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- (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.

Procedure on making or varying orders under section 329.

331.—(1) If the Authority proposes to make an order under section 329, it must give the person concerned a warning notice.

(2) The warning notice must set out the terms of the proposed order.

(3) If the Authority decides to make an order under section 329, it must give the person concerned a decision notice.

(4) The decision notice must—

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

(5) Subsections (6) to (8) apply to an application for the variation or revocation of an order under section 329.

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

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

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

(9) A person—

- (a) against whom the Authority have decided to make an order under section 329, or
- (b) whose application for the variation or revocation of such an order the Authority had decided to refuse,

may refer the matter to the Tribunal.

(10) The Authority may not make an order under section 329 unless—

- (a) the period within which the decision to make to the order may be referred to the Tribunal has expired and no such reference has been made; or
- (b) if such a reference has been made, the reference has been determined.

Rules in relation to persons to whom the general prohibition does not apply.

332.—(1) The Authority may make rules applicable to persons to whom, as a result of section 327(1), the general prohibition does not apply.

(2) The power conferred by subsection (1) is to be exercised for the purpose of ensuring that clients are aware that such persons are not authorised persons.

(3) A designated professional body must make rules—

- (a) applicable to members of the profession in relation to which it is established who are not authorised persons; and

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- (b) governing the carrying on by those members of regulated activities (other than regulated activities in relation to which they are exempt persons).

(4) Rules made in compliance with subsection (3) must be designed to secure that, in providing a particular professional service to a particular client, the member carries on only regulated activities which arise out of, or are complementary to, the provision by him of that service to that client.

(5) Rules made by a designated professional body under subsection (3) require the approval of the Authority.

333.—(1) A person who—

- (a) describes himself (in whatever terms) as a person to whom the general prohibition does not apply, in relation to a particular regulated activity, as a result of this Part, or
- (b) behaves, or otherwise holds himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is such a person,

False claims to be a person to whom the general prohibition does not apply.

is guilty of an offence if he is not such a person.

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

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

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

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MUTUAL SOCIETIES

Friendly societies

334.—(1) The Treasury may by order provide—

- (a) for any functions of the Friendly Societies Commission to be transferred to the Authority;
- (b) for any functions of the Friendly Societies Commission which have not been, or are not being, transferred to the Authority to be transferred to the Treasury.

The Friendly Societies Commission.

(2) If the Treasury consider it appropriate to do so, they may by order provide for the Friendly Societies Commission to cease to exist on a day specified in or determined in accordance with the order.

(3) The enactments relating to friendly societies which are mentioned in Part I of Schedule 18 are amended as set out in that Part.

(4) Part II of Schedule 18—

- (a) removes certain restrictions on the ability of incorporated friendly societies to form subsidiaries and control corporate bodies; and

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(b) makes connected amendments.

The Registry of
Friendly Societies.

335.—(1) The Treasury may by order provide—

- (a) for any functions of the Chief Registrar of Friendly Societies, or of an assistant registrar of friendly societies for the central registration area, to be transferred to the Authority;
- (b) for any of their functions which have not been, or are not being, transferred to the Authority to be transferred to the Treasury.

(2) The Treasury may by order provide—

- (a) for any functions of the central office of the registry of friendly societies to be transferred to the Authority;
- (b) for any functions of that office which have not been, or are not being, transferred to the Authority to be transferred to the Treasury.

(3) The Treasury may by order provide—

- (a) for any functions of the assistant registrar of friendly societies for Scotland to be transferred to the Authority;
- (b) for any functions of the assistant registrar which have not been, or are not being, transferred to the Authority to be transferred to the Treasury.

(4) If the Treasury consider it appropriate to do so, they may by order provide for—

- (a) the office of Chief Registrar of Friendly Societies,
- (b) the office of assistant registrar of friendly societies for the central registration area,
- (c) the central office, or
- (d) the office of assistant registrar of friendly societies for Scotland,

to cease to exist on a day specified in or determined in accordance with the order.

*Building societies*The Building
Societies
Commission.

336.—(1) The Treasury may by order provide—

- (a) for any functions of the Building Societies Commission to be transferred to the Authority;
- (b) for any functions of the Building Societies Commission which have not been, or are not being, transferred to the Authority to be transferred to the Treasury.

(2) If the Treasury consider it appropriate to do so, they may by order provide for the Building Societies Commission to cease to exist on a day specified in or determined in accordance with the order.

(3) The enactments relating to building societies which are mentioned in Part III of Schedule 18 are amended as set out in that Part.

The Building
Societies Investor
Protection Board.

337. The Treasury may by order provide for the Building Societies Investor Protection Board to cease to exist on a day specified in or determined in accordance with the order.

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Industrial and provident societies and credit unions

- 338.—(1) The Treasury may by order provide for the transfer to the Authority of any functions conferred by—
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|---|---|
| (a) the Industrial and Provident Societies Act 1965; | Industrial and provident societies and credit unions. |
| (b) the Industrial and Provident Societies Act 1967; | 1965 c. 12. |
| (c) the Friendly and Industrial and Provident Societies Act 1968; | 1967 c. 48. |
| (d) the Industrial and Provident Societies Act 1975; | 1968 c. 55. |
| (e) the Industrial and Provident Societies Act 1978; | 1975 c. 41. |
| (f) the Credit Unions Act 1979. | 1978 c. 34. |
| | 1979 c. 34. |
- (2) The Treasury may by order provide for the transfer to the Treasury of any functions under those enactments which have not been, or are not being, transferred to the Authority.
- (3) The enactments relating to industrial and provident societies which are mentioned in Part IV of Schedule 18 are amended as set out in that Part.
- (4) The enactments relating to credit unions which are mentioned in Part V of Schedule 18 are amended as set out in that Part.

Supplemental

- 339.—(1) The additional powers conferred by section 428 on a person making an order under this Act include power for the Treasury, when making an order under section 334, 335, 336 or 338 which transfers functions, to include provision—
- | | |
|---|--------------------------|
| (a) for the transfer of any functions of a member of the body, or servant or agent of the body or person, whose functions are transferred by the order; | Supplemental provisions. |
| (b) for the transfer of any property, rights or liabilities held, enjoyed or incurred by any person in connection with transferred functions; | |
| (c) for the carrying on and completion by or under the authority of the person to whom functions are transferred of any proceedings, investigations or other matters commenced, before the order takes effect, by or under the authority of the person from whom the functions are transferred; | |
| (d) amending any enactment relating to transferred functions in connection with their exercise by, or under the authority of, the person to whom they are transferred; | |
| (e) for the substitution of the person to whom functions are transferred for the person from whom they are transferred, in any instrument, contract or legal proceedings made or begun before the order takes effect. | |
- (2) The additional powers conferred by section 428 on a person making an order under this Act include power for the Treasury, when making an order under section 334(2), 335(4), 336(2) or 337, to include provision—
- | |
|---|
| (a) for the transfer of any property, rights or liabilities held, enjoyed or incurred by any person in connection with the office or body which ceases to have effect as a result of the order; |
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- (b) for the carrying on and completion by or under the authority of such person as may be specified in the order of any proceedings, investigations or other matters commenced, before the order takes effect, by or under the authority of the person whose office, or the body which, ceases to exist as a result of the order;
- (c) amending any enactment which makes provision with respect to that office or body;
- (d) for the substitution of the Authority, the Treasury or such other body as may be specified in the order in any instrument, contract or legal proceedings made or begun before the order takes effect.

(3) On or after the making of an order under any of sections 334 to 338 (“the original order”), the Treasury may by order make any incidental, supplemental, consequential or transitional provision which they had power to include in the original order.

(4) A certificate issued by the Treasury that property vested in a person immediately before an order under this Part takes effect has been transferred as a result of the order is conclusive evidence of the transfer.

(5) Subsections (1) and (2) are not to be read as affecting in any way the powers conferred by section 428.

PART XXII

AUDITORS AND ACTUARIES

Appointment

Appointment.

340.—(1) Rules may require an authorised person, or an authorised person falling within a specified class—

- (a) to appoint an auditor, or
- (b) to appoint an actuary,

if he is not already under an obligation to do so imposed by another enactment.

(2) Rules may require an authorised person, or an authorised person falling within a specified class—

- (a) to produce periodic financial reports; and
- (b) to have them reported on by an auditor or an actuary.

(3) Rules may impose such other duties on auditors of, or actuaries acting for, authorised persons as may be specified.

(4) Rules under subsection (1) may make provision—

- (a) specifying the manner in which and time within which an auditor or actuary is to be appointed;
- (b) requiring the Authority to be notified of an appointment;
- (c) enabling the Authority to make an appointment if no appointment has been made or notified;
- (d) as to remuneration;
- (e) as to the term of office, removal and resignation of an auditor or actuary.

(5) An auditor or actuary appointed as a result of rules under subsection (1), or on whom duties are imposed by rules under subsection (3)—

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- (a) must act in accordance with such provision as may be made by rules; and
- (b) is to have such powers in connection with the discharge of his functions as may be provided by rules.

(6) In subsections (1) to (3) “auditor” or “actuary” means an auditor, or actuary, who satisfies such requirements as to qualifications, experience and other matters (if any) as may be specified.

(7) “Specified” means specified in rules.

Information

341.—(1) An appointed auditor of, or an appointed actuary acting for, an authorised person—

Access to books etc.

- (a) has a right of access at all times to the authorised person’s books, accounts and vouchers; and
- (b) is entitled to require from the authorised person’s officers such information and explanations as he reasonably considers necessary for the performance of his duties as auditor or actuary.

(2) “Appointed” means appointed under or as a result of this Act.

342.—(1) This section applies to a person who is, or has been, an auditor of an authorised person appointed under or as a result of a statutory provision.

Information given by auditor or actuary to the Authority.

(2) This section also applies to a person who is, or has been, an actuary acting for an authorised person and appointed under or as a result of a statutory provision.

(3) An auditor or actuary does not contravene any duty to which he is subject merely because he gives to the Authority—

- (a) information on a matter of which he has, or had, become aware in his capacity as auditor of, or actuary acting for, the authorised person, or
- (b) his opinion on such a matter,

if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the Authority.

(4) Subsection (3) applies whether or not the auditor or actuary is responding to a request from the Authority.

(5) The Treasury may make regulations prescribing circumstances in which an auditor or actuary must communicate matters to the Authority as mentioned in subsection (3).

(6) It is the duty of an auditor or actuary to whom any such regulations apply to communicate a matter to the Authority in the circumstances prescribed by the regulations.

(7) The matters to be communicated to the Authority in accordance with the regulations may include matters relating to persons other than the authorised person concerned.

PART XXII

Information given
by auditor or
actuary to the
Authority:
persons with close
links.

343.—(1) This section applies to a person who—

- (a) is, or has been, an auditor of an authorised person appointed under or as a result of a statutory provision; and
- (b) is, or has been, an auditor of a person (“CL”) who has close links with the authorised person.

(2) This section also applies to a person who—

- (a) is, or has been, an actuary acting for an authorised person and appointed under or as a result of a statutory provision; and
- (b) is, or has been, an actuary acting for a person (“CL”) who has close links with the authorised person.

(3) An auditor or actuary does not contravene any duty to which he is subject merely because he gives to the Authority—

- (a) information on a matter concerning the authorised person of which he has, or had, become aware in his capacity as auditor of, or actuary acting for, CL, or
- (b) his opinion on such a matter,

if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the Authority.

(4) Subsection (3) applies whether or not the auditor or actuary is responding to a request from the Authority.

(5) The Treasury may make regulations prescribing circumstances in which an auditor or actuary must communicate matters to the Authority as mentioned in subsection (3).

(6) It is the duty of an auditor or actuary to whom any such regulations apply to communicate a matter to the Authority in the circumstances prescribed by the regulations.

(7) The matters to be communicated to the Authority in accordance with the regulations may include matters relating to persons other than the authorised person concerned.

(8) CL has close links with the authorised person concerned (“A”) if CL is—

- (a) a parent undertaking of A;
- (b) a subsidiary undertaking of A;
- (c) a parent undertaking of a subsidiary undertaking of A; or
- (d) a subsidiary undertaking of a parent undertaking of A.

(9) “Subsidiary undertaking” includes all the instances mentioned in Article 1(1) and (2) of the Seventh Company Law Directive in which an entity may be a subsidiary of an undertaking.

Duty of auditor or
actuary resigning
etc. to give notice.

344.—(1) This section applies to an auditor or actuary to whom section 342 applies.

(2) He must without delay notify the Authority if he—

- (a) is removed from office by an authorised person;
- (b) resigns before the expiry of his term of office with such a person; or
- (c) is not re-appointed by such a person.

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(3) If he ceases to be an auditor of, or actuary acting for, such a person, he must without delay notify the Authority—

- (a) of any matter connected with his so ceasing which he thinks ought to be drawn to the Authority's attention; or
- (b) that there is no such matter.

Disqualification

345.—(1) If it appears to the Authority that an auditor or actuary to whom section 342 applies has failed to comply with a duty imposed on him under this Act, it may disqualify him from being the auditor of, or (as the case may be) from acting as an actuary for, any authorised person or any particular class of authorised person. Disqualification.

(2) If the Authority proposes to disqualify a person under this section it must give him a warning notice.

(3) If it decides to disqualify him it must give him a decision notice.

(4) The Authority may remove any disqualification imposed under this section if satisfied that the disqualified person will in future comply with the duty in question.

(5) A person who has been disqualified under this section may refer the matter to the Tribunal.

Offence

346.—(1) An authorised person who knowingly or recklessly gives an appointed auditor or actuary information which is false or misleading in a material particular is guilty of an offence and liable— Provision of false or misleading information to auditor or actuary.

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

(2) Subsection (1) applies equally to an officer, controller or manager of an authorised person.

(3) "Appointed" means appointed under or as a result of this Act.

PART XXIII

PUBLIC RECORD, DISCLOSURE OF INFORMATION AND CO-OPERATION

The public record

347.—(1) The Authority must maintain a record of every—

- (a) person who appears to the Authority to be an authorised person;
- (b) authorised unit trust scheme;
- (c) authorised open-ended investment company;
- (d) recognised scheme;
- (e) recognised investment exchange;
- (f) recognised clearing house;
- (g) individual to whom a prohibition order relates;
- (h) approved person; and

The record of authorised persons etc.

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- (i) person falling within such other class (if any) as the Authority may determine.
- (2) The record must include such information as the Authority considers appropriate and at least the following information—
- (a) in the case of a person appearing to the Authority to be an authorised person—
 - (i) information as to the services which he holds himself out as able to provide; and
 - (ii) any address of which the Authority is aware at which a notice or other document may be served on him;
 - (b) in the case of an authorised unit trust scheme, the name and address of the manager and trustee of the scheme;
 - (c) in the case of an authorised open-ended investment company, the name and address of—
 - (i) the company;
 - (ii) if it has only one director, the director; and
 - (iii) its depositary (if any);
 - (d) in the case of a recognised scheme, the name and address of—
 - (i) the operator of the scheme; and
 - (ii) any representative of the operator in the United Kingdom;
 - (e) in the case of a recognised investment exchange or recognised clearing house, the name and address of the exchange or clearing house;
 - (f) in the case of an individual to whom a prohibition order relates—
 - (i) his name; and
 - (ii) details of the effect of the order;
 - (g) in the case of a person who is an approved person—
 - (i) his name;
 - (ii) the name of the relevant authorised person;
 - (iii) if the approved person is performing a controlled function under an arrangement with a contractor of the relevant authorised person, the name of the contractor.
- (3) If it appears to the Authority that a person in respect of whom there is an entry in the record as a result of one of the paragraphs of subsection (1) has ceased to be a person to whom that paragraph applies, the Authority may remove the entry from the record.
- (4) But if the Authority decides not to remove the entry, it must—
- (a) make a note to that effect in the record; and
 - (b) state why it considers that the person has ceased to be a person to whom that paragraph applies.
- (5) The Authority must—
- (a) make the record available for inspection by members of the public in a legible form at such times and in such place or places as the Authority may determine; and
 - (b) provide a certified copy of the record, or any part of it, to any person who asks for it—

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(i) on payment of the fee (if any) fixed by the Authority; and

(ii) in a form (either written or electronic) in which it is legible to the person asking for it.

(6) The Authority may—

(a) publish the record, or any part of it;

(b) exploit commercially the information contained in the record, or any part of that information.

(7) “Authorised unit trust scheme”, “authorised open-ended investment company” and “recognised scheme” have the same meaning as in Part XVII, and associated expressions are to be read accordingly.

(8) “Approved person” means a person in relation to whom the Authority has given its approval under section 59 and “controlled function” and “arrangement” have the same meaning as in that section.

(9) “Relevant authorised person” has the meaning given in section 66.

Disclosure of information

348.—(1) Confidential information must not be disclosed by a primary recipient, or by any person obtaining the information directly or indirectly from a primary recipient, without the consent of—

Restrictions on disclosure of confidential information by Authority etc.

(a) the person from whom the primary recipient obtained the information; and

(b) if different, the person to whom it relates.

(2) In this Part “confidential information” means information which—

(a) relates to the business or other affairs of any person;

(b) was received by the primary recipient for the purposes of, or in the discharge of, any functions of the Authority, the competent authority for the purposes of Part VI or the Secretary of State under any provision made by or under this Act; and

(c) is not prevented from being confidential information by subsection (4).

(3) It is immaterial for the purposes of subsection (2) whether or not the information was received—

(a) by virtue of a requirement to provide it imposed by or under this Act;

(b) for other purposes as well as purposes mentioned in that subsection.

(4) Information is not confidential information if—

(a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section; or

(b) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.

(5) Each of the following is a primary recipient for the purposes of this Part—

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- (a) the Authority;
 - (b) any person exercising functions conferred by Part VI on the competent authority;
 - (c) the Secretary of State;
 - (d) a person appointed to make a report under section 166;
 - (e) any person who is or has been employed by a person mentioned in paragraphs (a) to (c);
 - (f) any auditor or expert instructed by a person mentioned in those paragraphs.
- (6) In subsection (5)(f) “expert” includes—
- (a) a competent person appointed by the competent authority under section 97;
 - (b) a competent person appointed by the Authority or the Secretary of State to conduct an investigation under Part XI;
 - (c) any body or person appointed under paragraph 6 of Schedule 1 to perform a function on behalf of the Authority.

Exceptions from
section 348.

349.—(1) Section 348 does not prevent a disclosure of confidential information which is—

- (a) made for the purpose of facilitating the carrying out of a public function; and
 - (b) permitted by regulations made by the Treasury under this section.
- (2) The regulations may, in particular, make provision permitting the disclosure of confidential information or of confidential information of a prescribed kind—
- (a) by prescribed recipients, or recipients of a prescribed description, to any person for the purpose of enabling or assisting the recipient to discharge prescribed public functions;
 - (b) by prescribed recipients, or recipients of a prescribed description, to prescribed persons, or persons of prescribed descriptions, for the purpose of enabling or assisting those persons to discharge prescribed public functions;
 - (c) by the Authority to the Treasury or the Secretary of State for any purpose;
 - (d) by any recipient if the disclosure is with a view to or in connection with prescribed proceedings.
- (3) The regulations may also include provision—
- (a) making any permission to disclose confidential information subject to conditions (which may relate to the obtaining of consents or any other matter);
 - (b) restricting the uses to which confidential information disclosed under the regulations may be put.
- (4) In relation to confidential information, each of the following is a “recipient”—
- (a) a primary recipient;
 - (b) a person obtaining the information directly or indirectly from a primary recipient.

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(5) "Public functions" includes—

- (a) functions conferred by or in accordance with any provision contained in any enactment or subordinate legislation;
- (b) functions conferred by or in accordance with any provision contained in the Community Treaties or any Community instrument;
- (c) similar functions conferred on persons by or under provisions having effect as part of the law of a country or territory outside the United Kingdom;
- (d) functions exercisable in relation to prescribed disciplinary proceedings.

(6) "Enactment" includes—

- (a) an Act of the Scottish Parliament;
- (b) Northern Ireland legislation.

(7) "Subordinate legislation" has the meaning given in the Interpretation Act 1978 and also includes an instrument made under an Act of the Scottish Parliament or under Northern Ireland legislation. 1978 c. 30.

350.—(1) No obligation as to secrecy imposed by statute or otherwise prevents the disclosure of Revenue information to—

- (a) the Authority, or
- (b) the Secretary of State,

Disclosure of information by the Inland Revenue.

if the disclosure is made for the purpose of assisting in the investigation of a matter under section 168 or with a view to the appointment of an investigator under that section.

(2) A disclosure may only be made under subsection (1) by or under the authority of the Commissioners of Inland Revenue.

(3) Section 348 does not apply to Revenue information.

(4) Information obtained as a result of subsection (1) may not be used except—

- (a) for the purpose of deciding whether to appoint an investigator under section 168;
- (b) in the conduct of an investigation under section 168;
- (c) in criminal proceedings brought against a person under this Act or the Criminal Justice Act 1993 as a result of an investigation under section 168; 1993 c. 36.
- (d) for the purpose of taking action under this Act against a person as a result of an investigation under section 168;
- (e) in proceedings before the Tribunal as a result of action taken as mentioned in paragraph (d).

(5) Information obtained as a result of subsection (1) may not be disclosed except—

- (a) by or under the authority of the Commissioners of Inland Revenue;
- (b) in proceedings mentioned in subsection (4)(c) or (e) or with a view to their institution.

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(6) Subsection (5) does not prevent the disclosure of information obtained as a result of subsection (1) to a person to whom it could have been disclosed under subsection (1).

1989 c. 26.

(7) "Revenue information" means information held by a person which it would be an offence under section 182 of the Finance Act 1989 for him to disclose.

Competition information.

351.—(1) A person is guilty of an offence if he has competition information (whether or not it was obtained by him) and improperly discloses it—

- (a) if it relates to the affairs of an individual, during that individual's lifetime;
- (b) if it relates to any particular business of a body, while that business continues to be carried on.

