



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART I

THE REGULATOR

1 The Financial Services Authority

- (1) The body corporate known as the Financial Services Authority (“the Authority”) is to have the functions conferred on it by or under this Act.
- (2) The Authority must comply with the requirements as to its constitution set out in Schedule 1.
- (3) Schedule 1 also makes provision about the status of the Authority and the exercise of certain of its functions.

The Authority’s general duties

2 The Authority’s general duties

- (1) In discharging its general functions the Authority must, so far as is reasonably possible, act in a way—
 - (a) which is compatible with the regulatory objectives; and
 - (b) which the Authority considers most appropriate for the purpose of meeting those objectives.
- (2) The regulatory objectives are—
 - (a) market confidence;
 - (b) public awareness;
 - (c) the protection of consumers; and
 - (d) the reduction of financial crime.
- (3) In discharging its general functions the Authority must have regard to—
 - (a) the need to use its resources in the most efficient and economic way;

- (b) the responsibilities of those who manage the affairs of authorised persons;
 - (c) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
 - (d) the desirability of facilitating innovation in connection with regulated activities;
 - (e) the international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom;
 - (f) the need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions;
 - (g) the desirability of facilitating competition between those who are subject to any form of regulation by the Authority.
- (4) The Authority’s general functions are—
- (a) its function of making rules under this Act (considered as a whole);
 - (b) its function of preparing and issuing codes under this Act (considered as a whole);
 - (c) its functions in relation to the giving of general guidance (considered as a whole); and
 - (d) its function of determining the general policy and principles by reference to which it performs particular functions.
- (5) “General guidance” has the meaning given in section 158(5).

The regulatory objectives

3 Market confidence

- (1) The market confidence objective is: maintaining confidence in the financial system.
- (2) “The financial system” means the financial system operating in the United Kingdom and includes—
- (a) financial markets and exchanges;
 - (b) regulated activities; and
 - (c) other activities connected with financial markets and exchanges.

4 Public awareness

- (1) The public awareness objective is: promoting public understanding of the financial system.
- (2) It includes, in particular—
- (a) promoting awareness of the benefits and risks associated with different kinds of investment or other financial dealing; and
 - (b) the provision of appropriate information and advice.
- (3) “The financial system” has the same meaning as in section 3.

5 The protection of consumers

- (1) The protection of consumers objective is: securing the appropriate degree of protection for consumers.
- (2) In considering what degree of protection may be appropriate, the Authority must have regard to—
 - (a) the differing degrees of risk involved in different kinds of investment or other transaction;
 - (b) the differing degrees of experience and expertise that different consumers may have in relation to different kinds of regulated activity;
 - (c) the needs that consumers may have for advice and accurate information; and
 - (d) the general principle that consumers should take responsibility for their decisions.
- (3) “Consumers” means persons—
 - (a) who are consumers for the purposes of section 138; or
 - (b) who, in relation to regulated activities carried on otherwise than by authorised persons, would be consumers for those purposes if the activities were carried on by authorised persons.

6 The reduction of financial crime

- (1) The reduction of financial crime objective is: reducing the extent to which it is possible for a business carried on—
 - (a) by a regulated person, or
 - (b) in contravention of the general prohibition,to be used for a purpose connected with financial crime.
- (2) In considering that objective the Authority must, in particular, have regard to the desirability of—
 - (a) regulated persons being aware of the risk of their businesses being used in connection with the commission of financial crime;
 - (b) regulated persons taking appropriate measures (in relation to their administration and employment practices, the conduct of transactions by them and otherwise) to prevent financial crime, facilitate its detection and monitor its incidence;
 - (c) regulated persons devoting adequate resources to the matters mentioned in paragraph (b).
- (3) “Financial crime” includes any offence involving—
 - (a) fraud or dishonesty;
 - (b) misconduct in, or misuse of information relating to, a financial market; or
 - (c) handling the proceeds of crime.
- (4) “Offence” includes an act or omission which would be an offence if it had taken place in the United Kingdom.
- (5) “Regulated person” means an authorised person, a recognised investment exchange or a recognised clearing house.

