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(d) code issued by the Authority under section 64 or 119.

(2) For the purposes of this Chapter, 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
- (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.

(3) 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, for the purposes of this Chapter, to have an adverse effect on competition.

(4) In determining under this Chapter whether any of the regulating provisions have, or are 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.

Reports by
Director General
of Fair Trading.**160.**—(1) The Director must keep the regulating provisions and the Authority's practices under review.

(2) If at any time the Director considers that—

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

he must make a report to that effect.

(3) If at any time the Director considers that—

- (a) a regulating provision or practice does not have a significantly adverse effect on competition, or
- (b) two or more regulating provisions or practices taken together, or a particular combination of regulating provisions and practices, do not have any such effect,

he may make a report to that effect.

(4) A report under subsection (2) must include details of the adverse effect on competition.

(5) If the Director makes a report under subsection (2) he must—

- (a) send a copy of it to the Treasury, the Competition Commission and the Authority; and
- (b) publish it in the way appearing to him to be best calculated to bring it to the attention of the public.

(6) If the Director makes a report under subsection (3)—

- (a) he must send a copy of it to the Treasury, the Competition Commission and the Authority; and
- (b) he may publish it.

(7) Before publishing a report under this section the Director must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the Director, would or might seriously and prejudicially affect his interests.

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(8) Before publishing such a report the Director must, so far as practicable, exclude any matter which relates to the affairs of a particular body the publication of which, in the opinion of the Director, would or might seriously and prejudicially affect its interests.

(9) Subsections (7) and (8) do not apply in relation to copies of a report which the Director is required to send under subsection (5)(a) or (6)(a).

(10) For the purposes of the law of defamation, absolute privilege attaches to any report of the Director under this section.

161.—(1) For the purpose of investigating any matter with a view to its consideration under section 160, the Director may exercise the powers conferred on him by this section. Power of Director to request information.

(2) The Director may by notice in writing require any person to produce to him or to a person appointed by him for the purpose, at a time and place specified in the notice, any document which—

- (a) is specified or described in the notice; and
- (b) is a document in that person's custody or under his control.

(3) The Director may by notice in writing—

- (a) require any person carrying on any business to provide him with such information as may be specified or described in the notice; and
- (b) specify the time within which, and the manner and form in which, any such information is to be provided.

(4) A requirement may be imposed under subsection (2) or (3)(a) only in respect of documents or information which relate to any matter relevant to the investigation.

(5) If a person ("the defaulter") refuses, or otherwise fails, to comply with a notice under this section, the Director may certify that fact in writing to the court and the court may enquire into the case.

(6) If, after hearing any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence, the court is satisfied that the defaulter did not have a reasonable excuse for refusing or otherwise failing to comply with the notice, the court may deal with the defaulter as if he were in contempt.

(7) "Court" means—

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

162.—(1) If the Director—

- (a) makes a report under section 160(2), or
- (b) asks the Commission to consider a report that he has made under section 160(3),

the Commission must investigate the matter.

(2) The Commission must then make its own report on the matter unless it considers that, as a result of a change of circumstances, no useful purpose would be served by a report.

Consideration by
Competition
Commission.

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(3) If the Commission decides in accordance with subsection (2) not to make a report, it must make a statement setting out the change of circumstances which resulted in that decision.

(4) A report made under this section must state the Commission's conclusion as to whether—

- (a) the regulating provision or practice which is the subject of the report has a significantly adverse effect on competition; or
- (b) the regulating provisions or practices, or combination of regulating provisions and practices, which are the subject of the report have such an effect.

(5) A report under this section stating the Commission's conclusion that there is a significantly adverse effect on competition must also—

- (a) state whether the Commission considers that that effect is justified; and
- (b) if it states that the Commission considers that it is not justified, state its conclusion as to what action, if any, ought to be taken by the Authority.

(6) Subsection (7) applies whenever the Commission is considering, for the purposes of this section, whether a particular adverse effect on competition is justified.

(7) The Commission must ensure, so far as that is reasonably possible, that the conclusion it reaches is compatible with the functions conferred, and obligations imposed, on the Authority by or under this Act.

(8) A report under this section must contain such an account of the Commission's reasons for its conclusions as is expedient, in the opinion of the Commission, for facilitating proper understanding of them.

(9) Schedule 14 supplements this section.

(10) If the Commission makes a report under this section it must send a copy to the Treasury, the Authority and the Director.

Role of the
Treasury.

163.—(1) This section applies if the Competition Commission makes a report under section 162(2) which states its conclusion that there is a significantly adverse effect on competition.

(2) If the Commission's conclusion, as stated in the report, is that the adverse effect on competition is not justified, the Treasury must give a direction to the Authority requiring it to take such action as may be specified in the direction.

(3) But subsection (2) does not apply if the Treasury consider—

- (a) that, as a result of action taken by the Authority in response to the Commission's report, it is unnecessary for them to give a direction; or
- (b) that the exceptional circumstances of the case make it inappropriate or unnecessary for them to do so.

(4) In considering the action to be specified in a direction under subsection (2), the Treasury must have regard to any conclusion of the Commission included in the report because of section 162(5)(b).

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(5) Subsection (6) applies if—

- (a) the Commission's conclusion, as stated in its report, is that the adverse effect on competition is justified; but
- (b) the Treasury consider that the exceptional circumstances of the case require them to act.

(6) The Treasury may give a direction to the Authority requiring it to take such action—

- (a) as they consider to be necessary in the light of the exceptional circumstances of the case; and
- (b) as may be specified in the direction.

(7) The Authority may not be required as a result of this section to take any action—

- (a) that it would not have power to take in the absence of a direction under this section; or
- (b) that would otherwise be incompatible with any of the functions conferred, or obligations imposed, on it by or under this Act.

(8) Subsection (9) applies if the Treasury are considering—

- (a) whether subsection (2) applies and, if so, what action is to be specified in a direction under that subsection; or
- (b) whether to give a direction under subsection (6).

(9) The Treasury must—

- (a) do what they consider appropriate to allow the Authority, and any other person appearing to the Treasury to be affected, an opportunity to make representations; and
- (b) have regard to any such representations.

(10) If, in reliance on subsection (3)(a) or (b), the Treasury decline to act under subsection (2), they must make a statement to that effect, giving their reasons.

(11) If the Treasury give a direction under this section they must make a statement giving—

- (a) details of the direction; and
- (b) if the direction is given under subsection (6), their reasons for giving it.

(12) The Treasury must—

- (a) publish any statement made under this section in the way appearing to them best calculated to bring it to the attention of the public; and
- (b) lay a copy of it before Parliament.

164.—(1) The Chapter I prohibition does not apply to an agreement the parties to which consist of or include—

- (a) an authorised person, or

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Act 1998.

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(b) a person who is otherwise subject to the Authority's regulating provisions,

to the extent to which the agreement consists of provisions the inclusion of which in the agreement is encouraged by any of the Authority's regulating provisions.

(2) The Chapter I prohibition does not apply to the practices of an authorised person or a person who is otherwise subject to the regulating provisions to the extent to which the practices are encouraged by any of the Authority's regulating provisions.

(3) The Chapter II prohibition does not apply to conduct of—

(a) an authorised person, or

(b) a person who is otherwise subject to the Authority's regulating provisions,

to the extent to which the conduct is encouraged by any of the Authority's regulating provisions.

1998 c. 41.

(4) "The Chapter I prohibition" means the prohibition imposed by section 2(1) of the Competition Act 1998.

(5) "The Chapter II prohibition" means the prohibition imposed by section 18(1) of that Act.

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INFORMATION GATHERING AND INVESTIGATIONS

*Powers to gather information*Authority's power
to require
information.

165.—(1) The Authority may, by notice in writing given to an authorised person, require him—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

(2) The information or documents must be provided or produced—

(a) before the end of such reasonable period as may be specified; and

(b) at such place as may be specified.

(3) An officer who has written authorisation from the Authority to do so may require an authorised person without delay—

(a) to provide the officer with specified information or information of a specified description; or

(b) to produce to him specified documents or documents of a specified description.

(4) This section applies only to information and documents reasonably required in connection with the exercise by the Authority of functions conferred on it by or under this Act.

(5) The Authority may require any information provided under this section to be provided in such form as it may reasonably require.

(6) The Authority may require—

(a) any information provided, whether in a document or otherwise, to be verified in such manner, or

(b) any document produced to be authenticated in such manner, as it may reasonably require.

(7) The powers conferred by subsections (1) and (3) may also be exercised to impose requirements on—

- (a) a person who is connected with an authorised person;
- (b) an operator, trustee or depositary of a scheme recognised under section 270 or 272 who is not an authorised person;
- (c) a recognised investment exchange or recognised clearing house.

(8) “Authorised person” includes a person who was at any time an authorised person but who has ceased to be an authorised person.

(9) “Officer” means an officer of the Authority and includes a member of the Authority’s staff or an agent of the Authority.

(10) “Specified” means—

- (a) in subsections (1) and (2), specified in the notice; and
- (b) in subsection (3), specified in the authorisation.

(11) For the purposes of this section, a person is connected with an authorised person (“A”) if he is or has at any relevant time been—

- (a) a member of A’s group;
- (b) a controller of A;
- (c) any other member of a partnership of which A is a member; or
- (d) in relation to A, a person mentioned in Part I of Schedule 15.

166.—(1) The Authority may, by notice in writing given to a person to whom subsection (2) applies, require him to provide the Authority with a report on any matter about which the Authority has required or could require the provision of information or production of documents under section 165. Reports by skilled persons.

(2) This subsection applies to—

- (a) an authorised person (“A”),
- (b) any other member of A’s group,
- (c) a partnership of which A is a member, or
- (d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c),

who is, or was at the relevant time, carrying on a business.

(3) The Authority may require the report to be in such form as may be specified in the notice.

(4) The person appointed to make a report required by subsection (1) must be a person—

- (a) nominated or approved by the Authority; and
- (b) appearing to the Authority to have the skills necessary to make a report on the matter concerned.

(5) It is the duty of any person who is providing (or who at any time has provided) services to a person to whom subsection (2) applies in

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relation to a matter on which a report is required under subsection (1) to give a person appointed to provide such a report all such assistance as the appointed person may reasonably require.

1988 c. 36.

(6) The obligation imposed by subsection (5) is enforceable, on the application of the Authority, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

Appointment of investigators

Appointment of persons to carry out general investigations.

167.—(1) If it appears to the Authority or the Secretary of State (“the investigating authority”) that there is good reason for doing so, the investigating authority may appoint one or more competent persons to conduct an investigation on its behalf into—

- (a) the nature, conduct or state of the business of an authorised person or of an appointed representative;
- (b) a particular aspect of that business; or
- (c) the ownership or control of an authorised person.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of his investigation, he may also investigate the business of a person who is or has at any relevant time been—

- (a) a member of the group of which the person under investigation (“A”) is part; or
- (b) a partnership of which A is a member.

(3) If a person appointed under subsection (1) decides to investigate the business of any person under subsection (2) he must give that person written notice of his decision.

(4) The power conferred by this section may be exercised in relation to a former authorised person (or appointed representative) but only in relation to—

- (a) business carried on at any time when he was an authorised person (or appointed representative); or
- (b) the ownership or control of a former authorised person at any time when he was an authorised person.

(5) “Business” includes any part of a business even if it does not consist of carrying on regulated activities.

Appointment of persons to carry out investigations in particular cases.

168.—(1) Subsection (3) applies if it appears to an investigating authority that there are circumstances suggesting that—

- (a) a person may have contravened any regulation made under section 142; or
- (b) a person may be guilty of an offence under section 177, 191, 346 or 398(1) or under Schedule 4.

(2) Subsection (3) also applies if it appears to an investigating authority that there are circumstances suggesting that—

1993 c. 36.

- (a) an offence under section 24(1) or 397 or under Part V of the Criminal Justice Act 1993 may have been committed;
- (b) there may have been a breach of the general prohibition;
- (c) there may have been a contravention of section 21 or 238; or

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(d) market abuse may have taken place.

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

(4) Subsection (5) applies if it appears to the Authority that there are circumstances suggesting that—

- (a) a person may have contravened section 20;
- (b) a person may be guilty of an offence under prescribed regulations relating to money laundering;
- (c) an authorised person may have contravened a rule made by the Authority;
- (d) an individual may not be a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised or exempt person;
- (e) an individual may have performed or agreed to perform a function in breach of a prohibition order;
- (f) an authorised or exempt person may have failed to comply with section 56(6);
- (g) an authorised person may have failed to comply with section 59(1) or (2);
- (h) a person in relation to whom the Authority has given its approval under section 59 may not be a fit and proper person to perform the function to which that approval relates; or
- (i) a person may be guilty of misconduct for the purposes of section 66.

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

(6) “Investigating authority” means the Authority or the Secretary of State.

Assistance to overseas regulators

169.—(1) At the request of an overseas regulator, the Authority may—

- (a) exercise the power conferred by section 165; or
- (b) appoint one or more competent persons to investigate any matter.

Investigations etc.
in support of
overseas
regulator.

(2) An investigator has the same powers as an investigator appointed under section 168(3) (as a result of subsection (1) of that section).

(3) If the request has been made by a competent authority in pursuance of any Community obligation the Authority must, in deciding whether or not to exercise its investigative power, consider whether its exercise is necessary to comply with any such obligation.

(4) In deciding whether or not to exercise its investigative power, the Authority may take into account in particular—

- (a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;

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- (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 that it will not exercise its investigative power unless the overseas regulator undertakes to make such contribution towards the cost of its exercise as the Authority considers appropriate.

(6) Subsections (4) and (5) do not apply if the Authority considers that the exercise of its investigative power is necessary to comply with a Community obligation.

(7) If the Authority has appointed an investigator in response to a request from an overseas regulator, it may direct the investigator to permit a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation.

(8) A direction under subsection (7) is not to be given unless the Authority is satisfied that any information obtained by an overseas regulator as a result of the interview will be subject to safeguards equivalent to those contained in Part XXIII.

(9) The Authority must prepare a statement of its policy with respect to the conduct of interviews in relation to which a direction under subsection (7) has been given.

(10) The statement requires the approval of the Treasury.

(11) If the Treasury approve the statement, the Authority must publish it.

(12) No direction may be given under subsection (7) before the statement has been published.

(13) "Overseas regulator" has the same meaning as in section 195.

(14) "Investigative power" means one of the powers mentioned in subsection (1).

(15) "Investigator" means a person appointed under subsection (1)(b).

Conduct of investigations

Investigations:
general.

170.—(1) This section applies if an investigating authority appoints one or more competent persons ("investigators") under section 167 or 168(3) or (5) to conduct an investigation on its behalf.

(2) The investigating authority must give written notice of the appointment of an investigator to the person who is the subject of the investigation ("the person under investigation").

(3) Subsections (2) and (9) do not apply if —

- (a) the investigator is appointed as a result of section 168(1) or (4) and the investigating authority believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated; or

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- (b) the investigator is appointed as a result of subsection (2) of section 168.
- (4) A notice under subsection (2) must—
- (a) specify the provisions under which, and as a result of which, the investigator was appointed; and
 - (b) state the reason for his appointment.
- (5) Nothing prevents the investigating authority from appointing a person who is a member of its staff as an investigator.
- (6) An investigator must make a report of his investigation to the investigating authority.
- (7) The investigating authority may, by a direction to an investigator, control—
- (a) the scope of the investigation;
 - (b) the period during which the investigation is to be conducted;
 - (c) the conduct of the investigation; and
 - (d) the reporting of the investigation.
- (8) A direction may, in particular—
- (a) confine the investigation to particular matters;
 - (b) extend the investigation to additional matters;
 - (c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction;
 - (d) require the investigator to make such interim reports as are so specified.
- (9) If there is a change in the scope or conduct of the investigation and, in the opinion of the investigating authority, the person subject to investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.
- (10) “Investigating authority”, in relation to an investigator, means—
- (a) the Authority, if the Authority appointed him;
 - (b) the Secretary of State, if the Secretary of State appointed him.

171.—(1) An investigator may require the person who is the subject of the investigation (“the person under investigation”) or any person connected with the person under investigation—

Powers of persons appointed under section 167.

- (a) to attend before the investigator at a specified time and place and answer questions; or
 - (b) otherwise to provide such information as the investigator may require.
- (2) An investigator may also require any person to produce at a specified time and place any specified documents or documents of a specified description.
- (3) A requirement under subsection (1) or (2) may be imposed only so far as the investigator concerned reasonably considers the question, provision of information or production of the document to be relevant to the purposes of the investigation.

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(4) For the purposes of this section and section 172, a person is connected with the person under investigation ("A") if he is or has at any relevant time been—

- (a) a member of A's group;
- (b) a controller of A;
- (c) a partnership of which A is a member; or
- (d) in relation to A, a person mentioned in Part I or II of Schedule 15.

(5) "Investigator" means a person conducting an investigation under section 167.

(6) "Specified" means specified in a notice in writing.

Additional power
of persons
appointed as a
result of section
168(1) or (4).

172.—(1) An investigator has the powers conferred by section 171.

(2) An investigator may also require a person who is neither the subject of the investigation ("the person under investigation") nor a person connected with the person under investigation—

- (a) to attend before the investigator at a specified time and place and answer questions; or
- (b) otherwise to provide such information as the investigator may require for the purposes of the investigation.

(3) A requirement may only be imposed under subsection (2) if the investigator is satisfied that the requirement is necessary or expedient for the purposes of the investigation.

(4) "Investigator" means a person appointed as a result of subsection (1) or (4) of section 168.

(5) "Specified" means specified in a notice in writing.

Powers of persons
appointed as a
result of section
168(2).

173.—(1) Subsections (2) to (4) apply if an investigator considers that any person ("A") is or may be able to give information which is or may be relevant to the investigation.

(2) The investigator may require A—

- (a) to attend before him at a specified time and place and answer questions; or
- (b) otherwise to provide such information as he may require for the purposes of the investigation.

(3) The investigator may also require A to produce at a specified time and place any specified documents or documents of a specified description which appear to the investigator to relate to any matter relevant to the investigation.

(4) The investigator may also otherwise require A to give him all assistance in connection with the investigation which A is reasonably able to give.

(5) "Investigator" means a person appointed under subsection (3) of section 168 (as a result of subsection (2) of that section).

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Admissibility of
statements made
to investigators.

174.—(1) A statement made to an investigator by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(2) But in criminal proceedings in which that person is charged with an offence to which this subsection applies or in proceedings in relation to action to be taken against that person under section 123—

- (a) no evidence relating to the statement may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution or (as the case may be) the Authority, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Subsection (2) applies to any offence other than one—

- (a) under section 177(4) or 398;
- (b) under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath); 1911 c. 6.
- (c) under section 44(2) of the Criminal Law (Consolidation)(Scotland) Act 1995 (false statements made otherwise than on oath); or 1995 c. 39.
- (d) under Article 10 of the Perjury (Northern Ireland) Order 1979. S.I. 1979/1714 (N.I. 19).

(4) “Investigator” means a person appointed under section 167 or 168(3) or (5).

(5) “Information requirement” means a requirement imposed by an investigator under section 171, 172, 173 or 175.

175.—(1) If the Authority or an investigator has power under this Part to require a person to produce a document but it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.

Information and
documents:
supplemental
provisions.

(2) If a document is produced in response to a requirement imposed under this Part, the person to whom it is produced may—

- (a) take copies or extracts from the document; or
- (b) require the person producing the document, or any relevant person, to provide an explanation of the document.

(3) If a person who is required under this Part to produce a document fails to do so, the Authority or an investigator may require him to state, to the best of his knowledge and belief, where the document is.

(4) A lawyer may be required under this Part to furnish the name and address of his client.

(5) No person may be required under this Part to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (a) he is the person under investigation or a member of that person’s group;
- (b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person’s group;
- (c) the person to whom the obligation of confidence is owed consents to the disclosure or production; or

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(d) the imposing on him of a requirement with respect to such information or document has been specifically authorised by the investigating authority.

(6) If a person claims a lien on a document, its production under this Part does not affect the lien.

(7) "Relevant person", in relation to a person who is required to produce a document, means a person who—

- (a) has been or is or is proposed to be a director or controller of that person;
- (b) has been or is an auditor of that person;
- (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
- (d) has been or is an employee of that person.

(8) "Investigator" means a person appointed under section 167 or 168(3) or (5).

Entry of premises
under warrant.

176.—(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, the Authority or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.

(2) The first set of conditions is—

- (a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it; and
- (b) that on the premises specified in the warrant—
 - (i) there are documents which have been required; or
 - (ii) there is information which has been required.

(3) The second set of conditions is—

- (a) that the premises specified in the warrant are premises of an authorised person or an appointed representative;
- (b) that there are on the premises documents or information in relation to which an information requirement could be imposed; and
- (c) that if such a requirement were to be imposed—
 - (i) it would not be complied with; or
 - (ii) the documents or information to which it related would be removed, tampered with or destroyed.

(4) The third set of conditions is—

- (a) that an offence mentioned in section 168 for which the maximum sentence on conviction on indictment is two years or more has been (or is being) committed by any person;
- (b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed;
- (c) that an information requirement could be imposed in relation to those documents or information; and
- (d) that if such a requirement were to be imposed—

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- (i) it would not be complied with; or
- (ii) the documents or information to which it related would be removed, tampered with or destroyed.

