised person who has permission to effect or carry out contracts of insurance from carrying on a specified activity.

Insurance business rules.

(2) Such rules may specify an activity which is not a regulated activity.

(3) The Authority may make rules in relation to contracts entered into by an authorised person in the course of carrying on business which consists of the effecting or carrying out of contracts of long-term insurance.

(4) Such rules may, in particular—

- (a) restrict the descriptions of property or indices of the value of property by reference to which the benefits under such contracts may be determined;
- (b) make provision, in the interests of the protection of policyholders, for the substitution of one description of property, or index of value, by reference to which the benefits under a contract are to be determined for another such description of property or index.

(5) Rules made under this section are referred to in this Act as insurance business rules.

142.—(1) The Treasury may make regulations for the purpose of preventing a person who is not an authorised person but who—

Insurance business: regulations supplementing Authority's rules.

- (a) is a parent undertaking of an authorised person who has permission to effect or carry out contracts of insurance, and
- (b) falls within a prescribed class,

from doing anything to lessen the effectiveness of asset identification rules.

(2) "Asset identification rules" means rules made by the Authority which require an authorised person who has permission to effect or carry out contracts of insurance to identify assets which belong to him and which are maintained in respect of a particular aspect of his business.

(3) The regulations may, in particular, include provision—

- (a) prohibiting the payment of dividends;
- (b) prohibiting the creation of charges;
- (c) making charges created in contravention of the regulations void.

(4) The Treasury may by regulations provide that, in prescribed circumstances, charges created in contravention of asset identification rules are void.

(5) A person who contravenes regulations under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) "Charges" includes mortgages (or in Scotland securities over property).

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Endorsement of
codes etc.

143.—(1) The Authority may make rules (“endorsing rules”)—

- (a) endorsing the City Code on Takeovers and Mergers issued by the Panel on Takeovers and Mergers;
- (b) endorsing the Rules Governing Substantial Acquisitions of Shares issued by the Panel.

(2) Endorsement may be—

- (a) as respects all authorised persons; or
- (b) only as respects a specified kind of authorised person.

(3) At any time when endorsing rules are in force, and if asked to do so by the Panel, the Authority may exercise its powers under Part IV or section 66 as if failure to comply with an endorsed provision was a ground entitling the Authority to exercise those powers.

(4) At any time when endorsing rules are in force and if asked to do so by the Panel, the Authority may exercise its powers under Part XIII, XIV or XXV as if the endorsed provisions were rules applying to the persons in respect of whom they are endorsed.

(5) For the purposes of subsections (3) and (4), a failure to comply with a requirement imposed, or ruling given, under an endorsed provision is to be treated as a failure to comply with the endorsed provision under which that requirement was imposed or ruling was given.

(6) If endorsed provisions are altered, subsections (3) and (4) apply to them as altered, but only if before the alteration the Authority has notified the Panel (and has not withdrawn its notification) that it is satisfied with the Panel’s consultation procedures.

(7) “Consultation procedures” means procedures designed to provide an opportunity for persons likely to be affected by alterations to those provisions to make representations about proposed alterations to any of those provisions.

(8) Subsections (1), (2)(d), (4), (5), (6)(a) and (12) of section 155 apply (with the necessary modifications) to a proposal to give notification of the kind mentioned in subsection (6) as they apply to a proposal to make endorsing rules.

(9) This section applies in relation to particular provisions of the code or rules mentioned in subsection (1) as it applies to the code or the rules.

Specific rules

Price stabilising
rules.

144.—(1) The Authority may make rules (“price stabilising rules”) as to—

- (a) the circumstances and manner in which,
- (b) the conditions subject to which, and
- (c) the time when or the period during which,

action may be taken for the purpose of stabilising the price of investments of specified kinds.

(2) Price stabilising rules—

- (a) are to be made so as to apply only to authorised persons;
- (b) may make different provision in relation to different kinds of investment.