Corporate governance

7 Duty of Authority to follow principles of good governance

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

Arrangements for consulting practitioners and consumers

8 The Authority's general duty to consult

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

9 The Practitioner Panel

- (1) Arrangements under section 8 must include the establishment and maintenance of a panel of persons (to be known as “the Practitioner Panel”) to represent the interests of practitioners.
- (2) The Authority must appoint one of the members of the Practitioner Panel to be its chairman.
- (3) The Treasury's approval is required for the appointment or dismissal of the chairman.
- (4) The Authority must have regard to any representations made to it by the Practitioner Panel.
- (5) The Authority must appoint to the Practitioner Panel such—
 - (a) individuals who are authorised persons,
 - (b) persons representing authorised persons,
 - (c) persons representing recognised investment exchanges, and
 - (d) persons representing recognised clearing houses,as it considers appropriate.

10 The Consumer Panel

- (1) Arrangements under section 8 must include the establishment and maintenance of a panel of persons (to be known as “the Consumer Panel”) to represent the interests of consumers.
- (2) The Authority must appoint one of the members of the Consumer Panel to be its chairman.
- (3) The Treasury's approval is required for the appointment or dismissal of the chairman.
- (4) The Authority must have regard to any representations made to it by the Consumer Panel.
- (5) The Authority must appoint to the Consumer Panel such consumers, or persons representing the interests of consumers, as it considers appropriate.

- (6) The Authority must secure that the membership of the Consumer Panel is such as to give a fair degree of representation to those who are using, or are or may be contemplating using, services otherwise than in connection with businesses carried on by them.
- (7) “Consumers” means persons, other than authorised persons—
 - (a) who are consumers for the purposes of section 138; or
 - (b) who, in relation to regulated activities carried on otherwise than by authorised persons, would be consumers for those purposes if the activities were carried on by authorised persons.

11 Duty to consider representations by the Panels

- (1) This section applies to a representation made, in accordance with arrangements made under section 8, by the Practitioner Panel or by the Consumer Panel.
- (2) The Authority must consider the representation.
- (3) If the Authority disagrees with a view expressed, or proposal made, in the representation, it must give the Panel a statement in writing of its reasons for disagreeing.

Reviews

12 Reviews

- (1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the Authority has used its resources in discharging its functions.
- (2) A review may be limited by the Treasury to such functions of the Authority (however described) as the Treasury may specify in appointing the person to conduct it.
- (3) A review is not to be concerned with the merits of the Authority’s general policy or principles in pursuing regulatory objectives or in exercising functions under Part VI.
- (4) On completion of a review, the person conducting it must make a written report to the Treasury—
 - (a) setting out the result of the review; and
 - (b) making such recommendations (if any) as he considers appropriate.
- (5) A copy of the report must be—
 - (a) laid before each House of Parliament; and
 - (b) published in such manner as the Treasury consider appropriate.
- (6) Any expenses reasonably incurred in the conduct of a review are to be met by the Treasury out of money provided by Parliament.
- (7) “Independent” means appearing to the Treasury to be independent of the Authority.

13 Right to obtain documents and information

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

- (a) has a right of access at any reasonable time to all such documents as he may reasonably require for purposes of the review; and
 - (b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.
- (2) Subsection (1) applies only to documents in the custody or under the control of the Authority.
- (3) An obligation imposed on a person as a result of the exercise of powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