(5) A warrant under this section shall authorise a constable—

- (a) to enter the premises specified in the warrant;
- (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this section was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;
- (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and
- (e) to use such force as may be reasonably necessary.

(6) In England and Wales, sections 15(5) to (8) and section 16 of the Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this section. 1984 c. 60.

(7) In Northern Ireland, Articles 17(5) to (8) and 18 of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this section. S.I. 1989/1341 (N.I. 12).

(8) Any document of which possession is taken under this section may be retained—

- (a) for a period of three months; or
- (b) if within that period proceedings to which the document is relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.

(9) In the application of this section to Scotland—

- (a) for the references to a justice of the peace substitute references to a justice of the peace or a sheriff; and
- (b) for the references to information on oath substitute references to evidence on oath.

(10) “Investigator” means a person appointed under section 167 or 168(3) or (5).

(11) “Information requirement” means a requirement imposed—

- (a) by the Authority under section 165 or 175; or
- (b) by an investigator under section 171, 172, 173 or 175.

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Offences

Offences.

177.—(1) If a person other than the investigator (“the defaulter”) fails to comply with a requirement imposed on him under this Part the person imposing the requirement may certify that fact in writing to the court.

(2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and in the case of a body corporate, any director or officer) as if he were in contempt.

(3) A person who knows or suspects that an investigation is being or is likely to be conducted under this Part is guilty of an offence if—

- (a) he falsifies, conceals, destroys or otherwise disposes of a document which he knows or suspects is or would be relevant to such an investigation, or
- (b) he causes or permits the falsification, concealment, destruction or disposal of such a document,

unless he shows that he had no intention of concealing facts disclosed by the documents from the investigator.

(4) A person who, in purported compliance with a requirement imposed on him under this Part—

- (a) provides information which he knows to be false or misleading in a material particular, or
- (b) recklessly provides information which is false or misleading in a material particular,

is guilty of an offence.

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

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

(6) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 176 is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.

(7) “Court” means—

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

PART XII

CONTROL OVER AUTHORISED PERSONS

Notice of control

Obligation to notify the Authority.

178.—(1) If a step which a person proposes to take would result in his acquiring—

- (a) control over a UK authorised person,
- (b) an additional kind of control over a UK authorised person, or

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(c) an increase in a relevant kind of control which he already has over a UK authorised person,
he must notify the Authority of his proposal.

(2) A person who, without himself taking any such step, acquires any such control or additional or increased control must notify the Authority before the end of the period of 14 days beginning with the day on which he first becomes aware that he has acquired it.

(3) A person who is under the duty to notify the Authority imposed by subsection (1) must also give notice to the Authority on acquiring, or increasing, the control in question.

(4) In this Part “UK authorised person” means an authorised person who—

- (a) is a body incorporated in, or an unincorporated association formed under the law of, any part of the United Kingdom; and
- (b) is not a person authorised as a result of paragraph 1 of Schedule 5.

(5) A notice under subsection (1) or (2) is referred to in this Part as “a notice of control”.

Acquiring, increasing and reducing control

179.—(1) For the purposes of this Part, a person (“the acquirer”) acquires control over a UK authorised person (“A”) on first falling within any of the cases in subsection (2). Acquiring control.

(2) The cases are where the acquirer—

- (a) holds 10% or more of the shares in A;
- (b) is able to exercise significant influence over the management of A by virtue of his shareholding in A;
- (c) holds 10% or more of the shares in a parent undertaking (“P”) of A;
- (d) is able to exercise significant influence over the management of P by virtue of his shareholding in P;
- (e) is entitled to exercise, or control the exercise of, 10% or more of the voting power in A;
- (f) is able to exercise significant influence over the management of A by virtue of his voting power in A;
- (g) is entitled to exercise, or control the exercise of, 10% or more of the voting power in P; or
- (h) is able to exercise significant influence over the management of P by virtue of his voting power in P.

(3) In subsection (2) “the acquirer” means—

- (a) the acquirer;
- (b) any of the acquirer’s associates; or
- (c) the acquirer and any of his associates.

(4) For the purposes of this Part, each of the following is to be regarded as a kind of control—

- (a) control arising as a result of the holding of shares in A;

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- (b) control arising as a result of the holding of shares in P;
- (c) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in A;
- (d) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in P.

(5) For the purposes of this section and sections 180 and 181, “associate”, “shares” and “voting power” have the same meaning as in section 422.

Increasing control.

180.—(1) For the purposes of this Part, a controller of a person (“A”) who is a UK authorised person increases his control over A if—

- (a) the percentage of shares held by the controller in A increases by any of the steps mentioned in subsection (2);
- (b) the percentage of shares held by the controller in a parent undertaking (“P”) of A increases by any of the steps mentioned in subsection (2);
- (c) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in A increases by any of the steps mentioned in subsection (2);
- (d) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in P increases by any of the steps mentioned in subsection (2); or
- (e) the controller becomes a parent undertaking of A.

(2) The steps are—

- (a) from below 10% to 10% or more but less than 20%;
- (b) from below 20% to 20% or more but less than 33%;
- (c) from below 33% to 33% or more but less than 50%;
- (d) from below 50% to 50% or more.

(3) In paragraphs (a) to (d) of subsection (1) “the controller” means—

- (a) the controller;
- (b) any of the controller’s associates; or
- (c) the controller and any of his associates.

(4) In the rest of this Part “acquiring control” or “having control” includes—

- (a) acquiring or having an additional kind of control; or
- (b) acquiring an increase in a relevant kind of control, or having increased control of a relevant kind.

Reducing control.

181.—(1) For the purposes of this Part, a controller of a person (“A”) who is a UK authorised person reduces his control over A if—

- (a) the percentage of shares held by the controller in A decreases by any of the steps mentioned in subsection (2),
- (b) the percentage of shares held by the controller in a parent undertaking (“P”) of A decreases by any of the steps mentioned in subsection (2),

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- (c) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in A decreases by any of the steps mentioned in subsection (2),
 - (d) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in P decreases by any of the steps mentioned in subsection (2), or
 - (e) the controller ceases to be a parent undertaking of A,
- unless the controller ceases to have the kind of control concerned over A as a result.

(2) The steps are—

- (a) from 50% or more to 33% or more but less than 50%;
- (b) from 33% or more to 20% or more but less than 33%;
- (c) from 20% or more to 10% or more but less than 20%;
- (d) from 10% or more to less than 10%.

(3) In paragraphs (a) to (d) of subsection (1) “the controller” means—

- (a) the controller;
- (b) any of the controller’s associates; or
- (c) the controller and any of his associates.

Acquiring or increasing control: procedure

182.—(1) A notice of control must—

Notification.

- (a) be given to the Authority in writing; and
- (b) include such information and be accompanied by such documents as the Authority may reasonably require.

(2) The Authority may require the person giving a notice of control to provide such additional information or documents as it reasonably considers necessary in order to enable it to determine what action it is to take in response to the notice.

(3) Different requirements may be imposed in different circumstances.

183.—(1) The Authority must, before the end of the period of three months beginning with the date on which it receives a notice of control (“the period for consideration”), determine whether—

Duty of Authority in relation to notice of control.

- (a) to approve of the person concerned having the control to which the notice relates; or
- (b) to serve a warning notice under subsection (3) or section 185(3).

(2) Before doing so, the Authority must comply with such requirements as to consultation with competent authorities outside the United Kingdom as may be prescribed.

(3) If the Authority proposes to give the person concerned a notice of objection under section 186(1), it must give him a warning notice.

184.—(1) If the Authority decides to approve of the person concerned having the control to which the notice relates it must notify that person of its approval in writing without delay.

Approval of acquisition of control.

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(2) If the Authority fails to comply with subsection (1) of section 183 it is to be treated as having given its approval and notified the person concerned at the end of the period fixed by that subsection.

(3) The Authority's approval remains effective only if the person to whom it relates acquires the control in question—

- (a) before the end of such period as may be specified in the notice; or
- (b) if no period is specified, before the end of the period of one year beginning with the date—
 - (i) of the notice of approval;
 - (ii) on which the Authority is treated as having given approval under subsection (2); or
 - (iii) of a decision on a reference to the Tribunal which results in the person concerned receiving approval.

Conditions attached to approval.

185.—(1) The Authority's approval under section 184 may be given unconditionally or subject to such conditions as the Authority considers appropriate.

(2) In imposing any conditions, the Authority must have regard to its duty under section 41.

(3) If the Authority proposes to impose conditions on a person it must give him a warning notice.

(4) If the Authority decides to impose conditions on a person it must give him a decision notice.

(5) A person who is subject to a condition imposed under this section may apply to the Authority—

- (a) for the condition to be varied; or
- (b) for the condition to be cancelled.

(6) The Authority may, on its own initiative, cancel a condition imposed under this section.

(7) If the Authority has given its approval to a person subject to a condition, he may refer to the Tribunal—

- (a) the imposition of the condition; or
- (b) the Authority's decision to refuse an application made by him under subsection (5).

Objection to acquisition of control.

186.—(1) On considering a notice of control, the Authority may give a decision notice under this section to the person acquiring control ("the acquirer") unless it is satisfied that the approval requirements are met.

(2) The approval requirements are that—

- (a) the acquirer is a fit and proper person to have the control over the authorised person that he has or would have if he acquired the control in question; and
- (b) the interests of consumers would not be threatened by the acquirer's control or by his acquiring that control.

(3) In deciding whether the approval requirements are met, the Authority must have regard, in relation to the control that the acquirer—

- (a) has over the authorised person concerned ("A"), or

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(b) will have over A if the proposal to which the notice of control relates is carried into effect,

to its duty under section 41 in relation to each regulated activity carried on by A.

(4) If the Authority gives a notice under this section but considers that the approval requirements would be met if the person to whom a notice is given were to take, or refrain from taking, a particular step, the notice must identify that step.

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

(6) "Consumers" means persons who are consumers for the purposes of section 138.

187.—(1) If the Authority is not satisfied that the approval requirements are met, it may give a decision notice under this section to a person if he has failed to comply with a duty to notify imposed by section 178.

Objection to existing control.

(2) If the failure relates to subsection (1) or (2) of that section, the Authority may (instead of giving a notice under subsection (1)) approve the acquisition of the control in question by the person concerned as if he had given it a notice of control.

(3) The Authority may also give a decision notice under this section to a person who is a controller of a UK authorised person if the Authority becomes aware of matters as a result of which it is satisfied that—

- (a) the approval requirements are not met with respect to the controller; or
- (b) a condition imposed under section 185 required that person to do (or refrain from doing) a particular thing and the condition has been breached as a result of his failing to do (or doing) that thing.

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

(5) "Approval requirements" has the same meaning as in section 186.

188.—(1) If the Authority proposes to give a notice of objection to a person under section 187, it must give him a warning notice.

Notices of objection under section 187: procedure.

(2) Before doing so, the Authority must comply with such requirements as to consultation with competent authorities outside the United Kingdom as may be prescribed.

(3) If the Authority decides to give a warning notice under this section, it must do so before the end of the period of three months beginning—

- (a) in the case of a notice to be given under section 187(1), with the date on which it became aware of the failure to comply with the duty in question;
- (b) in the case of a notice to be given under section 187(3), with the date on which it became aware of the matters in question.

(4) The Authority may require the person concerned to provide such additional information or documents as it considers reasonable.

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(5) Different requirements may be imposed in different circumstances.

(6) In this Part “notice of objection” means a notice under section 186 or 187.

*Improperly acquired shares*Improperly
acquired shares.

189.—(1) The powers conferred by this section are exercisable if a person has acquired, or has continued to hold, any shares in contravention of—

- (a) a notice of objection; or
- (b) a condition imposed on the Authority’s approval.

(2) The Authority may by notice in writing served on the person concerned (“a restriction notice”) direct that any such shares which are specified in the notice are, until further notice, subject to one or more of the following restrictions—

- (a) a transfer of (or agreement to transfer) those shares, or in the case of unissued shares any transfer of (or agreement to transfer) the right to be issued with them, is void;
- (b) no voting rights are to be exercisable in respect of the shares;
- (c) no further shares are to be issued in right of them or in pursuance of any offer made to their holder;
- (d) except in a liquidation, no payment is to be made of any sums due from the body corporate on the shares, whether in respect of capital or otherwise.

(3) The court may, on the application of the Authority, order the sale of any shares to which this section applies and, if they are for the time being subject to any restriction under subsection (2), that they are to cease to be subject to that restriction.

(4) No order may be made under subsection (3)—

- (a) until the end of the period within which a reference may be made to the Tribunal in respect of the notice of objection; and
- (b) if a reference is made, until the matter has been determined or the reference withdrawn.

(5) If an order has been made under subsection (3), the court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) If shares are sold in pursuance of an order under this section, the proceeds of sale, less the costs of the sale, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him.

(7) This section applies—

- (a) in the case of an acquirer falling within section 178(1), to all the shares—
 - (i) in the authorised person which the acquirer has acquired;
 - (ii) which are held by him or an associate of his; and
 - (iii) which were not so held immediately before he became a person with control over the authorised person;

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- (b) in the case of an acquirer falling within section 178(2), to all the shares held by him or an associate of his at the time when he first became aware that he had acquired control over the authorised person; and
- (c) to all the shares in an undertaking ("C")—
 - (i) which are held by the acquirer or an associate of his, and
 - (ii) which were not so held before he became a person with control in relation to the authorised person,
 where C is the undertaking in which shares were acquired by the acquirer (or an associate of his) and, as a result, he became a person with control in relation to that authorised person.

- (8) A copy of the restriction notice must be served on—
 - (a) the authorised person to whose shares it relates; and
 - (b) if it relates to shares held by an associate of that authorised person, on that associate.

(9) The jurisdiction conferred by this section may be exercised by the High Court and the Court of Session.

Reducing control: procedure

190.—(1) If a step which a controller of a UK authorised person proposes to take would result in his— Notification.

- (a) ceasing to have control of a relevant kind over the authorised person, or
- (b) reducing a relevant kind of control over that person,

he must notify the Authority of his proposal.

(2) A controller of a UK authorised person who, without himself taking any such step, ceases to have that control or reduces that control must notify the Authority before the end of the period of 14 days beginning with the day on which he first becomes aware that—

- (a) he has ceased to have the control in question; or
- (b) he has reduced that control.

(3) A person who is under the duty to notify the Authority imposed by subsection (1) must also give a notice to the Authority—

- (a) on ceasing to have the control in question; or
- (b) on reducing that control.

(4) A notice under this section must—

- (a) be given to the Authority in writing; and
- (b) include details of the extent of the control (if any) which the person concerned will retain (or still retains) over the authorised person concerned.

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Offences

Offences under
this Part.

191.—(1) A person who fails to comply with the duty to notify the Authority imposed on him by section 178(1) or 190(1) is guilty of an offence.

(2) A person who fails to comply with the duty to notify the Authority imposed on him by section 178(2) or 190(2) is guilty of an offence.

(3) If a person who has given a notice of control to the Authority carries out the proposal to which the notice relates, he is guilty of an offence if—

- (a) the period of three months beginning with the date on which the Authority received the notice is still running; and
- (b) the Authority has not responded to the notice by either giving its approval or giving him a warning notice under section 183(3) or 185(3).

(4) A person to whom the Authority has given a warning notice under section 183(3) is guilty of an offence if he carries out the proposal to which the notice relates before the Authority has decided whether to give him a notice of objection.

(5) A person to whom a notice of objection has been given is guilty of an offence if he acquires the control to which the notice applies at a time when the notice is still in force.

(6) A person guilty of an offence under subsection (1), (2), (3) or (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) A person guilty of an offence under subsection (5) is liable—

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

(8) A person guilty of an offence under subsection (5) is also liable on summary conviction to a fine not exceeding one tenth of the statutory maximum for each day on which the offence has continued.

(9) It is a defence for a person charged with an offence under subsection (1) to show that he had, at the time of the alleged offence, no knowledge of the act or circumstances by virtue of which the duty to notify the Authority arose.

(10) If a person—

- (a) was under the duty to notify the Authority imposed by section 178(1) or 190(1) but had no knowledge of the act or circumstances by virtue of which that duty arose, but
- (b) subsequently becomes aware of that act or those circumstances, he must notify the Authority before the end of the period of 14 days beginning with the day on which he first became so aware.

(11) A person who fails to comply with the duty to notify the Authority imposed by subsection (10) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

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*Miscellaneous***192.** The Treasury may by order—

- (a) provide for exemptions from the obligations to notify imposed by sections 178 and 190;
- (b) amend section 179 by varying, or removing, any of the cases in which a person is treated as having control over a UK authorised person or by adding a case;
- (c) amend section 180 by varying, or removing, any of the cases in which a person is treated as increasing control over a UK authorised person or by adding a case;
- (d) amend section 181 by varying, or removing, any of the cases in which a person is treated as reducing his control over a UK authorised person or by adding a case;
- (e) amend section 422 by varying, or removing, any of the cases in which a person is treated as being a controller of a person or by adding a case.

Power to change definitions of control etc.

PART XIII

INCOMING FIRMS: INTERVENTION BY AUTHORITY

*Interpretation***193.—**(1) In this Part—

“additional procedure” means the procedure described in section 199;

“incoming firm” means—

(a) an EEA firm which is exercising, or has exercised, its right to carry on a regulated activity in the United Kingdom in accordance with Schedule 3; or

(b) a Treaty firm which is exercising, or has exercised, its right to carry on a regulated activity in the United Kingdom in accordance with Schedule 4; and

“power of intervention” means the power conferred on the Authority by section 196.

Interpretation of this Part.

(2) In relation to an incoming firm which is an EEA firm, expressions used in this Part and in Schedule 3 have the same meaning in this Part as they have in that Schedule.

194.—(1) The Authority may exercise its power of intervention in respect of an incoming firm if it appears to it that—

- (a) the firm has contravened, or is likely to contravene, a requirement which is imposed on it by or under this Act (in a case where the Authority is responsible for enforcing compliance in the United Kingdom);
- (b) the firm has, in purported compliance with any requirement imposed by or under this Act, knowingly or recklessly given the Authority information which is false or misleading in a material particular; or
- (c) it is desirable to exercise the power in order to protect the interests of actual or potential customers.

General grounds on which power of intervention is exercisable.

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(2) Subsection (3) applies to an incoming EEA firm falling within subparagraph (a) or (b) of paragraph 5 of Schedule 3 which is exercising an EEA right to carry on any Consumer Credit Act business in the United Kingdom.

(3) The Authority may exercise its power of intervention in respect of the firm if the Director General of Fair Trading has informed the Authority that—

- (a) the firm,
- (b) any of the firm's employees, agents or associates (whether past or present), or
- (c) if the firm is a body corporate, a controller of the firm or an associate of such a controller,

1974 c. 39.

has done any of the things specified in paragraphs (a) to (d) of section 25(2) of the Consumer Credit Act 1974.

(4) "Associate", "Consumer Credit Act business" and "controller" have the same meaning as in section 203.

Exercise of power
in support of
overseas
regulator.

195.—(1) The Authority may exercise its power of intervention in respect of an incoming firm at the request of, or for the purpose of assisting, an overseas regulator.

(2) Subsection (1) applies whether or not the Authority's power of intervention is also exercisable as a result of section 194.

(3) "An overseas regulator" means an authority in a country or territory outside the United Kingdom—

- (a) which is a home state regulator; or
- (b) which exercises any function of a kind mentioned in subsection (4).

(4) The functions are—

1985 c. 6.

- (a) a function corresponding to any function of the Authority under this Act;
- (b) a function corresponding to any function exercised by the competent authority under Part VI in relation to the listing of shares;
- (c) a function corresponding to any function exercised by the Secretary of State under the Companies Act 1985;
- (d) a function in connection with —

1993 c. 36.

- (i) the investigation of conduct of the kind prohibited by Part V of the Criminal Justice Act 1993 (insider dealing); or
- (ii) the enforcement of rules (whether or not having the force of law) relating to such conduct;
- (e) a function prescribed by regulations made for the purposes of this subsection which, in the opinion of the Treasury, relates to companies or financial services.

(5) If—

- (a) a request to the Authority for the exercise of its power of intervention has been made by a home state regulator in pursuance of a Community obligation, or

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- (b) a home state regulator has notified the Authority that an EEA firm's EEA authorisation has been withdrawn,

the Authority must, in deciding whether or not to exercise its power of intervention, consider whether exercising it is necessary in order to comply with a Community obligation.

(6) In deciding in any case in which the Authority does not consider that the exercise of its power of intervention 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 overseas 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.

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

(8) Subsection (7) does not apply if the Authority decides that it is necessary for it to exercise its power of intervention in order to comply with a Community obligation.

196. If the Authority is entitled to exercise its power of intervention in respect of an incoming firm under this Part, it may impose any requirement in relation to the firm which it could impose if—

The power of intervention.

- (a) the firm's permission was a Part IV permission; and
- (b) the Authority was entitled to exercise its power under that Part to vary that permission.

Exercise of power of intervention

197.—(1) A requirement takes effect—

- (a) immediately, if the notice given under subsection (3) 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 it relates is no longer open to review.