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(3) The Authority may make rules which, for the purposes of section 397(5)(b), treat a person who acts or engages in conduct—

- (a) for the purpose of stabilising the price of investments, and
- (b) in conformity with such provisions corresponding to price stabilising rules and made by a body or authority outside the United Kingdom as may be specified in the rules under this subsection,

as acting, or engaging in that conduct, for that purpose and in conformity with price stabilising rules.

(4) The Treasury may by order impose limitations on the power to make rules under this section.

(5) Such an order may, in particular—

- (a) specify the kinds of investment in relation to which price stabilising rules may make provision;
- (b) specify the kinds of investment in relation to which rules made under subsection (3) may make provision;
- (c) provide for price stabilising rules to make provision for action to be taken for the purpose of stabilising the price of investments only in such circumstances as the order may specify;
- (d) provide for price stabilising rules to make provision for action to be taken for that purpose only at such times or during such periods as the order may specify.

(6) If provisions specified in rules made under subsection (3) are altered, the rules continue to apply to those provisions as altered, but only if before the alteration the Authority has notified the body or authority concerned (and has not withdrawn its notification) that it is satisfied with its consultation procedures.

(7) “Consultation procedures” has the same meaning as in section 143.

145.—(1) The Authority may make rules applying to authorised persons about the communication by them, or their approval of the communication by others, of invitations or inducements—

Financial
promotion rules.

- (a) to engage in investment activity; or
- (b) to participate in a collective investment scheme.

(2) Rules under this section may, in particular, make provision about the form and content of communications.

(3) Subsection (1) applies only to communications which—

- (a) if made by a person other than an authorised person, without the approval of an authorised person, would contravene section 21(1);
- (b) may be made by an authorised person without contravening section 238(1).

(4) “Engage in investment activity” has the same meaning as in section 21.

(5) The Treasury may by order impose limitations on the power to make rules under this section.

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*Financial Services and Markets Act 2000*PART X
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rules.

146. The Authority may make rules in relation to the prevention and detection of money laundering in connection with the carrying on of regulated activities by authorised persons.

Control of
information rules.

147.—(1) The Authority may make rules (“control of information rules”) about the disclosure and use of information held by an authorised person (“A”).

(2) Control of information rules may—

- (a) require the withholding of information which A would otherwise have to disclose to a person (“B”) for or with whom A does business in the course of carrying on any regulated or other activity;
- (b) specify circumstances in which A may withhold information which he would otherwise have to disclose to B;
- (c) require A not to use for the benefit of B information A holds which A would otherwise have to use in that way;
- (d) specify circumstances in which A may decide not to use for the benefit of B information A holds which A would otherwise have to use in that way.

*Modification or waiver*Modification or
waiver of rules.

148.—(1) This section applies in relation to the following—

- (a) auditors and actuaries rules;
- (b) control of information rules;
- (c) financial promotion rules;
- (d) general rules;
- (e) insurance business rules;
- (f) money laundering rules; and
- (g) price stabilising rules.

(2) The Authority may, on the application or with the consent of an authorised person, direct that all or any of the rules to which this section applies—

- (a) are not to apply to the authorised person; or
- (b) are to apply to him with such modifications as may be specified in the direction.

(3) An application must be made in such manner as the Authority may direct.

(4) The Authority may not give a direction unless it is satisfied that—

- (a) compliance by the authorised person with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made; and
- (b) the direction would not result in undue risk to persons whose interests the rules are intended to protect.

(5) A direction may be given subject to conditions.

(6) Unless it is satisfied that it is inappropriate or unnecessary to do so, a direction must be published by the Authority in such a way as it thinks most suitable for bringing the direction to the attention of—

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- (a) those likely to be affected by it; and
- (b) others who may be likely to make an application for a similar direction.

(7) In deciding whether it is satisfied as mentioned in subsection (6), the Authority must—

- (a) take into account whether the direction relates to a rule contravention of which is actionable in accordance with section 150;
- (b) consider whether its publication would prejudice, to an unreasonable degree, the commercial interests of the authorised person concerned or any other member of his immediate group; and
- (c) consider whether its publication would be contrary to an international obligation of the United Kingdom.