Inquiries

14 Cases in which the Treasury may arrange independent inquiries

- (1) This section applies in two cases.
- (2) The first is where it appears to the Treasury that—
- (a) events have occurred in relation to—
 - (i) a collective investment scheme, or
 - (ii) a person who is, or was at the time of the events, carrying on a regulated activity (whether or not as an authorised person),
 which posed or could have posed a grave risk to the financial system or caused or risked causing significant damage to the interests of consumers; and
 - (b) those events might not have occurred, or the risk or damage might have been reduced, but for a serious failure in—
 - (i) the system established by this Act for the regulation of such schemes or of such persons and their activities; or
 - (ii) the operation of that system.
- (3) The second is where it appears to the Treasury that—
- (a) events have occurred in relation to listed securities or an issuer of listed securities which caused or could have caused significant damage to holders of listed securities; and
 - (b) those events might not have occurred but for a serious failure in the regulatory system established by Part VI or in its operation.
- (4) If the Treasury consider that it is in the public interest that there should be an independent inquiry into the events and the circumstances surrounding them, they may arrange for an inquiry to be held under section 15.
- (5) “Consumers” means persons—
- (a) who are consumers for the purposes of section 138; or
 - (b) who, in relation to regulated activities carried on otherwise than by authorised persons, would be consumers for those purposes if the activities were carried on by authorised persons.
- (6) “The financial system” has the same meaning as in section 3.
- (7) “Listed securities” means anything which has been admitted to the official list under Part VI.

15 Power to appoint person to hold an inquiry

- (1) If the Treasury decide to arrange for an inquiry to be held under this section, they may appoint such person as they consider appropriate to hold the inquiry.
- (2) The Treasury may, by a direction to the appointed person, control—
 - (a) the scope of the inquiry;
 - (b) the period during which the inquiry is to be held;
 - (c) the conduct of the inquiry; and
 - (d) the making of reports.
- (3) A direction may, in particular—
 - (a) confine the inquiry to particular matters;
 - (b) extend the inquiry to additional matters;
 - (c) require the appointed person to discontinue the inquiry or to take only such steps as are specified in the direction;
 - (d) require the appointed person to make such interim reports as are so specified.

16 Powers of appointed person and procedure

- (1) The person appointed to hold an inquiry under section 15 may—
 - (a) obtain such information from such persons and in such manner as he thinks fit;
 - (b) make such inquiries as he thinks fit; and
 - (c) determine the procedure to be followed in connection with the inquiry.
- (2) The appointed person may require any person who, in his opinion, is able to provide any information, or produce any document, which is relevant to the inquiry to provide any such information or produce any such document.
- (3) For the purposes of an inquiry, the appointed person has the same powers as the court in respect of the attendance and examination of witnesses (including the examination of witnesses abroad) and in respect of the production of documents.
- (4) “Court” means—
 - (a) the High Court; or
 - (b) in Scotland, the Court of Session.

17 Conclusion of inquiry

- (1) On completion of an inquiry under section 15, the person holding the inquiry must make a written report to the Treasury—
 - (a) setting out the result of the inquiry; and
 - (b) making such recommendations (if any) as he considers appropriate.
- (2) The Treasury may publish the whole, or any part, of the report and may do so in such manner as they consider appropriate.
- (3) Subsection (4) applies if the Treasury propose to publish a report but consider that it contains material—
 - (a) which relates to the affairs of a particular person whose interests would, in the opinion of the Treasury, be seriously prejudiced by publication of the material;or

- (b) the disclosure of which would be incompatible with an international obligation of the United Kingdom.
- (4) The Treasury must ensure that the material is removed before publication.
- (5) The Treasury must lay before each House of Parliament a copy of any report or part of a report published under subsection (2).
- (6) Any expenses reasonably incurred in holding an inquiry are to be met by the Treasury out of money provided by Parliament.

18 Obstruction and contempt

- (1) If a person (“A”)—
 - (a) fails to comply with a requirement imposed on him by a person holding an inquiry under section 15, or
 - (b) otherwise obstructs such an inquiry,the person holding the inquiry may certify the matter to the High Court (or, in Scotland, the Court of Session).
- (2) The court may enquire into the matter.
- (3) If, after hearing—
 - (a) any witnesses who may be produced against or on behalf of A, and
 - (b) any statement made by or on behalf of A,the court is satisfied that A would have been in contempt of court if the inquiry had been proceedings before the court, it may deal with him as if he were in contempt.