Procedure on exercise of power of intervention.

(2) A requirement 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 power of intervention, considers that it is necessary for the requirement to take effect immediately (or on that date).

(3) If the Authority proposes to impose a requirement under section 196 on an incoming firm, or imposes such a requirement with immediate effect, it must give the firm written notice.

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- (4) The notice must—
- (a) give details of the requirement;
 - (b) inform the firm of when the requirement takes effect;
 - (c) state the Authority's reasons for imposing the requirement and for its determination as to when the requirement takes effect;
 - (d) inform the firm that it may make representations to the Authority within such period as may be specified in the notice (whether or not it has referred the matter to the Tribunal); and
 - (e) inform it of its right to refer the matter to the Tribunal.

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

(6) If, having considered any representations made by the firm, the Authority decides—

- (a) to impose the requirement proposed, or
- (b) if it has been imposed, not to rescind the requirement,

it must give it written notice.

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

- (a) not to impose the requirement proposed,
- (b) to impose a different requirement from that proposed, or
- (c) to rescind a requirement which has effect,

it must give it written notice.

(8) A notice given under subsection (6) must inform the firm of its right to refer the matter to the Tribunal.

(9) A notice under subsection (7)(b) must comply with subsection (4).

(10) 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.

Power to apply to court for injunction in respect of certain overseas insurance companies.

198.—(1) This section applies if the Authority has received a request made in respect of an incoming EEA firm in accordance with—

- (a) Article 20.5 of the first non-life insurance directive; or
- (b) Article 24.5 of the first life insurance directive.

(2) The court may, on an application made to it by the Authority with respect to the firm, grant an injunction restraining (or in Scotland an interdict prohibiting) the firm disposing of or otherwise dealing with any of its assets.

(3) If the court grants an injunction, it may by subsequent orders make provision for such incidental, consequential and supplementary matters as it considers necessary to enable the Authority to perform any of its functions under this Act.

(4) "The court" means—

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

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199.—(1) This section applies if it appears to the Authority that its power of intervention is exercisable in relation to an EEA firm exercising EEA rights in the United Kingdom (“an incoming EEA firm”) in respect of the contravention of a relevant requirement.

Additional procedure for EEA firms in certain cases.

(2) A requirement is relevant if—

- (a) it is imposed by the Authority under this Act; and
- (b) as respects its contravention, any of the single market directives provides that a procedure of the kind set out in the following provisions of this section is to apply.

(3) The Authority must, in writing, require the firm to remedy the situation.

(4) If the firm fails to comply with the requirement under subsection (3) within a reasonable time, the Authority must give a notice to that effect to the firm’s home state regulator requesting it—

- (a) to take all appropriate measures for the purpose of ensuring that the firm remedies the situation which has given rise to the notice; and
- (b) to inform the Authority of the measures it proposes to take or has taken or the reasons for not taking such measures.

(5) Except as mentioned in subsection (6), the Authority may not exercise its power of intervention unless satisfied—

- (a) that the firm’s home state regulator has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or
- (b) that the measures taken by the home state regulator have proved inadequate for that purpose.

(6) If the Authority decides that it should exercise its power of intervention in respect of the incoming EEA firm as a matter of urgency in order to protect the interests of consumers, it may exercise that power—

- (a) before complying with subsections (3) and (4); or
- (b) where it has complied with those subsections, before it is satisfied as mentioned in subsection (5).

(7) In such a case the Authority must at the earliest opportunity inform the firm’s home state regulator and the Commission.

(8) If—

- (a) the Authority has (by virtue of subsection (6)) exercised its power of intervention before complying with subsections (3) and (4) or before it is satisfied as mentioned in subsection (5), and
- (b) the Commission decides under any of the single market directives that the Authority must rescind or vary any requirement imposed in the exercise of its power of intervention,

the Authority must in accordance with the decision rescind or vary the requirement.

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Supplemental

Rescission and
variation of
requirements.

200.—(1) The Authority may rescind or vary a requirement imposed in exercise of its power of intervention on its own initiative or on the application of the person subject to the requirement.

(2) The power of the Authority on its own initiative to rescind a requirement is exercisable by written notice given by the Authority to the person concerned, which takes effect on the date specified in the notice.

(3) Section 197 applies to the exercise of the power of the Authority on its own initiative to vary a requirement as it applies to the imposition of a requirement.

(4) If the Authority proposes to refuse an application for the variation or rescission of a requirement, it must give the applicant a warning notice.

(5) If the Authority decides to refuse an application for the variation or rescission of a requirement—

- (a) the Authority must give the applicant a decision notice; and
- (b) that person may refer the matter to the Tribunal.

Effect of certain
requirements on
other persons.

201. If the Authority, in exercising its power of intervention, imposes on an incoming firm a requirement of a kind mentioned in subsection (3) of section 48, the requirement has the same effect in relation to the firm as it would have in relation to an authorised person if it had been imposed on the authorised person by the Authority acting under section 45.

Contravention of
requirement
imposed under
this Part.

202.—(1) Contravention of a requirement imposed by the Authority under this Part does not—

- (a) make a person guilty of an offence;
- (b) make any transaction void or unenforceable; or
- (c) (subject to subsection (2)) give rise to any right of action for breach of statutory duty.

(2) 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.

Powers of Director General of Fair Trading

Power to prohibit
the carrying on of
Consumer Credit
Act business.

203.—(1) If it appears to the Director General of Fair Trading (“the Director”) that subsection (4) has been, or is likely to be, contravened as respects a consumer credit EEA firm, he may by written notice given to the firm impose on the firm a consumer credit prohibition.

(2) If it appears to the Director that a restriction imposed under section 204 on an EEA consumer credit firm has not been complied with, he may by written notice given to the firm impose a consumer credit prohibition.

(3) “Consumer credit prohibition” means a prohibition on carrying on, or purporting to carry on, in the United Kingdom any Consumer Credit Act business which consists of or includes carrying on one or more listed activities.

(4) This subsection is contravened as respects a firm if—

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- (a) the firm or any of its employees, agents or associates (whether past or present), or
- (b) if the firm is a body corporate, any controller of the firm or an associate of any such controller,

does any of the things specified in paragraphs (a) to (d) of section 25(2) of the Consumer Credit Act 1974.

1974 c. 39.

(5) A consumer credit prohibition may be absolute or may be imposed—

- (a) for such period,
- (b) until the occurrence of such event, or
- (c) until such conditions are complied with,

as may be specified in the notice given under subsection (1) or (2).

(6) Any period, event or condition so specified may be varied by the Director on the application of the firm concerned.

(7) A consumer credit prohibition may be withdrawn by written notice served by the Director on the firm concerned, and any such notice takes effect on such date as is specified in the notice.

(8) Schedule 16 has effect as respects consumer credit prohibitions and restrictions under section 204.

(9) A firm contravening a prohibition under this section 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 a fine.

(10) In this section and section 204—

“a consumer credit EEA firm” means an EEA firm falling within any of paragraphs (a) to (c) of paragraph 5 of Schedule 3 whose EEA authorisation covers any Consumer Credit Act business;

“Consumer Credit Act business” means consumer credit business, consumer hire business or ancillary credit business;

“consumer credit business”, “consumer hire business” and “ancillary credit business” have the same meaning as in the Consumer Credit Act 1974;

“listed activity” means an activity listed in the Annex to the second banking co-ordination directive or the Annex to the investment services directive;

“associate” has the same meaning as in section 25(2) of the Consumer Credit Act 1974;

“controller” has the meaning given by section 189(1) of that Act.

204.—(1) In this section “restriction” means a direction that a consumer credit EEA firm may not carry on in the United Kingdom, otherwise than in accordance with such condition or conditions as may be specified in the direction, any Consumer Credit Act business which—

- (a) consists of or includes carrying on any listed activity; and
- (b) is specified in the direction.

Power to restrict the carrying on of Consumer Credit Act business.

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(2) If it appears to the Director that the situation as respects a consumer credit EEA firm is such that the powers conferred by section 203(1) are exercisable, the Director may, instead of imposing a prohibition, impose such restriction as appears to him desirable.

(3) A restriction—

(a) may be withdrawn, or

(b) may be varied with the agreement of the firm concerned,

by written notice served by the Director on the firm, and any such notice takes effect on such date as is specified in the notice.

(4) A firm contravening a restriction 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 a fine.

PART XIV

DISCIPLINARY MEASURES

Public censure.

205. If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, the Authority may publish a statement to that effect.

Financial penalties.

206.—(1) If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.

(2) The Authority may not in respect of any contravention both require a person to pay a penalty under this section and withdraw his authorisation under section 33.

(3) A penalty under this section is payable to the Authority.

Proposal to take disciplinary measures.

207.—(1) If the Authority proposes—

(a) to publish a statement in respect of an authorised person (under section 205), or

(b) to impose a penalty on an authorised person (under section 206), it must give the authorised person a warning notice.

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

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

Decision notice.

208.—(1) If the Authority decides—

(a) to publish a statement under section 205 (whether or not in the terms proposed), or

(b) to impose a penalty under section 206 (whether or not of the amount proposed),

it must without delay give the authorised person concerned a decision notice.

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(2) In the case of a statement, the decision notice must set out the terms of the statement.

(3) In the case of a penalty, the decision notice must state the amount of the penalty.

(4) If the Authority decides to—

(a) publish a statement in respect of an authorised person under section 205, or

(b) impose a penalty on an authorised person under section 206, the authorised person may refer the matter to the Tribunal.

209. After a statement under section 205 is published, the Authority must send a copy of it to the authorised person and to any person on whom a copy of the decision notice was given under section 393(4). Publication.

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

(a) the imposition of penalties under this Part; and

(b) the amount of penalties under this Part.

(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 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 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) In exercising, or deciding whether to exercise, its power under section 206 in the case of any particular contravention, the Authority must have regard to any statement published under this section and in force at the time when the contravention in question occurred.

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

211.—(1) Before issuing a statement under section 210, 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. Statements of policy: procedure.

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(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.

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THE FINANCIAL SERVICES COMPENSATION SCHEME

The scheme manager

The scheme manager.

212.—(1) The Authority must establish a body corporate (“the scheme manager”) to exercise the functions conferred on the scheme manager by or under this Part.

(2) The Authority must take such steps as are necessary to ensure that the scheme manager is, at all times, capable of exercising those functions.

(3) The constitution of the scheme manager must provide for it to have—

- (a) a chairman; and
- (b) a board (which must include the chairman) whose members are the scheme manager’s directors.

(4) The chairman and other members of the board must be persons appointed, and liable to removal from office, by the Authority (acting, in the case of the chairman, with the approval of the Treasury).

(5) But the terms of their appointment (and in particular those governing removal from office) must be such as to secure their independence from the Authority in the operation of the compensation scheme.

(6) The scheme manager is not to be regarded as exercising functions on behalf of the Crown.

(7) The scheme manager’s board members, officers and staff are not to be regarded as Crown servants.

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The scheme

213.—(1) The Authority must by rules establish a scheme for compensating persons in cases where relevant persons are unable, or are likely to be unable, to satisfy claims against them. The compensation scheme.

(2) The rules are to be known as the Financial Services Compensation Scheme (but are referred to in this Act as “the compensation scheme”).

(3) The compensation scheme must, in particular, provide for the scheme manager—

- (a) to assess and pay compensation, in accordance with the scheme, to claimants in respect of claims made in connection with regulated activities carried on (whether or not with permission) by relevant persons; and
- (b) to have power to impose levies on authorised persons, or any class of authorised person, for the purpose of meeting its expenses (including in particular expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks).

(4) The compensation scheme may provide for the scheme manager to have power to impose levies on authorised persons, or any class of authorised person, for the purpose of recovering the cost (whenever incurred) of establishing the scheme.

(5) In making any provision of the scheme by virtue of subsection (3)(b), the Authority must take account of the desirability of ensuring that the amount of the levies imposed on a particular class of authorised person reflects, so far as practicable, the amount of the claims made, or likely to be made, in respect of that class of person.

(6) An amount payable to the scheme manager as a result of any provision of the scheme made by virtue of subsection (3)(b) or (4) may be recovered as a debt due to the scheme manager.

(7) Sections 214 to 217 make further provision about the scheme but are not to be taken as limiting the power conferred on the Authority by subsection (1).

(8) In those sections “specified” means specified in the scheme.

(9) In this Part (except in sections 219, 220 or 224) “relevant person” means a person who was—

- (a) an authorised person at the time the act or omission giving rise to the claim against him took place; or
- (b) an appointed representative at that time.

(10) But a person who, at that time—

- (a) qualified for authorisation under Schedule 3, and
- (b) fell within a prescribed category,

is not to be regarded as a relevant person in relation to any activities for which he had permission as a result of any provision of, or made under, that Schedule unless he had elected to participate in the scheme in relation to those activities at that time.

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PART XV

Provisions of the scheme

General.

214.—(1) The compensation scheme may, in particular, make provision—

- (a) as to the circumstances in which a relevant person is to be taken (for the purposes of the scheme) to be unable, or likely to be unable, to satisfy claims made against him;
- (b) for the establishment of different funds for meeting different kinds of claim;
- (c) for the imposition of different levies in different cases;
- (d) limiting the levy payable by a person in respect of a specified period;
- (e) for repayment of the whole or part of a levy in specified circumstances;
- (f) for a claim to be entertained only if it is made by a specified kind of claimant;
- (g) for a claim to be entertained only if it falls within a specified kind of claim;
- (h) as to the procedure to be followed in making a claim;
- (i) for the making of interim payments before a claim is finally determined;
- (j) limiting the amount payable on a claim to a specified maximum amount or a maximum amount calculated in a specified manner;
- (k) for payment to be made, in specified circumstances, to a person other than the claimant.

(2) Different provision may be made with respect to different kinds of claim.

(3) The scheme may provide for the determination and regulation of matters relating to the scheme by the scheme manager.

(4) The scheme, or particular provisions of the scheme, may be made so as to apply only in relation to—

- (a) activities carried on,
- (b) claimants,
- (c) matters arising, or
- (d) events occurring,

in specified territories, areas or localities.

(5) The scheme may provide for a person who—

- (a) qualifies for authorisation under Schedule 3, and
- (b) falls within a prescribed category,

to elect to participate in the scheme in relation to some or all of the activities for which he has permission as a result of any provision of, or made under, that Schedule.

(6) The scheme may provide for the scheme manager to have power—

- (a) in specified circumstances,
- (b) but only if the scheme manager is satisfied that the claimant is entitled to receive a payment in respect of his claim—

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(i) under a scheme which is comparable to the compensation scheme, or

(ii) as the result of a guarantee given by a government or other authority,

to make a full payment of compensation to the claimant and recover the whole or part of the amount of that payment from the other scheme or under that guarantee.

215.—(1) The compensation scheme may, in particular, make provision—

Rights of the scheme in relevant person's insolvency.

(a) as to the effect of a payment of compensation under the scheme in relation to rights or obligations arising out of the claim against a relevant person in respect of which the payment was made;

(b) for conferring on the scheme manager a right of recovery against that person.

(2) Such a right of recovery conferred by the scheme does not, in the event of the relevant person's insolvency, exceed such right (if any) as the claimant would have had in that event.

(3) If a person other than the scheme manager presents a petition under section 9 of the 1986 Act or Article 22 of the 1989 Order in relation to a company or partnership which is a relevant person, the scheme manager has the same rights as are conferred on the Authority by section 362.

(4) If a person other than the scheme manager presents a petition for the winding up of a body which is a relevant person, the scheme manager has the same rights as are conferred on the Authority by section 371.

(5) If a person other than the scheme manager presents a bankruptcy petition to the court in relation to an individual who, or an entity which, is a relevant person, the scheme manager has the same rights as are conferred on the Authority by section 374.

(6) Insolvency rules may be made for the purpose of integrating any procedure for which provision is made as a result of subsection (1) into the general procedure on the administration of a company or partnership or on a winding-up, bankruptcy or sequestration.

(7) "Bankruptcy petition" means a petition to the court—

(a) under section 264 of the 1986 Act or Article 238 of the 1989 Order for a bankruptcy order to be made against an individual;

(b) under section 5 of the 1985 Act for the sequestration of the estate of an individual; or

(c) under section 6 of the 1985 Act for the sequestration of the estate belonging to or held for or jointly by the members of an entity mentioned in subsection (1) of that section.

(8) "Insolvency rules" are—

(a) for England and Wales, rules made under sections 411 and 412 of the 1986 Act;

(b) for Scotland, rules made by order by the Treasury, after consultation with the Scottish Ministers, for the purposes of this section; and

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1978 c. 23.

(c) for Northern Ireland, rules made under Article 359 of the 1989 Order and section 55 of the Judicature (Northern Ireland) Act 1978.

(9) “The 1985 Act”, “the 1986 Act”, “the 1989 Order” and “court” have the same meaning as in Part XXIV.

Continuity of
long-term
insurance policies.

216.—(1) The compensation scheme may, in particular, include provision requiring the scheme manager to make arrangements for securing continuity of insurance for policyholders, or policyholders of a specified class, of relevant long-term insurers.

(2) “Relevant long-term insurers” means relevant persons who—

- (a) have permission to effect or carry out contracts of long-term insurance; and
- (b) are unable, or likely to be unable, to satisfy claims made against them.

(3) The scheme may provide for the scheme manager to take such measures as appear to him to be appropriate—

- (a) for securing or facilitating the transfer of a relevant long-term insurer’s business so far as it consists of the carrying out of contracts of long-term insurance, or of any part of that business, to another authorised person;
- (b) for securing the issue by another authorised person to the policyholders concerned of policies in substitution for their existing policies.

(4) The scheme may also provide for the scheme manager to make payments to the policyholders concerned—

- (a) during any period while he is seeking to make arrangements mentioned in subsection (1);
- (b) if it appears to him that it is not reasonably practicable to make such arrangements.

(5) A provision of the scheme made by virtue of section 213(3)(b) may include power to impose levies for the purpose of meeting expenses of the scheme manager incurred in—

- (a) taking measures as a result of any provision of the scheme made by virtue of subsection (3);
- (b) making payments as a result of any such provision made by virtue of subsection (4).

Insurers in
financial
difficulties.

217.—(1) The compensation scheme may, in particular, include provision for the scheme manager to have power to take measures for safeguarding policyholders, or policyholders of a specified class, of relevant insurers.

(2) “Relevant insurers” means relevant persons who—

- (a) have permission to effect or carry out contracts of insurance; and
- (b) are in financial difficulties.

(3) The measures may include such measures as the scheme manager considers appropriate for—

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- (a) securing or facilitating the transfer of a relevant insurer's business so far as it consists of the carrying out of contracts of insurance, or of any part of that business, to another authorised person;
 - (b) giving assistance to the relevant insurer to enable it to continue to effect or carry out contracts of insurance.
- (4) The scheme may provide—
- (a) that if measures of a kind mentioned in subsection (3)(a) are to be taken, they should be on terms appearing to the scheme manager to be appropriate, including terms reducing, or deferring payment of, any of the things to which any of those who are eligible policyholders in relation to the relevant insurer are entitled in their capacity as such;
 - (b) that if measures of a kind mentioned in subsection (3)(b) are to be taken, they should be conditional on the reduction of, or the deferment of the payment of, the things to which any of those who are eligible policyholders in relation to the relevant insurer are entitled in their capacity as such;
 - (c) for ensuring that measures of a kind mentioned in subsection (3)(b) do not benefit to any material extent persons who were members of a relevant insurer when it began to be in financial difficulties or who had any responsibility for, or who may have profited from, the circumstances giving rise to its financial difficulties, except in specified circumstances;
 - (d) for requiring the scheme manager to be satisfied that any measures he proposes to take are likely to cost less than it would cost to pay compensation under the scheme if the relevant insurer became unable, or likely to be unable, to satisfy claims made against him.
- (5) The scheme may provide for the Authority to have power—
- (a) to give such assistance to the scheme manager as it considers appropriate for assisting the scheme manager to determine what measures are practicable or desirable in the case of a particular relevant insurer;
 - (b) to impose constraints on the taking of measures by the scheme manager in the case of a particular relevant insurer;
 - (c) to require the scheme manager to provide it with information about any particular measures which the scheme manager is proposing to take.
- (6) The scheme may include provision for the scheme manager to have power—
- (a) to make interim payments in respect of eligible policyholders of a relevant insurer;
 - (b) to indemnify any person making payments to eligible policyholders of a relevant insurer.
- (7) A provision of the scheme made by virtue of section 213(3)(b) may include power to impose levies for the purpose of meeting expenses of the scheme manager incurred in—
- (a) taking measures as a result of any provision of the scheme made by virtue of subsection (1);

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(b) making payments or giving indemnities as a result of any such provision made by virtue of subsection (6).

(8) "Financial difficulties" and "eligible policyholders" have such meanings as may be specified.

Annual report

Annual report. **218.**—(1) At least once a year, the scheme manager must make a report to the Authority on the discharge of its functions.

(2) The report must—

(a) include a statement setting out the value of each of the funds established by the compensation scheme; and

(b) comply with any requirements specified in rules made by the Authority.

(3) The scheme manager must publish each report in the way it considers appropriate.

Information and documents

Scheme manager's power to require information.