(8) For the purposes of paragraphs (b) and (c) of subsection (7), the Authority must consider whether it would be possible to publish the direction without either of the consequences mentioned in those paragraphs by publishing it without disclosing the identity of the authorised person concerned.

(9) The Authority may—

- (a) revoke a direction; or
- (b) vary it on the application, or with the consent, of the authorised person to whom it relates.

(10) “Direction” means a direction under subsection (2).

(11) “Immediate group”, in relation to an authorised person (“A”), means—

- (a) A;
- (b) a parent undertaking of A;
- (c) a subsidiary undertaking of A;
- (d) a subsidiary undertaking of a parent undertaking of A;
- (e) a parent undertaking of a subsidiary undertaking of A.

Contravention of rules

149.—(1) If a particular rule so provides, contravention of the rule does not give rise to any of the consequences provided for by other provisions of this Act. Evidential provisions.

(2) A rule which so provides must also provide—

- (a) that contravention may be relied on as tending to establish contravention of such other rule as may be specified; or
- (b) that compliance may be relied on as tending to establish compliance with such other rule as may be specified.

(3) A rule may include the provision mentioned in subsection (1) only if the Authority considers that it is appropriate for it also to include the provision required by subsection (2).

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damages.

150.—(1) A contravention by an authorised person of a rule is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) If rules so provide, subsection (1) does not apply to contravention of a specified provision of those rules.

(3) In prescribed cases, a contravention of a rule which would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.

(4) In subsections (1) and (3) “rule” does not include—

- (a) listing rules; or
- (b) a rule requiring an authorised person to have or maintain financial resources.

(5) “Private person” has such meaning as may be prescribed.

Limits on effect of
contravening
rules.

151.—(1) A person is not guilty of an offence by reason of a contravention of a rule made by the Authority.

(2) No such contravention makes any transaction void or unenforceable.

*Procedural provisions*Notification of
rules to the
Treasury.

152.—(1) If the Authority makes any rules, it must give a copy to the Treasury without delay.

(2) If the Authority alters or revokes any rules, it must give written notice to the Treasury without delay.

(3) Notice of an alteration must include details of the alteration.

Rule-making
instruments.

153.—(1) Any power conferred on the Authority to make rules is exercisable in writing.

(2) An instrument by which rules are made by the Authority (“a rule-making instrument”) must specify the provision under which the rules are made.

(3) To the extent to which a rule-making instrument does not comply with subsection (2), it is void.

(4) A rule-making instrument 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.

(5) The Authority may charge a reasonable fee for providing a person with a copy of a rule-making instrument.

(6) A person is not to be taken to have contravened any rule made by the Authority if he shows that at the time of the alleged contravention the rule-making instrument concerned had not been made available in accordance with this section.

Verification of
rules.

154.—(1) The production of a printed copy of a rule-making instrument purporting to be made by the Authority—

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(a) on which is endorsed a certificate signed by a member of the Authority's staff authorised by it for that purpose, and

(b) which contains the required statements,

is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.

(2) The required statements are—

- (a) that the instrument was made by the Authority;
- (b) that the copy is a true copy of the instrument; and
- (c) that on a specified date the instrument was made available to the public in accordance with section 153(4).

(3) A certificate purporting to be signed as mentioned in subsection (1) is to be taken to have been properly signed unless the contrary is shown.

(4) A person who wishes in any legal proceedings to rely on a rule-making instrument may require the Authority to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (1).

155.—(1) If the Authority proposes to make any rules, it must publish a draft of the proposed rules in the way appearing to it to be best calculated to bring them to the attention of the public. Consultation.

(2) The draft must be accompanied by—

- (a) a cost benefit analysis;
- (b) an explanation of the purpose of the proposed rules;
- (c) an explanation of the Authority's reasons for believing that making the proposed rules is compatible with its general duties under section 2; and
- (d) notice that representations about the proposals may be made to the Authority within a specified time.

(3) In the case of a proposal to make rules under a provision mentioned in subsection (9), the draft must also be accompanied by details of the expected expenditure by reference to which the proposal is made.