(2) For the purposes of subsection (1) a disclosure is improper unless it is made—

- (a) with the consent of the person from whom it was obtained and, if different—
 - (i) the individual to whose affairs the information relates, or
 - (ii) the person for the time being carrying on the business to which the information relates;
- (b) to facilitate the performance by a person mentioned in the first column of the table set out in Part I of Schedule 19 of a function mentioned in the second column of that table;
- (c) in pursuance of a Community obligation;
- (d) for the purpose of criminal proceedings in any part of the United Kingdom;
- (e) in connection with the investigation of any criminal offence triable in the United Kingdom or any part of the United Kingdom;
- (f) with a view to the institution of, or otherwise for the purposes of, civil proceedings brought under or in connection with—
 - (i) a competition provision; or
 - (ii) a specified enactment.

(3) A person guilty of an offence under this section is liable—

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

(4) Section 348 does not apply to competition information.

(5) "Competition information" means information which—

- (a) relates to the affairs of a particular individual or body;
- (b) is not otherwise in the public domain; and
- (c) was obtained under or by virtue of a competition provision.

(6) "Competition provision" means any provision of—

- (a) an order made under section 95;

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- (b) Chapter III of Part X; or
- (c) Chapter II of Part XVIII.

(7) "Specified enactment" means an enactment specified in Part II of Schedule 19.

352.—(1) A person who discloses information in contravention of section 348 or 350(5) is guilty of an offence. Offences.

(2) A person guilty of an offence under subsection (1) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding three 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.

(3) A person is guilty of an offence if, in contravention of any provision of regulations made under section 349, he uses information which has been disclosed to him in accordance with the regulations.

(4) A person is guilty of an offence if, in contravention of subsection (4) of section 350, he uses information which has been disclosed to him in accordance with that section.

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

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

- (a) that he did not know and had no reason to suspect that the information was confidential information or that it had been disclosed in accordance with section 350;
- (b) that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

353.—(1) The Treasury may make regulations permitting the disclosure of any information, or of information of a prescribed kind— Removal of other restrictions on disclosure.

- (a) by prescribed persons for the purpose of assisting or enabling them to discharge prescribed functions under this Act or any rules or regulations made under it;
- (b) by prescribed persons, or persons of a prescribed description, to the Authority for the purpose of assisting or enabling the Authority to discharge prescribed functions.

(2) Regulations under this section may not make any provision in relation to the disclosure of confidential information by primary recipients or by any person obtaining confidential information directly or indirectly from a primary recipient.

(3) If a person discloses any information as permitted by regulations under this section the disclosure is not to be taken as a contravention of any duty to which he is subject.

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Co-operation

Authority's duty
to co-operate with
others.

354.—(1) The Authority must take such steps as it considers appropriate to co-operate with other persons (whether in the United Kingdom or elsewhere) who have functions—

(a) similar to those of the Authority; or

(b) in relation to the prevention or detection of financial crime.

(2) Co-operation may include the sharing of information which the Authority is not prevented from disclosing.

(3) “Financial crime” has the same meaning as in section 6.

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INSOLVENCY

Interpretation

Interpretation of
this Part.
1985 c. 66.
1986 c. 45.
S.I. 1989/2405
(N.I. 19).

355.—(1) In this Part—

“the 1985 Act” means the Bankruptcy (Scotland) Act 1985;

“the 1986 Act” means the Insolvency Act 1986;

“the 1989 Order” means the Insolvency (Northern Ireland) Order 1989;

“body” means a body of persons—

(a) over which the court has jurisdiction under any provision of, or made under, the 1986 Act (or the 1989 Order); but

(b) which is not a building society, a friendly society or an industrial and provident society; and

“court” means—

(a) the court having jurisdiction for the purposes of the 1985 Act or the 1986 Act; or

(b) in Northern Ireland, the High Court.

(2) In this Part “insurer” has such meaning as may be specified in an order made by the Treasury.

Voluntary arrangements

Authority's
powers to
participate in
proceedings:
company
voluntary
arrangements.

356.—(1) This section applies if a voluntary arrangement has been approved under Part I of the 1986 Act (or Part II of the 1989 Order) in respect of a company or insolvent partnership which is an authorised person.

(2) The Authority may make an application to the court in relation to the company or insolvent partnership under section 6 of the 1986 Act (or Article 19 of the 1989 Order).

(3) If a person other than the Authority makes an application to the court in relation to the company or insolvent partnership under either of those provisions, the Authority is entitled to be heard at any hearing relating to the application.

Authority's
powers to
participate in
proceedings:
individual
voluntary
arrangements.

357.—(1) The Authority is entitled to be heard on an application by an individual who is an authorised person under section 253 of the 1986 Act (or Article 227 of the 1989 Order).

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(2) Subsections (3) to (6) apply if such an order is made on the application of such a person.

(3) A person appointed for the purpose by the Authority is entitled to attend any meeting of creditors of the debtor summoned under section 257 of the 1986 Act (or Article 231 of the 1989 Order).

(4) Notice of the result of a meeting so summoned is to be given to the Authority by the chairman of the meeting.

(5) The Authority may apply to the court—

- (a) under section 262 of the 1986 Act (or Article 236 of the 1989 Order); or
- (b) under section 263 of the 1986 Act (or Article 237 of the 1989 Order).

(6) If a person other than the Authority makes an application to the court under any provision mentioned in subsection (5), the Authority is entitled to be heard at any hearing relating to the application.

358.—(1) This section applies where a trust deed has been granted by or on behalf of a debtor who is an authorised person.

(2) The trustee must, as soon as practicable after he becomes aware that the debtor is an authorised person, send to the Authority—

- (a) in every case, a copy of the trust deed;
- (b) where any other document or information is sent to every creditor known to the trustee in pursuance of paragraph 5(1)(c) of Schedule 5 to the 1985 Act, a copy of such document or information.

(3) Paragraph 7 of that Schedule applies to the Authority as if it were a qualified creditor who has not been sent a copy of the notice as mentioned in paragraph 5(1)(c) of the Schedule.

(4) The Authority must be given the same notice as the creditors of any meeting of creditors held in relation to the trust deed.

(5) A person appointed for the purpose by the Authority is entitled to attend and participate in (but not to vote at) any such meeting of creditors as if the Authority were a creditor under the deed.

(6) This section does not affect any right the Authority has as a creditor of a debtor who is an authorised person.

(7) Expressions used in this section and in the 1985 Act have the same meaning in this section as in that Act.

Authority's powers to participate in proceedings: trust deeds for creditors in Scotland.

Administration orders

359.—(1) The Authority may present a petition to the court under section 9 of the 1986 Act (or Article 22 of the 1989 Order) in relation to a company or insolvent partnership which—

- (a) is, or has been, an authorised person;
- (b) is, or has been, an appointed representative; or
- (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

Petitions.

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(2) Subsection (3) applies in relation to a petition presented by the Authority by virtue of this section.

(3) If the company or partnership is in default on an obligation to pay a sum due and payable under an agreement, it is to be treated for the purpose of section 8(1)(a) of the 1986 Act (or Article 21(1)(a) of the 1989 Order) as unable to pay its debts.

(4) "Agreement" means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the company or partnership.

(5) "Company" means—

- (a) a company to which section 8 of the 1986 Act applies; or
- (b) in relation to Northern Ireland, a company to which Article 21 of the 1989 Order applies.

Insurers.

360.—(1) The Treasury may by order provide that such provisions of Part II of the 1986 Act (or Part III of the 1989 Order) as may be specified are to apply in relation to insurers with such modifications as may be specified.

(2) An order under this section—

- (a) may provide that such provisions of this Part as may be specified are to apply in relation to the administration of insurers in accordance with the order with such modifications as may be specified; and
- (b) requires the consent of the Secretary of State.

(3) "Specified" means specified in the order.

Administrator's
duty to report to
Authority.

361.—(1) If—

- (a) an administration order is in force in relation to a company or partnership by virtue of a petition presented by a person other than the Authority, and
- (b) it appears to the administrator that the company or partnership is carrying on, or has carried on, a regulated activity in contravention of the general prohibition,

the administrator must report the matter to the Authority without delay.

(2) "An administration order" means an administration order under Part II of the 1986 Act (or Part III of the 1989 Order).

Authority's
powers to
participate in
proceedings.

362.—(1) This section applies if a person other than the Authority presents a petition to the court under section 9 of the 1986 Act (or Article 22 of the 1989 Order) in relation to a company or partnership which—

- (a) is, or has been, an authorised person;
- (b) is, or has been, an appointed representative; or
- (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

(2) The Authority is entitled to be heard—

- (a) at the hearing of the petition; and

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(b) at any other hearing of the court in relation to the company or partnership under Part II of the 1986 Act (or Part III of the 1989 Order).

(3) Any notice or other document required to be sent to a creditor of the company or partnership must also be sent to the Authority.

(4) The Authority may apply to the court under section 27 of the 1986 Act (or Article 39 of the 1989 Order); and on such an application, section 27(1)(a) (or Article 39(1)(a)) has effect with the omission of the words "(including at least himself)".

(5) A person appointed for the purpose by the Authority is entitled—

(a) to attend any meeting of creditors of the company or partnership summoned under any enactment;

(b) to attend any meeting of a committee established under section 26 of the 1986 Act (or Article 38 of the 1989 Order); and

(c) to make representations as to any matter for decision at such a meeting.

(6) If, during the course of the administration of a company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the Authority may apply to the court under section 425 of the Companies Act 1985 (or Article 418 of the Companies (Northern Ireland) Order 1986).

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

Receivership

363.—(1) This section applies if a receiver has been appointed in relation to a company which—

(a) is, or has been, an authorised person;

(b) is, or has been, an appointed representative; or

(c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

Authority's
powers to
participate in
proceedings.

(2) The Authority is entitled to be heard on an application made under section 35 or 63 of the 1986 Act (or Article 45 of the 1989 Order).

(3) The Authority is entitled to make an application under section 41(1)(a) or 69(1)(a) of the 1986 Act (or Article 51(1)(a) of the 1989 Order).

(4) A report under section 48(1) or 67(1) of the 1986 Act (or Article 58(1) of the 1989 Order) must be sent by the person making it to the Authority.

(5) A person appointed for the purpose by the Authority is entitled—

(a) to attend any meeting of creditors of the company summoned under any enactment;

(b) to attend any meeting of a committee established under section 49 or 68 of the 1986 Act (or Article 59 of the 1989 Order); and

(c) to make representations as to any matter for decision at such a meeting.

364. If—

(a) a receiver has been appointed in relation to a company, and

Receiver's duty to
report to
Authority.

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- (b) it appears to the receiver that the company is carrying on, or has carried on, a regulated activity in contravention of the general prohibition,

the receiver must report the matter to the Authority without delay.

Voluntary winding up

Authority's powers to participate in proceedings.

365.—(1) This section applies in relation to a company, which—

- (a) is being wound up voluntarily;
 (b) is an authorised person; and
 (c) is not an insurer effecting or carrying out contracts of long-term insurance.

(2) The Authority may apply to the court under section 112 of the 1986 Act (or Article 98 of the 1989 Order) in respect of the company.

(3) The Authority is entitled to be heard at any hearing of the court in relation to the voluntary winding up of the company.

(4) Any notice or other document required to be sent to a creditor of the company must also be sent to the Authority.

(5) A person appointed for the purpose by the Authority is entitled—

- (a) to attend any meeting of creditors of the company summoned under any enactment;
 (b) to attend any meeting of a committee established under section 101 of the 1986 Act (or Article 87 of the 1989 Order); and
 (c) to make representations as to any matter for decision at such a meeting.

(6) The voluntary winding up of the company does not bar the right of the Authority to have it wound up by the court.

(7) If, during the course of the winding up of the company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the Authority may apply to the court under section 425 of the Companies Act 1985 (or Article 418 of the Companies (Northern Ireland) Order 1986).

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

Insurers effecting or carrying out long-term contracts or insurance.

366.—(1) An insurer effecting or carrying out contracts of long-term insurance may not be wound up voluntarily without the consent of the Authority.

(2) If notice of a general meeting of such an insurer is given, specifying the intention to propose a resolution for voluntary winding up of the insurer, a director of the insurer must notify the Authority as soon as practicable after he becomes aware of it.

(3) A person who fails to comply with subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) The following provisions do not apply in relation to a winding-up resolution—

- (a) sections 378(3) and 381A of the Companies Act 1985 (“the 1985 Act”); and

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- (b) Articles 386(3) and 389A of the Companies (Northern Ireland) Order 1986 (“the 1986 Order”).

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

(5) A copy of a winding-up resolution forwarded to the registrar of companies in accordance with section 380 of the 1985 Act (or Article 388 of the 1986 Order) must be accompanied by a certificate issued by the Authority stating that it consents to the voluntary winding up of the insurer.

(6) If subsection (5) is complied with, the voluntary winding up is to be treated as having commenced at the time the resolution was passed.

(7) If subsection (5) is not complied with, the resolution has no effect.

(8) “Winding-up resolution” means a resolution for voluntary winding up of an insurer effecting or carrying out contracts of long-term insurance.

Winding up by the court

367.—(1) The Authority may present a petition to the court for the winding up of a body which—

Winding-up
petitions.

- (a) is, or has been, an authorised person;
 - (b) is, or has been, an appointed representative; or
 - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (2) In subsection (1) “body” includes any partnership.
- (3) On such a petition, the court may wind up the body if—
- (a) the body is unable to pay its debts within the meaning of section 123 or 221 of the 1986 Act (or Article 103 or 185 of the 1989 Order); or
 - (b) the court is of the opinion that it is just and equitable that it should be wound up.

(4) If a body is in default on an obligation to pay a sum due and payable under an agreement, it is to be treated for the purpose of subsection (3)(a) as unable to pay its debts.

(5) “Agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the body concerned.

(6) Subsection (7) applies if a petition is presented under subsection (1) for the winding up of a partnership—

- (a) on the ground mentioned in subsection (3)(b); or
- (b) in Scotland, on a ground mentioned in subsection (3)(a) or (b).

(7) The court has jurisdiction, and the 1986 Act (or the 1989 Order) has effect, as if the partnership were an unregistered company as defined by section 220 of that Act (or Article 184 of that Order).

368. The Authority may not present a petition to the court under section 367 for the winding up of—

Winding-up
petitions: EEA
and Treaty firms.

- (a) an EEA firm which qualifies for authorisation under Schedule 3, or

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(b) a Treaty firm which qualifies for authorisation under Schedule 4, unless it has been asked to do so by the home state regulator of the firm concerned.

Insurers: service of petition etc. on Authority.

369.—(1) If a person other than the Authority presents a petition for the winding up of an authorised person with permission to effect or carry out contracts of insurance, the petitioner must serve a copy of the petition on the Authority.

(2) If a person other than the Authority applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised person with permission to effect or carry out contracts of insurance, the applicant must serve a copy of the application on the Authority.

Liquidator's duty to report to Authority.

370. If—

- (a) a company is being wound up voluntarily or a body is being wound up on a petition presented by a person other than the Authority, and
- (b) it appears to the liquidator that the company or body is carrying on, or has carried on, a regulated activity in contravention of the general prohibition,

the liquidator must report the matter to the Authority without delay.

Authority's powers to participate in proceedings.

371.—(1) This section applies if a person other than the Authority presents a petition for the winding up of a body which—

- (a) is, or has been, an authorised person;
- (b) is, or has been, an appointed representative; or
- (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

(2) The Authority is entitled to be heard—

- (a) at the hearing of the petition; and
- (b) at any other hearing of the court in relation to the body under or by virtue of Part IV or V of the 1986 Act (or Part V or VI of the 1989 Order).

(3) Any notice or other document required to be sent to a creditor of the body must also be sent to the Authority.

(4) A person appointed for the purpose by the Authority is entitled—

- (a) to attend any meeting of creditors of the body;
- (b) to attend any meeting of a committee established for the purposes of Part IV or V of the 1986 Act under section 101 of that Act or under section 141 or 142 of that Act;
- (c) to attend any meeting of a committee established for the purposes of Part V or VI of the 1989 Order under Article 87 of that Order or under Article 120 of that Order; and
- (d) to make representations as to any matter for decision at such a meeting.

(5) If, during the course of the winding up of a company, a compromise or arrangement is proposed between the company and its creditors, or

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any class of them, the Authority may apply to the court under section 425 of the Companies Act 1985 (or Article 418 of the Companies (Northern Ireland) Order 1986).

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

Bankruptcy

372.—(1) The Authority may present a petition to the court—

Petitions.

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

(2) But such a petition may be presented only on the ground that—

- (a) the individual appears to be unable to pay a regulated activity debt; or
- (b) the individual appears to have no reasonable prospect of being able to pay a regulated activity debt.

(3) An individual appears to be unable to pay a regulated activity debt if he is in default on an obligation to pay a sum due and payable under an agreement.

(4) An individual appears to have no reasonable prospect of being able to pay a regulated activity debt if—

- (a) the Authority has served on him a demand requiring him to establish to the satisfaction of the Authority that there is a reasonable prospect that he will be able to pay a sum payable under an agreement when it falls due;
- (b) at least three weeks have elapsed since the demand was served; and
- (c) the demand has been neither complied with nor set aside in accordance with rules.

(5) A demand made under subsection (4)(a) is to be treated for the purposes of the 1986 Act (or the 1989 Order) as if it were a statutory demand under section 268 of that Act (or Article 242 of that Order).

(6) For the purposes of a petition presented in accordance with subsection (1)(b)—

- (a) the Authority is to be treated as a qualified creditor; and
- (b) a ground mentioned in subsection (2) constitutes apparent insolvency.

(7) “Individual” means an individual—

- (a) who is, or has been, an authorised person; or
- (b) who is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

(8) “Agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the individual concerned.

(9) “Rules” means—

- (a) in England and Wales, rules made under section 412 of the 1986 Act;

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- (b) in Scotland, rules made by order by the Treasury, after consultation with the Scottish Ministers, for the purposes of this section; and
- (c) in Northern Ireland, rules made under Article 359 of the 1989 Order.

Insolvency practitioner's duty to report to Authority.

373.—(1) If—

- (a) a bankruptcy order or sequestration award is in force in relation to an individual by virtue of a petition presented by a person other than the Authority, and
- (b) it appears to the insolvency practitioner that the individual is carrying on, or has carried on, a regulated activity in contravention of the general prohibition,

the insolvency practitioner must report the matter to the Authority without delay.

(2) “Bankruptcy order” means a bankruptcy order under Part IX of the 1986 Act (or Part IX of the 1989 Order).

(3) “Sequestration award” means an award of sequestration under section 12 of the 1985 Act.

(4) “Individual” includes an entity mentioned in section 374(1)(c).

Authority's powers to participate in proceedings.

374.—(1) This section applies if a person other than the Authority presents 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.

(2) The Authority is entitled to be heard—

- (a) at the hearing of the petition; and
- (b) at any other hearing in relation to the individual or entity under—
 - (i) Part IX of the 1986 Act;
 - (ii) Part IX of the 1989 Order; or
 - (iii) the 1985 Act.

(3) A copy of the report prepared under section 274 of the 1986 Act (or Article 248 of the 1989 Order) must also be sent to the Authority.

(4) A person appointed for the purpose by the Authority is entitled—

- (a) to attend any meeting of creditors of the individual or entity;
- (b) to attend any meeting of a committee established under section 301 of the 1986 Act (or Article 274 of the 1989 Order);
- (c) to attend any meeting of commissioners held under paragraph 17 or 18 of Schedule 6 to the 1985 Act; and
- (d) to make representations as to any matter for decision at such a meeting.

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- (5) "Individual" means an individual who—
- (a) is, or has been, an authorised person; or
 - (b) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (6) "Entity" means an entity which—
- (a) is, or has been, an authorised person; or
 - (b) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

Provisions against debt avoidance

375.—(1) The Authority may apply for an order under section 423 of the 1986 Act (or Article 367 of the 1989 Order) in relation to a debtor if—

Authority's right to apply for an order.

- (a) at the time the transaction at an undervalue was entered into, the debtor was carrying on a regulated activity (whether or not in contravention of the general prohibition); and
- (b) a victim of the transaction is or was party to an agreement entered into with the debtor, the making or performance of which constituted or was part of a regulated activity carried on by the debtor.

(2) An application made under this section is to be treated as made on behalf of every victim of the transaction to whom subsection (1)(b) applies.

(3) Expressions which are given a meaning in Part XVI of the 1986 Act (or Article 367, 368 or 369 of the 1989 Order) have the same meaning when used in this section.

Supplemental provisions concerning insurers

376.—(1) This section applies in relation to the winding up of an insurer which effects or carries out contracts of long-term insurance.

Continuation of contracts of long-term insurance where insurer in liquidation.

(2) Unless the court otherwise orders, the liquidator must carry on the insurer's business so far as it consists of carrying out the insurer's contracts of long-term insurance with a view to its being transferred as a going concern to a person who may lawfully carry out those contracts.

(3) In carrying on the business, the liquidator—

- (a) may agree to the variation of any contracts of insurance in existence when the winding up order is made; but
- (b) must not effect any new contracts of insurance.

(4) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the insurer attributable to contracts of long-term insurance effected by it require the appointment of a special manager, he may apply to the court.

(5) On such an application, the court may appoint a special manager to act during such time as the court may direct.

(6) The special manager is to have such powers, including any of the powers of a receiver or manager, as the court may direct.

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(7) Section 177(5) of the 1986 Act (or Article 151(5) of the 1989 Order) applies to a special manager appointed under subsection (5) as it applies to a special manager appointed under section 177 of the 1986 Act (or Article 151 of the 1989 Order).

(8) If the court thinks fit, it may reduce the value of one or more of the contracts of long-term insurance effected by the insurer.

(9) Any reduction is to be on such terms and subject to such conditions (if any) as the court thinks fit.