219.—(1) The scheme manager may, by notice in writing given to the relevant person in respect of whom a claim is made under the scheme or to a person otherwise involved, require that person—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

(2) The information or documents must be provided or produced—

(a) before the end of such reasonable period as may be specified; and

(b) in the case of information, in such manner or form as may be specified.

(3) This section applies only to information and documents the provision or production of which the scheme manager considers—

(a) to be necessary for the fair determination of the claim; or

(b) to be necessary (or likely to be necessary) for the fair determination of other claims made (or which it expects may be made) in respect of the relevant person concerned.

(4) If a document is produced in response to a requirement imposed under this section, the scheme manager may—

(a) take copies or extracts from the document; or

(b) require the person producing the document to provide an explanation of the document.

(5) If a person who is required under this section to produce a document fails to do so, the scheme manager may require the person to state, to the best of his knowledge and belief, where the document is.

(6) If the relevant person is insolvent, no requirement may be imposed under this section on a person to whom section 220 or 224 applies.

(7) If a person claims a lien on a document, its production under this Part does not affect the lien.

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(8) "Relevant person" has the same meaning as in section 224.

(9) "Specified" means specified in the notice given under subsection (1).

(10) A person is involved in a claim made under the scheme if he was knowingly involved in the act or omission giving rise to the claim.

220.—(1) For the purpose of assisting the scheme manager to discharge its functions in relation to a claim made in respect of an insolvent relevant person, a person to whom this section applies must permit a person authorised by the scheme manager to inspect relevant documents.

Scheme manager's power to inspect information held by liquidator etc.

(2) A person inspecting a document under this section may take copies of, or extracts from, the document.

(3) This section applies to—

- (a) the administrative receiver, administrator, liquidator or trustee in bankruptcy of an insolvent relevant person;
- (b) the permanent trustee, within the meaning of the Bankruptcy (Scotland) Act 1985, on the estate of an insolvent relevant person.

1985 c. 66.

(4) This section does not apply to a liquidator, administrator or trustee in bankruptcy who is—

- (a) the Official Receiver;
- (b) the Official Receiver for Northern Ireland; or
- (c) the Accountant in Bankruptcy.

(5) "Relevant person" has the same meaning as in section 224.

221.—(1) If a person ("the defaulter")—

- (a) fails to comply with a requirement imposed under section 219, or
- (b) fails to permit documents to be inspected under section 220,

the scheme manager may certify that fact in writing to the court and the court may enquire into the case.

Powers of court where information required.

(2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement (or to permit the documents to be inspected), it may deal with the defaulter (and, in the case of a body corporate, any director or officer) as if he were in contempt.

(3) "Court" means—

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

Miscellaneous

222.—(1) Neither the scheme manager nor any person who is, or is acting as, its board member, officer or member of staff is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the scheme manager's functions.

Statutory immunity.

(2) Subsection (1) does not apply—

- (a) if the act or omission is shown to have been in bad faith; or

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- (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.

Management expenses.

223.—(1) The amount which the scheme manager may recover, from the sums levied under the scheme, as management expenses attributable to a particular period may not exceed such amount as may be fixed by the scheme as the limit applicable to that period.

(2) In calculating the amount of any levy to be imposed by the scheme manager, no amount may be included to reflect management expenses unless the limit mentioned in subsection (1) has been fixed by the scheme.

(3) “Management expenses” means expenses incurred, or expected to be incurred, by the scheme manager in connection with its functions under this Act other than those incurred—

- (a) in paying compensation;
- (b) as a result of any provision of the scheme made by virtue of section 216(3) or (4) or 217(1) or (6).

Scheme manager’s power to inspect documents held by Official Receiver etc.

224.—(1) If, as a result of the insolvency or bankruptcy of a relevant person, any documents have come into the possession of a person to whom this section applies, he must permit any person authorised by the scheme manager to inspect the documents for the purpose of establishing—

- (a) the identity of persons to whom the scheme manager may be liable to make a payment in accordance with the compensation scheme; or
- (b) the amount of any payment which the scheme manager may be liable to make.

(2) A person inspecting a document under this section may take copies or extracts from the document.

(3) In this section “relevant person” means a person who was—

- (a) an authorised person at the time the act or omission which may give rise to the liability mentioned in subsection (1)(a) took place; or
- (b) an appointed representative at that time.

(4) But a person who, at that time—

- (a) qualified for authorisation under Schedule 3, and
- (b) fell within a prescribed category,

is not to be regarded as a relevant person for the purposes of this section in relation to any activities for which he had permission as a result of any provision of, or made under, that Schedule unless he had elected to participate in the scheme in relation to those activities at that time.

(5) This section applies to—

- (a) the Official Receiver;
- (b) the Official Receiver for Northern Ireland; and
- (c) the Accountant in Bankruptcy.

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THE OMBUDSMAN SCHEME

The scheme

225.—(1) This Part provides for a scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person. The scheme and the scheme operator.

(2) The scheme is to be administered by a body corporate (“the scheme operator”).

(3) The scheme is to be operated under a name chosen by the scheme operator but is referred to in this Act as “the ombudsman scheme”.

(4) Schedule 17 makes provision in connection with the ombudsman scheme and the scheme operator.

226.—(1) A complaint which relates to an act or omission of a person (“the respondent”) in carrying on an activity to which compulsory jurisdiction rules apply is to be dealt with under the ombudsman scheme if the conditions mentioned in subsection (2) are satisfied. Compulsory jurisdiction.

(2) The conditions are that—

- (a) the complainant is eligible and wishes to have the complaint dealt with under the scheme;
- (b) the respondent was an authorised person at the time of the act or omission to which the complaint relates; and
- (c) the act or omission to which the complaint relates occurred at a time when compulsory jurisdiction rules were in force in relation to the activity in question.

(3) “Compulsory jurisdiction rules” means rules—

- (a) made by the Authority for the purposes of this section; and
- (b) specifying the activities to which they apply.

(4) Only activities which are regulated activities, or which could be made regulated activities by an order under section 22, may be specified.

(5) Activities may be specified by reference to specified categories (however described).

(6) A complainant is eligible, in relation to the compulsory jurisdiction of the ombudsman scheme, if he falls within a class of person specified in the rules as eligible.

(7) The rules—

- (a) may include provision for persons other than individuals to be eligible; but
- (b) may not provide for authorised persons to be eligible except in specified circumstances or in relation to complaints of a specified kind.

(8) The jurisdiction of the scheme which results from this section is referred to in this Act as the “compulsory jurisdiction”.

227.—(1) A complaint which relates to an act or omission of a person (“the respondent”) in carrying on an activity to which voluntary jurisdiction rules apply is to be dealt with under the ombudsman scheme if the conditions mentioned in subsection (2) are satisfied. Voluntary jurisdiction.

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- (2) The conditions are that—
- (a) the complainant is eligible and wishes to have the complaint dealt with under the scheme;
 - (b) at the time of the act or omission to which the complaint relates, the respondent was participating in the scheme;
 - (c) at the time when the complaint is referred under the scheme, the respondent has not withdrawn from the scheme in accordance with its provisions;
 - (d) the act or omission to which the complaint relates occurred at a time when voluntary jurisdiction rules were in force in relation to the activity in question; and
 - (e) the complaint cannot be dealt with under the compulsory jurisdiction.

- (3) “Voluntary jurisdiction rules” means rules—
- (a) made by the scheme operator for the purposes of this section; and
 - (b) specifying the activities to which they apply.

(4) The only activities which may be specified in the rules are activities which are, or could be, specified in compulsory jurisdiction rules.

(5) Activities may be specified by reference to specified categories (however described).

(6) The rules require the Authority’s approval.

(7) A complainant is eligible, in relation to the voluntary jurisdiction of the ombudsman scheme, if he falls within a class of person specified in the rules as eligible.

(8) The rules may include provision for persons other than individuals to be eligible.

(9) A person qualifies for participation in the ombudsman scheme if he falls within a class of person specified in the rules in relation to the activity in question.

(10) Provision may be made in the rules for persons other than authorised persons to participate in the ombudsman scheme.

(11) The rules may make different provision in relation to complaints arising from different activities.

(12) The jurisdiction of the scheme which results from this section is referred to in this Act as the “voluntary jurisdiction”.

(13) In such circumstances as may be specified in voluntary jurisdiction rules, a complaint—

- (a) which relates to an act or omission occurring at a time before the rules came into force, and
- (b) which could have been dealt with under a scheme which has to any extent been replaced by the voluntary jurisdiction,

is to be dealt with under the ombudsman scheme even though paragraph (b) or (d) of subsection (2) would otherwise prevent that.

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(14) In such circumstances as may be specified in voluntary jurisdiction rules, a complaint is to be dealt with under the ombudsman scheme even though—

- (a) paragraph (b) or (d) of subsection (2) would otherwise prevent that, and
- (b) the complaint is not brought within the scheme as a result of subsection (13),

but only if the respondent has agreed that complaints of that kind were to be dealt with under the scheme.

Determination of complaints

228.—(1) This section applies only in relation to the compulsory jurisdiction.

Determination under the compulsory jurisdiction.

(2) A complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case.

(3) When the ombudsman has determined a complaint he must give a written statement of his determination to the respondent and to the complainant.

(4) The statement must—

- (a) give the ombudsman's reasons for his determination;
- (b) be signed by him; and
- (c) require the complainant to notify him in writing, before a date specified in the statement, whether he accepts or rejects the determination.

(5) If the complainant notifies the ombudsman that he accepts the determination, it is binding on the respondent and the complainant and final.

(6) If, by the specified date, the complainant has not notified the ombudsman of his acceptance or rejection of the determination he is to be treated as having rejected it.

(7) The ombudsman must notify the respondent of the outcome.

(8) A copy of the determination on which appears a certificate signed by an ombudsman is evidence (or in Scotland sufficient evidence) that the determination was made under the scheme.

(9) Such a certificate purporting to be signed by an ombudsman is to be taken to have been duly signed unless the contrary is shown.

229.—(1) This section applies only in relation to the compulsory jurisdiction. Awards.

(2) If a complaint which has been dealt with under the scheme is determined in favour of the complainant, the determination may include—

- (a) an award against the respondent of such amount as the ombudsman considers fair compensation for loss or damage (of a kind falling within subsection (3)) suffered by the complainant (“a money award”);

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(b) a direction that the respondent take such steps in relation to the complainant as the ombudsman considers just and appropriate (whether or not a court could order those steps to be taken).

(3) A money award may compensate for—

(a) financial loss; or

(b) any other loss, or any damage, of a specified kind.

(4) The Authority may specify the maximum amount which may be regarded as fair compensation for a particular kind of loss or damage specified under subsection (3)(b).

(5) A money award may not exceed the monetary limit; but the ombudsman may, if he considers that fair compensation requires payment of a larger amount, recommend that the respondent pay the complainant the balance.

(6) The monetary limit is such amount as may be specified.

(7) Different amounts may be specified in relation to different kinds of complaint.

(8) A money award—

(a) may provide for the amount payable under the award to bear interest at a rate and as from a date specified in the award; and

(b) is enforceable by the complainant in accordance with Part III of Schedule 17.

(9) Compliance with a direction under subsection (2)(b)—

(a) is enforceable by an injunction; or

(b) in Scotland, is enforceable by an order under section 45 of the Court of Session Act 1988.

1988 c. 36.

(10) Only the complainant may bring proceedings for an injunction or proceedings for an order.

(11) "Specified" means specified in compulsory jurisdiction rules.

Costs.

230.—(1) The scheme operator may by rules ("costs rules") provide for an ombudsman to have power, on determining a complaint under the compulsory jurisdiction, to award costs in accordance with the provisions of the rules.

(2) Costs rules require the approval of the Authority.

(3) Costs rules may not provide for the making of an award against the complainant in respect of the respondent's costs.

(4) But they may provide for the making of an award against the complainant in favour of the scheme operator, for the purpose of providing a contribution to resources deployed in dealing with the complaint, if in the opinion of the ombudsman—

(a) the complainant's conduct was improper or unreasonable; or

(b) the complainant was responsible for an unreasonable delay.

(5) Costs rules may authorise an ombudsman making an award in accordance with the rules to order that the amount payable under the award bears interest at a rate and as from a date specified in the order.

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(6) An amount due under an award made in favour of the scheme operator is recoverable as a debt due to the scheme operator.

(7) Any other award made against the respondent is to be treated as a money award for the purposes of paragraph 16 of Schedule 17.

Information

231.—(1) An ombudsman may, by notice in writing given to a party to a complaint, require that party—

Ombudsman's power to require information.

- (a) to provide specified information or information of a specified description; or
- (b) to produce specified documents or documents of a specified description.

- (2) The information or documents must be provided or produced—
 - (a) before the end of such reasonable period as may be specified; and
 - (b) in the case of information, in such manner or form as may be specified.

(3) This section applies only to information and documents the production of which the ombudsman considers necessary for the determination of the complaint.

(4) If a document is produced in response to a requirement imposed under this section, the ombudsman may—

- (a) take copies or extracts from the document; or
- (b) require the person producing the document to provide an explanation of the document.

(5) If a person who is required under this section to produce a document fails to do so, the ombudsman may require him to state, to the best of his knowledge and belief, where the document is.

(6) If a person claims a lien on a document, its production under this Part does not affect the lien.

(7) “Specified” means specified in the notice given under subsection (1).

232.—(1) If a person (“the defaulter”) fails to comply with a requirement imposed under section 231, the ombudsman may certify that fact in writing to the court and the court may enquire into the case.

Powers of court where information required.

(2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and, in the case of a body corporate, any director or officer) as if he were in contempt.

- (3) “Court” means—
 - (a) the High Court;
 - (b) in Scotland, the Court of Session.

233. In section 31 of the Data Protection Act 1998 (regulatory activity), after subsection (4), insert—

Data protection. 1998 c. 29.

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“(4A) Personal data processed for the purpose of discharging any function which is conferred by or under Part XVI of the Financial Services and Markets Act 2000 on the body established by the Financial Services Authority for the purposes of that Part are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of the function.”

Funding

Industry funding.

234.—(1) For the purpose of funding—

- (a) the establishment of the ombudsman scheme (whenever any relevant expense is incurred), and
- (b) its operation in relation to the compulsory jurisdiction,

the Authority may make rules requiring the payment to it or to the scheme operator, by authorised persons or any class of authorised person of specified amounts (or amounts calculated in a specified way).

(2) “Specified” means specified in the rules.

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COLLECTIVE INVESTMENT SCHEMES

CHAPTER I

INTERPRETATION

Collective investment schemes.

235.—(1) In this Part “collective investment scheme” means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements must be such that the persons who are to participate (“participants”) do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.

(3) The arrangements must also have either or both of the following characteristics—

- (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
- (b) the property is managed as a whole by or on behalf of the operator of the scheme.

(4) If arrangements provide for such pooling as is mentioned in subsection (3)(a) in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

(5) The Treasury may by order provide that arrangements do not amount to a collective investment scheme—

- (a) in specified circumstances; or

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- (b) if the arrangements fall within a specified category of arrangement.

236.—(1) In this Part “an open-ended investment company” means a collective investment scheme which satisfies both the property condition and the investment condition. Open-ended investment companies.

(2) The property condition is that the property belongs beneficially to, and is managed by or on behalf of, a body corporate (“BC”) having as its purpose the investment of its funds with the aim of—

- (a) spreading investment risk; and
(b) giving its members the benefit of the results of the management of those funds by or on behalf of that body.

(3) The investment condition is that, in relation to BC, a reasonable investor would, if he were to participate in the scheme—

- (a) expect that he would be able to realize, within a period appearing to him to be reasonable, his investment in the scheme (represented, at any given time, by the value of shares in, or securities of, BC held by him as a participant in the scheme); and
(b) be satisfied that his investment would be realized on a basis calculated wholly or mainly by reference to the value of property in respect of which the scheme makes arrangements.

(4) In determining whether the investment condition is satisfied, no account is to be taken of any actual or potential redemption or repurchase of shares or securities under—

- (a) Chapter VII of Part V of the Companies Act 1985; 1985 c. 6.
(b) Chapter VII of Part VI of the Companies (Northern Ireland) Order 1986; S.I. 1986/1032 (N.I. 6.)
(c) corresponding provisions in force in another EEA State; or
(d) provisions in force in a country or territory other than an EEA state which the Treasury have, by order, designated as corresponding provisions.

(5) The Treasury may by order amend the definition of “an open-ended investment company” for the purposes of this Part.

237.—(1) In this Part “unit trust scheme” means a collective investment scheme under which the property is held on trust for the participants. Other definitions.

(2) In this Part—

“trustee”, in relation to a unit trust scheme, means the person holding the property in question on trust for the participants;

“depository”, in relation to—

(a) a collective investment scheme which is constituted by a body incorporated by virtue of regulations under section 262, or

(b) any other collective investment scheme which is not a unit trust scheme,

means any person to whom the property subject to the scheme is entrusted for safekeeping;

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“the operator”, in relation to a unit trust scheme with a separate trustee, means the manager and in relation to an open-ended investment company, means that company;

“units” means the rights or interests (however described) of the participants in a collective investment scheme.

(3) In this Part—

“an authorised unit trust scheme” means a unit trust scheme which is authorised for the purposes of this Act by an authorisation order in force under section 243;

“an authorised open-ended investment company” means a body incorporated by virtue of regulations under section 262 in respect of which an authorisation order is in force under any provision made in such regulations by virtue of subsection (2)(1) of that section;

“a recognised scheme” means a scheme recognised under section 264, 270 or 272.

CHAPTER II

RESTRICTIONS ON PROMOTION

Restrictions on
promotion.

238.—(1) An authorised person must not communicate an invitation or inducement to participate in a collective investment scheme.

(2) But that is subject to the following provisions of this section and to section 239.

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

(4) Subsection (1) does not apply in relation to—

- (a) an authorised unit trust scheme;
- (b) a scheme constituted by an authorised open-ended investment company; or
- (c) a recognised scheme.

(5) Subsection (1) does not apply to anything done in accordance with rules made by the Authority for the purpose of exempting from that subsection the promotion otherwise than to the general public of schemes of specified descriptions.

(6) The Treasury may by order specify circumstances in which subsection (1) does not apply.

(7) An order under subsection (6) 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.

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

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

(10) "Promotion otherwise than to the general public" includes promotion in a way designed to reduce, so far as possible, the risk of participation by persons for whom participation would be unsuitable.

(11) "Participate", in relation to a collective investment scheme, means become a participant (within the meaning given by section 235(2)) in the scheme.

239.—(1) The Treasury may by regulations make provision for exempting single property schemes from section 238(1).

Single property schemes.

(2) For the purposes of subsection (1) a single property scheme is a scheme which has the characteristics mentioned in subsection (3) and satisfies such other requirements as are prescribed by the regulations conferring the exemption.

(3) The characteristics are—

(a) that the property subject to the scheme (apart from cash or other assets held for management purposes) consists of—

(i) a single building (or a single building with ancillary buildings) managed by or on behalf of the operator of the scheme, or

(ii) a group of adjacent or contiguous buildings managed by him or on his behalf as a single enterprise,

with or without ancillary land and with or without furniture, fittings or other contents of the building or buildings in question; and

(b) that the units of the participants in the scheme are either dealt in on a recognised investment exchange or offered on terms such that any agreement for their acquisition is conditional on their admission to dealings on such an exchange.

(4) If regulations are made under subsection (1), the Authority may make rules imposing duties or liabilities on the operator and (if any) the trustee or depositary of a scheme exempted by the regulations.

(5) The rules may include, to such extent as the Authority thinks appropriate, provision for purposes corresponding to those for which provision can be made under section 248 in relation to authorised unit trust schemes.

240.—(1) An authorised person may not approve for the purposes of section 21 the content of a communication relating to a collective investment scheme if he would be prohibited by section 238(1) from effecting the communication himself or from causing it to be communicated.

Restriction on approval of promotion.

(2) For the purposes of determining in any case whether there has been a contravention of section 21(1), an approval given in contravention of subsection (1) is to be regarded as not having been given.

241. If an authorised person contravenes a requirement imposed on him by section 238 or 240, section 150 applies to the contravention as it applies to a contravention mentioned in that section.

Actions for damages.

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CHAPTER III

AUTHORISED UNIT TRUST SCHEMES

*Applications for authorisation*Applications for
authorisation of
unit trust schemes.

242.—(1) Any application for an order declaring a unit trust scheme to be an authorised unit trust scheme must be made to the Authority by the manager and trustee, or proposed manager and trustee, of the scheme.

(2) The manager and trustee (or proposed manager and trustee) must be different persons.

(3) The application—

(a) must be made in such manner as the Authority may direct; and

(b) must contain or be accompanied by such information as the Authority may reasonably require for the purpose of determining the application.

(4) At any time after receiving an application and before determining it, the Authority may require the applicants 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.

(6) The Authority may require applicants to present information which they are required to give under this section in such form, or to verify it in such a way, as the Authority may direct.

Authorisation
orders.

243.—(1) If, on an application under section 242 in respect of a unit trust scheme, the Authority—

(a) is satisfied that the scheme complies with the requirements set out in this section,

(b) is satisfied that the scheme complies with the requirements of the trust scheme rules, and

(c) has been provided with a copy of the trust deed and a certificate signed by a solicitor to the effect that it complies with such of the requirements of this section or those rules as relate to its contents,

the Authority may make an order declaring the scheme to be an authorised unit trust scheme.