(4) Before making the proposed rules, the Authority must have regard to any representations made to it in accordance with subsection (2)(d).

(5) If the Authority makes the proposed rules, it must publish an account, in general terms, of—

- (a) the representations made to it in accordance with subsection (2)(d); and
- (b) its response to them.

(6) If the rules differ from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant—

- (a) the Authority must (in addition to complying with subsection (5)) publish details of the difference; and
- (b) those details must be accompanied by a cost benefit analysis.

(7) Subsections (1) to (6) do not apply if the Authority considers that the delay involved in complying with them would be prejudicial to the interests of consumers.

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(8) Neither subsection (2)(a) nor subsection (6)(b) applies if the Authority considers—

- (a) that, making the appropriate comparison, there will be no increase in costs; or
- (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.

(9) Neither subsection (2)(a) nor subsection (6)(b) requires a cost benefit analysis to be carried out in relation to rules made under—

- (a) section 136(2);
- (b) subsection (1) of section 213 as a result of subsection (4) of that section;
- (c) section 234;
- (d) paragraph 17 of Schedule 1.

(10) “Cost benefit analysis” means an estimate of the costs together with an analysis of the benefits that will arise—

- (a) if the proposed rules are made; or
- (b) if subsection (6) applies, from the rules that have been made.

(11) “The appropriate comparison” means—

- (a) in relation to subsection (2)(a), a comparison between the overall position if the rules are made and the overall position if they are not made;
- (b) in relation to subsection (6)(b), a comparison between the overall position after the making of the rules and the overall position before they were made.

(12) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

General
supplementary
powers.

156.—(1) Rules made by the Authority may make different provision for different cases and may, in particular, make different provision in respect of different descriptions of authorised person, activity or investment.

(2) Rules made by the Authority may contain such incidental, supplemental, consequential and transitional provision as the Authority considers appropriate.

CHAPTER II

GUIDANCE

Guidance.

157.—(1) The Authority may give guidance consisting of such information and advice as it considers appropriate—

- (a) with respect to the operation of this Act and of any rules made under it;
- (b) with respect to any matters relating to functions of the Authority;
- (c) for the purpose of meeting the regulatory objectives;
- (d) with respect to any other matters about which it appears to the Authority to be desirable to give information or advice.

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(2) The Authority may give financial or other assistance to persons giving information or advice of a kind which the Authority could give under this section.

(3) If the Authority proposes to give guidance to regulated persons generally, or to a class of regulated person, in relation to rules to which those persons are subject, subsections (1), (2) and (4) to (10) of section 155 apply to the proposed guidance as they apply to proposed rules.

(4) The Authority may—

- (a) publish its guidance;
- (b) offer copies of its published guidance for sale at a reasonable price; and
- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

(5) In this Chapter, references to guidance given by the Authority include references to any recommendation made by the Authority to persons generally, to regulated persons generally or to any class of regulated person.

(6) “Regulated person” means any—

- (a) authorised person;
- (b) person who is otherwise subject to rules made by the Authority.

158.—(1) On giving any general guidance, the Authority must give the Treasury a copy of the guidance without delay.

Notification of
guidance to the
Treasury.

(2) If the Authority alters any of its general guidance, it must give written notice to the Treasury without delay.

(3) The notice must include details of the alteration.

(4) If the Authority revokes any of its general guidance, it must give written notice to the Treasury without delay.

(5) “General guidance” means guidance given by the Authority under section 157 which is—

- (a) given to persons generally, to regulated persons generally or to a class of regulated person;
- (b) intended to have continuing effect; and
- (c) given in writing or other legible form.

(6) “Regulated person” has the same meaning as in section 157.

CHAPTER III

COMPETITION SCRUTINY

159.—(1) In this Chapter—

Interpretation.

“Director” means the Director General of Fair Trading;

“practices”, in relation to the Authority, means practices adopted by the Authority in the exercise of functions under this Act;

“regulating provisions” means any—

- (a) rules;
- (b) general guidance (as defined by section 158(5));
- (c) statement issued by the Authority under section 64;