(10) The court may, on the application of an official, appoint an independent actuary to investigate the insurer's business so far as it consists of carrying out its contracts of long-term insurance and to report to the official—

- (a) on the desirability or otherwise of that part of the insurer's business being continued; and
- (b) on any reduction in the contracts of long-term insurance effected by the insurer that may be necessary for successful continuation of that part of the insurer's business.

(11) "Official" means—

- (a) the liquidator;
- (b) a special manager appointed under subsection (5); or
- (c) the Authority.

(12) The liquidator may make an application in the name of the insurer and on its behalf under Part VII without obtaining the permission that would otherwise be required by section 167 of, and Schedule 4 to, the 1986 Act (or Article 142 of, and Schedule 2 to, the 1989 Order).

Reducing the value of contracts instead of winding up.

377.—(1) This section applies in relation to an insurer which has been proved to be unable to pay its debts.

(2) If the court thinks fit, it may reduce the value of one or more of the insurer's contracts instead of making a winding up order.

(3) Any reduction is to be on such terms and subject to such conditions (if any) as the court thinks fit.

Treatment of assets on winding up.

378.—(1) The Treasury may by regulations provide for the treatment of the assets of an insurer on its winding up.

(2) The regulations may, in particular, provide for—

- (a) assets representing a particular part of the insurer's business to be available only for meeting liabilities attributable to that part of the insurer's business;
- (b) separate general meetings of the creditors to be held in respect of liabilities attributable to a particular part of the insurer's business.

Winding-up rules.

379.—(1) Winding-up rules may include provision—

- (a) for determining the amount of the liabilities of an insurer to policyholders of any class or description for the purpose of proof in a winding up; and

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(b) generally for carrying into effect the provisions of this Part with respect to the winding up of insurers.

(2) Winding-up rules may, in particular, make provision for all or any of the following matters—

- (a) the identification of assets and liabilities;
- (b) the apportionment, between assets of different classes or descriptions, of—
 - (i) the costs, charges and expenses of the winding up; and
 - (ii) any debts of the insurer of a specified class or description;
- (c) the determination of the amount of liabilities of a specified description;
- (d) the application of assets for meeting liabilities of a specified description;
- (e) the application of assets representing any excess of a specified description.

(3) “Specified” means specified in winding-up rules.

(4) “Winding-up rules” means rules made under section 411 of the 1986 Act (or Article 359 of the 1989 Order).

(5) Nothing in this section affects the power to make winding-up rules under the 1986 Act or the 1989 Order.

PART XXV

INJUNCTIONS AND RESTITUTION

Injunctions

380.—(1) If, on the application of the Authority or the Secretary of State, the court is satisfied— Injunctions.

- (a) that there is a reasonable likelihood that any person will contravene a relevant requirement, or
- (b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) If on the application of the Authority or the Secretary of State the court is satisfied—

- (a) that any person has contravened a relevant requirement, and
- (b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the Authority or the Secretary of State, the court is satisfied that any person may have—

- (a) contravened a relevant requirement, or

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- (b) been knowingly concerned in the contravention of such a requirement,

it may make an order restraining (or in Scotland an interdict prohibiting) him from disposing of, or otherwise dealing with, any assets of his which it is satisfied he is reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.

(5) In subsection (2), references to remedying a contravention include references to mitigating its effect.

(6) "Relevant requirement"—

- (a) in relation to an application by the Authority, means a requirement—

(i) which is imposed by or under this Act; or

(ii) which is imposed by or under any other Act and whose contravention constitutes an offence which the Authority has power to prosecute under this Act;

- (b) in relation to an application by the Secretary of State, means a requirement which is imposed by or under this Act and whose contravention constitutes an offence which the Secretary of State has power to prosecute under this Act.

(7) In the application of subsection (6) to Scotland—

- (a) in paragraph (a)(ii) for "which the Authority has power to prosecute under this Act" substitute "mentioned in paragraph (a) or (b) of section 402(1)"; and

- (b) in paragraph (b) omit "which the Secretary of State has power to prosecute under this Act".

Injunctions in cases of market abuse.

381.—(1) If, on the application of the Authority, the court is satisfied—

- (a) that there is a reasonable likelihood that any person will engage in market abuse, or

- (b) that any person is or has engaged in market abuse and that there is a reasonable likelihood that the market abuse will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the market abuse.

(2) If on the application of the Authority the court is satisfied—

- (a) that any person is or has engaged in market abuse, and

- (b) that there are steps which could be taken for remedying the market abuse,

the court may make an order requiring him to take such steps as the court may direct to remedy it.

(3) Subsection (4) applies if, on the application of the Authority, the court is satisfied that any person—

- (a) may be engaged in market abuse; or

- (b) may have been engaged in market abuse.

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(4) The court make an order restraining (or in Scotland an interdict prohibiting) the person concerned from disposing of, or otherwise dealing with, any assets of his which it is satisfied that he is reasonably likely to dispose of, or otherwise deal with.

(5) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.

(6) In subsection (2), references to remedying any market abuse include references to mitigating its effect.

Restitution orders

382.—(1) The court may, on the application of the Authority or the Secretary of State, make an order under subsection (2) if it is satisfied that a person has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—

- (a) that profits have accrued to him as a result of the contravention; or
- (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The court may order the person concerned to pay to the Authority such sum as appears to the court to be just having regard—

- (a) in a case within paragraph (a) of subsection (1), to the profits appearing to the court to have accrued;
- (b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect;
- (c) in a case within both of those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(3) Any amount paid to the Authority in pursuance of an order under subsection (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.

(4) On an application under subsection (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes—

- (a) establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of that subsection;
- (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in paragraph (b) of that subsection and, if so, the extent of that loss or adverse effect; and
- (c) determining how any amounts are to be paid or distributed under subsection (3).

(5) The court may require any accounts or other information supplied under subsection (4) to be verified in such manner as it may direct.

(6) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.

(7) Nothing in this section affects the right of any person other than the Authority or the Secretary of State to bring proceedings in respect of the matters to which this section applies.

Restitution orders.

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(8) “Qualifying person” means a person appearing to the court to be someone—

- (a) to whom the profits mentioned in subsection (1)(a) are attributable; or
- (b) who has suffered the loss or adverse effect mentioned in subsection (1)(b).

(9) “Relevant requirement”—

- (a) in relation to an application by the Authority, means a requirement—
 - (i) which is imposed by or under this Act; or
 - (ii) which is imposed by or under any other Act and whose contravention constitutes an offence which the Authority has power to prosecute under this Act;
- (b) in relation to an application by the Secretary of State, means a requirement which is imposed by or under this Act and whose contravention constitutes an offence which the Secretary of State has power to prosecute under this Act.

(10) In the application of subsection (9) to Scotland—

- (a) in paragraph (a)(ii) for “which the Authority has power to prosecute under this Act” substitute “mentioned in paragraph (a) or (b) of section 402(1); and
- (b) in paragraph (b) omit “which the Secretary of State has power to prosecute under this Act”.

Restitution orders
in cases of market
abuse.

383.—(1) The court may, on the application of the Authority, make an order under subsection (4) if it is satisfied that a person (“the person concerned”)—

- (a) has engaged in market abuse, or
- (b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by the person concerned, would amount to market abuse,

and the condition mentioned in subsection (2) is fulfilled.

(2) The condition is—

- (a) that profits have accrued to the person concerned as a result; or
- (b) that one or more persons have suffered loss or been otherwise adversely affected as a result.

(3) But the court may not make an order under subsection (4) if it is satisfied that—

- (a) the person concerned believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1); or
- (b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of subsection (1).

(4) The court may order the person concerned to pay to the Authority such sum as appears to the court to be just having regard—

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- (a) in a case within paragraph (a) of subsection (2), to the profits appearing to the court to have accrued;
- (b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect;
- (c) in a case within both of those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(5) Any amount paid to the Authority in pursuance of an order under subsection (4) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.

(6) On an application under subsection (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes—

- (a) establishing whether any and, if so, what profits have accrued to him as mentioned in subsection (2)(a);
- (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in subsection (2)(b) and, if so, the extent of that loss or adverse effect; and
- (c) determining how any amounts are to be paid or distributed under subsection (5).

(7) The court may require any accounts or other information supplied under subsection (6) to be verified in such manner as it may direct.

(8) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.

(9) Nothing in this section affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this section applies.

(10) “Qualifying person” means a person appearing to the court to be someone—

- (a) to whom the profits mentioned in paragraph (a) of subsection (2) are attributable; or
- (b) who has suffered the loss or adverse effect mentioned in paragraph (b) of that subsection.

Restitution required by Authority

384.—(1) The Authority may exercise the power in subsection (5) if it is satisfied that an authorised person (“the person concerned”) has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—

Power of Authority to require restitution.

- (a) that profits have accrued to him as a result of the contravention; or
- (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The Authority may exercise the power in subsection (5) if it is satisfied that a person (“the person concerned”)—

- (a) has engaged in market abuse, or

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- (b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by the person concerned, would amount to market abuse,

and the condition mentioned in subsection (3) is fulfilled,

- (3) The condition is—

- (a) that profits have accrued to the person concerned as a result of the market abuse; or
(b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the market abuse.

(4) But the Authority may not exercise that power as a result of subsection (2) if, having considered any representations made to it in response to a warning notice, there are reasonable grounds for it to be satisfied that—

- (a) the person concerned believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of that subsection; or
(b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection.

(5) The power referred to in subsections (1) and (2) is a power to require the person concerned, in accordance with such arrangements as the Authority considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the Authority to be just having regard—

- (a) in a case within paragraph (a) of subsection (1) or (3), to the profits appearing to the Authority to have accrued;
(b) in a case within paragraph (b) of subsection (1) or (3), to the extent of the loss or other adverse effect;
(c) in a case within paragraphs (a) and (b) of subsection (1) or (3), to the profits appearing to the Authority to have accrued and to the extent of the loss or other adverse effect.

(6) “Appropriate person” means a person appearing to the Authority to be someone—

- (a) to whom the profits mentioned in paragraph (a) of subsection (1) or (3) are attributable; or
(b) who has suffered the loss or adverse effect mentioned in paragraph (b) of subsection (1) or (3).

(7) “Relevant requirement” means—

- (a) a requirement imposed by or under this Act; and
(b) a requirement which is imposed by or under any other Act and whose contravention constitutes an offence in relation to which this Act confers power to prosecute on the Authority.

(8) In the application of subsection (7) to Scotland, in paragraph (b) for “in relation to which this Act confers power to prosecute on the Authority” substitute “mentioned in paragraph (a) or (b) of section 402(1)”.

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Warning notices.

385.—(1) If the Authority proposes to exercise the power under section 384(5) in relation to a person, it must give him a warning notice.

(2) A warning notice under this section must specify the amount which the Authority proposes to require the person concerned to pay or distribute as mentioned in section 384(5).

386.—(1) If the Authority decides to exercise the power under section 384(5), it must give a decision notice to the person in relation to whom the power is exercised.

Decision notices.

(2) The decision notice must—

- (a) state the amount that he is to pay or distribute as mentioned in section 384(5);
- (b) identify the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and
- (c) state the arrangements in accordance with which the payment or distribution is to be made.

(3) If the Authority decides to exercise the power under section 384(5), the person in relation to whom it is exercised may refer the matter to the Tribunal.

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NOTICES

Warning notices

387.—(1) A warning notice must—

- (a) state the action which the Authority proposes to take;
- (b) be in writing;
- (c) give reasons for the proposed action;
- (d) state whether section 394 applies; and
- (e) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it.

(2) The warning notice must specify a reasonable period (which may not be less than 28 days) within which the person to whom it is given may make representations to the Authority.

(3) The Authority may extend the period specified in the notice.

(4) The Authority must then decide, within a reasonable period, whether to give the person concerned a decision notice.

Decision notices

388.—(1) A decision notice must—

- (a) be in writing;
- (b) give the Authority's reasons for the decision to take the action to which the notice relates;
- (c) state whether section 394 applies;

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(d) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it; and

(e) give an indication of—

(i) any right to have the matter referred to the Tribunal which is given by this Act; and

(ii) the procedure on such a reference.

(2) If the decision notice was preceded by a warning notice, the action to which the decision notice relates must be action under the same Part as the action proposed in the warning notice.

(3) The Authority may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.

(4) The Authority may give a further decision notice as a result of subsection (3) only if the person to whom the original notice was given consents.

(5) If the person to whom a decision notice is given under subsection (3) had the right to refer the matter to which the original decision notice related to the Tribunal, he has that right as respects the decision notice under subsection (3).

Conclusion of proceedings

Notices of
discontinuance.

389.—(1) If the Authority decides not to take—

(a) the action proposed in a warning notice, or

(b) the action to which a decision notice relates,

it must give a notice of discontinuance to the person to whom the warning notice or decision notice was given.

(2) But subsection (1) does not apply if the discontinuance of the proceedings concerned results in the granting of an application made by the person to whom the warning or decision notice was given.

(3) A notice of discontinuance must identify the proceedings which are being discontinued.

Final notices.

390.—(1) If the Authority has given a person a decision notice and the matter was not referred to the Tribunal within the period mentioned in section 133(1), the Authority must, on taking the action to which the decision notice relates, give the person concerned and any person to whom the decision notice was copied a final notice.

(2) If the Authority has given a person a decision notice and the matter was referred to the Tribunal, the Authority must, on taking action in accordance with any directions given by—

(a) the Tribunal, or

(b) the court under section 137,

give that person and any person to whom the decision notice was copied a final notice.

(3) A final notice about a statement must—

(a) set out the terms of the statement;

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- (b) give details of the manner in which, and the date on which, the statement will be published.
- (4) A final notice about an order must—
- (a) set out the terms of the order;
 - (b) state the date from which the order has effect.
- (5) A final notice about a penalty must—
- (a) state the amount of the penalty;
 - (b) state the manner in which, and the period within which, the penalty is to be paid;
 - (c) give details of the way in which the penalty will be recovered if it is not paid by the date stated in the notice.
- (6) A final notice about a requirement to make a payment or distribution in accordance with section 384(5) must state—
- (a) the persons to whom,
 - (b) the manner in which, and
 - (c) the period within which,
- it must be made.
- (7) In any other case, the final notice must—
- (a) give details of the action being taken;
 - (b) state the date on which the action is to be taken.
- (8) The period stated under subsection (5)(b) or (6)(c) may not be less than 14 days beginning with the date on which the final notice is given.
- (9) If all or any of the amount of a penalty payable under a final notice is outstanding at the end of the period stated under subsection (5)(b), the Authority may recover the outstanding amount as a debt due to it.
- (10) If all or any of a required payment or distribution has not been made at the end of a period stated in a final notice under subsection (6)(c), the obligation to make the payment is enforceable, on the application of the Authority, by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.

1988 c. 36.

Publication

- 391.**—(1) Neither the Authority nor a person to whom a warning notice or decision notice is given or copied may publish the notice or any details concerning it. Publication.
- (2) A notice of discontinuance must state that, if the person to whom the notice is given consents, the Authority may publish such information as it considers appropriate about the matter to which the discontinued proceedings related.
- (3) A copy of a notice of discontinuance must be accompanied by a statement that, if the person to whom the notice is copied consents, the Authority may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.
- (4) The Authority must publish such information about the matter to which a final notice relates as it considers appropriate.

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(5) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.

(6) But the Authority may not publish information under this section if publication of it would, in its opinion, be unfair to the person with respect to whom the action was taken or prejudicial to the interests of consumers.

(7) Information is to be published under this section in such manner as the Authority considers appropriate.

(8) For the purposes of determining when a supervisory notice takes effect, a matter to which the notice relates is open to review if—

- (a) the period during which any person may refer the matter to the Tribunal is still running;
- (b) the matter has been referred to the Tribunal but has not been dealt with;
- (c) the matter has been referred to the Tribunal and dealt with but the period during which an appeal may be brought against the Tribunal's decision is still running; or
- (d) such an appeal has been brought but has not been determined.

(9) "Notice of discontinuance" means a notice given under section 389.

(10) "Supervisory notice" has the same meaning as in section 395.

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

Third party rights and access to evidence

Application of sections 393 and 394.

392. Sections 393 and 394 apply to—

- (a) a warning notice given in accordance with section 54(1), 57(1), 63(3), 67(1), 88(4)(b), 89(2), 92(1), 126(1), 207(1), 255(1), 280(1), 331(1), 345(2) (whether as a result of subsection (1) of that section or section 249(1)) or 385(1);
- (b) a decision notice given in accordance with section 54(2), 57(3), 63(4), 67(4), 88(6)(b), 89(3), 92(4), 127(1), 208(1), 255(2), 280(2), 331(3), 345(3) (whether as a result of subsection (1) of that section or section 249(1)) or 386(1).

Third party rights.

393.—(1) If any of the reasons contained in a warning notice to which this section applies relates to a matter which—

- (a) identifies a person ("the third party") other than the person to whom the notice is given, and

(b) in the opinion of the Authority, is prejudicial to the third party, a copy of the notice must be given to the third party.

(2) Subsection (1) does not require a copy to be given to the third party if the Authority—

- (a) has given him a separate warning notice in relation to the same matter; or
- (b) gives him such a notice at the same time as it gives the warning notice which identifies him.

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(3) The notice copied to a third party under subsection (1) must specify a reasonable period (which may not be less than 28 days) within which he may make representations to the Authority.

(4) If any of the reasons contained in a decision notice to which this section applies relates to a matter which—

(a) identifies a person (“the third party”) other than the person to whom the decision notice is given, and

(b) in the opinion of the Authority, is prejudicial to the third party, a copy of the notice must be given to the third party.

(5) If the decision notice was preceded by a warning notice, a copy of the decision notice must (unless it has been given under subsection (4)) be given to each person to whom the warning notice was copied.

(6) Subsection (4) does not require a copy to be given to the third party if the Authority—

(a) has given him a separate decision notice in relation to the same matter; or

(b) gives him such a notice at the same time as it gives the decision notice which identifies him.

(7) Neither subsection (1) nor subsection (4) requires a copy of a notice to be given to a third party if the Authority considers it impracticable to do so.

(8) Subsections (9) to (11) apply if the person to whom a decision notice is given has a right to refer the matter to the Tribunal.

(9) A person to whom a copy of the notice is given under this section may refer to the Tribunal—

(a) the decision in question, so far as it is based on a reason of the kind mentioned in subsection (4); or

(b) any opinion expressed by the Authority in relation to him.

(10) The copy must be accompanied by an indication of the third party’s right to make a reference under subsection (9) and of the procedure on such a reference.

(11) A person who alleges that a copy of the notice should have been given to him, but was not, may refer to the Tribunal the alleged failure and—

(a) the decision in question, so far as it is based on a reason of the kind mentioned in subsection (4); or

(b) any opinion expressed by the Authority in relation to him.

(12) Section 394 applies to a third party as it applies to the person to whom the notice to which this section applies was given, in so far as the material which the Authority must disclose under that section relates to the matter which identifies the third party.

(13) A copy of a notice given to a third party under this section must be accompanied by a description of the effect of section 394 as it applies to him.

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(14) Any person to whom a warning notice or decision notice was copied under this section must be given a copy of a notice of discontinuance applicable to the proceedings to which the warning notice or decision notice related.

Access to
Authority
material.

394.—(1) If the Authority gives a person (“A”) a notice to which this section applies, it must—

- (a) allow him access to the material on which it relied in taking the decision which gave rise to the obligation to give the notice;
- (b) allow him access to any secondary material which, in the opinion of the Authority, might undermine that decision.

(2) But the Authority does not have to allow A access to material under subsection (1) if the material is excluded material or it—

- (a) relates to a case involving a person other than A; and
- (b) was taken into account by the Authority in A’s case only for purposes of comparison with other cases.

(3) The Authority may refuse A access to particular material which it would otherwise have to allow him access to if, in its opinion, allowing him access to the material—

- (a) would not be in the public interest; or
- (b) would not be fair, having regard to—
 - (i) the likely significance of the material to A in relation to the matter in respect of which he has been given a notice to which this section applies; and
 - (ii) the potential prejudice to the commercial interests of a person other than A which would be caused by the material’s disclosure.

(4) If the Authority does not allow A access to material because it is excluded material consisting of a protected item, it must give A written notice of—

- (a) the existence of the protected item; and
- (b) the Authority’s decision not to allow him access to it.

(5) If the Authority refuses under subsection (3) to allow A access to material, it must give him written notice of—

- (a) the refusal; and
- (b) the reasons for it.

(6) “Secondary material” means material, other than material falling within paragraph (a) of subsection (1) which—

- (a) was considered by the Authority in reaching the decision mentioned in that paragraph; or
- (b) was obtained by the Authority in connection with the matter to which the notice to which this section applies relates but which was not considered by it in reaching that decision.

(7) “Excluded material” means material which—

- (a) has been intercepted in obedience to a warrant issued under any enactment relating to the interception of communications;

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- (b) indicates that such a warrant has been issued or that material has been intercepted in obedience to such a warrant; or
- (c) is a protected item (as defined in section 413).

The Authority's procedures

395.—(1) The Authority must determine the procedure that it proposes to follow in relation to the giving of— The Authority's procedures.

- (a) supervisory notices; and
- (b) warning notices and decision notices.

(2) That procedure must be designed to secure, among other things, that the decision which gives rise to the obligation to give any such notice is taken by a person not directly involved in establishing the evidence on which that decision is based.

(3) But the procedure may permit a decision which gives rise to an obligation to give a supervisory notice to be taken by a person other than a person mentioned in subsection (2) if—

- (a) the Authority considers that, in the particular case, it is necessary in order to protect the interests of consumers; and
- (b) the person taking the decision is of a level of seniority laid down by the procedure.

(4) A level of seniority laid down by the procedure for the purposes of subsection (3)(b) must be appropriate to the importance of the decision.

(5) The Authority must issue a statement of the procedure.