(2) If the Authority makes an order under subsection (1), it must give written notice of the order to the applicant.

(3) In this Chapter “authorisation order” means an order under subsection (1).

(4) The manager and the trustee must be persons who are independent of each other.

(5) The manager and the trustee must each—

(a) be a body corporate incorporated in the United Kingdom or another EEA State, and

(b) have a place of business in the United Kingdom,

and the affairs of each must be administered in the country in which it is incorporated.

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(6) If the manager is incorporated in another EEA State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 264.

(7) The manager and the trustee must each be an authorised person and the manager must have permission to act as manager and the trustee must have permission to act as trustee.

(8) The name of the scheme must not be undesirable or misleading.

(9) The purposes of the scheme must be reasonably capable of being successfully carried into effect.

(10) The participants must be entitled to have their units redeemed in accordance with the scheme at a price—

- (a) related to the net value of the property to which the units relate; and
- (b) determined in accordance with the scheme.

(11) But a scheme is to be treated as complying with subsection (10) if it requires the manager to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in that subsection.

244.—(1) An application under section 242 must be determined by the Authority before the end of the period of six months beginning with the date on which it receives the completed application. Determination of applications.

(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 first receives the application.

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

Applications refused

245.—(1) If the Authority proposes to refuse an application made under section 242 it must give each of the applicants a warning notice. Procedure when refusing an application.

- (2) If the Authority decides to refuse the application—
 - (a) it must give each of the applicants a decision notice; and
 - (b) either applicant may refer the matter to the Tribunal.

Certificates

246.—(1) If the manager or trustee of a unit trust scheme which complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument so requests, the Authority may issue a certificate to the effect that the scheme complies with those conditions. Certificates.

(2) Such a certificate may be issued on the making of an authorisation order in respect of the scheme or at any subsequent time.

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*Financial Services and Markets Act 2000**Rules*Trust scheme
rules.**247.**—(1) The Authority may make rules (“trust scheme rules”) as to—

- (a) the constitution, management and operation of authorised unit trust schemes;
- (b) the powers, duties, rights and liabilities of the manager and trustee of any such scheme;
- (c) the rights and duties of the participants in any such scheme; and
- (d) the winding up of any such scheme.

(2) Trust scheme rules may, in particular, make provision—

- (a) as to the issue and redemption of the units under the scheme;
- (b) as to the expenses of the scheme and the means of meeting them;
- (c) for the appointment, removal, powers and duties of an auditor for the scheme;
- (d) for restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;
- (e) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records;
- (f) requiring the preparation of periodical reports with respect to the scheme and the provision of those reports to the participants and to the Authority; and
- (g) with respect to the amendment of the scheme.

(3) Trust scheme rules may make provision as to the contents of the trust deed, including provision requiring any of the matters mentioned in subsection (2) to be dealt with in the deed.

(4) But trust scheme rules are binding on the manager, trustee and participants independently of the contents of the trust deed and, in the case of the participants, have effect as if contained in it.

(5) If—

- (a) a modification is made of the statutory provisions in force in Great Britain or Northern Ireland relating to companies,
- (b) the modification relates to the rights and duties of persons who hold the beneficial title to any shares in a company without also holding the legal title, and
- (c) it appears to the Treasury that, for the purpose of assimilating the law relating to authorised unit trust schemes to the law relating to companies as so modified, it is expedient to modify the rule-making powers conferred on the Authority by this section,

the Treasury may by order make such modifications of those powers as they consider appropriate.

Scheme
particulars rules.**248.**—(1) The Authority may make rules (“scheme particulars rules”) requiring the manager of an authorised unit trust scheme—

- (a) to submit scheme particulars to the Authority; and
- (b) to publish scheme particulars or make them available to the public on request.

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(2) “Scheme particulars” means particulars in such form, containing such information about the scheme and complying with such requirements, as are specified in scheme particulars rules.

(3) Scheme particulars rules may require the manager of an authorised unit trust scheme to submit, and to publish or make available, revised or further scheme particulars if there is a significant change affecting any matter—

- (a) which is contained in scheme particulars previously published or made available; and
- (b) whose inclusion in those particulars was required by the rules.

(4) Scheme particulars rules may require the manager of an authorised unit trust scheme to submit, and to publish or make available, revised or further scheme particulars if—

- (a) a significant new matter arises; and
- (b) the inclusion of information in respect of that matter would have been required in previous particulars if it had arisen when those particulars were prepared.

(5) Scheme particulars rules may provide for the payment, by the person or persons who in accordance with the rules are treated as responsible for any scheme particulars, of compensation to any qualifying person who has suffered loss as a result of—

- (a) any untrue or misleading statement in the particulars; or
- (b) the omission from them of any matter required by the rules to be included.

(6) “Qualifying person” means a person who—

- (a) has become or agreed to become a participant in the scheme; or
- (b) although not being a participant, has a beneficial interest in units in the scheme.

(7) Scheme particulars rules do not affect any liability which any person may incur apart from the rules.

249.—(1) If it appears to the Authority that an auditor has failed to comply with a duty imposed on him by trust scheme rules, it may disqualify him from being the auditor for any authorised unit trust scheme or authorised open-ended investment company.

Disqualification of auditor for breach of trust scheme rules.

(2) Subsections (2) to (5) of section 345 have effect in relation to disqualification under subsection (1) as they have effect in relation to disqualification under subsection (1) of that section.

250.—(1) In this section “rules” means—

- (a) trust scheme rules; or
- (b) scheme particulars rules.

Modification or waiver of rules.

(2) The Authority may, on the application or with the consent of any person to whom any rules apply, direct that all or any of the rules—

- (a) are not to apply to him as respects a particular scheme; or
- (b) are to apply to him, as respects a particular scheme, with such modifications as may be specified in the direction.

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(3) The Authority may, on the application or with the consent of the manager and trustee of a particular scheme acting jointly, direct that all or any of the rules—

- (a) are not to apply to the scheme; or
- (b) are to apply to the scheme with such modifications as may be specified in the direction.

(4) Subsections (3) to (9) and (11) of section 148 have effect in relation to a direction under subsection (2) as they have effect in relation to a direction under section 148(2) but with the following modifications—

- (a) subsection (4)(a) is to be read as if the words “by the authorised person” were omitted;
- (b) any reference to the authorised person (except in subsection (4)(a)) is to be read as a reference to the person mentioned in subsection (2); and
- (c) subsection (7)(b) is to be read, in relation to a participant of the scheme, as if the word “commercial” were omitted.

(5) Subsections (3) to (9) and (11) of section 148 have effect in relation to a direction under subsection (3) as they have effect in relation to a direction under section 148(2) but with the following modifications—

- (a) subsection (4)(a) is to be read as if the words “by the authorised person” were omitted;
- (b) subsections (7)(b) and (11) are to be read as if references to the authorised person were references to each of the manager and the trustee of the scheme;
- (c) subsection (7)(b) is to be read, in relation to a participant of the scheme, as if the word “commercial” were omitted;
- (d) subsection (8) is to be read as if the reference to the authorised person concerned were a reference to the scheme concerned and to its manager and trustee; and
- (e) subsection (9) is to be read as if the reference to the authorised person were a reference to the manager and trustee of the scheme acting jointly.

Alterations

Alteration of schemes and changes of manager or trustee.

251.—(1) The manager of an authorised unit trust scheme must give written notice to the Authority of any proposal to alter the scheme or to replace its trustee.

(2) Any notice given in respect of a proposal to alter the scheme involving a change in the trust deed must be accompanied by a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the trust scheme rules.

(3) The trustee of an authorised unit trust scheme must give written notice to the Authority of any proposal to replace the manager of the scheme.

(4) Effect is not to be given to any proposal of which notice has been given under subsection (1) or (3) unless—

- (a) the Authority, by written notice, has given its approval to the proposal; or

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- (b) one month, beginning with the date on which the notice was given, has expired without the manager or trustee having received from the Authority a warning notice under section 252 in respect of the proposal.

(5) The Authority must not approve a proposal to replace the manager or the trustee of an authorised unit trust scheme unless it is satisfied that, if the proposed replacement is made, the scheme will continue to comply with the requirements of section 243(4) to (7).

252.—(1) If the Authority proposes to refuse approval of a proposal to replace the trustee or manager of an authorised unit trust scheme, it must give a warning notice to the person by whom notice of the proposal was given under section 251(1) or (3).

Procedure when refusing approval of change of manager or trustee.

(2) If the Authority proposes to refuse approval of a proposal to alter an authorised unit trust scheme it must give separate warning notices to the manager and the trustee of the scheme.

(3) To be valid the warning notice must be received by that person before the end of one month beginning with the date on which notice of the proposal was given.

(4) If, having given a warning notice to a person, the Authority decides to refuse approval—

- (a) it must give him a decision notice; and
- (b) he may refer the matter to the Tribunal.

Exclusion clauses

253. Any provision of the trust deed of an authorised unit trust scheme is void in so far as it would have the effect of exempting the manager or trustee from liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the scheme.

Avoidance of exclusion clauses.

Ending of authorisation

254.—(1) An authorisation order may be revoked by an order made by the Authority if it appears to the Authority that—

Revocation of authorisation order otherwise than by consent.

- (a) one or more of the requirements for the making of the order are no longer satisfied;
- (b) the manager or trustee of the scheme concerned has contravened a requirement imposed on him by or under this Act;
- (c) the manager or trustee of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular;
- (d) no regulated activity is being carried on in relation to the scheme and the period of that inactivity began at least twelve months earlier; or
- (e) none of paragraphs (a) to (d) applies, but it is desirable to revoke the authorisation order in order to protect the interests of participants or potential participants in the scheme.

(2) For the purposes of subsection (1)(e), the Authority may take into account any matter relating to—

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- (a) the scheme;
- (b) the manager or trustee;
- (c) any person employed by or associated with the manager or trustee in connection with the scheme;
- (d) any director of the manager or trustee;
- (e) any person exercising influence over the manager or trustee;
- (f) any body corporate in the same group as the manager or trustee;
- (g) any director of any such body corporate;
- (h) any person exercising influence over any such body corporate.

Procedure.

255.—(1) If the Authority proposes to make an order under section 254 revoking an authorisation order (“a revoking order”), it must give separate warning notices to the manager and the trustee of the scheme.

(2) If the Authority decides to make a revoking order, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

Requests for
revocation of
authorisation
order.

256.—(1) An authorisation order may be revoked by an order made by the Authority at the request of the manager or trustee of the scheme concerned.

(2) If the Authority makes an order under subsection (1), it must give written notice of the order to the manager and trustee of the scheme concerned.

(3) The Authority may refuse a request to make an order under this section if it considers that—

- (a) the public interest requires that any matter concerning the scheme should be investigated before a decision is taken as to whether the authorisation order should be revoked; or
- (b) revocation would not be in the interests of the participants or would be incompatible with a Community obligation.

(4) If the Authority proposes to refuse a request under this section, it must give separate warning notices to the manager and the trustee of the scheme.

(5) If the Authority decides to refuse the request, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

Powers of intervention

Directions.

257.—(1) The Authority may give a direction under this section if it appears to the Authority that—

- (a) one or more of the requirements for the making of an authorisation order are no longer satisfied;
- (b) the manager or trustee of an authorised unit trust scheme has contravened, or is likely to contravene, a requirement imposed on him by or under this Act;

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- (c) the manager or trustee of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular; or
 - (d) none of paragraphs (a) to (c) applies, but it is desirable to give a direction in order to protect the interests of participants or potential participants in such a scheme.
- (2) A direction under this section may—
- (a) require the manager of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme;
 - (b) require the manager and trustee of the scheme to wind it up.
- (3) If the authorisation order is revoked, the revocation does not affect any direction under this section which is then in force.
- (4) A direction may be given under this section in relation to a scheme in the case of which the authorisation order has been revoked if a direction under this section was already in force at the time of revocation.
- (5) If a person contravenes a direction under this section, section 150 applies to the contravention as it applies to a contravention mentioned in that section.
- (6) The Authority may, either on its own initiative or on the application of the manager or trustee of the scheme concerned, revoke or vary a direction given under this section if it appears to the Authority—
- (a) in the case of revocation, that it is no longer necessary for the direction to take effect or continue in force;
 - (b) in the case of variation, that the direction should take effect or continue in force in a different form.

258.—(1) If the Authority could give a direction under section 257, it may also apply to the court for an order—

Applications to the court.

- (a) removing the manager or the trustee, or both the manager and the trustee, of the scheme; and
 - (b) replacing the person or persons removed with a suitable person or persons nominated by the Authority.
- (2) The Authority may nominate a person for the purposes of subsection (1)(b) only if it is satisfied that, if the order was made, the requirements of section 243(4) to (7) would be complied with.
- (3) If it appears to the Authority that there is no person it can nominate for the purposes of subsection (1)(b), it may apply to the court for an order—
- (a) removing the manager or the trustee, or both the manager and the trustee, of the scheme; and
 - (b) appointing an authorised person to wind up the scheme.
- (4) On an application under this section the court may make such order as it thinks fit.
- (5) The court may, on the application of the Authority, rescind any such order as is mentioned in subsection (3) and substitute such an order as is mentioned in subsection (1).

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(6) The Authority must give written notice of the making of an application under this section to the manager and trustee of the scheme concerned.

(7) The jurisdiction conferred by this section may be exercised by—

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

Procedure on giving directions under section 257 and varying them on Authority's own initiative.

259.—(1) A direction takes effect—

- (a) immediately, if the notice given under subsection (3) 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 it relates is no longer open to review.

(2) A direction 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 power under section 257, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the Authority proposes to give a direction under section 257, or gives such a direction with immediate effect, it must give separate written notice to the manager and the trustee of the scheme concerned.

(4) The notice must—

- (a) give details of the direction;
- (b) inform the person to whom it is given of when the direction takes effect;
- (c) state the Authority's reasons for giving the direction and for its determination as to when the direction takes effect;
- (d) inform the person to whom it is given that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and
- (e) inform him of his right to refer the matter to the Tribunal.

(5) If the direction imposes a requirement under section 257(2)(a), the notice must state that the requirement has effect until—

- (a) a specified date; or
- (b) a further direction.

(6) If the direction imposes a requirement under section 257(2)(b), the scheme must be wound up—

- (a) by a date specified in the notice; or
- (b) if no date is specified, as soon as practicable.

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

(8) If, having considered any representations made by a person to whom the notice was given, the Authority decides—

- (a) to give the direction in the way proposed, or

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(b) if it has been given, not to revoke the direction,
it must give separate written notice to the manager and the trustee of the scheme concerned.

(9) If, having considered any representations made by a person to whom the notice was given, the Authority decides—

- (a) not to give the direction in the way proposed,
- (b) to give the direction in a way other than that proposed, or
- (c) to revoke a direction which has effect,

it must give separate written notice to the manager and the trustee of the scheme concerned.

(10) A notice given under subsection (8) must inform the person to whom it is given of his right to refer the matter to the Tribunal.

(11) A notice under subsection (9)(b) must comply with subsection (4).

(12) 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.

(13) This section applies to the variation of a direction on the Authority's own initiative as it applies to the giving of a direction.

(14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

260.—(1) If on an application under section 257(6) for a direction to be revoked or varied the Authority proposes—

- (a) to vary the direction otherwise than in accordance with the application, or
- (b) to refuse to revoke or vary the direction,

it must give the applicant a warning notice.

(2) If the Authority decides to refuse to revoke or vary the direction—

- (a) it must give the applicant a decision notice; and
- (b) the applicant may refer the matter to the Tribunal.

261.—(1) If the Authority decides on its own initiative to revoke a direction under section 257 it must give separate written notices of its decision to the manager and trustee of the scheme.

(2) If on an application under section 257(6) for a direction to be revoked or varied the Authority decides to revoke the direction or vary it in accordance with the application, it must give the applicant written notice of its decision.

(3) A notice under this section must specify the date on which the decision takes effect.

(4) The Authority may publish such information about the revocation or variation, in such way, as it considers appropriate.

Procedure: refusal to revoke or vary direction.

Procedure: revocation of direction and grant of request for variation.

CHAPTER IV

OPEN-ENDED INVESTMENT COMPANIES

Open-ended
investment
companies.

- 262.—(1) The Treasury may by regulations make provision for—
- (a) facilitating the carrying on of collective investment by means of open-ended investment companies;
 - (b) regulating such companies.
- (2) The regulations may, in particular, make provision—
- (a) for the incorporation and registration in Great Britain of bodies corporate;
 - (b) for a body incorporated by virtue of the regulations to take such form as may be determined in accordance with the regulations;
 - (c) as to the purposes for which such a body may exist, the investments which it may issue and otherwise as to its constitution;
 - (d) as to the management and operation of such a body and the management of its property;
 - (e) as to the powers, duties, rights and liabilities of such a body and of other persons, including—
 - (i) the directors or sole director of such a body;
 - (ii) its depositary (if any);
 - (iii) its shareholders, and persons who hold the beneficial title to shares in it without holding the legal title;
 - (iv) its auditor; and
 - (v) any persons who act or purport to act on its behalf;
 - (f) as to the merger of one or more such bodies and the division of such a body;
 - (g) for the appointment and removal of an auditor for such a body;
 - (h) as to the winding up and dissolution of such a body;
 - (i) for such a body, or any director or depositary of such a body, to be required to comply with directions given by the Authority;
 - (j) enabling the Authority to apply to a court for an order removing and replacing any director or depositary of such a body;
 - (k) for the carrying out of investigations by persons appointed by the Authority or the Secretary of State;
 - (l) corresponding to any provision made in relation to unit trust schemes by Chapter III of this Part.
- (3) Regulations under this section may—
- (a) impose criminal liability;
 - (b) confer functions on the Authority;
 - (c) in the case of provision made by virtue of subsection (2)(l), authorise the making of rules by the Authority;
 - (d) confer jurisdiction on any court or on the Tribunal;
 - (e) provide for fees to be charged by the Authority in connection with the carrying out of any of its functions under the regulations (including fees payable on a periodical basis);

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- (f) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act);
- (g) make consequential amendments, repeals and revocations of any such legislation;
- (h) modify or exclude any rule of law.

(4) The provision that may be made by virtue of subsection (3)(f) includes provision extending or adapting any power to make subordinate legislation.

(5) Regulations under this section may, in particular—

- (a) revoke the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996; and
- (b) provide for things done under or in accordance with those regulations to be treated as if they had been done under or in accordance with regulations under this section.

S.I. 1996/2827.

263. In section 716(1) of the Companies Act 1985 (prohibition on formation of companies with more than 20 members unless registered under the Act etc.), after “this Act,” insert “is incorporated by virtue of regulations made under section 262 of the Financial Services and Markets Act 2000”.

Amendment of
section 716
Companies Act
1985.
1985 c. 6.

CHAPTER V

RECOGNISED OVERSEAS SCHEMES

Schemes constituted in other EEA States

264.—(1) A collective investment scheme constituted in another EEA State is a recognised scheme if—

Schemes
constituted in
other EEA States.

- (a) it satisfies such requirements as are prescribed for the purposes of this section; and
- (b) not less than two months before inviting persons in the United Kingdom to become participants in the scheme, the operator of the scheme gives notice to the Authority of his intention to do so, specifying the way in which the invitation is to be made.

(2) But this section does not make the scheme a recognised scheme if within two months of receiving the notice under subsection (1) the Authority notifies—

- (a) the operator of the scheme, and
- (b) the authorities of the State in question who are responsible for the authorisation of collective investment schemes,

that the way in which the invitation is to be made does not comply with the law in force in the United Kingdom.

(3) The notice to be given to the Authority under subsection (1)—

- (a) must be accompanied by a certificate from the authorities mentioned in subsection (2)(b) to the effect that the scheme complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument;
- (b) must contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and

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(c) must contain or be accompanied by such other information and documents as may be prescribed.

(4) A notice given by the Authority under subsection (2) must—

- (a) give the reasons for which the Authority considers that the law in force in the United Kingdom will not be complied with; and
- (b) specify a reasonable period (which may not be less than 28 days) within which any person to whom it is given may make representations to the Authority.

(5) For the purposes of this section a collective investment scheme is constituted in another EEA State if—

- (a) it is constituted under the law of that State by a contract or under a trust and is managed by a body corporate incorporated under that law; or
- (b) it takes the form of an open-ended investment company incorporated under that law.

(6) The operator of a recognised scheme may give written notice to the Authority that he desires the scheme to be no longer recognised by virtue of this section.

(7) On the giving of notice under subsection (6), the scheme ceases to be a recognised scheme.

Representations and references to the Tribunal.

265.—(1) This section applies if any representations are made to the Authority, before the period for making representations has ended, by a person to whom a notice was given by the Authority under section 264(2).

(2) The Authority must, within a reasonable period, decide in the light of those representations whether or not to withdraw its notice.

(3) If the Authority withdraws its notice the scheme is a recognised scheme from the date on which the notice is withdrawn.

(4) If the Authority decides not to withdraw its notice, it must give a decision notice to each person to whom the notice under section 264(2) was given.

(5) The operator of the scheme to whom the decision notice is given may refer the matter to the Tribunal.