(6) The statement must be published in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

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

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

(9) When giving a supervisory notice, or a warning notice or decision notice, the Authority must follow its stated procedure.

(10) If the Authority changes the procedure in a material way, it must publish a revised statement.

(11) The Authority's failure in a particular case to follow its procedure as set out in the latest published statement does not affect the validity of a notice given in that case.

(12) But subsection (11) does not prevent the Tribunal from taking into account any such failure in considering a matter referred to it.

(13) "Supervisory notice" means a notice given in accordance with section—

- (a) 53(4), (7) or (8)(b);
- (b) 78(2) or (5);
- (c) 197(3), (6) or (7)(b);
- (d) 259(3), (8) or (9)(b);
- (e) 268(3), (7)(a) or (9)(a) (as a result of subsection (8)(b));

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(f) 282(3), (6) or (7)(b);

(g) 321(2) or (5).

Statements under
section 395:
consultation.

396.—(1) Before issuing a statement of procedure under section 395, the Authority must publish a draft of the proposed statement in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the Authority within a specified time.

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

(4) If the Authority issues the proposed statement of procedure 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 of procedure 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 revise a statement of policy.

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OFFENCES

*Miscellaneous offences*Misleading
statements and
practices.

397.—(1) This subsection applies to a person who—

(a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive in a material particular;

(b) dishonestly conceals any material facts whether in connection with a statement, promise or forecast made by him or otherwise; or

(c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive in a material particular.

(2) A person to whom subsection (1) applies is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made)—

(a) to enter or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement; or

(b) to exercise, or refrain from exercising, any rights conferred by a relevant investment.

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(3) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any relevant investments is guilty of an offence if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.

(4) In proceedings for an offence under subsection (2) brought against a person to whom subsection (1) applies as a result of paragraph (a) of that subsection, it is a defence for him to show that the statement, promise or forecast was made in conformity with price stabilising rules or control of information rules.

(5) In proceedings brought against any person for an offence under subsection (3) it is a defence for him to show—

- (a) that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the matters mentioned in that subsection;
- (b) that he acted or engaged in the conduct—
 - (i) for the purpose of stabilising the price of investments; and
 - (ii) in conformity with price stabilising rules; or
- (c) that he acted or engaged in the conduct in conformity with control of information rules.

(6) Subsections (1) and (2) do not apply unless—

- (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the United Kingdom or arrangements are made in or from the United Kingdom for the statement, promise or forecast to be made or the facts to be concealed;
- (b) the person on whom the inducement is intended to or may have effect is in the United Kingdom; or
- (c) the agreement is or would be entered into or the rights are or would be exercised in the United Kingdom.

(7) Subsection (3) does not apply unless—

- (a) the act is done, or the course of conduct is engaged in, in the United Kingdom; or
- (b) the false or misleading impression is created there.

(8) A person guilty of an offence under this section 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 seven years or a fine, or both.

(9) “Relevant agreement” means an agreement—

- (a) the entering into or performance of which by either party constitutes an activity of a specified kind or one which falls within a specified class of activity; and
- (b) which relates to a relevant investment.

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(10) "Relevant investment" means an investment of a specified kind or one which falls within a prescribed class of investment.

(11) Schedule 2 (except paragraphs 25 and 26) applies for the purposes of subsections (9) and (10) with references to section 22 being read as references to each of those subsections.

(12) Nothing in Schedule 2, as applied by subsection (11), limits the power conferred by subsection (9) or (10).

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

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

Misleading the Authority: residual cases.

398.—(1) A person who, in purported compliance with any requirement imposed by or under this Act, knowingly or recklessly gives the Authority information which is false or misleading in a material particular is guilty of an offence.

(2) Subsection (1) applies only to a requirement in relation to which no other provision of this Act creates an offence in connection with the giving of information.

(3) A person guilty of an offence under this section is liable—

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

Misleading the Director General of Fair Trading. 1998 c. 41.

399. Section 44 of the Competition Act 1998 (offences connected with the provision of false or misleading information) applies in relation to any function of the Director General of Fair Trading under this Act as if it were a function under Part I of that Act.

Bodies corporate and partnerships

Offences by bodies corporate etc.

400.—(1) If an offence under this Act committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(3) If an offence under this Act committed by a partnership is shown—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on his part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) In subsection (3) "partner" includes a person purporting to act as a partner.

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(5) “Officer”, in relation to a body corporate, means—

- (a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; and
- (b) an individual who is a controller of the body.

(6) If an offence under this Act committed by an unincorporated association (other than a partnership) is shown—

- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
- (b) to be attributable to any neglect on the part of such an officer or member,

that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) Regulations may provide for the application of any provision of this section, with such modifications as the Treasury consider appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside the United Kingdom.

Institution of proceedings

401.—(1) In this section “offence” means an offence under this Act or subordinate legislation made under this Act.

Proceedings for offences.

(2) Proceedings for an offence may be instituted in England and Wales only—

- (a) by the Authority or the Secretary of State; or
- (b) by or with the consent of the Director of Public Prosecutions.

(3) Proceedings for an offence may be instituted in Northern Ireland only—

- (a) by the Authority or the Secretary of State; or
- (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(4) Except in Scotland, proceedings for an offence under section 203 may also be instituted by the Director General of Fair Trading.

(5) In exercising its power to institute proceedings for an offence, the Authority must comply with any conditions or restrictions imposed in writing by the Treasury.

(6) Conditions or restrictions may be imposed under subsection (5) in relation to—

- (a) proceedings generally; or
- (b) such proceedings, or categories of proceedings, as the Treasury may direct.

402.—(1) Except in Scotland, the Authority may institute proceedings for an offence under—

- (a) Part V of the Criminal Justice Act 1993 (insider dealing); or
- (b) prescribed regulations relating to money laundering.

Power of the Authority to institute proceedings for certain other offences.

1993 c. 36.

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(2) In exercising its power to institute proceedings for any such offence, the Authority must comply with any conditions or restrictions imposed in writing by the Treasury.

(3) Conditions or restrictions may be imposed under subsection (2) in relation to—

- (a) proceedings generally; or
- (b) such proceedings, or categories of proceedings, as the Treasury may direct.

Jurisdiction and procedure in respect of offences.

403.—(1) A fine imposed on an unincorporated association on its conviction of an offence is to be paid out of the funds of the association.

(2) Proceedings for an offence alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members).

(3) Rules of court relating to the service of documents are to have effect as if the association were a body corporate.

(4) In proceedings for an offence brought against an unincorporated association—

1925 c. 86.
1980 c. 43.

(a) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980 (procedure) apply as they do in relation to a body corporate;

1995 c. 46.

(b) section 70 of the Criminal Procedure (Scotland) Act 1995 (procedure) applies as if the association were a body corporate;

1945 c. 15 (N.I.)
S.I. 1981/1675
(N.I. 26).

(c) section 18 of the Criminal Justice (Northern Ireland) Act 1945 and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (procedure) apply as they do in relation to a body corporate.

(5) Summary proceedings for an offence may be taken—

- (a) against a body corporate or unincorporated association at any place at which it has a place of business;
- (b) against an individual at any place where he is for the time being.

(6) Subsection (5) does not affect any jurisdiction exercisable apart from this section.

(7) "Offence" means an offence under this Act.

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MISCELLANEOUS

Schemes for reviewing past business

Schemes for reviewing past business.

404.—(1) Subsection (2) applies if the Treasury are satisfied that there is evidence suggesting—

- (a) that there has been a widespread or regular failure on the part of authorised persons to comply with rules relating to a particular kind of activity; and
- (b) that, as a result, private persons have suffered (or will suffer) loss in respect of which authorised persons are (or will be) liable to make payments ("compensation payments").

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(2) The Treasury may by order (“a scheme order”) authorise the Authority to establish and operate a scheme for—

- (a) determining the nature and extent of the failure;
- (b) establishing the liability of authorised persons to make compensation payments; and
- (c) determining the amounts payable by way of compensation payments.

(3) An authorised scheme must be made so as to comply with specified requirements.

(4) A scheme order may be made only if—

- (a) the Authority has given the Treasury a report about the alleged failure and asked them to make a scheme order;
- (b) the report contains details of the scheme which the Authority propose to make; and
- (c) the Treasury are satisfied that the proposed scheme is an appropriate way of dealing with the failure.

(5) A scheme order may provide for specified provisions of or made under this Act to apply in relation to any provision of, or determination made under, the resulting authorised scheme subject to such modifications (if any) as may be specified.

(6) For the purposes of this Act, failure on the part of an authorised person to comply with any provision of an authorised scheme is to be treated (subject to any provision made by the scheme order concerned) as a failure on his part to comply with rules.

(7) The Treasury may prescribe circumstances in which loss suffered by a person (“A”) acting in a fiduciary or other prescribed capacity is to be treated, for the purposes of an authorised scheme, as suffered by a private person in relation to whom A was acting in that capacity.

(8) This section applies whenever the failure in question occurred.

(9) “Authorised scheme” means a scheme authorised by a scheme order.

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

(11) “Specified” means specified in a scheme order.

Third countries

405.—(1) For the purpose of implementing a third country decision, the Treasury may direct the Authority to— Directions.

- (a) refuse an application for permission under Part IV made by a body incorporated in, or formed under the law of, any part of the United Kingdom;
- (b) defer its decision on such an application either indefinitely or for such period as may be specified in the direction;
- (c) give a notice of objection to a person who has served a notice of control to the effect that he proposes to acquire a 50% stake in a UK authorised person; or

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(d) give a notice of objection to a person who has acquired a 50% stake in a UK authorised person without having served the required notice of control.

(2) A direction may also be given in relation to—

- (a) any person falling within a class specified in the direction;
- (b) future applications, notices of control or acquisitions.

(3) The Treasury may revoke a direction at any time.

(4) But revocation does not affect anything done in accordance with the direction before it was revoked.

(5) “Third country decision” means a decision of the Council or the Commission under—

- (a) Article 7(5) of the investment services directive;
- (b) Article 9(4) of the second banking co-ordination directive;
- (c) Article 29b(4) of the first non-life insurance directive; or
- (d) Article 32b(4) of the first life insurance directive.

Interpretation of section 405.

406.—(1) For the purposes of section 405, a person (“the acquirer”) acquires a 50% stake in a UK authorised person (“A”) on first falling within any of the cases set out in subsection (2).

(2) The cases are where the acquirer—

- (a) holds 50% or more of the shares in A;
- (b) holds 50% or more of the shares in a parent undertaking (“P”) of A;
- (c) is entitled to exercise, or control the exercise of, 50% or more of the voting power in A; or
- (d) is entitled to exercise, or control the exercise of, 50% or more of the 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) “Associate”, “shares” and “voting power” have the same meaning as in section 422.

Consequences of a direction under section 405.

407.—(1) If the Authority refuses an application for permission as a result of a direction under section 405(1)(a)—

- (a) subsections (7) to (9) of section 52 do not apply in relation to the refusal; but
- (b) the Authority must notify the applicant of the refusal and the reasons for it.

(2) If the Authority defers its decision on an application for permission as a result of a direction under section 405(1)(b)—

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- (a) the time limit for determining the application mentioned in section 52(1) or (2) stops running on the day of the deferral and starts running again (if at all) on the day the period specified in the direction (if any) ends or the day the direction is revoked; and
 - (b) the Authority must notify the applicant of the deferral and the reasons for it.
- (3) If the Authority gives a notice of objection to a person as a result of a direction under section 405(1)(c) or (d)—
- (a) sections 189 and 191 have effect as if the notice was a notice of objection within the meaning of Part XII; and
 - (b) the Authority must state in the notice the reasons for it.

408.—(1) If a third country decision has been taken, the Treasury may make a determination in relation to an EFTA firm which is a subsidiary undertaking of a parent undertaking which is governed by the law of the country to which the decision relates. EFTA firms.

(2) “Determination” means a determination that the firm concerned does not qualify for authorisation under Schedule 3 even if it satisfies the conditions in paragraph 13 or 14 of that Schedule.

(3) A determination may also be made in relation to any firm falling within a class specified in the determination.

(4) The Treasury may withdraw a determination at any time.

(5) But withdrawal does not affect anything done in accordance with the determination before it was withdrawn.

(6) If the Treasury make a determination in respect of a particular firm, or withdraw such a determination, they must give written notice to that firm.

(7) The Treasury must publish notice of any determination (or the withdrawal of any determination)—

- (a) in such a way as they think most suitable for bringing the determination (or withdrawal) to the attention of those likely to be affected by it; and
- (b) on, or as soon as practicable after, the date of the determination (or withdrawal).

(8) “EFTA firm” means a firm, institution or undertaking which—

- (a) is an EEA firm as a result of paragraph 5(a), (b) or (d) of Schedule 3; and
- (b) is incorporated in, or formed under the law of, an EEA State which is not a member State.

(9) “Third country decision” has the same meaning as in section 405.

409.—(1) The Treasury may by order—

Gibraltar.

- (a) modify Schedule 3 so as to provide for Gibraltar firms of a specified description to qualify for authorisation under that Schedule in specified circumstances;

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- (b) modify Schedule 3 so as to make provision in relation to the exercise by UK firms of rights under the law of Gibraltar which correspond to EEA rights;
- (c) modify Schedule 4 so as to provide for Gibraltar firms of a specified description to qualify for authorisation under that Schedule in specified circumstances;
- (d) modify section 264 so as to make provision in relation to collective investment schemes constituted under the law of Gibraltar;
- (e) provide for the Authority to be able to give notice under section 264(2) on grounds relating to the law of Gibraltar;
- (f) provide for this Act to apply to a Gibraltar recognised scheme as if the scheme were a scheme recognised under section 264.

(2) The fact that a firm may qualify for authorisation under Schedule 3 as a result of an order under subsection (1) does not prevent it from applying for a Part IV permission.

(3) "Gibraltar firm" means a firm which has its head office in Gibraltar or is otherwise connected with Gibraltar.

(4) "Gibraltar recognised scheme" means a collective investment scheme—

- (a) constituted in an EEA State other than the United Kingdom, and
- (b) recognised in Gibraltar under provisions which appear to the Treasury to give effect to the provisions of a relevant Community instrument.

(5) "Specified" means specified in the order.

(6) "UK firm" and "EEA right" have the same meaning as in Schedule 3.

International obligations

International obligations.

410.—(1) If it appears to the Treasury that any action proposed to be taken by a relevant person would be incompatible with Community obligations or any other international obligations of the United Kingdom, they may direct that person not to take that action.

(2) If it appears to the Treasury that any action which a relevant person has power to take is required for the purpose of implementing any such obligations, they may direct that person to take that action.

(3) A direction under this section—

- (a) may include such supplemental or incidental requirements as the Treasury consider necessary or expedient; and
- (b) is enforceable, on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

1988 c. 36.

(4) "Relevant person" means—

- (a) the Authority;
- (b) any person exercising functions conferred by Part VI on the competent authority;

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- (c) any recognised investment exchange (other than one which is an overseas investment exchange);
- (d) any recognised clearing house (other than one which is an overseas clearing house);
- (e) a person included in the list maintained under section 301; or
- (f) the scheme operator of the ombudsman scheme.

Tax treatment of levies and repayments

411.—(1) In the Income and Corporation Taxes Act 1988 (“the 1988 Act”), in section 76 (expenses of management: insurance companies), for subsections (7) and (7A) substitute—

Tax treatment of levies and repayments. 1988 c. 1.

“(7) For the purposes of this section any sums paid by a company by way of a levy shall be treated as part of its expenses of management.

(7A) “Levy” means—

- (a) a payment required under rules made under section 136(2) of the Financial Services and Markets Act 2000 (“the Act of 2000”);
- (b) a levy imposed under the Financial Services Compensation Scheme;
- (c) a payment required under rules made under section 234 of the Act of 2000;
- (d) a payment required in accordance with the standard terms fixed under paragraph 18 of Schedule 17 to the Act of 2000.”

(2) After section 76 of the 1988 Act insert—

“Levies and repayments under the Financial Services and Markets Act 2000.

76A.—(1) In computing the amount of the profits to be charged under Case I of Schedule D arising from a trade carried on by an authorised person (other than an investment company)—

- (a) to the extent that it would not be deductible apart from this section, any sum expended by the authorised person in paying a levy may be deducted as an allowable expense;
- (b) any payment which is made to the authorised person as a result of a repayment provision is to be treated as a trading receipt.

(2) “Levy” has the meaning given in section 76(7A).

(3) “Repayment provision” means any provision made by virtue of—

- (a) section 136(7) of the Financial Services and Markets Act 2000 (“the Act of 2000”);
- (b) section 214(1)(e) of the Act of 2000.

(4) “Authorised person” has the same meaning as in the Act of 2000.

Levies and repayments

76B.—(1) For the purposes of section 75 any sums paid by an investment company—

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under the
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2000: investment
companies.

- (a) by way of a levy, or
 - (b) as a result of an award of costs under costs rules,
- shall be treated as part of its expenses of management.

(2) If a payment is made to an investment company as a result of a repayment provision, the company shall be charged to tax under Case VI of Schedule D on the amount of that payment.

(3) "Levy" has the meaning given in section 76(7A).

(4) "Costs rules" means—

- (a) rules made under section 230 of the Financial Services and Markets Act 2000;
- (b) provision relating to costs contained in the standard terms fixed under paragraph 18 of Schedule 17 to that Act.

(5) "Repayment provision" has the meaning given in section 76A(3)."

Gaming contracts

Gaming contracts.

412.—(1) No contract to which this section applies is void or unenforceable because of—

1845 c. 109.
1892 c. 9.
S.I. 1985/1204
(N.I. 11).

- (a) section 18 of the Gaming Act 1845, section 1 of the Gaming Act 1892 or Article 170 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985; or
- (b) any rule of the law of Scotland under which a contract by way of gaming or wagering is not legally enforceable.

(2) This section applies to a contract if—

- (a) it is entered into by either or each party by way of business;
- (b) the entering into or performance of it by either party constitutes an activity of a specified kind or one which falls within a specified class of activity; and
- (c) it relates to an investment of a specified kind or one which falls within a specified class of investment.

(3) Part II of Schedule 2 applies for the purposes of subsection (2)(c), with the references to section 22 being read as references to that subsection.

(4) Nothing in Part II of Schedule 2, as applied by subsection (3), limits the power conferred by subsection (2)(c).

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

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

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Limitation on powers to require documents

413.—(1) A person may not be required under this Act to produce, disclose or permit the inspection of protected items. Protected items.

(2) “Protected items” means—

- (a) communications between a professional legal adviser and his client or any person representing his client which fall within subsection (3);
- (b) communications between a professional legal adviser, his client or any person representing his client and any other person which fall within subsection (3) (as a result of paragraph (b) of that subsection);
- (c) items which—
 - (i) are enclosed with, or referred to in, such communications;
 - (ii) fall within subsection (3); and
 - (iii) are in the possession of a person entitled to possession of them.

(3) A communication or item falls within this subsection if it is made—

- (a) in connection with the giving of legal advice to the client; or
- (b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.

(4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

Service of notices

414.—(1) The Treasury may by regulations make provision with respect to the procedure to be followed, or rules to be applied, when a provision of or made under this Act requires a notice, direction or document of any kind to be given or authorises the imposition of a requirement. Service of notices.

(2) The regulations may, in particular, make provision—

- (a) as to the manner in which a document must be given;
- (b) as to the address to which a document must be sent;
- (c) requiring, or allowing, a document to be sent electronically;
- (d) for treating a document as having been given, or as having been received, on a date or at a time determined in accordance with the regulations;
- (e) as to what must, or may, be done if the person to whom a document is required to be given is not an individual;
- (f) as to what must, or may, be done if the intended recipient of a document is outside the United Kingdom.

(3) Subsection (1) applies however the obligation to give a document is expressed (and so, in particular, includes a provision which requires a document to be served or sent).

(4) Section 7 of the Interpretation Act 1978 (service of notice by post) has effect in relation to provisions made by or under this Act subject to any provision made by regulations under this section. 1978 c. 30.

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*Jurisdiction*Jurisdiction in
civil proceedings.**415.**—(1) Proceedings arising out of any act or omission (or proposed act or omission) of—

- (a) the Authority,
- (b) the competent authority for the purposes of Part VI,
- (c) the scheme manager, or
- (d) the scheme operator,

in the discharge or purported discharge of any of its functions under this Act may be brought before the High Court or the Court of Session.

(2) The jurisdiction conferred by subsection (1) is in addition to any other jurisdiction exercisable by those courts.

*Removal of certain unnecessary provisions*Provisions relating
to industrial
assurance and
certain other
enactments.
1923 c. 8.
1948 c. 39.
1977 c. 46.
S.I. 1979/1574
(N.I. 13).**416.**—(1) The following enactments are to cease to have effect—

- (a) the Industrial Assurance Act 1923;
- (b) the Industrial Assurance and Friendly Societies Act 1948;
- (c) the Insurance Brokers (Registration) Act 1977.

(2) The Industrial Assurance (Northern Ireland) Order 1979 is revoked.

(3) The following bodies are to cease to exist—

- (a) the Insurance Brokers Registration Council;
- (b) the Policyholders Protection Board;
- (c) the Deposit Protection Board;
- (d) the Board of Banking Supervision.

(4) If the Treasury consider that, as a consequence of any provision of this section, it is appropriate to do so, they may by order make any provision of a kind that they could make under this Act (and in particular any provision of a kind mentioned in section 339) with respect to anything done by or under any provision of Part XXI.

(5) Subsection (4) is not to be read as affecting in any way any other power conferred on the Treasury by this Act.

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INTERPRETATION

Definitions.

417.—(1) In this Act—

- “appointed representative” has the meaning given in section 39(2);
- “auditors and actuaries rules” means rules made under section 340;
- “authorisation offence” has the meaning given in section 23(2);
- “authorised open-ended investment company” has the meaning given in section 237(3);
- “authorised person” has the meaning given in section 31(2);
- “the Authority” means the Financial Services Authority;
- “body corporate” includes a body corporate constituted under the law of a country or territory outside the United Kingdom;

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“chief executive”—

(a) in relation to a body corporate whose principal place of business is within the United Kingdom, means an employee of that body who, alone or jointly with one or more others, is responsible under the immediate authority of the directors, for the conduct of the whole of the business of that body; and

(b) in relation to a body corporate whose principal place of business is outside the United Kingdom, means the person who, alone or jointly with one or more others, is responsible for the conduct of its business within the United Kingdom;

“collective investment scheme” has the meaning given in section 235;

“the Commission” means the European Commission (except in provisions relating to the Competition Commission);

“the compensation scheme” has the meaning given in section 213(2);

“control of information rules” has the meaning given in section 147(1);

“director”, in relation to a body corporate, includes—

(a) a person occupying in relation to it the position of a director (by whatever name called); and

(b) a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act;

“documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“exempt person”, in relation to a regulated activity, means a person who is exempt from the general prohibition in relation to that activity as a result of an exemption order made under section 38(1) or as a result of section 39(1) or 285(2) or (3);

“financial promotion rules” means rules made under section 145;

“friendly society” means an incorporated or registered friendly society;

“general prohibition” has the meaning given in section 19(2);

“general rules” has the meaning given in section 138(2);

“incorporated friendly society” means a society incorporated under the Friendly Societies Act 1992;

1992 c. 40.

“industrial and provident society” means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969;

1965 c. 12.

1969 c. 24. (N.I.)

“market abuse” has the meaning given in section 118;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

1975 c. 26.

“money laundering rules” means rules made under section 146;

“notice of control” has the meaning given in section 178(5);

“the ombudsman scheme” has the meaning given in section 225(3);

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“open-ended investment company” has the meaning given in section 236;

“Part IV permission” has the meaning given in section 40(4);

“partnership” includes a partnership constituted under the law of a country or territory outside the United Kingdom;

“prescribed” (where not otherwise defined) means prescribed in regulations made by the Treasury;

“price stabilising rules” means rules made under section 144;

“private company” has the meaning given in section 1(3) of the Companies Act 1985 or in Article 12(3) of the Companies (Northern Ireland) Order 1986;

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

“prohibition order” has the meaning given in section 56(2);

“recognised clearing house” and “recognised investment exchange” have the meaning given in section 285;

“registered friendly society” means a society which is—

1992 c. 40.

(a) a friendly society within the meaning of section 7(1)(a) of the Friendly Societies Act 1974; and

(b) registered within the meaning of that Act;

“regulated activity” has the meaning given in section 22;

“regulating provisions” has the meaning given in section 159(1);

“regulatory objectives” means the objectives mentioned in section 2;

“regulatory provisions” has the meaning given in section 302;

“rule” means a rule made by the Authority under this Act;

“rule-making instrument” has the meaning given in section 153;

“the scheme manager” has the meaning given in section 212(1);

“the scheme operator” has the meaning given in section 225(2);

“scheme particulars rules” has the meaning given in section 248(1);

“Seventh Company Law Directive” means the European Council Seventh Company Law Directive of 13 June 1983 on consolidated accounts (No. 83/349/EEC);

“threshold conditions”, in relation to a regulated activity, has the meaning given in section 41;

“the Treaty” means the treaty establishing the European Community;

“trust scheme rules” has the meaning given in section 247(1);

“UK authorised person” has the meaning given in section 178(4);
and

“unit trust scheme” has the meaning given in section 237.

(2) In the application of this Act to Scotland, references to a matter being actionable at the suit of a person are to be read as references to the matter being actionable at the instance of that person.

(3) For the purposes of any provision of this Act authorising or requiring a person to do anything within a specified number of days no account is to be taken of any day which is a public holiday in any part of the United Kingdom.

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Carrying on regulated activities in the United Kingdom.

418.—(1) In the four cases described in this section, a person who—

- (a) is carrying on a regulated activity, but
- (b) would not otherwise be regarded as carrying it on in the United Kingdom,

is, for the purposes of this Act, to be regarded as carrying it on in the United Kingdom.

(2) The first case is where—

- (a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;
- (b) he is entitled to exercise rights under a single market directive as a UK firm; and
- (c) he is carrying on in another EEA State a regulated activity to which that directive applies.

(3) The second case is where—

- (a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;
- (b) he is the manager of a scheme which is entitled to enjoy the rights conferred by an instrument which is a relevant Community instrument for the purposes of section 264; and
- (c) persons in another EEA State are invited to become participants in the scheme.

(4) The third case is where—

- (a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;
- (b) the day-to-day management of the carrying on of the regulated activity is the responsibility of—
 - (i) his registered office (or head office); or
 - (ii) another establishment maintained by him in the United Kingdom.

(5) The fourth case is where—

- (a) his head office is not in the United Kingdom; but
- (b) the activity is carried on from an establishment maintained by him in the United Kingdom.

(6) For the purposes of subsections (2) to (5) it is irrelevant where the person with whom the activity is carried on is situated.

419.—(1) The Treasury may by order make provision—

- (a) as to the circumstances in which a person who would otherwise not be regarded as carrying on a regulated activity by way of business is to be regarded as doing so;
- (b) as to the circumstances in which a person who would otherwise be regarded as carrying on a regulated activity by way of business is to be regarded as not doing so.

Carrying on regulated activities by way of business.

(2) An order under subsection (1) may be made so as to apply—

- (a) generally in relation to all regulated activities;
- (b) in relation to a specified category of regulated activity; or

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(c) in relation to a particular regulated activity.

(3) An order under subsection (1) may be made so as to apply—

- (a) for the purposes of all provisions;
- (b) for a specified group of provisions; or
- (c) for a specified provision.

(4) “Provision” means a provision of, or made under, this Act.

(5) Nothing in this section is to be read as affecting the provisions of section 428(3).

Parent and
subsidiary
undertaking.
1985 c. 6.
S.I. 1986/1032
(N.I. 6).

420.—(1) In this Act, except in relation to an incorporated friendly society, “parent undertaking” and “subsidiary undertaking” have the same meaning as in Part VII of the Companies Act 1985 (or Part VIII of the Companies (Northern Ireland) Order 1986).

(2) But—

- (a) “parent undertaking” also includes an individual who would be a parent undertaking for the purposes of those provisions if he were taken to be an undertaking (and “subsidiary undertaking” is to be read accordingly);
- (b) “subsidiary undertaking” also includes, in relation to a body incorporated in or formed under the law of an EEA State other than the United Kingdom, an undertaking which is a subsidiary undertaking within the meaning of any rule of law in force in that State for purposes connected with implementation of the Seventh Company Law Directive (and “parent undertaking” is to be read accordingly).

1992 c. 40.

(3) In this Act “subsidiary undertaking”, in relation to an incorporated friendly society, means a body corporate of which the society has control within the meaning of section 13(9)(a) or (aa) of the Friendly Societies Act 1992 (and “parent undertaking” is to be read accordingly).

Group.

421.—(1) In this Act “group”, in relation to a person (“A”), means A and any person who is—

- (a) a parent undertaking of A;
- (b) a subsidiary undertaking of A;
- (c) a subsidiary undertaking of a parent undertaking of A;
- (d) a parent undertaking of a subsidiary undertaking of A;
- (e) an undertaking in which A or an undertaking mentioned in paragraph (a), (b), (c) or (d) has a participating interest;
- (f) if A or an undertaking mentioned in paragraph (a) or (d) is a building society, an associated undertaking of the society; or
- (g) if A or an undertaking mentioned in paragraph (a) or (d) is an incorporated friendly society, a body corporate of which the society has joint control (within the meaning of section 13(9)(c) or (cc) of the Friendly Societies Act 1992).

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(2) "Participating interest" has the same meaning as in Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986; but also includes an interest held by an individual which would be a participating interest for the purposes of those provisions if he were taken to be an undertaking.

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

(3) "Associated undertaking" has the meaning given in section 119(1) of the Building Societies Act 1986.

1986 c. 53.

422.—(1) In this Act "controller", in relation to an undertaking ("A"), means a person who falls within any of the cases in subsection (2).

Controller.

(2) The cases are where the person—

- (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 person" means—

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

(4) "Associate", in relation to a person ("H") holding shares in an undertaking ("C") or entitled to exercise or control the exercise of voting power in relation to another undertaking ("D"), means—

- (a) the spouse of H;
- (b) a child or stepchild of H (if under 18);
- (c) the trustee of any settlement under which H has a life interest in possession (or in Scotland a life interest);
- (d) an undertaking of which H is a director;
- (e) a person who is an employee or partner of H;
- (f) if H is an undertaking—
 - (i) a director of H;
 - (ii) a subsidiary undertaking of H;
 - (iii) a director or employee of such a subsidiary undertaking; and

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(g) if H has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in C or D or under which they undertake to act together in exercising their voting power in relation to C or D, that other person.

(5) "Settlement", in subsection (4)(c), includes any disposition or arrangement under which property is held on trust (or subject to a comparable obligation).

(6) "Shares"—

(a) in relation to an undertaking with a share capital, means allotted shares;

(b) in relation to an undertaking with capital but no share capital, means rights to share in the capital of the undertaking;

(c) in relation to an undertaking without capital, means interests—

(i) conferring any right to share in the profits, or liability to contribute to the losses, of the undertaking; or

(ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

(7) "Voting power", in relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, means the right under the constitution of the undertaking to direct the overall policy of the undertaking or alter the terms of its constitution.

Manager.

423.—(1) In this Act, except in relation to a unit trust scheme or a registered friendly society, "manager" means an employee who—

(a) under the immediate authority of his employer is responsible, either alone or jointly with one or more other persons, for the conduct of his employer's business; or

(b) under the immediate authority of his employer or of a person who is a manager by virtue of paragraph (a) exercises managerial functions or is responsible for maintaining accounts or other records of his employer.

(2) If the employer is not an individual, references in subsection (1) to the authority of the employer are references to the authority—

(a) in the case of a body corporate, of the directors;

(b) in the case of a partnership, of the partners; and

(c) in the case of an unincorporated association, of its officers or the members of its governing body.

(3) "Manager", in relation to a body corporate, means a person (other than an employee of the body) who is appointed by the body to manage any part of its business and includes an employee of the body corporate (other than the chief executive) who, under the immediate authority of a director or chief executive of the body corporate, exercises managerial functions or is responsible for maintaining accounts or other records of the body corporate.

Insurance.

424.—(1) In this Act, references to—

(a) contracts of insurance,

(b) reinsurance,

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(c) contracts of long-term insurance,
 (d) contracts of general insurance,
 are to be read with section 22 and Schedule 2.

(2) In this Act “policy” and “policyholder”, in relation to a contract of insurance, have such meaning as the Treasury may by order specify.

(3) The law applicable to a contract of insurance, the effecting of which constitutes the carrying on of a regulated activity, is to be determined, if it is of a prescribed description, in accordance with regulations made by the Treasury.

425.—(1) In this Act—

- (a) “EEA authorisation”, “EEA firm”, “EEA right”, “EEA State”, “first life insurance directive”, “first non-life insurance directive”, “insurance directives”, “investment services directive”, “single market directives” and “second banking co-ordination directive” have the meaning given in Schedule 3; and
 (b) “home state regulator”, in relation to an EEA firm, has the meaning given in Schedule 3.

Expressions relating to authorisation elsewhere in the single market.

(2) In this Act—

- (a) “home state authorisation” has the meaning given in Schedule 4;
 (a) “Treaty firm” has the meaning given in Schedule 4; and
 (c) “home state regulator”, in relation to a Treaty firm, has the meaning given in Schedule 4.

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SUPPLEMENTAL

426.—(1) A Minister of the Crown may by order make such incidental, consequential, transitional or supplemental provision as he considers necessary or expedient for the general purposes, or any particular purpose, of this Act or in consequence of any provision made by or under this Act or for giving full effect to this Act or any such provision.

Consequential and supplementary provision.

(2) An order under subsection (1) may, in particular, make provision—

- (a) for enabling any person by whom any powers will become exercisable, on a date set by or under this Act, by virtue of any provision made by or under this Act to take before that date any steps which are necessary as a preliminary to the exercise of those powers;
 (b) for applying (with or without modifications) or amending, repealing or revoking any provision of or made under an Act passed before this Act or in the same Session;
 (c) dissolving any body corporate established by any Act passed, or instrument made, before the passing of this Act;
 (d) for making savings, or additional savings, from the effect of any repeal or revocation made by or under this Act.

(3) Amendments made under this section are additional, and without prejudice, to those made by or under any other provision of this Act.

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(4) No other provision of this Act restricts the powers conferred by this section.

Transitional provisions.

427.—(1) Subsections (2) and (3) apply to an order under section 426 which makes transitional provisions or savings.

(2) The order may, in particular—

- (a) if it makes provision about the authorisation and permission of persons who before commencement were entitled to carry on any activities, also include provision for such persons not to be treated as having any authorisation or permission (whether on an application to the Authority or otherwise);
- (b) make provision enabling the Authority to require persons of such descriptions as it may direct to re-apply for permissions having effect by virtue of the order;
- (c) make provision for the continuation as rules of such provisions (including primary and subordinate legislation) as may be designated in accordance with the order by the Authority, including provision for the modification by the Authority of provisions designated;
- (d) make provision about the effect of requirements imposed, liabilities incurred and any other things done before commencement, including provision for and about investigations, penalties and the taking or continuing of any other action in respect of contraventions;
- (e) make provision for the continuation of disciplinary and other proceedings begun before commencement, including provision about the decisions available to bodies before which such proceedings take place and the effect of their decisions;
- (f) make provision as regards the Authority's obligation to maintain a record under section 347 as respects persons in relation to whom provision is made by the order.

(3) The order may—

- (a) confer functions on the Treasury, the Secretary of State, the Authority, the scheme manager, the scheme operator, members of the panel established under paragraph 4 of Schedule 17, the Competition Commission or the Director General of Fair Trading;
- (b) confer jurisdiction on the Tribunal;
- (c) provide for fees to be charged in connection with the carrying out of functions conferred under the order;
- (d) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act).

(4) In subsection (2) "commencement" means the commencement of such provisions of this Act as may be specified by the order.

Regulations and orders.

428.—(1) Any power to make an order which is conferred on a Minister of the Crown by this Act and any power to make regulations which is conferred by this Act is exercisable by statutory instrument.

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(2) The Lord Chancellor's power to make rules under section 132 is exercisable by statutory instrument.

(3) Any statutory instrument made under this Act may—

- (a) contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate; and
- (b) make different provision for different cases.

429.—(1) No order is to be made under—

- (a) section 144(4), 192(b) or (e), 236(5), 404 or 419, or
- (b) paragraph 1 of Schedule 8,

Parliamentary
control of
statutory
instruments.

unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(2) No regulations are to be made under section 262 unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.

(3) An order to which, if it is made, subsection (4) or (5) will apply is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(4) This subsection applies to an order under section 21 if—

- (a) it is the first order to be made, or to contain provisions made, under section 21(4);
- (b) it varies an order made under section 21(4) so as to make section 21(1) apply in circumstances in which it did not previously apply;
- (c) it is the first order to be made, or to contain provision made, under section 21(5);
- (d) it varies a previous order made under section 21(5) so as to make section 21(1) apply in circumstances in which it did not, as a result of that previous order, apply;
- (e) it is the first order to be made, or to contain provisions made, under section 21(9) or (10);
- (f) it adds one or more activities to those that are controlled activities for the purposes of section 21; or
- (g) it adds one or more investments to those which are controlled investments for the purposes of section 21.

(5) This subsection applies to an order under section 38 if—

- (a) it is the first order to be made, or to contain provisions made, under that section; or
- (b) it contains provisions restricting or removing an exemption provided by an earlier order made under that section.

(6) An order containing a provision to which, if the order is made, subsection (7) will apply is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(7) This subsection applies to a provision contained in an order if—

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- (a) it is the first to be made in the exercise of the power conferred by subsection (1) of section 326 or it removes a body from those for the time being designated under that subsection; or
- (b) it is the first to be made in the exercise of the power conferred by subsection (6) of section 327 or it adds a description of regulated activity or investment to those for the time being specified for the purposes of that subsection.

(8) Any other statutory instrument made under this Act, apart from one made under section 431(2) or to which paragraph 26 of Schedule 2 applies, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Extent.

430.—(1) This Act, except Chapter IV of Part XVII, extends to Northern Ireland.

(2) Except where Her Majesty by Order in Council provides otherwise, the extent of any amendment or repeal made by or under this Act is the same as the extent of the provision amended or repealed.

(3) Her Majesty may by Order in Council provide for any provision of or made under this Act relating to a matter which is the subject of other legislation which extends to any of the Channel Islands or the Isle of Man to extend there with such modifications (if any) as may be specified in the Order.

Commencement.

431.—(1) The following provisions come into force on the passing of this Act—

- (a) this section;
- (b) sections 428, 430 and 433;
- (c) paragraphs 1 and 2 of Schedule 21.

(2) The other provisions of this Act come into force on such day as the Treasury may by order appoint; and different days may be appointed for different purposes.

Minor and consequential amendments, transitional provisions and repeals.

432.—(1) Schedule 20 makes minor and consequential amendments.

(2) Schedule 21 makes transitional provisions.

(3) The enactments set out in Schedule 22 are repealed.

Short title.

433. This Act may be cited as the Financial Services and Markets Act 2000.

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SCHEDULES

SCHEDULE 1

Section 1.

THE FINANCIAL SERVICES AUTHORITY

PART I

GENERAL

Interpretation

1.—(1) In this Schedule—

“the 1985 Act” means the Companies Act 1985;

1985 c. 6.

“non-executive committee” means the committee maintained under paragraph 3;

“functions”, in relation to the Authority, means functions conferred on the Authority by or under any provision of this Act.

(2) For the purposes of this Schedule, the following are the Authority's legislative functions—

- (a) making rules;
- (b) issuing codes under section 64 or 119;
- (c) issuing statements under section 64, 69, 124 or 210;
- (d) giving directions under section 316, 318 or 328;
- (e) issuing general guidance (as defined by section 158(5)).

Constitution

2.—(1) The constitution of the Authority must continue to provide for the Authority to have—

- (a) a chairman; and
- (b) a governing body.

(2) The governing body must include the chairman.

(3) The chairman and other members of the governing body must be appointed, and be liable to removal from office, by the Treasury.

(4) The validity of any act of the Authority is not affected—

- (a) by a vacancy in the office of chairman; or
- (b) by a defect in the appointment of a person as a member of the governing body or as chairman.

Non-executive members of the governing body

3.—(1) The Authority must secure—

- (a) that the majority of the members of its governing body are non-executive members; and
- (b) that a committee of its governing body, consisting solely of the non-executive members, is set up and maintained for the purposes of discharging the functions conferred on the committee by this Schedule.

(2) The members of the non-executive committee are to be appointed by the Authority.

(3) The non-executive committee is to have a chairman appointed by the Treasury from among its members.

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Functions of the non-executive committee

4.—(1) In this paragraph “the committee” means the non-executive committee.

(2) The non-executive functions are functions of the Authority but must be discharged by the committee.

(3) The non-executive functions are—

- (a) keeping under review the question whether the Authority is, in discharging its functions in accordance with decisions of its governing body, using its resources in the most efficient and economic way;
- (b) keeping under review the question whether the Authority’s internal financial controls secure the proper conduct of its financial affairs; and
- (c) determining the remuneration of—
 - (i) the chairman of the Authority’s governing body; and
 - (ii) the executive members of that body.

(4) The function mentioned in sub-paragraph (3)(b) and those mentioned in sub-paragraph (3)(c) may be discharged on behalf of the committee by a sub-committee.

(5) Any sub-committee of the committee—

- (a) must have as its chairman the chairman of the committee; but
- (b) may include persons other than members of the committee.

(6) The committee must prepare a report on the discharge of its functions for inclusion in the Authority’s annual report to the Treasury under paragraph 10.

(7) The committee’s report must relate to the same period as that covered by the Authority’s report.

Arrangements for discharging functions

5.—(1) The Authority may make arrangements for any of its functions to be discharged by a committee, sub-committee, officer or member of staff of the Authority.

(2) But in exercising its legislative functions, the Authority must act through its governing body.

(3) Sub-paragraph (1) does not apply to the non-executive functions.

Monitoring and enforcement

6.—(1) The Authority must maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under this Act are complying with them.

(2) Those arrangements may provide for functions to be performed on behalf of the Authority by any body or person who, in its opinion, is competent to perform them.

(3) The Authority must also maintain arrangements for enforcing the provisions of, or made under, this Act.

(4) Sub-paragraph (2) does not affect the Authority’s duty under sub-paragraph (1).

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Arrangements for the investigation of complaints

- 7.—(1) The Authority must—
- (a) make arrangements (“the complaints scheme”) for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of its functions (other than its legislative functions); and
 - (b) appoint an independent person (“the investigator”) to be responsible for the conduct of investigations in accordance with the complaints scheme.
- (2) The complaints scheme must be designed so that, as far as reasonably practicable, complaints are investigated quickly.
- (3) The Treasury’s approval is required for the appointment or dismissal of the investigator.
- (4) The terms and conditions on which the investigator is appointed must be such as, in the opinion of the Authority, are reasonably designed to secure—
- (a) that he will be free at all times to act independently of the Authority; and
 - (b) that complaints will be investigated under the complaints scheme without favouring the Authority.
- (5) Before making the complaints scheme, the Authority must publish a draft of the proposed scheme in the way appearing to the Authority best calculated to bring it to the attention of the public.
- (6) The draft must be accompanied by notice that representations about it may be made to the Authority within a specified time.
- (7) Before making the proposed complaints scheme, the Authority must have regard to any representations made to it in accordance with sub-paragraph (6).
- (8) If the Authority makes the proposed complaints scheme, it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with sub-paragraph (6); and
 - (b) its response to them.
- (9) If the complaints scheme differs from the draft published under sub-paragraph (5) in a way which is, in the opinion of the Authority, significant the Authority must (in addition to complying with sub-paragraph (8)) publish details of the difference.
- (10) The Authority must publish up-to-date details of the complaints scheme including, in particular, details of—
- (a) the provision made under paragraph 8(5); and
 - (b) the powers which the investigator has to investigate a complaint.
- (11) Those details must be published in the way appearing to the Authority to be best calculated to bring them to the attention of the public.
- (12) The Authority must, without delay, give the Treasury a copy of any details published by it under this paragraph.
- (13) The Authority may charge a reasonable fee for providing a person with a copy of—
- (a) a draft published under sub-paragraph (5);
 - (b) details published under sub-paragraph (10).
- (14) Sub-paragraphs (5) to (9) and (13)(a) also apply to a proposal to alter or replace the complaints scheme.