Disapplication of rules.

266.—(1) Apart from—

- (a) financial promotion rules, and
- (b) rules under section 283(1),

rules made by the Authority under this Act do not apply to the operator, trustee or depositary of a scheme in relation to the carrying on by him of regulated activities for which he has permission in that capacity.

(2) “Scheme” means a scheme which is a recognised scheme by virtue of section 264.

Power of Authority to suspend promotion of scheme.

267.—(1) Subsection (2) applies if it appears to the Authority that the operator of a scheme has communicated an invitation or inducement in relation to the scheme in a manner contrary to financial promotion rules.

(2) The Authority may direct that—

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- (a) the exemption from subsection (1) of section 238 provided by subsection (4)(c) of that section is not to apply in relation to the scheme; and
- (b) subsection (5) of that section does not apply with respect to things done in relation to the scheme.
- (3) A direction under subsection (2) has effect—
- (a) for a specified period;
- (b) until the occurrence of a specified event; or
- (c) until specified conditions are complied with.
- (4) The Authority may, either on its own initiative or on the application of the operator of the scheme concerned, vary a direction given under subsection (2) if it appears to the Authority that the direction should take effect or continue in force in a different form.
- (5) The Authority may, either on its own initiative or on the application of the operator of the recognised scheme concerned, revoke a direction given under subsection (2) if it appears to the Authority—
- (a) that the conditions specified in the direction have been complied with; or
- (b) that it is no longer necessary for the direction to take effect or continue in force.
- (6) If an event is specified, the direction ceases to have effect (unless revoked earlier) on the occurrence of that event.
- (7) For the purposes of this section and sections 268 and 269—
- (a) the scheme's home State is the EEA State in which the scheme is constituted (within the meaning given by section 264);
- (b) the competent authorities in the scheme's home State are the authorities in that State who are responsible for the authorisation of collective investment schemes.
- (8) "Scheme" means a scheme which is a recognised scheme by virtue of section 264.
- (9) "Specified", in relation to a direction, means specified in it.

268.—(1) A direction under section 267 takes effect—

- (a) immediately, if the notice given under subsection (3)(a) 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 it relates is no longer open to review.

Procedure on giving directions under section 267 and varying them on Authority's own initiative.

- (2) A direction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to its reasons for exercising its power under section 267, considers that it is necessary for the direction to take effect immediately (or on that date).
- (3) If the Authority proposes to give a direction under section 267, or gives such a direction with immediate effect, it must—
- (a) give the operator of the scheme concerned written notice; and
- (b) inform the competent authorities in the scheme's home State of its proposal or (as the case may be) of the direction.

- (4) The notice must—
- (a) give details of the direction;
 - (b) inform the operator of when the direction takes effect;
 - (c) state the Authority's reasons for giving the direction and for its determination as to when the direction takes effect;
 - (d) inform the operator that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and
 - (e) inform him of his right to refer the matter to the Tribunal.

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

(6) Subsection (7) applies if, having considered any representations made by the operator, the Authority decides—

- (a) to give the direction in the way proposed, or
- (b) if it has been given, not to revoke the direction.

(7) The Authority must—

- (a) give the operator of the scheme concerned written notice; and
- (b) inform the competent authorities in the scheme's home State of the direction.

(8) Subsection (9) applies if, having considered any representations made by a person to whom the notice was given, the Authority decides—

- (a) not to give the direction in the way proposed,
- (b) to give the direction in a way other than that proposed, or
- (c) to revoke a direction which has effect.

(9) The Authority must—

- (a) give the operator of the scheme concerned written notice; and
- (b) inform the competent authorities in the scheme's home State of its decision.

(10) A notice given under subsection (7)(a) must inform the operator of his right to refer the matter to the Tribunal.

(11) A notice under subsection (9)(a) given as a result of subsection (8)(b) must comply with subsection (4).

(12) 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.

(13) This section applies to the variation of a direction on the Authority's own initiative as it applies to the giving of a direction.

(14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

Procedure on application for variation or revocation of direction.

269.—(1) If, on an application under subsection (4) or (5) of section 267, the Authority proposes—

- (a) to vary a direction otherwise than in accordance with the application, or
- (b) to refuse the application,

it must give the operator of the scheme concerned a warning notice.

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(2) If, on such an application, the Authority decides—

- (a) to vary a direction otherwise than in accordance with the application, or
- (b) to refuse the application,

it must give the operator of the scheme concerned a decision notice.

(3) If the application is refused, the operator of the scheme may refer the matter to the Tribunal.

(4) If, on such an application, the Authority decides to grant the application it must give the operator of the scheme concerned written notice.

(5) If the Authority decides on its own initiative to revoke a direction given under section 267 it must give the operator of the scheme concerned written notice.

(6) The Authority must inform the competent authorities in the scheme's home State of any notice given under this section.

Schemes authorised in designated countries or territories

270.—(1) A collective investment scheme which is not a recognised scheme by virtue of section 264 but is managed in, and authorised under the law of, a country or territory outside the United Kingdom is a recognised scheme if—

- (a) that country or territory is designated for the purposes of this section by an order made by the Treasury;
- (b) the scheme is of a class specified by the order;
- (c) the operator of the scheme has given written notice to the Authority that he wishes it to be recognised; and
- (d) either—
 - (i) the Authority, by written notice, has given its approval to the scheme's being recognised; or
 - (ii) two months, beginning with the date on which notice was given under paragraph (c), have expired without the operator receiving a warning notice from the Authority under section 271.

Schemes authorised in designated countries or territories.

(2) The Treasury may not make an order designating any country or territory for the purposes of this section unless satisfied—

- (a) that the law and practice under which relevant collective investment schemes are authorised and supervised in that country or territory affords to investors in the United Kingdom protection at least equivalent to that provided for them by or under this Part in the case of comparable authorised schemes; and
- (b) that adequate arrangements exist, or will exist, for co-operation between the authorities of the country or territory responsible for the authorisation and supervision of relevant collective investment schemes and the Authority.

(3) "Relevant collective investment schemes" means collective investment schemes of the class or classes to be specified by the order.

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(4) "Comparable authorised schemes" means whichever of the following the Treasury consider to be the most appropriate, having regard to the class or classes of scheme to be specified by the order—

- (a) authorised unit trust schemes;
- (b) authorised open-ended investment companies;
- (c) both such unit trust schemes and such companies.

(5) If the Treasury are considering whether to make an order designating a country or territory for the purposes of this section—

- (a) the Treasury must ask the Authority for a report—
 - (i) on the law and practice of that country or territory in relation to the authorisation and supervision of relevant collective investment schemes,
 - (ii) on any existing or proposed arrangements for co-operation between it and the authorities responsible in that country or territory for the authorisation and supervision of relevant collective investment schemes,
 having regard to the Treasury's need to be satisfied as mentioned in subsection (2);
- (b) the Authority must provide the Treasury with such a report; and
- (c) the Treasury must have regard to it in deciding whether to make the order.

(6) The notice to be given by the operator under subsection (1)(c)—

- (a) must contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and
- (b) must contain or be accompanied by such information and documents as may be specified by the Authority.

Procedure.

271.—(1) If the Authority proposes to refuse approval of a scheme's being a recognised scheme by virtue of section 270, it must give the operator of the scheme a warning notice.

(2) To be valid the warning notice must be received by the operator before the end of two months beginning with the date on which notice was given under section 270(1)(c).

(3) If, having given a warning notice, the Authority decides to refuse approval—

- (a) it must give the operator of the scheme a decision notice; and
- (b) the operator may refer the matter to the Tribunal.

*Individually recognised overseas schemes*Individually
recognised
overseas schemes.

272.—(1) The Authority may, on the application of the operator of a collective investment scheme which—

- (a) is managed in a country or territory outside the United Kingdom,
- (b) does not satisfy the requirements prescribed for the purposes of section 264,

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(c) is not managed in a country or territory designated for the purposes of section 270 or, if it is so managed, is of a class not specified by the designation order, and

(d) appears to the Authority to satisfy the requirements set out in the following provisions of this section,

make an order declaring the scheme to be a recognised scheme.

(2) Adequate protection must be afforded to participants in the scheme.

(3) The arrangements for the scheme's constitution and management must be adequate.

(4) The powers and duties of the operator and, if the scheme has a trustee or depositary, of the trustee or depositary must be adequate.

(5) In deciding whether the matters mentioned in subsection (3) or (4) are adequate, the Authority must have regard to—

(a) any rule of law, and

(b) any matters which are, or could be, the subject of rules,

applicable in relation to comparable authorised schemes.

(6) "Comparable authorised schemes" means whichever of the following the Authority considers the most appropriate, having regard to the nature of scheme in respect of which the application is made—

(a) authorised unit trust schemes;

(b) authorised open-ended investment companies;

(c) both such unit trust schemes and such companies.

(7) The scheme must take the form of an open-ended investment company or (if it does not take that form) the operator must be a body corporate.

(8) The operator of the scheme must—

(a) if an authorised person, have permission to act as operator;

(b) if not an authorised person, be a fit and proper person to act as operator.

(9) The trustee or depositary (if any) of the scheme must—

(a) if an authorised person, have permission to act as trustee or depositary;

(b) if not an authorised person, be a fit and proper person to act as trustee or depositary.

(10) The operator and the trustee or depositary (if any) of the scheme must be able and willing to co-operate with the Authority by the sharing of information and in other ways.

(11) The name of the scheme must not be undesirable or misleading.

(12) The purposes of the scheme must be reasonably capable of being successfully carried into effect.

(13) The participants must be entitled to have their units redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme.

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(14) But a scheme is to be treated as complying with subsection (13) if it requires the operator to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in that subsection.

(15) Subsection (13) is not to be read as imposing a requirement that the participants must be entitled to have their units redeemed (or sold as mentioned in subsection (14)) immediately following a demand to that effect.

Matters that may
be taken into
account.

273. For the purposes of subsections (8)(b) and (9)(b) of section 272, the Authority may take into account any matter relating to—

- (a) any person who is or will be employed by or associated with the operator, trustee or depositary in connection with the scheme;
- (b) any director of the operator, trustee or depositary;
- (c) any person exercising influence over the operator, trustee or depositary;
- (d) any body corporate in the same group as the operator, trustee or depositary;
- (e) any director of any such body corporate;
- (f) any person exercising influence over any such body corporate.

Applications for
recognition of
individual
schemes.

274.—(1) An application under section 272 for an order declaring a scheme to be a recognised scheme must be made to the Authority by the operator of the scheme.

(2) The application—

- (a) must be made in such manner as the Authority may direct;
- (b) must contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act;
- (c) must contain or be accompanied by such information as the Authority may reasonably require for the purpose of determining the application.

(3) 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.

(4) Different directions may be given, and different requirements imposed, in relation to different applications.

(5) 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.

Determination of
applications.

275.—(1) An application under section 272 must be determined by the Authority before the end of the period of six months beginning with the date on which it receives 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 first receives the application.

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CHAPTER V

(3) If the Authority makes an order under section 272(1), it must give written notice of the order to the applicant.

276.—(1) If the Authority proposes to refuse an application made under section 272 it must give the applicant a warning notice.

Procedure when refusing an application.

- (2) If the Authority decides to refuse the application—
- (a) it must give the applicant a decision notice; and
 - (b) the applicant may refer the matter to the Tribunal.

277.—(1) The operator of a scheme recognised by virtue of section 272 must give written notice to the Authority of any proposed alteration to the scheme.

Alteration of schemes and changes of operator, trustee or depositary.

- (2) Effect is not to be given to any such proposal unless—
- (a) the Authority, by written notice, has given its approval to the proposal; or
 - (b) one month, beginning with the date on which notice was given under subsection (1), has expired without the Authority having given written notice to the operator that it has decided to refuse approval.
- (3) At least one month before any replacement of the operator, trustee or depositary of such a scheme, notice of the proposed replacement must be given to the Authority—
- (a) by the operator, trustee or depositary (as the case may be); or
 - (b) by the person who is to replace him.

Schemes recognised under sections 270 and 272

278. The Authority may make rules imposing duties or liabilities on the operator of a scheme recognised under section 270 or 272 for purposes corresponding to those for which rules may be made under section 248 in relation to authorised unit trust schemes.

Rules as to scheme particulars.

279. The Authority may direct that a scheme is to cease to be recognised by virtue of section 270 or revoke an order under section 272 if it appears to the Authority—

Revocation of recognition.

- (a) that the operator, trustee or depositary of the scheme has contravened a requirement imposed on him by or under this Act;
- (b) that the operator, trustee or depositary of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular;
- (c) in the case of an order under section 272, that one or more of the requirements for the making of the order are no longer satisfied; or
- (d) that none of paragraphs (a) to (c) applies, but it is undesirable in the interests of the participants or potential participants that the scheme should continue to be recognised.

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Procedure.

280.—(1) If the Authority proposes to give a direction under section 279 or to make an order under that section revoking a recognition order, it must give a warning notice to the operator and (if any) the trustee or depositary of the scheme.

(2) If the Authority decides to give a direction or make an order under that section—

- (a) it must without delay give a decision notice to the operator and (if any) the trustee or depositary of the scheme; and
- (b) the operator or the trustee or depositary may refer the matter to the Tribunal.

Directions.

281.—(1) In this section a “relevant recognised scheme” means a scheme recognised under section 270 or 272.

(2) If it appears to the Authority that—

- (a) the operator, trustee or depositary of a relevant recognised scheme has contravened, or is likely to contravene, a requirement imposed on him by or under this Act,
- (b) the operator, trustee or depositary of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular,
- (c) one or more of the requirements for the recognition of a scheme under section 272 are no longer satisfied, or
- (d) none of paragraphs (a) to (c) applies, but the exercise of the power conferred by this section is desirable in order to protect the interests of participants or potential participants in a relevant recognised scheme who are in the United Kingdom,

it may direct that the scheme is not to be a recognised scheme for a specified period or until the occurrence of a specified event or until specified conditions are complied with.

Procedure on giving directions under section 281 and varying them otherwise than as requested.

282.—(1) A direction takes effect—

- (a) immediately, if the notice given under subsection (3) 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 it relates is no longer open to review.

(2) A direction 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 power under section 281, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the Authority proposes to give a direction under section 281, or gives such a direction with immediate effect, it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.

(4) The notice must—

- (a) give details of the direction;
- (b) inform the person to whom it is given of when the direction takes effect;

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CHAPTER V

- (c) state the Authority's reasons for giving the direction and for its determination as to when the direction takes effect;
- (d) inform the person to whom it is given that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and
- (e) inform him of his right to refer the matter to the Tribunal.

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

(6) If, having considered any representations made by a person to whom the notice was given, the Authority decides—

- (a) to give the direction in the way proposed, or
- (b) if it has been given, not to revoke the direction,

it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.

(7) If, having considered any representations made by a person to whom the notice was given, the Authority decides—

- (a) not to give the direction in the way proposed,
- (b) to give the direction in a way other than that proposed, or
- (c) to revoke a direction which has effect,

it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.

(8) A notice given under subsection (6) must inform the person to whom it is given of his right to refer the matter to the Tribunal.

(9) A notice under subsection (7)(b) must comply with subsection (4).

(10) 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.

(11) This section applies to the variation of a direction on the Authority's own initiative as it applies to the giving of a direction.

(12) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

Facilities and information in UK

283.—(1) The Authority may make rules requiring operators of recognised schemes to maintain in the United Kingdom, or in such part or parts of it as may be specified, such facilities as the Authority thinks desirable in the interests of participants and as are specified in rules.

Facilities and
information in
UK.

(2) The Authority may by notice in writing require the operator of any recognised scheme to include such explanatory information as is specified in the notice in any communication of his which—

- (a) is a communication of an invitation or inducement of a kind mentioned in section 21(1); and
- (b) names the scheme.

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(3) In the case of a communication originating outside the United Kingdom, subsection (2) only applies if the communication is capable of having an effect in the United Kingdom.

CHAPTER VI

INVESTIGATIONS

Power to
investigate.

284.—(1) An investigating authority may appoint one or more competent persons to investigate on its behalf—

- (a) the affairs of, or of the manager or trustee of, any authorised unit trust scheme,
- (b) the affairs of, or of the operator, trustee or depositary of, any recognised scheme so far as relating to activities carried on in the United Kingdom, or
- (c) the affairs of, or of the operator, trustee or depositary of, any other collective investment scheme except a body incorporated by virtue of regulations under section 262,

if it appears to the investigating authority that it is in the interests of the participants or potential participants to do so or that the matter is of public concern.

(2) A person appointed under subsection (1) to investigate the affairs of, or of the manager, trustee, operator or depositary of, any scheme (scheme “A”), may also, if he thinks it necessary for the purposes of that investigation, investigate—

- (a) the affairs of, or of the manager, trustee, operator or depositary of, any other such scheme as is mentioned in subsection (1) whose manager, trustee, operator or depositary is the same person as the manager, trustee, operator or depositary of scheme A;
- (b) the affairs of such other schemes and persons (including bodies incorporated by virtue of regulations under section 262 and the directors and depositaries of such bodies) as may be prescribed.

(3) If the person appointed to conduct an investigation under this section (“B”) considers that a person (“C”) is or may be able to give information which is relevant to the investigation, B may require C—

- (a) to produce to B any documents in C’s possession or under his control which appear to B to be relevant to the investigation,
- (b) to attend before B, and
- (c) otherwise to give B all assistance in connection with the investigation which C is reasonably able to give,

and it is C’s duty to comply with that requirement.

(4) Subsections (5) to (9) of section 170 apply if an investigating authority appoints a person under this section to conduct an investigation on its behalf as they apply in the case mentioned in subsection (1) of that section.

(5) Section 174 applies to a statement made by a person in compliance with a requirement imposed under this section as it applies to a statement mentioned in that section.

(6) Subsections (2) to (4) and (6) of section 175 and section 177 have effect as if this section were contained in Part XI.

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(7) Subsections (1) to (9) of section 176 apply in relation to a person appointed under subsection (1) as if—

- (a) references to an investigator were references to a person so appointed;
- (b) references to an information requirement were references to a requirement imposed under section 175 or under subsection (3) by a person so appointed;
- (c) the premises mentioned in subsection (3)(a) were the premises of a person whose affairs are the subject of an investigation under this section or of an appointed representative of such a person.

(8) No person may be required under this section to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless subsection (9) or (10) applies.

(9) This subsection applies if—

- (a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or
- (b) the imposing on the person concerned of a requirement with respect to information or a document of a kind mentioned in subsection (8) has been specifically authorised by the investigating authority.

(10) This subsection applies if the person owing the obligation of confidence or the person to whom it is owed is—

- (a) the manager, trustee, operator or depositary of any collective investment scheme which is under investigation;
- (b) the director of a body incorporated by virtue of regulations under section 262 which is under investigation;
- (c) any other person whose own affairs are under investigation.

(11) “Investigating authority” means the Authority or the Secretary of State.

PART XVIII

RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES

CHAPTER I

EXEMPTION

General

285.—(1) In this Act—

- (a) “recognised investment exchange” means an investment exchange in relation to which a recognition order is in force; and
- (b) “recognised clearing house” means a clearing house in relation to which a recognition order is in force.

Exemption for
recognised
investment
exchanges and
clearing houses.

(2) A recognised investment exchange is exempt from the general prohibition as respects any regulated activity—

- (a) which is carried on as a part of the exchange’s business as an investment exchange; or
- (b) which is carried on for the purposes of, or in connection with, the provision of clearing services by the exchange.

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(3) A recognised clearing house is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the provision of clearing services by the clearing house.

Qualification for
recognition.

286.—(1) The Treasury may make regulations setting out the requirements—

- (a) which must be satisfied by an investment exchange or clearing house if it is to qualify as a body in respect of which the Authority may make a recognition order under this Part; and
- (b) which, if a recognition order is made, it must continue to satisfy if it is to remain a recognised body.

(2) But if regulations contain provision as to the default rules of an investment exchange or clearing house, or as to proceedings taken under such rules by such a body, they require the approval of the Secretary of State.

(3) “Default rules” means rules of an investment exchange or clearing house which provide for the taking of action in the event of a person’s appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the exchange or clearing house.

(4) “Market contract” means—

1989 c. 40.

- (a) a contract to which Part VII of the Companies Act 1989 applies as a result of section 155 of that Act or a contract to which Part V of the Companies (No. 2)(Northern Ireland) Order 1990 applies as a result of Article 80 of that Order; and

S.I. 1990/1504
(N.I. 10).

- (b) such other kind of contract as may be prescribed.

(5) Requirements resulting from this section are referred to in this Part as “recognition requirements”.

*Applications for recognition*Application by an
investment
exchange.

287.—(1) Any body corporate or unincorporated association may apply to the Authority for an order declaring it to be a recognised investment exchange for the purposes of this Act.

(2) The application must be made in such manner as the Authority may direct and must be accompanied by—

- (a) a copy of the applicant’s rules;
- (b) a copy of any guidance issued by the applicant;
- (c) the required particulars; and
- (d) such other information as the Authority may reasonably require for the purpose of determining the application.

(3) The required particulars are—

- (a) particulars of any arrangements which the applicant has made, or proposes to make, for the provision of clearing services in respect of transactions effected on the exchange;
- (b) if the applicant proposes to provide clearing services in respect of transactions other than those effected on the exchange, particulars of the criteria which the applicant will apply when determining to whom it will provide those services.