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Investigation of complaints

8.—(1) The Authority is not obliged to investigate a complaint in accordance with the complaints scheme which it reasonably considers would be more appropriately dealt with in another way (for example by referring the matter to the Tribunal or by the institution of other legal proceedings).

(2) The complaints scheme must provide—

(a) for reference to the investigator of any complaint which the Authority is investigating; and

(b) for him—

(i) to have the means to conduct a full investigation of the complaint;

(ii) to report on the result of his investigation to the Authority and the complainant; and

(iii) to be able to publish his report (or any part of it) if he considers that it (or the part) ought to be brought to the attention of the public.

(3) If the Authority has decided not to investigate a complaint, it must notify the investigator.

(4) If the investigator considers that a complaint of which he has been notified under sub-paragraph (3) ought to be investigated, he may proceed as if the complaint had been referred to him under the complaints scheme.

(5) The complaints scheme must confer on the investigator the power to recommend, if he thinks it appropriate, that the Authority—

(a) makes a compensatory payment to the complainant,

(b) remedies the matter complained of,

or takes both of those steps.

(6) The complaints scheme must require the Authority, in a case where the investigator—

(a) has reported that a complaint is well-founded, or

(b) has criticised the Authority in his report,

to inform the investigator and the complainant of the steps which it proposes to take in response to the report.

(7) The investigator may require the Authority to publish the whole or a specified part of the response.

(8) The investigator may appoint a person to conduct the investigation on his behalf but subject to his direction.

(9) Neither an officer nor an employee of the Authority may be appointed under sub-paragraph (8).

(10) Sub-paragraph (2) is not to be taken as preventing the Authority from making arrangements for the initial investigation of a complaint to be conducted by the Authority.

Records

9. The Authority must maintain satisfactory arrangements for—

(a) recording decisions made in the exercise of its functions; and

(b) the safe-keeping of those records which it considers ought to be preserved.

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Annual report

10.—(1) At least once a year the Authority must make a report to the Treasury on—

- (a) the discharge of its functions;
- (b) the extent to which, in its opinion, the regulatory objectives have been met;
- (c) its consideration of the matters mentioned in section 2(3); and
- (d) such other matters as the Treasury may from time to time direct.

(2) The report must be accompanied by—

- (a) the report prepared by the non-executive committee under paragraph 4(6); and
- (b) such other reports or information, prepared by such persons, as the Treasury may from time to time direct.

(3) The Treasury must lay before Parliament a copy of each report received by them under this paragraph.

(4) The Treasury may—

- (a) require the Authority to comply with any provisions of the 1985 Act about accounts and their audit which would not otherwise apply to it; or
- (b) direct that any such provision of that Act is to apply to the Authority with such modifications as are specified in the direction.

(5) Compliance with any requirement imposed under sub-paragraph (4)(a) or (b) is enforceable by injunction or, in Scotland, an order under section 45(b) of the Court of Session Act 1988.

1988 c. 36.

(6) Proceedings under sub-paragraph (5) may be brought only by the Treasury.

Annual public meeting

11.—(1) Not later than three months after making a report under paragraph 10, the Authority must hold a public meeting (“the annual meeting”) for the purposes of enabling that report to be considered.

(2) The Authority must organise the annual meeting so as to allow—

- (a) a general discussion of the contents of the report which is being considered; and
- (b) a reasonable opportunity for those attending the meeting to put questions to the Authority about the way in which it discharged, or failed to discharge, its functions during the period to which the report relates.

(3) But otherwise the annual meeting is to be organised and conducted in such a way as the Authority considers appropriate.

(4) The Authority must give reasonable notice of its annual meeting.

(5) That notice must—

- (a) give details of the time and place at which the meeting is to be held;
- (b) set out the proposed agenda for the meeting;
- (c) indicate the proposed duration of the meeting;
- (d) give details of the Authority’s arrangements for enabling persons to attend; and
- (e) be published by the Authority in the way appearing to it to be most suitable for bringing the notice to the attention of the public.

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(6) If the Authority proposes to alter any of the arrangements which have been included in the notice given under sub-paragraph (4) it must—

- (a) give reasonable notice of the alteration; and
- (b) publish that notice in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

Report of annual meeting

12. Not later than one month after its annual meeting, the Authority must publish a report of the proceedings of the meeting.

PART II

STATUS

13. In relation to any of its functions—

- (a) the Authority is not to be regarded as acting on behalf of the Crown; and
- (b) its members, officers and staff are not to be regarded as Crown servants.

Exemption from requirement of "limited" in Authority's name

14. The Authority is to continue to be exempt from the requirements of the 1985 Act relating to the use of "limited" as part of its name.

15. If the Secretary of State is satisfied that any action taken by the Authority makes it inappropriate for the exemption given by paragraph 14 to continue he may, after consulting the Treasury, give a direction removing it.

PART III

PENALTIES AND FEES

Penalties

16.—(1) In determining its policy with respect to the amounts of penalties to be imposed by it under this Act, the Authority must take no account of the expenses which it incurs, or expects to incur, in discharging its functions.

(2) The Authority must prepare and operate a scheme for ensuring that the amounts paid to the Authority by way of penalties imposed under this Act are applied for the benefit of authorised persons.

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

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

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

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

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

(8) Before making the scheme, the Authority must have regard to any representations made to it in accordance with sub-paragraph (7).

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

- (a) the representations made to it in accordance with sub-paragraph (7); and

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(b) its response to them.

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

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

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

(a) a draft published under sub-paragraph (6);

(b) scheme details.

(13) Sub-paragraphs (6) to (10) and (12)(a) also apply to a proposal to alter or replace the complaints scheme.

Fees

17.—(1) The Authority may make rules providing for the payment to it of such fees, in connection with the discharge of any of its functions under or as a result of this Act, as it considers will (taking account of its expected income from fees and charges provided for by any other provision of this Act) enable it—

(a) to meet expenses incurred in carrying out its functions or for any incidental purpose;

(b) to repay the principal of, and pay any interest on, any money which it has borrowed and which has been used for the purpose of meeting expenses incurred in relation to its assumption of functions under this Act or the Bank of England Act 1998; and

1998 c. 11.

(c) to maintain adequate reserves.

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

(3) Sub-paragraph (1)(b) applies whether expenses were incurred before or after the coming into force of this Act or the Bank of England Act 1998.

(4) Any fee which is owed to the Authority under any provision made by or under this Act may be recovered as a debt due to the Authority.

Services for which fees may not be charged

18. The power conferred by paragraph 17 may not be used to require—

(a) a fee to be paid in respect of the discharge of any of the Authority's functions under paragraphs 13, 14, 19 or 20 of Schedule 3; or

(b) a fee to be paid by any person whose application for approval under section 59 has been granted.

PART IV

MISCELLANEOUS

Exemption from liability in damages

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

(2) Neither the investigator appointed under paragraph 7 nor a person appointed to conduct an investigation on his behalf under paragraph 8(8) is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of his functions in relation to the investigation of a complaint.

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- (3) Neither sub-paragraph (1) nor sub-paragraph (2) applies—
- (a) if the act or omission is shown to have been in bad faith; or
 - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

1998 c. 42.

Disqualification for membership of House of Commons

1975 c. 24.

20. In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices), insert at the appropriate place—
“Member of the governing body of the Financial Services Authority”.

Disqualification for membership of Northern Ireland Assembly

1975 c. 25.

21. In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (disqualifying offices), insert at the appropriate place—
“Member of the governing body of the Financial Services Authority”.

Section 22(2).

SCHEDULE 2

REGULATED ACTIVITIES

PART I

REGULATED ACTIVITIES

General

1. The matters with respect to which provision may be made under section 22(1) in respect of activities include, in particular, those described in general terms in this Part of this Schedule.

Dealing in investments

- 2.—(1) Buying, selling, subscribing for or underwriting investments or offering or agreeing to do so, either as a principal or as an agent.
- (2) In the case of an investment which is a contract of insurance, that includes carrying out the contract.

Arranging deals in investments

3. Making, or offering or agreeing to make—
- (a) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment;
 - (b) arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

Deposit taking

4. Accepting deposits.

Safekeeping and administration of assets

- 5.—(1) Safeguarding and administering assets belonging to another which consist of or include investments or offering or agreeing to do so.
- (2) Arranging for the safeguarding and administration of assets belonging to another, or offering or agreeing to do so.

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Managing investments

6. Managing, or offering or agreeing to manage, assets belonging to another person where—

- (a) the assets consist of or include investments; or
- (b) the arrangements for their management are such that the assets may consist of or include investments at the discretion of the person managing or offering or agreeing to manage them.

Investment advice

7. Giving or offering or agreeing to give advice to persons on—

- (a) buying, selling, subscribing for or underwriting an investment; or
- (b) exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.

Establishing collective investment schemes

8. Establishing, operating or winding up a collective investment scheme, including acting as—

- (a) trustee of a unit trust scheme;
- (b) depositary of a collective investment scheme other than a unit trust scheme; or
- (c) sole director of a body incorporated by virtue of regulations under section 262.

Using computer-based systems for giving investment instructions

9.—(1) Sending on behalf of another person instructions relating to an investment by means of a computer-based system which enables investments to be transferred without a written instrument.

(2) Offering or agreeing to send such instructions by such means on behalf of another person.

(3) Causing such instructions to be sent by such means on behalf of another person.

(4) Offering or agreeing to cause such instructions to be sent by such means on behalf of another person.

PART II**INVESTMENTS***General*

10. The matters with respect to which provision may be made under section 22(1) in respect of investments include, in particular, those described in general terms in this Part of this Schedule.

Securities

11.—(1) Shares or stock in the share capital of a company.

(2) “Company” includes—

- (a) any body corporate (wherever incorporated), and
- (b) any unincorporated body constituted under the law of a country or territory outside the United Kingdom,

other than an open-ended investment company.

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Instruments creating or acknowledging indebtedness

12. Any of the following—

- (a) debentures;
- (b) debenture stock;
- (c) loan stock;
- (d) bonds;
- (e) certificates of deposit;
- (f) any other instruments creating or acknowledging a present or future indebtedness.

Government and public securities

13.—(1) Loan stock, bonds and other instruments—

- (a) creating or acknowledging indebtedness; and
- (b) issued by or on behalf of a government, local authority or public authority.

(2) “Government, local authority or public authority” means—

- (a) the government of the United Kingdom, of Northern Ireland, or of any country or territory outside the United Kingdom;
- (b) a local authority in the United Kingdom or elsewhere;
- (c) any international organisation the members of which include the United Kingdom or another member State.

Instruments giving entitlement to investments

14.—(1) Warrants or other instruments entitling the holder to subscribe for any investment.

(2) It is immaterial whether the investment is in existence or identifiable.

Certificates representing securities

15. Certificates or other instruments which confer contractual or property rights—

- (a) in respect of any investment held by someone other than the person on whom the rights are conferred by the certificate or other instrument; and
- (b) the transfer of which may be effected without requiring the consent of that person.

Units in collective investment schemes

16.—(1) Shares in or securities of an open-ended investment company.

(2) Any right to participate in a collective investment scheme.

Options

17. Options to acquire or dispose of property.

Futures

18. Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date.

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Contracts for differences

19. Rights under—

- (a) a contract for differences; or
- (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in—
 - (i) the value or price of property of any description; or
 - (ii) an index or other factor designated for that purpose in the contract.

Contracts of insurance

20. Rights under a contract of insurance, including rights under contracts falling within head C of Schedule 2 to the Friendly Societies Act 1992.

1992 c. 40.

Participation in Lloyd's syndicates

- 21.—(1) The underwriting capacity of a Lloyd's syndicate.
- (2) A person's membership (or prospective membership) of a Lloyd's syndicate.

Deposits

22. Rights under any contract under which a sum of money (whether or not denominated in a currency) is paid on terms under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it.

Loans secured on land

- 23.—(1) Rights under any contract under which—
- (a) one person provides another with credit; and
 - (b) the obligation of the borrower to repay is secured on land.
- (2) "Credit" includes any cash loan or other financial accommodation.
- (3) "Cash" includes money in any form.

Rights in investments

24. Any right or interest in anything which is an investment as a result of any other provision made under section 22(1).

PART III

SUPPLEMENTAL PROVISIONS

The order-making power

- 25.—(1) An order under section 22(1) may—
- (a) provide for exemptions;
 - (b) confer powers on the Treasury or the Authority;
 - (c) authorise the making of regulations or other instruments by the Treasury for purposes of, or connected with, any relevant provision;
 - (d) authorise the making of rules or other instruments by the Authority for purposes of, or connected with, any relevant provision;
 - (e) make provision in respect of any information or document which, in the opinion of the Treasury or the Authority, is relevant for purposes of, or connected with, any relevant provision;

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(f) make such consequential, transitional or supplemental provision as the Treasury consider appropriate for purposes of, or connected with, any relevant provision.

(2) Provision made as a result of sub-paragraph (1)(f) may amend any primary or subordinate legislation, including any provision of, or made under, this Act.

(3) "Relevant provision" means any provision—

- (a) of section 22 or this Schedule; or
- (b) made under that section or this Schedule.

Parliamentary control

26.—(1) This paragraph applies to the first order made under section 22(1).

(2) This paragraph also applies to any subsequent order made under section 22(1) which contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be that an activity which is not a regulated activity would become a regulated activity.

(3) An order to which this paragraph applies—

- (a) must be laid before Parliament after being made; and
- (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).

(4) "Relevant period" means a period of twenty-eight days beginning with the day on which the order is made.

(5) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

Interpretation

27.—(1) In this Schedule—

- "buying" includes acquiring for valuable consideration;
- "offering" includes inviting to treat;
- "property" includes currency of the United Kingdom or any other country or territory; and
- "selling" includes disposing for valuable consideration.

(2) In sub-paragraph (1) "disposing" includes—

- (a) in the case of an investment consisting of rights under a contract—
 - (i) surrendering, assigning or converting those rights; or
 - (ii) assuming the corresponding liabilities under the contract;
- (b) in the case of an investment consisting of rights under other arrangements, assuming the corresponding liabilities under the contract or arrangements;
- (c) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists.

(3) In this Schedule references to an instrument include references to any record (whether or not in the form of a document).

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SCHEDULE 3

EEA PASSPORT RIGHTS

PART I

DEFINED TERMS

The single market directives

1. "The single market directives" means—
- (a) the first banking co-ordination directive;
 - (b) the second banking co-ordination directive;
 - (c) the insurance directives; and
 - (d) the investment services directive.

The banking co-ordination directives

2.—(1) "The first banking co-ordination directive" means the Council Directive of 12 December 1977 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (No. 77/780/EEC).

(2) "The second banking co-ordination directive" means the Council Directive of 15 December 1989 on the co-ordination of laws, etc, relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (No. 89/646/EEC).

The insurance directives

3.—(1) "The insurance directives" means the first, second and third non-life insurance directives and the first, second and third life insurance directives.

(2) "First non-life insurance directive" means the Council Directive of 24 July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance (No. 73/239/EEC).

(3) "Second non-life insurance directive" means the Council Directive of 22 June 1988 on the co-ordination of laws, etc, and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC (No. 88/357/EEC).

(4) "Third non-life insurance directive" means the Council Directive of 18 June 1992 on the co-ordination of laws, etc, and amending Directives 73/239/EEC and 88/357/EEC (No. 92/49/EEC).

(5) "First life insurance directive" means the Council Directive of 5 March 1979 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (No. 79/267/EEC).

(6) "Second life insurance directive" means the Council Directive of 8 November 1990 on the co-ordination of laws, etc, and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (No. 90/619/EEC).

(7) "Third life insurance directive" means the Council Directive of 10 November 1992 on the co-ordination of laws, etc, and amending Directives 79/267/EEC and 90/619/EEC (No. 92/96/EEC).

Sections 31(1)(b)
and 37.

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The investment services directive

4. "The investment services directive" means the Council Directive of 10 May 1993 on investment services in the securities field (No. 93/22/EEC).

EEA firm

5. "EEA firm" means any of the following if it does not have its head office in the United Kingdom—

(a) an investment firm (as defined in Article 1.2 of the investment services directive) which is authorised (within the meaning of Article 3) by its home state regulator;

(b) a credit institution (as defined in Article 1 of the first banking co-ordination directive) which is authorised (within the meaning of Article 1) by its home state regulator;

(c) a financial institution (as defined in Article 1 of the second banking co-ordination directive) which is a subsidiary of the kind mentioned in Article 18.2 and which fulfils the conditions in Article 18; or

(d) an undertaking pursuing the activity of direct insurance (within the meaning of Article 1 of the first life insurance directive or of the first non-life insurance directive) which has received authorisation under Article 6 from its home state regulator.

EEA authorisation

6. "EEA authorisation" means authorisation granted to an EEA firm by its home state regulator for the purpose of the relevant single market directive.

EEA right

7. "EEA right" means the entitlement of a person to establish a branch, or provide services, in an EEA State other than that in which he has his head office—

(a) in accordance with the Treaty as applied in the EEA; and

(b) subject to the conditions of the relevant single market directive.

EEA State

8. "EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992 as it has effect for the time being.

Home state regulator

9. "Home state regulator" means the competent authority (within the meaning of the relevant single market directive) of an EEA State (other than the United Kingdom) in relation to the EEA firm concerned.

UK firm

10. "UK firm" means a person whose head office is in the UK and who has an EEA right to carry on activity in an EEA State other than the United Kingdom.

Host state regulator

11. "Host state regulator" means the competent authority (within the meaning of the relevant single market directive) of an EEA State (other than the United Kingdom) in relation to a UK firm's exercise of EEA rights there.

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PART II

EXERCISE OF PASSPORT RIGHTS BY EEA FIRMS

Firms qualifying for authorisation

12.—(1) Once an EEA firm which is seeking to establish a branch in the United Kingdom in exercise of an EEA right satisfies the establishment conditions, it qualifies for authorisation.

(2) Once an EEA firm which is seeking to provide services in the United Kingdom in exercise of an EEA right satisfies the service conditions, it qualifies for authorisation.

Establishment

13.—(1) The establishment conditions are that—

- (a) the Authority has received notice (“a consent notice”) from the firm’s home state regulator that it has given the firm consent to establish a branch in the United Kingdom;
- (b) the consent notice—
 - (i) is given in accordance with the relevant single market directive;
 - (ii) identifies the activities to which consent relates; and
 - (iii) includes such other information as may be prescribed; and
- (c) the firm has been informed of the applicable provisions or two months have elapsed beginning with the date when the Authority received the consent notice.

(2) If the Authority has received a consent notice, it must—

- (a) prepare for the firm’s supervision;
- (b) notify the firm of the applicable provisions (if any); and
- (c) if the firm falls within paragraph 5(d), notify its home state regulator of the applicable provisions (if any).

(3) A notice under sub-paragraph (2)(b) or (c) must be given before the end of the period of two months beginning with the day on which the Authority received the consent notice.

(4) For the purposes of this paragraph—

“applicable provisions” means the host state rules with which the firm is required to comply when carrying on a permitted activity through a branch in the United Kingdom;

“host state rules” means rules—

- (a) made in accordance with the relevant single market directive; and
- (b) which are the responsibility of the United Kingdom (both as to implementation and as to supervision of compliance) in accordance with that directive; and

“permitted activity” means an activity identified in the consent notice.

Services

14.—(1) The service conditions are that—

- (a) the firm has given its home state regulator notice of its intention to provide services in the United Kingdom (“a notice of intention”);
- (b) if the firm falls within paragraph 5(a) or (d), the Authority has received notice (“a regulator’s notice”) from the firm’s home state regulator containing such information as may be prescribed; and

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(c) if the firm falls within paragraph 5(d), its home state regulator has informed it that the regulator's notice has been sent to the Authority.

(2) If the Authority has received a regulator's notice or, where none is required by sub-paragraph (1), has been informed of the firm's intention to provide services in the United Kingdom, it must—

- (a) prepare for the firm's supervision; and
- (b) notify the firm of the applicable provisions (if any).

(3) A notice under sub-paragraph (2)(b) must be given before the end of the period of two months beginning on the day on which the Authority received the regulator's notice, or was informed of the firm's intention.

(4) For the purposes of this paragraph—

“applicable provisions” means the host state rules with which the firm is required to comply when carrying on a permitted activity by providing services in the United Kingdom;

“host state rules” means rules—

- (a) made in accordance with the relevant single market directive; and
- (b) which are the responsibility of the United Kingdom (both as to implementation and as to supervision of compliance) in accordance with that directive; and

“permitted activity” means an activity identified in—

- (a) the regulator's notice; or
- (b) where none is required by sub-paragraph (1), the notice of intention.

Grant of permission

15.—(1) On qualifying for authorisation as a result of paragraph 12, a firm has, in respect of each permitted activity which is a regulated activity, permission to carry it on through its United Kingdom branch (if it satisfies the establishment conditions) or by providing services in the United Kingdom (if it satisfies the service conditions).

(2) The permission is to be treated as being on terms equivalent to those appearing from the consent notice, regulator's notice or notice of intention.