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288.—(1) Any body corporate or unincorporated association may apply to the Authority for an order declaring it to be a recognised clearing house for the purposes of this Act.

Application by a
clearing house.

(2) The application must be made in such manner as the Authority may direct and must be accompanied by—

- (a) a copy of the applicant's rules;
- (b) a copy of any guidance issued by the applicant;
- (c) the required particulars; and
- (d) such other information as the Authority may reasonably require for the purpose of determining the application.

(3) The required particulars are—

- (a) if the applicant makes, or proposes to make, clearing arrangements with a recognised investment exchange, particulars of those arrangements;
- (b) if the applicant proposes to provide clearing services for persons other than recognised investment exchanges, particulars of the criteria which it will apply when determining to whom it will provide those services.

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

Applications:
supplementary.

(2) Information which the Authority requires in connection with an application must be provided in such form, or verified in such manner, as the Authority may direct.

(3) Different directions may be given, or requirements imposed, by the Authority with respect to different applications.

290.—(1) If it appears to the Authority that the applicant satisfies the recognition requirements applicable in its case, the Authority may make a recognition order declaring the applicant to be—

Recognition
orders.

- (a) a recognised investment exchange, if the application is made under section 287;
- (b) a recognised clearing house, if it is made under section 288.

(2) The Treasury's approval of the making of a recognition order is required under section 307.

(3) In considering an application, the Authority may have regard to any information which it considers is relevant to the application.

(4) A recognition order must specify a date on which it is to take effect.

(5) Section 298 has effect in relation to a decision to refuse to make a recognition order—

- (a) as it has effect in relation to a decision to revoke such an order; and
- (b) as if references to a recognised body were references to the applicant.

(6) Subsection (5) does not apply in a case in which the Treasury have failed to give their approval under section 307.

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Liability in relation to recognised body's regulatory functions.

1998 c. 42.

Overseas investment exchanges and overseas clearing houses.

291.—(1) A recognised body and its officers and staff are not to be liable in damages for anything done or omitted in the discharge of the recognised body's regulatory functions unless it is shown that the act or omission was in bad faith.

(2) But subsection (1) does not 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.

(3) "Regulatory functions" means the functions of the recognised body so far as relating to, or to matters arising out of, the obligations to which the body is subject under or by virtue of this Act.

292.—(1) An application under section 287 or 288 by an overseas applicant must contain the address of a place in the United Kingdom for the service on the applicant of notices or other documents required or authorised to be served on it under this Act.

(2) If it appears to the Authority that an overseas applicant satisfies the requirements of subsection (3) it may make a recognition order declaring the applicant to be—

- (a) a recognised investment exchange;
- (b) a recognised clearing house.

(3) The requirements are that—

- (a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with recognition requirements;
- (b) there are adequate procedures for dealing with a person who is unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the investment exchange or clearing house;
- (c) the applicant is able and willing to co-operate with the Authority by the sharing of information and in other ways;
- (d) adequate arrangements exist for co-operation between the Authority and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.

(4) In considering whether it is satisfied as to the requirements mentioned in subsection (3)(a) and (b), the Authority is to have regard to—

- (a) the relevant law and practice of the country or territory in which the applicant's head office is situated;
- (b) the rules and practices of the applicant.

(5) In relation to an overseas applicant and a body or association declared to be a recognised investment exchange or recognised clearing house by a recognition order made by virtue of subsection (2)—

- (a) the reference in section 313(2) to recognition requirements is to be read as a reference to matters corresponding to the matters in respect of which provision is made in the recognition requirements;

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- (b) sections 296(1) and 297(2) have effect as if the requirements mentioned in section 296(1)(a) and section 297(2)(a) were those of subsection (3)(a), (b), and (c) of this section;
- (c) section 297(2) has effect as if the grounds on which a recognition order may be revoked under that provision included the ground that in the opinion of the Authority arrangements of the kind mentioned in subsection (3)(d) no longer exist.

Supervision

- 293.**—(1) The Authority may make rules requiring a recognised body to give it— Notification requirements.
- (a) notice of such events relating to the body as may be specified; and
 - (b) such information in respect of those events as may be specified.
- (2) The rules may also require a recognised body to give the Authority, at such times or in respect of such periods as may be specified, such information relating to the body as may be specified.
- (3) An obligation imposed by the rules extends only to a notice or information which the Authority may reasonably require for the exercise of its functions under this Act.
- (4) The rules may require information to be given in a specified form and to be verified in a specified manner.
- (5) If a recognised body—
- (a) alters or revokes any of its rules or guidance, or
 - (b) makes new rules or issues new guidance,
- it must give written notice to the Authority without delay.
- (6) If a recognised investment exchange makes a change—
- (a) in the arrangements it makes for the provision of clearing services in respect of transactions effected on the exchange, or
 - (b) in the criteria which it applies when determining to whom it will provide clearing services,
- it must give written notice to the Authority without delay.
- (7) If a recognised clearing house makes a change—
- (a) in the recognised investment exchanges for whom it provides clearing services, or
 - (b) in the criteria which it applies when determining to whom (other than recognised investment exchanges) it will provide clearing services,
- it must give written notice to the Authority without delay.
- (8) Subsections (5) to (7) do not apply to an overseas investment exchange or an overseas clearing house.
- (9) “Specified” means specified in the Authority’s rules.

- 294.**—(1) The Authority may, on the application or with the consent of a recognised body, direct that rules made under section 293 or 295— Modification or waiver of rules.
- (a) are not to apply to the body; or

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(b) are to apply to the body with such modifications as may be specified in the direction.

(2) An application must be made in such manner as the Authority may direct.

(3) Subsections (4) to (6) apply to a direction given under subsection (1).

(4) The Authority may not give a direction unless it is satisfied that—

(a) compliance by the recognised body 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) The Authority may—

(a) revoke a direction; or

(b) vary it on the application, or with the consent, of the recognised body to which it relates.

Notification:
overseas
investment
exchanges and
overseas clearing
houses.

295.—(1) At least once a year, every overseas investment exchange and overseas clearing house must provide the Authority with a report.

(2) The report must contain a statement as to whether any events have occurred which are likely—

(a) to affect the Authority's assessment of whether it is satisfied as to the requirements set out in section 292(3); or

(b) to have any effect on competition.

(3) The report must also contain such information as may be specified in rules made by the Authority.

(4) The investment exchange or clearing house must provide the Treasury and the Director with a copy of the report.

Authority's power
to give directions.

296.—(1) This section applies if it appears to the Authority that a recognised body—

(a) has failed, or is likely to fail, to satisfy the recognition requirements; or

(b) has failed to comply with any other obligation imposed on it by or under this Act.

(2) The Authority may direct the body to take specified steps for the purpose of securing the body's compliance with—

(a) the recognition requirements; or

(b) any obligation of the kind in question.

(3) A direction under this section is enforceable, on the application of the Authority, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

1988 c. 36.

(4) The fact that a rule made by a recognised body has been altered in response to a direction given by the Authority does not prevent it from being subsequently altered or revoked by the recognised body.

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297.—(1) A recognition order may be revoked by an order made by the Authority at the request, or with the consent, of the recognised body concerned.

Revoking
recognition.

(2) If it appears to the Authority that a recognised body—

- (a) is failing, or has failed, to satisfy the recognition requirements, or
- (b) is failing, or has failed, to comply with any other obligation imposed on it by or under this Act,

it may make an order revoking the recognition order for that body even though the body does not wish the order to be made.

(3) An order under this section (“a revocation order”) must specify the date on which it is to take effect.

(4) In the case of a revocation order made under subsection (2), the specified date must not be earlier than the end of the period of three months beginning with the day on which the order is made.

(5) A revocation order may contain such transitional provisions as the Authority thinks necessary or expedient.

298.—(1) Before giving a direction under section 296, or making a revocation order under section 297(2), the Authority must—

Directions and
revocation:
procedure.

- (a) give written notice of its intention to do so to the recognised body concerned;
- (b) take such steps as it considers reasonably practicable to bring the notice to the attention of members (if any) of that body; and
- (c) publish the notice in such manner as it thinks appropriate for bringing it to the attention of other persons who are, in its opinion, likely to be affected.

(2) A notice under subsection (1) must—

- (a) state why the Authority intends to give the direction or make the order; and
- (b) draw attention to the right to make representations conferred by subsection (3).

(3) Before the end of the period for making representations—

- (a) the recognised body,
- (b) any member of that body, and
- (c) any other person who is likely to be affected by the proposed direction or revocation order,

may make representations to the Authority.

(4) The period for making representations is—

- (a) two months beginning—
 - (i) with the date on which the notice is served on the recognised body; or
 - (ii) if later, with the date on which the notice is published; or
- (b) such longer period as the Authority may allow in the particular case.

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(5) In deciding whether to—

- (a) give a direction, or
- (b) make a revocation order,

the Authority must have regard to any representations made in accordance with subsection (3).

(6) When the Authority has decided whether to give a direction under section 296 or to make the proposed revocation order, it must—

- (a) give the recognised body written notice of its decision; and
- (b) if it has decided to give a direction or make an order, take such steps as it considers reasonably practicable for bringing its decision to the attention of members of the body or of other persons who are, in the Authority's opinion, likely to be affected.

(7) If the Authority considers it essential to do so, it may give a direction under section 296—

- (a) without following the procedure set out in this section; or
- (b) if the Authority has begun to follow that procedure, regardless of whether the period for making representations has expired.

(8) If the Authority has, in relation to a particular matter, followed the procedure set out in subsections (1) to (5), it need not follow it again if, in relation to that matter, it decides to take action other than that specified in its notice under subsection (1).

Complaints about recognised bodies.

299.—(1) The Authority must make arrangements for the investigation of any relevant complaint about a recognised body.

(2) "Relevant complaint" means a complaint which the Authority considers is relevant to the question of whether the body concerned should remain a recognised body.

Extension of functions of Tribunal.

300.—(1) If the Treasury are satisfied that the condition mentioned in subsection (2) is satisfied, they may by order confer functions on the Tribunal with respect to disciplinary proceedings—

- (a) of one or more investment exchanges in relation to which a recognition order under section 290 is in force or of such investment exchanges generally, or
- (b) of one or more clearing houses in relation to which a recognition order under that section is in force or of such clearing houses generally.

(2) The condition is that it is desirable to exercise the power conferred under subsection (1) with a view to ensuring that—

- (a) decisions taken in disciplinary proceedings with respect to which functions are to be conferred on the Tribunal are consistent with—
 - (i) decisions of the Tribunal in cases arising under Part VIII; and
 - (ii) decisions taken in other disciplinary proceedings with respect to which the Tribunal has functions as a result of an order under this section; or

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(b) the disciplinary proceedings are in accordance with the Convention rights.

(3) An order under this section may modify or exclude any provision made by or under this Act with respect to proceedings before the Tribunal.

(4) "Disciplinary proceedings" means proceedings under the rules of an investment exchange or clearing house in relation to market abuse by persons subject to the rules.

(5) "The Convention rights" has the meaning given in section 1 of the Human Rights Act 1998.

1998 c. 42.

Other matters

301.—(1) The Secretary of State and the Treasury, acting jointly, may by regulations provide for—

Supervision of
certain contracts.

(a) Part VII of the Companies Act 1989 (financial markets and insolvency), and

1989 c. 40.

(b) Part V of the Companies (No. 2)(Northern Ireland) Order 1990, to apply to relevant contracts as it applies to contracts connected with a recognised body.

S.I. 1990/1504
(N.I. 10).

(2) "Relevant contracts" means contracts of a prescribed description in relation to which settlement arrangements are provided by a person for the time being included in a list ("the list") maintained by the Authority for the purposes of this section.

(3) Regulations may be made under this section only if the Secretary of State and the Treasury are satisfied, having regard to the extent to which the relevant contracts concerned are contracts of a kind dealt in by persons supervised by the Authority, that it is appropriate for the arrangements mentioned in subsection (2) to be supervised by the Authority.

(4) The approval of the Treasury is required for—

- (a) the conditions set by the Authority for admission to the list; and
- (b) the arrangements for admission to, and removal from, the list.

(5) If the Treasury withdraw an approval given by them under subsection (4), all regulations made under this section and then in force are to be treated as suspended.

(6) But if—

- (a) the Authority changes the conditions or arrangements (or both), and
- (b) the Treasury give a fresh approval under subsection (4),

the suspension of the regulations ends on such date as the Treasury may, in giving the fresh approval, specify.

(7) The Authority must—

- (a) publish the list as for the time being in force; and
- (b) provide a certified copy of it to any person who wishes to refer to it in legal proceedings.

(8) A certified copy of the list is evidence (or in Scotland sufficient evidence) of the contents of the list.

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(9) A copy of the list which purports to be certified by or on behalf of the Authority is to be taken to have been duly certified unless the contrary is shown.

(10) Regulations under this section may, in relation to a person included in the list—

(a) apply (with such exceptions, additions and modifications as appear to the Secretary of State and the Treasury to be necessary or expedient) such provisions of, or made under, this Act as they consider appropriate;

1989 c. 40.
S.I. 1990/1504
(N.I. 10).

(b) provide for the provisions of Part VII of the Companies Act 1989 and Part V of the Companies (No. 2)(Northern Ireland) Order 1990 to apply (with such exceptions, additions or modifications as appear to the Secretary of State and the Treasury to be necessary or expedient).

CHAPTER II

COMPETITION SCRUTINY

Interpretation.

302.—(1) In this Chapter and Chapter III—

“practices” means—

(a) in relation to a recognised investment exchange, the practices of the exchange in its capacity as such; and

(b) in relation to a recognised clearing house, the practices of the clearing house in respect of its clearing arrangements;

“regulatory provisions” means—

(a) the rules of an investment exchange or a clearing house;

(b) any guidance issued by an investment exchange or clearing house;

(c) in the case of an investment exchange, the arrangements and criteria mentioned in section 287(3);

(d) in the case of a clearing house, the arrangements and criteria mentioned in section 288(3).

(2) For the purposes of this Chapter, regulatory provisions or practices have a significantly adverse effect on competition if—

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

(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.

(3) If regulatory 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, for the purposes of this Chapter, to have an adverse effect on competition.

(4) In determining under this Chapter whether any regulatory provisions have, or are intended or likely to have, a particular effect, it may be assumed that persons to whom the provisions concerned are addressed will act in accordance with them.

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CHAPTER II*Role of Director General of Fair Trading*

303.—(1) The Authority must send to the Treasury and to the Director a copy of any regulatory provisions with which it is provided on an application for recognition under section 287 or 288. Initial report by Director.

(2) The Authority must send to the Director such information in its possession as a result of the application for recognition as it considers will assist him in discharging his functions in connection with the application.

(3) The Director must issue a report as to whether—

- (a) a regulatory provision of which a copy has been sent to him under subsection (1) has a significantly adverse effect on competition; or
- (b) a combination of regulatory provisions so copied to him have such an effect.

(4) If the Director's conclusion is that one or more provisions have a significantly adverse effect on competition, he must state his reasons for that conclusion.

(5) When the Director issues a report under subsection (3), he must send a copy of it to the Authority, the Competition Commission and the Treasury.

304.—(1) The Director must keep under review the regulatory provisions and practices of recognised bodies. Further reports by Director.

(2) If at any time the Director considers that—

- (a) a regulatory provision or practice has a significantly adverse effect on competition, or
- (b) regulatory provisions or practices, or a combination of regulating provisions and practices have such an effect,

he must make a report.

(3) If at any time the Director considers that—

- (a) a regulatory provision or practice does not have a significantly adverse effect on competition, or
- (b) regulatory provisions or practices, or a combination of regulatory provisions and practices do not have any such effect,

he may make a report to that effect.

(4) A report under subsection (2) must contain details of the adverse effect on competition.

(5) If the Director makes a report under subsection (2), he must—

- (a) send a copy of it to the Treasury, to the Competition Commission and to the Authority; and
- (b) publish it in the way appearing to him to be best calculated to bring it to the attention of the public.

(6) If the Director makes a report under subsection (3)—

- (a) he must send a copy of it to the Treasury, to the Competition Commission and to the Authority; and
- (b) he may publish it.

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(7) Before publishing a report under this section, the Director must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the Director, would or might seriously and prejudicially affect his interests.

(8) Before publishing such a report, the Director must exclude any matter which relates to the affairs of a particular body the publication of which, in the opinion of the Director, would or might seriously and prejudicially affect its interests.

(9) Subsections (7) and (8) do not apply to the copy of a report which the Director is required to send to the Treasury, the Competition Commission and the Authority under subsection (5)(a) or (6)(a).

(10) For the purposes of the law of defamation, absolute privilege attaches to any report of the Director under this section.

Investigations by
Director.

305.—(1) For the purpose of investigating any matter with a view to its consideration under section 303 or 304, the Director may exercise the powers conferred on him by this section.

(2) The Director may by notice in writing require any person to produce to him or to a person appointed by him for the purpose, at a time and place specified in the notice, any document which—

- (a) is specified or described in the notice; and
- (b) is a document in that person's custody or under his control.

(3) The Director may by notice in writing—

- (a) require any person carrying on any business to provide him with such information as may be specified or described in the notice; and
- (b) specify the time within which, and the manner and form in which, any such information is to be provided.

(4) A requirement may be imposed under subsection (2) or (3)(a) only in respect of documents or information which relate to any matter relevant to the investigation.

(5) If a person ("the defaulter") refuses, or otherwise fails, to comply with a notice under this section, the Director may certify that fact in writing to the court and the court may enquire into the case.

(6) If, after hearing any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence, the court is satisfied that the defaulter did not have a reasonable excuse for refusing or otherwise failing to comply with the notice, the court may deal with the defaulter as if he were in contempt.

(7) In this section, "the court" means—

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

*Role of Competition Commission*Consideration by
Competition
Commission.

306.—(1) If subsection (2) or (3) applies, the Commission must investigate the matter which is the subject of the Director's report.

(2) This subsection applies if the Director sends to the Competition Commission a report—

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- (a) issued by him under section 303(3) which concludes that one or more regulatory provisions have a significantly adverse effect on competition, or
 - (b) made by him under section 304(2).
- (3) This subsection applies if the Director asks the Commission to consider a report—
- (a) issued by him under section 303(3) which concludes that one or more regulatory provisions do not have a significantly adverse effect on competition, or
 - (b) made by him under section 304(3).
- (4) The Commission must then make its own report on the matter unless it considers that, as a result of a change of circumstances, no useful purpose would be served by a report.
- (5) If the Commission decides in accordance with subsection (4) not to make a report, it must make a statement setting out the change of circumstances which resulted in that decision.
- (6) A report made under this section must state the Commission's conclusion as to whether—
- (a) the regulatory provision or practice which is the subject of the report has a significantly adverse effect on competition, or
 - (b) the regulatory provisions or practices or combination of regulatory provisions and practices which are the subject of the report have such an effect.
- (7) A report under this section stating the Commission's conclusion that there is a significantly adverse effect on competition must also—
- (a) state whether the Commission considers that that effect is justified; and
 - (b) if it states that the Commission considers that it is not justified, state its conclusion as to what action, if any, the Treasury ought to direct the Authority to take.
- (8) Subsection (9) applies whenever the Commission is considering, for the purposes of this section, whether a particular adverse effect on competition is justified.
- (9) The Commission must ensure, so far as that is reasonably possible, that the conclusion it reaches is compatible with the obligations imposed on the recognised body concerned by or under this Act.
- (10) A report under this section must contain such an account of the Commission's reasons for its conclusions as is expedient, in the opinion of the Commission, for facilitating proper understanding of them.
- (11) The provisions of Schedule 14 (except paragraph 2(b)) apply for the purposes of this section as they apply for the purposes of section 162.
- (12) If the Commission makes a report under this section it must send a copy to the Treasury, the Authority and the Director.

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CHAPTER II*Role of the Treasury*Recognition
orders: role of the
Treasury.**307.**—(1) Subsection (2) applies if, on an application for a recognition order—

- (a) the Director makes a report under section 303 but does not ask the Competition Commission to consider it under section 306;
- (b) the Competition Commission concludes—
 - (i) that the applicant's regulatory provisions do not have a significantly adverse effect on competition; or
 - (ii) that if those provisions do have that effect, the effect is justified.

(2) The Treasury may refuse to approve the making of the recognition order only if they consider that the exceptional circumstances of the case make it inappropriate for them to give their approval.

(3) Subsection (4) applies if, on an application for a recognition order, the Competition Commission concludes—

- (a) that the applicant's regulatory provisions have a significantly adverse effect on competition; and
- (b) that that effect is not justified.

(4) The Treasury must refuse to approve the making of the recognition order unless they consider that the exceptional circumstances of the case make it inappropriate for them to refuse their approval.

Directions by the
Treasury.**308.**—(1) This section applies if the Competition Commission makes a report under section 306(4) (other than a report on an application for a recognition order) which states the Commission's conclusion that there is a significantly adverse effect on competition.

(2) If the Commission's conclusion, as stated in the report, is that the adverse effect on competition is not justified, the Treasury must give a remedial direction to the Authority.