1974 c. 39.

(3) Sections 21, 39(1) and 147(1) of the Consumer Credit Act 1974 (business requiring a licence under that Act) do not apply in relation to the carrying on of a permitted activity which is Consumer Credit Act business by a firm which qualifies for authorisation as a result of paragraph 12, unless the Director General of Fair Trading has exercised the power conferred on him by section 203 in relation to the firm.

(4) “Consumer Credit Act business” has the same meaning as in section 203.

Effect of carrying on regulated activity when not qualified for authorisation

16.—(1) This paragraph applies to an EEA firm which is not qualified for authorisation under paragraph 12.

(2) Section 26 does not apply to an agreement entered into by the firm.

(3) Section 27 does not apply to an agreement in relation to which the firm is a third party for the purposes of that section.

(4) Section 29 does not apply to an agreement in relation to which the firm is the deposit-taker.

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Continuing regulation of EEA firms

17. Regulations may—

- (a) modify any provision of this Act which is an applicable provision (within the meaning of paragraph 13 or 14) in its application to an EEA firm qualifying for authorisation;
- (b) make provision as to any change (or proposed change) of a prescribed kind relating to an EEA firm or to an activity that it carries on in the United Kingdom and as to the procedure to be followed in relation to such cases;
- (c) provide that the Authority may treat an EEA firm's notification that it is to cease to carry on regulated activity in the United Kingdom as a request for cancellation of its qualification for authorisation under this Schedule.

Giving up right to authorisation

18. Regulations may provide that in prescribed circumstances an EEA firm falling within paragraph 5(c) may, on following the prescribed procedure—

- (a) have its qualification for authorisation under this Schedule cancelled; and
- (b) seek to become an authorised person by applying for a Part IV permission.

PART III

EXERCISE OF PASSPORT RIGHTS BY UK FIRMS

Establishment

19.—(1) A UK firm may not exercise an EEA right to establish a branch unless three conditions are satisfied.

(2) The first is that the firm has given the Authority, in the specified way, notice of its intention to establish a branch (“a notice of intention”) which—

- (a) identifies the activities which it seeks to carry on through the branch; and
- (b) includes such other information as may be specified.

(3) The activities identified in a notice of intention may include activities which are not regulated activities.

(4) The second is that the Authority has given notice in specified terms (“a consent notice”) to the host state regulator.

(5) The third is that—

- (a) the host state regulator has notified the firm (or, where the EEA right in question derives from any of the insurance directives, the Authority) of the applicable provisions; or
- (b) two months have elapsed beginning with the date on which the Authority gave the consent notice.

(6) If the firm's EEA right derives from the investment services directive or the second banking coordination directive and the first condition is satisfied, the Authority must give a consent notice to the host state regulator unless it has reason to doubt the adequacy of the firm's resources or its administrative structure.

(7) If the firm's EEA right derives from any of the insurance directives and the first condition is satisfied, the Authority must give a consent notice unless it has reason—

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- (a) to doubt the adequacy of the firm's resources or its administrative structure, or
 - (b) to question the reputation, qualifications or experience of the directors or managers of the firm or the person proposed as the branch's authorised agent for the purposes of those directives,
- in relation to the business to be conducted through the proposed branch.

(8) If the Authority proposes to refuse to give a consent notice it must give the firm concerned a warning notice.

(9) If the firm's EEA right derives from any of the insurance directives and the host state regulator has notified it of the applicable provisions, the Authority must inform the firm of those provisions.

(10) Rules may specify the procedure to be followed by the Authority in exercising its functions under this paragraph.

(11) If the Authority gives a consent notice it must give written notice that it has done so to the firm concerned.

(12) If the Authority decides to refuse to give a consent notice—

- (a) it must, within three months beginning with the date when it received the notice of intention, give the person who gave that notice a decision notice to that effect; and
- (b) that person may refer the matter to the Tribunal.

(13) In this paragraph, "applicable provisions" means the host state rules with which the firm will be required to comply when conducting business through the proposed branch in the EEA State concerned.

(14) In sub-paragraph (13), "host state rules" means rules—

- (a) made in accordance with the relevant single market directive; and
- (b) which are the responsibility of the EEA State concerned (both as to implementation and as to supervision of compliance) in accordance with that directive.

(15) "Specified" means specified in rules.

Services

20.—(1) A UK firm may not exercise an EEA right to provide services unless the firm has given the Authority, in the specified way, notice of its intention to provide services ("a notice of intention") which—

- (a) identifies the activities which it seeks to carry out by way of provision of services; and
- (b) includes such other information as may be specified.

(2) The activities identified in a notice of intention may include activities which are not regulated activities.

(3) If the firm's EEA right derives from the investment services directive or a banking co-ordination directive, the Authority must, within one month of receiving a notice of intention, send a copy of it to the host state regulator.

(4) When the Authority sends the copy under sub-paragraph (3), it must give written notice to the firm concerned.

(5) If the firm concerned's EEA right derives from the investment services directive, it must not provide the services to which its notice of intention relates until it has received written notice from the Authority under sub-paragraph (4).

(6) "Specified" means specified in rules.

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Offence relating to exercise of passport rights

21.—(1) If a UK firm which is not an authorised person contravenes the prohibition imposed by—

- (a) sub-paragraph (1) of paragraph 19, or
- (b) sub-paragraph (1) or (5) of paragraph 20,

it is guilty of an offence.

(2) A firm guilty of an offence under sub-paragraph (1) is liable—

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

(3) In proceedings for an offence under sub-paragraph (1), it is a defence for the firm to show that it took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Continuing regulation of UK firms

22.—(1) Regulations may make such provision as the Treasury consider appropriate in relation to a UK firm's exercise of EEA rights, and may in particular provide for the application (with or without modification) of any provision of, or made under, this Act in relation to an activity of a UK firm.

(2) Regulations may—

- (a) make provision as to any change (or proposed change) of a prescribed kind relating to a UK firm or to an activity that it carries on and as to the procedure to be followed in relation to such cases;
- (b) make provision with respect to the consequences of the firm's failure to comply with a provision of the regulations.

(3) Where a provision of the kind mentioned in sub-paragraph (2) requires the Authority's consent to a change (or proposed change)—

- (a) consent may be refused only on prescribed grounds; and
- (b) if the Authority decides to refuse consent, the firm concerned may refer the matter to the Tribunal.

23.—(1) Sub-paragraph (2) applies if a UK firm—

- (a) has a Part IV permission; and
- (b) is exercising an EEA right to carry on any Consumer Credit Act business in an EEA State other than the United Kingdom.

(2) The Authority may exercise its power under section 45 in respect of the firm if the Director 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,

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

1974 c. 39.

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

24.—(1) Sub-paragraph (2) applies if a UK firm—

- (a) is not required to have a Part IV permission in relation to the business which it is carrying on; and

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(b) is exercising the right conferred by Article 18.2 of the second banking co-ordination directive to carry on that business in an EEA State other than the United Kingdom.

(2) If requested to do so by the host state regulator in the EEA State in which the UK firm's business is being carried on, the Authority may impose any requirement in relation to the firm which it could impose if—

- (a) the firm had a Part IV permission in relation to the business which it is carrying on; and
- (b) the Authority was entitled to exercise its power under that Part to vary that permission.

Section 31(1)(c).

SCHEDULE 4

TREATY RIGHTS

Definitions

1. In this Schedule—

“consumers” means persons who are consumers for the purposes of section 138;

“Treaty firm” means a person—

- (a) whose head office is situated in an EEA State (its “home state”) other than the United Kingdom; and
- (b) which is recognised under the law of that State as its national; and

“home state regulator”, in relation to a Treaty firm, means the competent authority of the firm's home state for the purpose of its home state authorisation (as to which see paragraph 3(1)(a)).

Firms qualifying for authorisation

2. Once a Treaty firm which is seeking to carry on a regulated activity satisfies the conditions set out in paragraph 3(1), it qualifies for authorisation.

Exercise of Treaty rights

3.—(1) The conditions are that—

- (a) the firm has received authorisation (“home state authorisation”) under the law of its home state to carry on the regulated activity in question (“the permitted activity”);
- (b) the relevant provisions of the law of the firm's home state—
 - (i) afford equivalent protection; or
 - (ii) satisfy the conditions laid down by a Community instrument for the co-ordination or approximation of laws, regulations or administrative provisions of member States relating to the carrying on of that activity; and
- (c) the firm has no EEA right to carry on that activity in the manner in which it is seeking to carry it on.

(2) A firm is not to be regarded as having home state authorisation unless its home state regulator has so informed the Authority in writing.

(3) Provisions afford equivalent protection if, in relation to the firm's carrying on of the permitted activity, they afford consumers protection which is at least equivalent to that afforded by or under this Act in relation to that activity.

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(4) A certificate issued by the Treasury that the provisions of the law of a particular EEA State afford equivalent protection in relation to the activities specified in the certificate is conclusive evidence of that fact.

Permission

4.—(1) On qualifying for authorisation under this Schedule, a Treaty firm has permission to carry on each permitted activity through its United Kingdom branch or by providing services in the United Kingdom.

(2) The permission is to be treated as being on terms equivalent to those to which the firm's home state authorisation is subject.

(3) If, on qualifying for authorisation under this Schedule, a firm has a Part IV permission which includes permission to carry on a permitted activity, the Authority must give a direction cancelling the permission so far as it relates to that activity.

(4) The Authority need not give a direction under sub-paragraph (3) if it considers that there are good reasons for not doing so.

Notice to Authority

5.—(1) Sub-paragraph (2) applies to a Treaty firm which—

- (a) qualifies for authorisation under this Schedule, but
- (b) is not carrying on in the United Kingdom the regulated activity, or any of the regulated activities, which it has permission to carry on there.

(2) At least seven days before it begins to carry on such a regulated activity, the firm must give the Authority written notice of its intention to do so.

(3) If a Treaty firm to which sub-paragraph (2) applies has given notice under that sub-paragraph, it need not give such a notice if it again becomes a firm to which that sub-paragraph applies.

(4) Subsections (1), (3) and (6) of section 51 apply to a notice under sub-paragraph (2) as they apply to an application for a Part IV permission.

Offences

6.—(1) A person who contravenes paragraph 5(2) is guilty of an offence.

(2) In proceedings against a person for an offence under sub-paragraph (1) it is a defence for him to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(3) A person is guilty of an offence if in, or in connection with, a notice given by him under paragraph 5(2) he—

- (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.

(4) A person guilty of an offence under this paragraph is liable—

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

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Section 36.

SCHEDULE 5

PERSONS CONCERNED IN COLLECTIVE INVESTMENT SCHEMES

Authorisation

1.—(1) A person who for the time being is an operator, trustee or depositary of a recognised collective investment scheme is an authorised person.

(2) “Recognised” means recognised by virtue of section 264.

(3) An authorised open-ended investment company is an authorised person.

Permission

2.—(1) A person authorised as a result of paragraph 1(1) has permission to carry on, so far as it is a regulated activity—

(a) any activity, appropriate to the capacity in which he acts in relation to the scheme, of the kind described in paragraph 8 of Schedule 2;

(b) any activity in connection with, or for the purposes of, the scheme.

(2) A person authorised as a result of paragraph 1(3) has permission to carry on, so far as it is a regulated activity—

(a) the operation of the scheme;

(b) any activity in connection with, or for the purposes of, the operation of the scheme.

Section 41.

SCHEDULE 6

THRESHOLD CONDITIONS

PART I

PART IV PERMISSION

Legal status

1.—(1) If the regulated activity concerned is the effecting or carrying out of contracts of insurance the authorised person must be a body corporate, a registered friendly society or a member of Lloyd’s.

(2) If the person concerned appears to the Authority to be seeking to carry on, or to be carrying on, a regulated activity constituting accepting deposits, it must be—

(a) a body corporate; or

(b) a partnership.

Location of offices

2.—(1) If the person concerned is a body corporate constituted under the law of any part of the United Kingdom—

(a) its head office, and

(b) if it has a registered office, that office,

must be in the United Kingdom.

(2) If the person concerned has its head office in the United Kingdom but is not a body corporate, it must carry on business in the United Kingdom.

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Close links

3.—(1) If the person concerned (“A”) has close links with another person (“CL”) the Authority must be satisfied—

- (a) that those links are not likely to prevent the Authority’s effective supervision of A; and
- (b) if it appears to the Authority that CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State (“the foreign provisions”), that neither the foreign provisions, nor any deficiency in their enforcement, would prevent the Authority’s effective supervision of A.

(2) A has close links with CL if—

- (a) CL is a parent undertaking of A;
- (b) CL is a subsidiary undertaking of A;
- (c) CL is a parent undertaking of a subsidiary undertaking of A;
- (d) CL is a subsidiary undertaking of a parent undertaking of A;
- (e) CL owns or controls 20% or more of the voting rights or capital of A; or
- (f) A owns or controls 20% or more of the voting rights or capital of CL.

(3) “Subsidiary undertaking” includes all the instances mentioned in Article 1(1) and (2) of the Seventh Company Law Directive in which an entity may be a subsidiary of an undertaking.

Adequate resources

4.—(1) The resources of the person concerned must, in the opinion of the Authority, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.

(2) In reaching that opinion, the Authority may—

- (a) take into account the person’s membership of a group and any effect which that membership may have; and
- (b) have regard to—
 - (i) the provision he makes and, if he is a member of a group, which other members of the group make in respect of liabilities (including contingent and future liabilities); and
 - (ii) the means by which he manages and, if he is a member of a group, which other members of the group manage the incidence of risk in connection with his business.

Suitability

5. The person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances, including—

- (a) his connection with any person;
- (b) the nature of any regulated activity that he carries on or seeks to carry on; and
- (c) the need to ensure that his affairs are conducted soundly and prudently.

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PART II

AUTHORISATION

Authorisation under Schedule 3

6. In relation to an EEA firm qualifying for authorisation under Schedule 3, the conditions set out in paragraphs 1 and 3 to 5 apply, so far as relevant, to—

- (a) an application for permission under Part IV;
- (b) exercise of the Authority's own-initiative power under section 45 in relation to a Part IV permission.

Authorisation under Schedule 4

7. In relation to a person who qualifies for authorisation under Schedule 4, the conditions set out in paragraphs 1 and 3 to 5 apply, so far as relevant, to—

- (a) an application for an additional permission;
- (b) the exercise of the Authority's own-initiative power under section 45 in relation to additional permission.

PART III

ADDITIONAL CONDITIONS

8.—(1) If this paragraph applies to the person concerned, he must, for the purposes of such provisions of this Act as may be specified, satisfy specified additional conditions.

- (2) This paragraph applies to a person who—
 - (a) has his head office outside the EEA; and
 - (b) appears to the Authority to be seeking to carry on a regulated activity relating to insurance business.
- (3) "Specified" means specified in, or in accordance with, an order made by the Treasury.

9. The Treasury may by order—

- (a) vary or remove any of the conditions set out in Parts I and II;
- (b) add to those conditions.

Section 72(2).

SCHEDULE 7

THE AUTHORITY AS COMPETENT AUTHORITY FOR PART VI

General

1. This Act applies in relation to the Authority when it is exercising functions under Part VI as the competent authority subject to the following modifications.

The Authority's general functions

2. In section 2—

- (a) subsection (4)(a) does not apply to listing rules;
- (b) subsection (4)(c) does not apply to general guidance given in relation to Part VI; and
- (c) subsection (4)(d) does not apply to functions under Part VI.

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Duty to consult

3. Section 8 does not apply.

Rules

4.—(1) Sections 149, 153, 154 and 156 do not apply.

(2) Section 155 has effect as if—

- (a) the reference in subsection (2)(c) to the general duties of the Authority under section 2 were a reference to its duty under section 73; and
- (b) section 99 were included in the provisions referred to in subsection (9).

Statements of policy

5.—(1) Paragraph 5 of Schedule 1 has effect as if the requirement to act through the Authority's governing body applied also to the exercise of its functions of publishing statements under section 93.

(2) Paragraph 1 of Schedule 1 has effect as if section 93 were included in the provisions referred to in sub-paragraph (2)(d).

Penalties

6. Paragraph 16 of Schedule 1 does not apply in relation to penalties under Part VI (for which separate provision is made by section 100).

Fees

7. Paragraph 17 of Schedule 1 does not apply in relation to fees payable under Part VI (for which separate provision is made by section 99).

Exemption from liability in damages

8. Schedule 1 has effect as if—

- (a) sub-paragraph (1) of paragraph 19 were omitted (similar provision being made in relation to the competent authority by section 102); and
- (b) for the words from the beginning to "(a)" in sub-paragraph (3) of that paragraph, there were substituted "Sub-paragraph (2) does not apply".

SCHEDULE 8

Section 72(3).

TRANSFER OF FUNCTIONS UNDER PART VI

The power to transfer

1.—(1) The Treasury may by order provide for any function conferred on the competent authority which is exercisable for the time being by a particular person to be transferred so as to be exercisable by another person.

(2) An order may be made under this paragraph only if—

- (a) the person from whom the relevant functions are to be transferred has agreed in writing that the order should be made;
- (b) the Treasury are satisfied that the manner in which, or efficiency with which, the functions are discharged would be significantly improved if they were transferred to the transferee; or
- (c) the Treasury are satisfied that it is otherwise in the public interest that the order should be made.

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Supplemental

2.—(1) An order under this Schedule does not affect anything previously done by any person (“the previous authority”) in the exercise of functions which are transferred by the order to another person (“the new authority”).

(2) Such an order may, in particular, include provision—

- (a) modifying or excluding any provision of Part VI, IX or XXVI in its application to any such functions;
- (b) for reviews similar to that made, in relation to the Authority, by section 12;
- (c) imposing on the new authority requirements similar to those imposed, in relation to the Authority, by sections 152, 155 and 354;
- (d) as to the giving of guidance by the new authority;
- (e) for the delegation by the new authority of the exercise of functions under Part VI and as to the consequences of delegation;
- (f) for the transfer of any property, rights or liabilities relating to any such functions from the previous authority to the new authority;
- (g) for the carrying on and completion by the new authority of anything in the process of being done by the previous authority when the order takes effect;
- (h) for the substitution of the new authority for the previous authority in any instrument, contract or legal proceedings;
- (i) for the transfer of persons employed by the previous authority to the new authority and as to the terms on which they are to transfer;
- (j) making such amendments to any primary or subordinate legislation (including any provision of, or made under, this Act) as the Treasury consider appropriate in consequence of the transfer of functions effected by the order.

(3) Nothing in this paragraph is to be taken as restricting the powers conferred by section 428.

3. If the Treasury have made an order under paragraph 1 (“the transfer order”) they may, by a separate order made under this paragraph, make any provision of a kind that could have been included in the transfer order.

Section 87(5).

SCHEDULE 9

NON-LISTING PROSPECTUSES

General application of Part VI

1. The provisions of Part VI apply in relation to a non-listing prospectus as they apply in relation to listing particulars but with the modifications made by this Schedule.

References to listing particulars

2.—(1) Any reference to listing particulars is to be read as a reference to a prospectus.

(2) Any reference to supplementary listing particulars is to be read as a reference to a supplementary prospectus.

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General duty of disclosure

3.—(1) In section 80(1), for “section 79” substitute “section 87”.

(2) In section 80(2), omit “as a condition of the admission of the securities to the official list”.

Supplementary prospectuses

4. In section 81(1), for “section 79 and before the commencement of dealings in the securities concerned following their admission to the official list” substitute “section 87 and before the end of the period during which the offer to which the prospectus relates remains open”.

Exemption from liability for compensation

5.—(1) In paragraphs 1(3) and 2(3) of Schedule 10, for paragraph (d) substitute—

“(d) the securities were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused and, if the securities are dealt in on an approved exchange, he continued in that belief until after the commencement of dealings in the securities on that exchange.”

(2) After paragraph 8 of that Schedule, insert—

“Meaning of “approved exchange”

9. “Approved exchange” has such meaning as may be prescribed.”

Advertisements

6. In section 98(1), for “If listing particulars are, or are to be, published in connection with an application for listing,” substitute “If a prospectus is, or is to be, published in connection with an application for approval, then, until the end of the period during which the offer to which the prospectus relates remains open,”.

Fees

7. Listing rules made under section 99 may require the payment of fees to the competent authority in respect of a prospectus submitted for approval under section 87.

SCHEDULE 10

COMPENSATION: EXEMPTIONS

Statements believed to be true

1.—(1) In this paragraph “statement” means—

- (a) any untrue or misleading statement in listing particulars; or
- (b) the omission from listing particulars of any matter required to be included by section 80 or 81.

(2) A person does not incur any liability under section 90(1) for loss caused by a statement if he satisfies the court that, at the time when the listing particulars were submitted to the competent authority, he reasonably believed (having made such enquiries, if any, as were reasonable) that—

- (a) the statement was true and not misleading, or

Section 90(2) and
(5).

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(b) the matter whose omission caused the loss was properly omitted, and that one or more of the conditions set out in sub-paragraph (3) are satisfied.

(3) The conditions are that—

- (a) he continued in his belief until the time when the securities in question were acquired;
- (b) they were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire them;
- (c) before the securities were acquired, he had taken all such steps as it was reasonable for him to have taken to secure that a correction was brought to the attention of those persons;
- (d) he continued in his belief until after the commencement of dealings in the securities following their admission to the official list and they were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused.

Statements by experts

2.—(1) In this paragraph “statement” means a statement included in listing particulars which—

- (a) purports to be made by, or on the authority of, another person as an expert; and
- (b) is stated to be included in the listing particulars with that other person’s consent.

(2) A person does not incur any liability under section 90(1) for loss in respect of any securities caused by a statement if he satisfies the court that, at the time when the listing particulars were submitted to the competent authority, he reasonably believed that the other person—

- (a) was competent to make or authorise the statement, and
- (b) had consented to its inclusion in the form and context in which it was included,

and that one or more of the conditions set out in sub-paragraph (3) are satisfied.