(3) But subsection (2) does not apply if the Treasury consider—

- (a) that, as a result of action taken by the Authority or the recognised body concerned in response to the Commission's report, it is unnecessary for them to give a direction; or
- (b) that the exceptional circumstances of the case make it inappropriate or unnecessary for them to do so.

(4) In considering the action to be specified in a remedial direction, the Treasury must have regard to any conclusion of the Commission included in the report because of section 306(7)(b).

(5) Subsection (6) applies if—

- (a) the Commission's conclusion, as stated in its report, is that the adverse effect on competition is justified; but
- (b) the Treasury consider that the exceptional circumstances of the case require them to act.

(6) The Treasury may give a direction to the Authority requiring it to take such action—

- (a) as they consider to be necessary in the light of the exceptional circumstances of the case; and

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(b) as may be specified in the direction.

(7) If the action specified in a remedial direction is the giving by the Authority of a direction—

- (a) the direction to be given must be compatible with the recognition requirements applicable to the recognised body in relation to which it is given; and
- (b) subsections (3) and (4) of section 296 apply to it as if it were a direction given under that section.

(8) “Remedial direction” means a direction requiring the Authority—

- (a) to revoke the recognition order for the body concerned; or
- (b) to give such directions to the body concerned as may be specified in it.

309.—(1) If, in reliance on subsection (3)(a) or (b) of section 308, the Treasury decline to act under subsection (2) of that section, they must make a statement to that effect, giving their reasons.

Statements by the Treasury.

(2) If the Treasury give a direction under section 308 they must make a statement giving—

- (a) details of the direction; and
- (b) if the direction is given under subsection (6) of that section, their reasons for giving it.

(3) The Treasury must—

- (a) publish any statement made under this section in the way appearing to them best calculated to bring it to the attention of the public; and
- (b) lay a copy of it before Parliament.

310.—(1) Subsection (2) applies if the Treasury are considering—

- (a) whether to refuse their approval under section 307;
- (b) whether section 308(2) applies; or
- (c) whether to give a direction under section 308(6).

Procedure on exercise of certain powers by the Treasury.

(2) The Treasury must—

- (a) take such steps as they consider appropriate to allow the exchange or clearing house concerned, and any other person appearing to the Treasury to be affected, an opportunity to make representations—
 - (i) about any report made by the Director under section 303 or 304 or by the Competition Commission under section 306;
 - (ii) as to whether, and if so how, the Treasury should exercise their powers under section 307 or 308; and
- (b) have regard to any such representations.

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EXCLUSION FROM THE COMPETITION ACT 1998

The Chapter I
prohibition.

311.—(1) The Chapter I prohibition does not apply to an agreement for the constitution of a recognised body to the extent to which the agreement relates to the regulatory provisions of that body.

(2) If the conditions set out in subsection (3) are satisfied, the Chapter I prohibition does not apply to an agreement for the constitution of—

- (a) an investment exchange which is not a recognised investment exchange, or
- (b) a clearing house which is not a recognised clearing house,

to the extent to which the agreement relates to the regulatory provisions of that body.

(3) The conditions are that—

- (a) the body has applied for a recognition order in accordance with the provisions of this Act; and
- (b) the application has not been determined.

(4) The Chapter I prohibition does not apply to a recognised body's regulatory provisions.

(5) The Chapter I prohibition does not apply to a decision made by a recognised body to the extent to which the decision relates to any of that body's regulatory provisions or practices.

(6) The Chapter I prohibition does not apply to practices of a recognised body.

(7) The Chapter I prohibition does not apply to an agreement the parties to which consist of or include—

- (a) a recognised body, or
- (b) a person who is subject to the rules of a recognised body,

to the extent to which the agreement consists of provisions the inclusion of which is required or encouraged by any of the body's regulatory provisions or practices.

(8) If a recognised body's recognition order is revoked, this section is to have effect as if that body had continued to be recognised until the end of the period of six months beginning with the day on which the revocation took effect.

1998 c. 41.

(9) "The Chapter I prohibition" means the prohibition imposed by section 2(1) of the Competition Act 1998.

(10) Expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.

The Chapter II
prohibition.

312.—(1) The Chapter II prohibition does not apply to—

- (a) practices of a recognised body;
- (b) the adoption or enforcement of such a body's regulatory provisions;

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- (c) any conduct which is engaged in by such a body or by a person who is subject to the rules of such a body to the extent to which it is encouraged or required by the regulatory provisions of the body.

(2) The Chapter II prohibition means the prohibition imposed by section 18(1) of the Competition Act 1998.

1998 c. 41.

CHAPTER IV

Interpretation

313.—(1) In this Part—

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- “application” means an application for a recognition order made under section 287 or 288;
- “applicant” means a body corporate or unincorporated association which has applied for a recognition order;
- “Director” means the Director General of Fair Trading;
- “overseas applicant” means a body corporate or association which has neither its head office nor its registered office in the United Kingdom and which has applied for a recognition order;
- “overseas investment exchange” means a body corporate or association which has neither its head office nor its registered office in the United Kingdom and in relation to which a recognition order is in force;
- “overseas clearing house” means a body corporate or association which has neither its head office nor its registered office in the United Kingdom and in relation to which a recognition order is in force;
- “recognised body” means a recognised investment exchange or a recognised clearing house;
- “recognised clearing house” has the meaning given in section 285;
- “recognised investment exchange” has the meaning given in section 285;
- “recognition order” means an order made under section 290 or 292;
- “recognition requirements” has the meaning given by section 286;
- “remedial direction” has the meaning given in section 308(8);
- “revocation order” has the meaning given in section 297.

(2) References in this Part to rules of an investment exchange (or a clearing house) are to rules made, or conditions imposed, by the investment exchange (or the clearing house) with respect to—

- (a) recognition requirements;
- (b) admission of persons to, or their exclusion from the use of, its facilities; or
- (c) matters relating to its constitution.

(3) References in this Part to guidance issued by an investment exchange are references to guidance issued, or any recommendation made, in writing or other legible form and intended to have continuing effect, by the investment exchange to—

- (a) all or any class of its members or users, or

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(b) persons seeking to become members of the investment exchange or to use its facilities,

with respect to any of the matters mentioned in subsection (2)(a) to (c).

(4) References in this Part to guidance issued by a clearing house are to guidance issued, or any recommendation made, in writing or other legible form and intended to have continuing effect, by the clearing house to—

(a) all or any class of its members, or

(b) persons using or seeking to use its services,

with respect to the provision by it or its members of clearing services.

PART XIX

LLOYD'S

*General*Authority's
general duty.

314.—(1) The Authority must keep itself informed about—

(a) the way in which the Council supervises and regulates the market at Lloyd's; and

(b) the way in which regulated activities are being carried on in that market.

(2) The Authority must keep under review the desirability of exercising—

(a) any of its powers under this Part;

(b) any powers which it has in relation to the Society as a result of section 315.

*The Society*The Society:
authorisation and
permission.

315.—(1) The Society is an authorised person.

(2) The Society has permission to carry on a regulated activity of any of the following kinds—

(a) arranging deals in contracts of insurance written at Lloyd's ("the basic market activity");

(b) arranging deals in participation in Lloyd's syndicates ("the secondary market activity"); and

(c) an activity carried on in connection with, or for the purposes of, the basic or secondary market activity.

(3) For the purposes of Part IV, the Society's permission is to be treated as if it had been given on an application for permission under that Part.

(4) The power conferred on the Authority by section 45 may be exercised in anticipation of the coming into force of the Society's permission (or at any other time).

(5) The Society is not subject to any requirement of this Act concerning the registered office of a body corporate.

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PART XIX

Power to apply Act to Lloyd's underwriting

316.—(1) The general prohibition or (if the general prohibition is not applied under this section) a core provision applies to the carrying on of an insurance market activity by— Direction by Authority.

- (a) a member of the Society, or
- (b) the members of the Society taken together,

only if the Authority so directs.

(2) A direction given under subsection (1) which applies a core provision is referred to in this Part as “an insurance market direction”.

(3) In subsection (1)—

“core provision” means a provision of this Act mentioned in section 317; and

“insurance market activity” means a regulated activity relating to contracts of insurance written at Lloyd's.

(4) In deciding whether to give a direction under subsection (1), the Authority must have particular regard to—

- (a) the interests of policyholders and potential policyholders;
- (b) any failure by the Society to satisfy an obligation to which it is subject as a result of a provision of the law of another EEA State which—
 - (i) gives effect to any of the insurance directives; and
 - (ii) is applicable to an activity carried on in that State by a person to whom this section applies;
- (c) the need to ensure the effective exercise of the functions which the Authority has in relation to the Society as a result of section 315.

(5) A direction under subsection (1) must be in writing.

(6) A direction under subsection (1) applying the general prohibition may apply it in relation to different classes of person.

(7) An insurance market direction—

- (a) must specify each core provision, class of person and kind of activity to which it applies;
- (b) may apply different provisions in relation to different classes of person and different kinds of activity.

(8) A direction under subsection (1) has effect from the date specified in it, which may not be earlier than the date on which it is made.

(9) A direction under subsection (1) must be published in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

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

(11) The Authority must, without delay, give the Treasury a copy of any direction which it gives under this section.

317.—(1) The core provisions are Parts V, X, XI, XII, XIV, XV, XVI, XXII and XXIV, sections 384 to 386 and Part XXVI. The core provisions.

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(2) References in an applied core provision to an authorised person are (where necessary) to be read as references to a person in the class to which the insurance market direction applies.

(3) An insurance market direction may provide that a core provision is to have effect, in relation to persons to whom the provision is applied by the direction, with modifications.

Exercise of powers through Council.

318—(1) The Authority may give a direction under this subsection to the Council or to the Society (acting through the Council) or to both.

(2) A direction under subsection (1) is one given to the body concerned—

(a) in relation to the exercise of its powers generally with a view to achieving, or in support of, a specified objective; or

(b) in relation to the exercise of a specified power which it has, whether in a specified manner or with a view to achieving, or in support of, a specified objective.

(3) “Specified” means specified in the direction.

(4) A direction under subsection (1) may be given—

(a) instead of giving a direction under section 316(1); or

(b) if the Authority considers it necessary or expedient to do so, at the same time as, or following, the giving of such a direction.

(5) A direction may also be given under subsection (1) in respect of underwriting agents as if they were among the persons mentioned in section 316(1).

(6) A direction under this section—

(a) does not, at any time, prevent the exercise by the Authority of any of its powers;

(b) must be in writing.

(7) A direction under subsection (1) must be published 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 the direction.

(9) The Authority must, without delay, give the Treasury a copy of any direction which it gives under this section.

Consultation.

319.—(1) Before giving a direction under section 316 or 318, the Authority must publish a draft of the proposed direction.

(2) The draft must be accompanied by—

(a) a cost benefit analysis; and

(b) notice that representations about the proposed direction may be made to the Authority within a specified time.

(3) Before giving the proposed direction, the Authority must have regard to any representations made to it in accordance with subsection (2)(b).

(4) If the Authority gives the proposed direction it must publish an account, in general terms, of—

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

(5) If the direction 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 the delay involved in complying with them would be prejudicial to the interests of consumers.

(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) When the Authority is required to publish a document under this section it must do so in the way appearing to it to be best calculated to bring it to the attention of the public.

(10) “Cost benefit analysis” means an estimate of the costs together with an analysis of the benefits that will arise—

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

(11) “The appropriate comparison” means—

- (a) in relation to subsection (2)(a), a comparison between the overall position if the direction is given and the overall position if it is not given;
- (b) in relation to subsection (5)(b), a comparison between the overall position after the giving of the direction and the overall position before it was given.

Former underwriting members

320.—(1) A former underwriting member may carry out each contract of insurance that he has underwritten at Lloyd’s whether or not he is an authorised person.

Former
underwriting
members.

(2) If he is an authorised person, any Part IV permission that he has does not extend to his activities in carrying out any of those contracts.

(3) The Authority may impose on a former underwriting member such requirements as appear to it to be appropriate for the purpose of protecting policyholders against the risk that he may not be able to meet his liabilities.

(4) A person on whom a requirement is imposed may refer the matter to the Tribunal.

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Requirements
imposed under
section 320.

321.—(1) A requirement imposed under section 320 takes effect—

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

(2) If the Authority proposes to impose a requirement on a former underwriting member (“A”) under section 320, or imposes such a requirement on him which takes effect immediately, it must give him written notice.

(3) The notice must—

- (a) give details of the requirement;
- (b) state the Authority’s reasons for imposing it;
- (c) inform A 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 the date on which the requirement took effect or will take effect; and
- (e) inform him of his right to refer the matter to the Tribunal.

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

(5) If, having considered any representations made by A, the Authority decides—

- (a) to impose the proposed requirement, or
- (b) if it has been imposed, not to revoke it,

it must give him written notice.

(6) If the Authority decides—

- (a) not to impose a proposed requirement, or
- (b) to revoke a requirement that has been imposed,

it must give A written notice.

(7) If the Authority decides to grant an application by A for the variation or revocation of a requirement, it must give him written notice of its decision.

(8) If the Authority proposes to refuse an application by A for the variation or revocation of a requirement it must give him a warning notice.

(9) If the Authority, having considered any representations made in response to the warning notice, decides to refuse the application, it must give A a decision notice.

(10) A notice given under—

- (a) subsection (5), or
- (b) subsection (9) in the case of a decision to refuse the application,

must inform A of his right to refer the matter to the Tribunal.

(11) If the Authority decides to refuse an application for a variation or revocation of the requirement, the applicant may refer the matter to the Tribunal.

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(12) 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.

322.—(1) The Authority may make rules imposing such requirements on persons to whom the rules apply as appear to it to be appropriate for protecting policyholders against the risk that those persons may not be able to meet their liabilities.

Rules applicable to former underwriting members.

(2) The rules may apply to—

- (a) former underwriting members generally; or
- (b) to a class of former underwriting member specified in them.

(3) Section 319 applies to the making of proposed rules under this section as it applies to the giving of a proposed direction under section 316.

(4) Part X (except sections 152 to 154) does not apply to rules made under this section.

Transfers of business done at Lloyd's

323. The Treasury may by order provide for the application of any provision of Part VII (with or without modification) in relation to schemes for the transfer of the whole or any part of the business carried on by one or more members of the Society or former underwriting members.

Transfer schemes.

Supplemental

324.—(1) In this Part—

- “arranging deals”, in relation to the investments to which this Part applies, has the same meaning as in paragraph 3 of Schedule 2;
- “former underwriting member” means a person ceasing to be an underwriting member of the Society on, or at any time after, 24 December 1996; and
- “participation in Lloyd’s syndicates”, in relation to the secondary market activity, means the investment described in subparagraph (1) of paragraph 21 of Schedule 2.

Interpretation of this Part.

(2) A term used in this Part which is defined in Lloyd’s Act 1982 has the same meaning as in that Act.

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PART XX

PROVISION OF FINANCIAL SERVICES BY MEMBERS OF THE PROFESSIONS

325.—(1) The Authority must keep itself informed about—

- (a) the way in which designated professional bodies supervise and regulate the carrying on of exempt regulated activities by members of the professions in relation to which they are established;
- (b) the way in which such members are carrying on exempt regulated activities.

Authority’s general duty.

(2) In this Part—

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“exempt regulated activities” means regulated activities which may, as a result of this Part, be carried on by members of a profession which is supervised and regulated by a designated professional body without breaching the general prohibition; and

“members”, in relation to a profession, means persons who are entitled to practise the profession in question and, in practising it, are subject to the rules of the body designated in relation to that profession, whether or not they are members of that body.

(3) The Authority must keep under review the desirability of exercising any of its powers under this Part.

(4) Each designated professional body must co-operate with the Authority, by the sharing of information and in other ways, in order to enable the Authority to perform its functions under this Part.

Designation of
professional
bodies.

326.—(1) The Treasury may by order designate bodies for the purposes of this Part.

(2) A body designated under subsection (1) is referred to in this Part as a designated professional body.

(3) The Treasury may designate a body under subsection (1) only if they are satisfied that—

- (a) the basic condition, and
- (b) one or more of the additional conditions,

are met in relation to it.

(4) The basic condition is that the body has rules applicable to the carrying on by members of the profession in relation to which it is established of regulated activities which, if the body were to be designated, would be exempt regulated activities.

(5) The additional conditions are that—

- (a) the body has power under any enactment to regulate the practice of the profession;
- (b) being a member of the profession is a requirement under any enactment for the exercise of particular functions or the holding of a particular office;
- (c) the body has been recognised for the purpose of any enactment other than this Act and the recognition has not been withdrawn;
- (d) the body is established in an EEA State other than the United Kingdom and in that State—
 - (i) the body has power corresponding to that mentioned in paragraph (a);
 - (ii) there is a requirement in relation to the body corresponding to that mentioned in paragraph (b); or
 - (iii) the body is recognised in a manner corresponding to that mentioned in paragraph (c).

(6) “Enactment” includes an Act of the Scottish Parliament, Northern Ireland legislation and subordinate legislation (whether made under an Act, an Act of the Scottish Parliament or Northern Ireland legislation).

(7) “Recognised” means recognised by—

- (a) a Minister of the Crown;

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- (b) the Scottish Ministers;
- (c) a Northern Ireland Minister;
- (d) a Northern Ireland department or its head.

327.—(1) The general prohibition does not apply to the carrying on of a regulated activity by a person (“P”) if—

Exemption from the general prohibition.

- (a) the conditions set out in subsections (2) to (7) are satisfied; and
- (b) there is not in force—
 - (i) a direction under section 328, or
 - (ii) an order under section 329,

which prevents this subsection from applying to the carrying on of that activity by him.

- (2) P must be—
 - (a) a member of a profession; or
 - (b) controlled or managed by one or more such members.
- (3) P must not receive from a person other than his client any pecuniary reward or other advantage, for which he does not account to his client, arising out of his carrying on of any of the activities.
- (4) The manner of the provision by P of any service in the course of carrying on the activities must be incidental to the provision by him of professional services.
- (5) P must not carry on, or hold himself out as carrying on, a regulated activity other than—
 - (a) one which rules made as a result of section 332(3) allow him to carry on; or
 - (b) one in relation to which he is an exempt person.
- (6) The activities must not be of a description, or relate to an investment of a description, specified in an order made by the Treasury for the purposes of this subsection.
- (7) The activities must be the only regulated activities carried on by P (other than regulated activities in relation to which he is an exempt person).
- (8) “Professional services” means services—
 - (a) which do not constitute carrying on a regulated activity, and
 - (b) the provision of which is supervised and regulated by a designated professional body.

328.—(1) The Authority may direct that section 327(1) is not to apply to the extent specified in the direction.

Directions in relation to the general prohibition.

- (2) A direction under subsection (1)—
 - (a) must be in writing;
 - (b) may be given in relation to different classes of person or different descriptions of regulated activity.
- (3) A direction under subsection (1) must be published in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

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

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

(6) The Authority may exercise the power conferred by subsection (1) only if it is satisfied that it is desirable in order to protect the interests of clients.

(7) In considering whether it is so satisfied, the Authority must have regard amongst other things to the effectiveness of any arrangements made by any designated professional body—

- (a) for securing compliance with rules made under section 332(1);
- (b) for dealing with complaints against its members in relation to the carrying on by them of exempt regulated activities;
- (c) in order to offer redress to clients who suffer, or claim to have suffered, loss as a result of misconduct by its members in their carrying on of exempt regulated activities;
- (d) for co-operating with the Authority under section 325(4).

(8) In this Part “clients” means—

- (a) persons who use, have used or are or may be contemplating using, any of the services provided by a member of a profession in the course of carrying on exempt regulated activities;
- (b) persons who have rights or interests which are derived from, or otherwise attributable to, the use of any such services by other persons; or
- (c) persons 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.

(9) If a member of a profession is carrying on an exempt 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 that person in his carrying on of that activity.

Orders in relation to the general prohibition.

329.—(1) Subsection (2) applies if it appears to the Authority that a person to whom, as a result of section 327(1), the general prohibition does not apply is not a fit and proper person to carry on regulated activities in accordance with that section.

(2) The Authority may make an order disapplying section 327(1) in relation to that person to the extent specified in the order.

(3) The Authority may, on the application of the person named in an order under subsection (1), vary or revoke it.

(4) “Specified” means specified in the order.

(5) If a partnership is named in an order under this section, the order is not affected by any change in its membership.

(6) If a partnership named in an order under this section is dissolved, the order continues to have effect in relation to any partnership which succeeds to the business of the dissolved partnership.

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(7) For the purposes of subsection (6), a partnership is to be regarded as succeeding to the business of another partnership only if—

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

330.—(1) Before giving a direction under section 328(1), the Authority must publish a draft of the proposed direction. Consultation.

(2) The draft must be accompanied by—

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

(3) Before giving the proposed direction, the Authority must have regard to any representations made to it in accordance with subsection (2)(b).

(4) If the Authority gives the proposed direction 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 direction 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 the delay involved in complying with them would prejudice the interests of consumers.

(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) When the Authority is required to publish a document under this section it must do so in the way appearing to it to be best calculated to bring it to the attention of the public.

(10) “Cost benefit analysis” means an estimate of the costs together with an analysis of the benefits that will arise—

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

(11) “The appropriate comparison” means—