(3) The conditions are that—

- (a) he continued in his belief until the time when the securities were acquired;
- (b) they were acquired before it was reasonably practicable to bring the fact that the expert was not competent, or had not consented, to the attention of persons likely to acquire the securities in question;
- (c) before the securities were acquired he had taken all such steps as it was reasonable for him to have taken to secure that that fact was brought to the attention of those persons;
- (d) he continued in his belief until after the commencement of dealings in the securities following their admission to the official list and they were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused.

Corrections of statements

3.—(1) In this paragraph “statement” has the same meaning as in paragraph 1.

(2) A person does not incur liability under section 90(1) for loss caused by a statement if he satisfies the court—

- (a) that before the securities in question were acquired, a correction had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities; or

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(b) that he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the securities were acquired.

(3) Nothing in this paragraph is to be taken as affecting paragraph 1.

Corrections of statements by experts

4.—(1) In this paragraph “statement” has the same meaning as in paragraph 2.

(2) A person does not incur liability under section 90(1) for loss caused by a statement if he satisfies the court—

(a) that before the securities in question were acquired, the fact that the expert was not competent or had not consented had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities; or

(b) that he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the securities were acquired.

(3) Nothing in this paragraph is to be taken as affecting paragraph 2.

Official statements

5. A person does not incur any liability under section 90(1) for loss resulting from—

(a) a statement made by an official person which is included in the listing particulars, or

(b) a statement contained in a public official document which is included in the listing particulars,

if he satisfies the court that the statement is accurately and fairly reproduced.

False or misleading information known about

6. A person does not incur any liability under section 90(1) or (4) if he satisfies the court that the person suffering the loss acquired the securities in question with knowledge—

(a) that the statement was false or misleading,

(b) of the omitted matter, or

(c) of the change or new matter,

as the case may be.

Belief that supplementary listing particulars not called for

7. A person does not incur any liability under section 90(4) if he satisfies the court that he reasonably believed that the change or new matter in question was not such as to call for supplementary listing particulars.

Meaning of “expert”

8. “Expert” includes any engineer, valuer, accountant or other person whose profession, qualifications or experience give authority to a statement made by him.

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Section 103(6).

SCHEDULE 11

OFFERS OF SECURITIES

The general rule

- 1.—(1) A person offers securities to the public in the United Kingdom if—
- (a) to the extent that the offer is made to persons in the United Kingdom, it is made to the public; and
 - (b) the offer is not an exempt offer.
- (2) For this purpose, an offer which is made to any section of the public, whether selected—
- (a) as members or debenture holders of a body corporate,
 - (b) as clients of the person making the offer, or
 - (c) in any other manner,
- is to be regarded as made to the public.

Exempt offers

- 2.—(1) For the purposes of this Schedule, an offer of securities is an “exempt offer” if, to the extent that the offer is made to persons in the United Kingdom—
- (a) the condition specified in any of paragraphs 3 to 24 is satisfied in relation to the offer; or
 - (b) the condition specified in one relevant paragraph is satisfied in relation to part, but not the whole, of the offer and, in relation to each other part of the offer, the condition specified in a different relevant paragraph is satisfied.
- (2) The relevant paragraphs are 3 to 8, 12 to 18 and 21.

Offers for business purposes

3. The securities are offered to persons—
- (a) whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses, or
 - (b) who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses,
- or are otherwise offered to persons in the context of their trades, professions or occupations.

Offers to limited numbers

- 4.—(1) The securities are offered to no more than fifty persons.
- (2) In determining whether this condition is satisfied, the offer is to be taken together with any other offer of the same securities which was—
- (a) made by the same person;
 - (b) open at any time within the period of 12 months ending with the date on which the offer is first made; and
 - (c) not an offer to the public in the United Kingdom by virtue of this condition being satisfied.
- (3) For the purposes of this paragraph—

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- (a) the making of an offer of securities to trustees or members of a partnership in their capacity as such, or
- (b) the making of such an offer to any other two or more persons jointly, is to be treated as the making of an offer to a single person.

Clubs and associations

5. The securities are offered to the members of a club or association (whether or not incorporated) and the members can reasonably be regarded as having a common interest with each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer.

Restricted circles

6.—(1) The securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer.

(2) In determining whether a person is sufficiently knowledgeable to understand the risks involved in accepting an offer of securities, any information supplied by the person making the offer is to be disregarded, apart from information about—

- (a) the issuer of the securities; or
- (b) if the securities confer the right to acquire other securities, the issuer of those other securities.

Underwriting agreements

7. The securities are offered in connection with a genuine invitation to enter into an underwriting agreement with respect to them.

Offers to public authorities

8.—(1) The securities are offered to a public authority.

(2) “Public authority” means—

- (a) the government of the United Kingdom;
- (b) the government of any country or territory outside the United Kingdom;
- (c) a local authority in the United Kingdom or elsewhere;
- (d) any international organisation the members of which include the United Kingdom or another EEA State; and
- (e) such other bodies, if any, as may be specified.

Maximum consideration

9.—(1) The total consideration payable for the securities cannot exceed 40,000 euros (or an equivalent amount).

(2) In determining whether this condition is satisfied, the offer is to be taken together with any other offer of the same securities which was—

- (a) made by the same person;
- (b) open at any time within the period of 12 months ending with the date on which the offer is first made; and
- (c) not an offer to the public in the United Kingdom by virtue of this condition being satisfied.

(3) An amount (in relation to an amount denominated in euros) is an “equivalent amount” if it is an amount of equal value, calculated at the latest

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practicable date before (but in any event not more than 3 days before) the date on which the offer is first made, denominated wholly or partly in another currency or unit of account.

Minimum consideration

10.—(1) The minimum consideration which may be paid by any person for securities acquired by him pursuant to the offer is at least 40,000 euros (or an equivalent amount).

(2) Paragraph 9(3) also applies for the purposes of this paragraph.

Securities denominated in euros

11.—(1) The securities are denominated in amounts of at least 40,000 euros (or an equivalent amount).

(2) Paragraph 9(3) also applies for the purposes of this paragraph.

Takeovers

12.—(1) The securities are offered in connection with a takeover offer.

(2) "Takeover offer" means—

- (a) an offer to acquire shares in a body incorporated in the United Kingdom which is a takeover offer within the meaning of the takeover provisions (or would be such an offer if those provisions applied in relation to any body corporate);
- (b) an offer to acquire all or substantially all of the shares, or of the shares of a particular class, in a body incorporated outside the United Kingdom; or
- (c) an offer made to all the holders of shares, or of shares of a particular class, in a body corporate to acquire a specified proportion of those shares.

(3) "The takeover provisions" means—

- (a) Part XIII A of the Companies Act 1985; or
- (b) in relation to Northern Ireland, Part XIVA of the Companies (Northern Ireland) Order 1986.

(4) For the purposes of sub-paragraph (2)(b), any shares which the offeror or any associate of his holds or has contracted to acquire are to be disregarded.

(5) For the purposes of sub-paragraph (2)(c), the following are not to be regarded as holders of the shares in question—

- (a) the offeror;
- (b) any associate of the offeror; and
- (c) any person whose shares the offeror or any associate of the offeror has contracted to acquire.

(6) "Associate" has the same meaning as in—

- (a) section 430E of the Companies Act 1985; or
- (b) in relation to Northern Ireland, Article 423E of the Companies (Northern Ireland) Order 1986.

Mergers

13. The securities are offered in connection with a merger (within the meaning of Council Directive No. 78/855/EEC).

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Free shares

14.—(1) The securities are shares and are offered free of charge to any or all of the holders of shares in the issuer.

(2) “Holders of shares” means the persons who at the close of business on a date—

(a) specified in the offer, and

(b) falling within the period of 60 days ending with the date on which the offer is first made,

were holders of such shares.

Exchange of shares

15. The securities—

(a) are shares, or investments of a specified kind relating to shares, in a body corporate, and

(b) are offered in exchange for shares in the same body corporate,

and the offer cannot result in any increase in the issued share capital of the body corporate.

Qualifying persons

16.—(1) The securities are issued by a body corporate and are offered—

(a) by the issuer, by a body corporate connected with the issuer or by a relevant trustee;

(b) only to qualifying persons; and

(c) on terms that a contract to acquire any such securities may be entered into only by the qualifying person to whom they were offered or, if the terms of the offer so permit, any qualifying person.

(2) A person is a “qualifying person”, in relation to an issuer, if he is a genuine employee or former employee of the issuer or of another body corporate in the same group or the wife, husband, widow, widower or child or stepchild under the age of eighteen of such an employee or former employee.

(3) In relation to an issuer of securities, “connected with” has such meaning as may be prescribed.

(4) “Group” and “relevant trustee” have such meaning as may be prescribed.

Convertible securities

17.—(1) The securities result from the conversion of convertible securities and listing particulars (or a prospectus) relating to the convertible securities were (or was) published in the United Kingdom under or by virtue of Part VI or such other provisions applying in the United Kingdom as may be specified.

(2) “Convertible securities” means securities of a specified kind which can be converted into, or exchanged for, or which confer rights to acquire, other securities.

(3) “Conversion” means conversion into or exchange for, or the exercise of rights conferred by the securities to acquire, other securities.

Charities

18. The securities are issued by—

(a) a charity within the meaning of—

(i) section 96(1) of the Charities Act 1993, or

(ii) section 35 of the Charities Act (Northern Ireland) 1964,

1993 c. 10.

1964 c. 33 (N.I.)

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1990 c. 40.

(b) a recognised body within the meaning of section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,

(c) a housing association within the meaning of—

1985 c. 68.

(i) section 5(1) of the Housing Act 1985,

1985 c. 69

(ii) section 1 of the Housing Associations Act 1985, or

S.I. 1992/1725

(iii) Article 3 of the Housing (Northern Ireland) Order 1992,

(N.I. 10).

(d) an industrial or provident society registered in accordance with—

1965 c. 12.

(i) section 1(2)(b) of the Industrial and Provident Societies Act 1965, or

1969 c. 24 (N.I.).

(ii) section 1(2)(b) of the Industrial and Provident Societies Act 1969, or

(e) a non-profit making association or body, recognised by the country or territory in which it is established, with objectives similar to those of a body falling within any of paragraphs (a) to (c),

and the proceeds of the offer will be used for the purposes of the issuer's objectives.

Building societies etc.

19. The securities offered are shares which are issued by, or ownership of which entitles the holder to membership of or to obtain the benefit of services provided by—

(a) a building society incorporated under the law of, or of any part of, the United Kingdom;

(b) any body incorporated under the law of, or of any part of, the United Kingdom relating to industrial and provident societies or credit unions; or

(c) a body of a similar nature established in another EEA State.

Euro-securities

20.—(1) The securities offered are Euro-securities and no advertisement relating to the offer is issued in the United Kingdom, or is caused to be so issued—

(a) by the issuer of the Euro-securities;

(b) by any credit institution or other financial institution through which the Euro-securities may be acquired pursuant to the offer; or

(c) by any body corporate which is a member of the same group as the issuer or any of those institutions.

(2) But sub-paragraph (1) does not apply to an advertisement of a prescribed kind.

(3) "Euro-securities" means investments which—

(a) are to be underwritten and distributed by a syndicate at least two of the members of which have their registered offices in different countries or territories;

(b) are to be offered on a significant scale in one or more countries or territories, other than the country or territory in which the issuer has its registered office; and

(c) may be acquired pursuant to the offer only through a credit institution or other financial institution.

(4) "Credit institution" means a credit institution as defined in Article 1 of Council Directive No 77/780/EEC.

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(5) “Financial institution” means a financial institution as defined in Article 1 of Council Directive No 89/646/EEC.

(6) “Underwritten” means underwritten by whatever means, including by acquisition or subscription, with a view to resale.

Same class securities

21. The securities are of the same class, and were issued at the same time, as securities in respect of which a prospectus has been published under or by virtue of—

- (a) Part VI;
- (b) Part III of the Companies Act 1985; or
- (c) such other provisions applying in the United Kingdom as may be specified.

1985 c. 6.

Short date securities

22. The securities are investments of a specified kind with a maturity of less than one year from their date of issue.

Government and public securities

23.—(1) The securities are investments of a specified kind creating or acknowledging indebtedness issued by or on behalf of a public authority.

(2) “Public authority” means—

- (a) the government of the United Kingdom;
- (b) the government of any country or territory outside the United Kingdom;
- (c) a local authority in the United Kingdom or elsewhere;
- (d) any international organisation the members of which include the United Kingdom or another EEA State; and
- (e) such other bodies, if any, as may be specified.

Non-transferable securities

24. The securities are not transferable.

General definitions

25. For the purposes of this Schedule—

“shares” has such meaning as may be specified; and

“specified” means specified in an order made by the Treasury.

SCHEDULE 12

TRANSFER SCHEMES: CERTIFICATES

PART I

INSURANCE BUSINESS TRANSFER SCHEMES

1.—(1) For the purposes of section 111(2) the appropriate certificates, in relation to an insurance business transfer scheme, are—

- (a) a certificate under paragraph 2;
- (b) if sub-paragraph (2) applies, a certificate under paragraph 3;

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and 115.

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- (c) if sub-paragraph (3) applies, a certificate under paragraph 4;
 - (d) if sub-paragraph (4) applies, a certificate under paragraph 5.
- (2) This sub-paragraph applies if—
- (a) the authorised person concerned is a UK authorised person which has received authorisation under Article 6 of the first life insurance directive or of the first non-life insurance directive from the Authority; and
 - (b) the establishment from which the business is to be transferred under the proposed insurance business transfer scheme is in an EEA State other than the United Kingdom.
- (3) This sub-paragraph applies if—
- (a) the authorised person concerned has received authorisation under Article 6 of the first life insurance directive from the Authority;
 - (b) the proposed transfer relates to business which consists of the effecting or carrying out of contracts of long-term insurance; and
 - (c) as regards any policy which is included in the proposed transfer and which evidences a contract of insurance (other than reinsurance), an EEA State other than the United Kingdom is the State of the commitment.
- (4) This sub-paragraph applies if—
- (a) the authorised person concerned has received authorisation under Article 6 of the first non-life insurance directive from the Authority;
 - (b) the business to which the proposed insurance business transfer scheme relates is business which consists of the effecting or carrying out of contracts of general insurance; and
 - (c) as regards any policy which is included in the proposed transfer and which evidences a contract of insurance (other than reinsurance), the risk is situated in an EEA State other than the United Kingdom.

Certificates as to margin of solvency

- 2.—(1) A certificate under this paragraph is to be given—
- (a) by the relevant authority; or
 - (b) in a case in which there is no relevant authority, by the Authority.
- (2) A certificate given under sub-paragraph (1)(a) is one certifying that, taking the proposed transfer into account—
- (a) the transferee possesses, or will possess before the scheme takes effect, the necessary margin of solvency; or
 - (b) there is no necessary margin of solvency applicable to the transferee.
- (3) A certificate under sub-paragraph (1)(b) is one certifying that the Authority has received from the authority which it considers to be the authority responsible for supervising persons who effect or carry out contracts of insurance in the place to which the business is to be transferred that, taking the proposed transfer into account—
- (a) the transferee possesses or will possess before the scheme takes effect the margin of solvency required under the law applicable in that place; or
 - (b) there is no such margin of solvency applicable to the transferee.
- (4) “Necessary margin of solvency” means the margin of solvency required in relation to the transferee, taking the proposed transfer into account, under the law which it is the responsibility of the relevant authority to apply.
- (5) “Margin of solvency” means the excess of the value of the assets of the transferee over the amount of its liabilities.

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(6) "Relevant authority" means—

- (a) if the transferee is an EEA firm falling within paragraph 5(d) of Schedule 3, its home state regulator;
- (b) if the transferee is a Swiss general insurer, the authority responsible in Switzerland for supervising persons who effect or carry out contracts of insurance;
- (c) if the transferee is an authorised person not falling within paragraph (a) or (b), the Authority.

(7) In sub-paragraph (6), any reference to a transferee of a particular description includes a reference to a transferee who will be of that description if the proposed scheme takes effect.

(8) "Swiss general insurer" means a body—

- (a) whose head office is in Switzerland;
- (b) which has permission to carry on regulated activities consisting of the effecting and carrying out of contracts of general insurance; and
- (c) whose permission is not restricted to the effecting or carrying out of contracts of reinsurance.

Certificates as to consent

3. A certificate under this paragraph is one given by the Authority and certifying that the host State regulator has been notified of the proposed scheme and that—

- (a) that regulator has responded to the notification; or
- (b) that it has not responded but the period of three months beginning with the notification has elapsed.

Certificates as to long-term business

4. A certificate under this paragraph is one given by the Authority and certifying that the authority responsible for supervising persons who effect or carry out contracts of insurance in the State of the commitment has been notified of the proposed scheme and that—

- (a) that authority has consented to the proposed scheme; or
- (b) the period of three months beginning with the notification has elapsed and that authority has not refused its consent.

Certificates as to general business

5. A certificate under this paragraph is one given by the Authority and certifying that the authority responsible for supervising persons who effect or carry out contracts of insurance in the EEA State in which the risk is situated has been notified of the proposed scheme and that—

- (a) that authority has consented to the proposed scheme; or
- (b) the period of three months beginning with the notification has elapsed and that authority has not refused its consent.

Interpretation of Part I

6.—(1) "State of the commitment", in relation to a commitment entered into at any date, means—

- (a) if the policyholder is an individual, the State in which he had his habitual residence at that date;
- (b) if the policyholder is not an individual, the State in which the establishment of the policyholder to which the commitment relates was situated at that date.

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(2) "Commitment" means a commitment represented by contracts of insurance of a prescribed class.

(3) References to the EEA State in which a risk is situated are—

- (a) if the insurance relates to a building or to a building and its contents (so far as the contents are covered by the same policy), to the EEA State in which the building is situated;
- (b) if the insurance relates to a vehicle of any type, to the EEA State of registration;
- (c) in the case of policies of a duration of four months or less covering travel or holiday risks (whatever the class concerned), to the EEA State in which the policyholder took out the policy;
- (d) in a case not covered by paragraphs (a) to (c)—
 - (i) if the policyholder is an individual, to the EEA State in which he has his habitual residence at the date when the contract is entered into; and
 - (ii) otherwise, to the EEA State in which the establishment of the policyholder to which the policy relates is situated at that date.

PART II

BANKING BUSINESS TRANSFER SCHEMES

7.—(1) For the purposes of section 111(2) the appropriate certificates, in relation to a banking business transfer scheme, are—

- (a) a certificate under paragraph 8; and
- (b) if sub-paragraph (2) applies, a certificate under paragraph 9.

(2) This sub-paragraph applies if the authorised person concerned or the transferee is an EEA firm falling within paragraph 5(b) of Schedule 3.

Certificates as to financial resources

8.—(1) A certificate under this paragraph is one given by the relevant authority and certifying that, taking the proposed transfer into account, the transferee possesses, or will possess before the scheme takes effect, adequate financial resources.

(2) "Relevant authority" means—

- (a) if the transferee is a person with a Part IV permission or with permission under Schedule 4, the Authority;
- (b) if the transferee is an EEA firm falling within paragraph 5(b) of Schedule 3, its home state regulator;
- (c) if the transferee does not fall within paragraph (a) or (b), the authority responsible for the supervision of the transferee's business in the place in which the transferee has its head office.

(3) In sub-paragraph (2), any reference to a transferee of a particular description of person includes a reference to a transferee who will be of that description if the proposed banking business transfer scheme takes effect.

Certificates as to consent of home state regulator

9. A certificate under this paragraph is one given by the Authority and certifying that the home State regulator of the authorised person concerned or of the transferee has been notified of the proposed scheme and that—

- (a) the home State regulator has responded to the notification; or
- (b) the period of three months beginning with the notification has elapsed.

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PART III

INSURANCE BUSINESS TRANSFERS EFFECTED OUTSIDE THE UNITED KINGDOM

10.—(1) This paragraph applies to a proposal to execute under provisions corresponding to Part VII in a country or territory other than the United Kingdom an instrument transferring all the rights and obligations of the transferor under general or long-term insurance policies, or under such descriptions of such policies as may be specified in the instrument, to the transferee if any of the conditions in sub-paragraphs (2), (3) or (4) is met in relation to it.

(2) The transferor is an EEA firm falling within paragraph 5(d) of Schedule 3 and the transferee is an authorised person whose margin of solvency is supervised by the Authority.

(3) The transferor is a company authorised in an EEA State other than the United Kingdom under Article 27 of the first life insurance directive, or Article 23 of the first non-life insurance directive and the transferee is a UK authorised person which has received authorisation under Article 6 of either of those directives.

(4) The transferor is a Swiss general insurer and the transferee is a UK authorised person which has received authorisation under Article 6 of the first life insurance directive or the first non-life insurance directive.

(5) In relation to a proposed transfer to which this paragraph applies, the Authority may, if it is satisfied that the transferee possesses the necessary margin of solvency, issue a certificate to that effect.

(6) “Necessary margin of solvency” means the margin of solvency which the transferee, taking the proposed transfer into account, is required by the Authority to maintain.

(7) “Swiss general insurer” has the same meaning as in paragraph 2.

(8) “General policy” means a policy evidencing a contract which, if it had been effected by the transferee, would have constituted the carrying on of a regulated activity consisting of the effecting of contracts of general insurance.

(9) “Long-term policy” means a policy evidencing a contract which, if it had been effected by the transferee, would have constituted the carrying on of a regulated activity consisting of the effecting of contracts of long-term insurance.

SCHEDULE 13

Section 132(4).

THE FINANCIAL SERVICES AND MARKETS TRIBUNAL

PART I

GENERAL

Interpretation

1. In this Schedule—

“panel of chairmen” means the panel established under paragraph 3(1);

“lay panel” means the panel established under paragraph 3(4);

“rules” means rules made by the Lord Chancellor under section 132.