



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART V

PERFORMANCE OF REGULATED ACTIVITIES

Prohibition orders

56 Prohibition orders

- (1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.
- (2) The Authority may make an order (“a prohibition order”) prohibiting the individual from performing a specified function, any function falling within a specified description or any function.
- (3) A prohibition order may relate to—
 - (a) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;
 - (b) authorised persons generally or any person within a specified class of authorised person.
- (4) An individual who performs or agrees to perform a function in breach of a prohibition order is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) In proceedings for an offence under subsection (4) it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (6) An authorised person must take reasonable care to ensure that no function of his, in relation to the carrying on of a regulated activity, is performed by a person who is prohibited from performing that function by a prohibition order.

Status: This is the original version (as it was originally enacted).

- (7) The Authority may, on the application of the individual named in a prohibition order, vary or revoke it.
- (8) This section applies to the performance of functions in relation to a regulated activity carried on by—
 - (a) a person who is an exempt person in relation to that activity, and
 - (b) a person to whom, as a result of Part XX, the general prohibition does not apply in relation to that activity,as it applies to the performance of functions in relation to a regulated activity carried on by an authorised person.
- (9) “Specified” means specified in the prohibition order.

57 Prohibition orders: procedure and right to refer to Tribunal

- (1) If the Authority proposes to make a prohibition order it must give the individual concerned a warning notice.
- (2) The warning notice must set out the terms of the prohibition.
- (3) If the Authority decides to make a prohibition order it must give the individual concerned a decision notice.
- (4) The decision notice must—
 - (a) name the individual to whom the prohibition order applies;
 - (b) set out the terms of the order; and
 - (c) be given to the individual named in the order.
- (5) A person against whom a decision to make a prohibition order is made may refer the matter to the Tribunal.

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

- (1) This section applies to an application for the variation or revocation of a prohibition order.
- (2) If the Authority decides to grant the application, it must give the applicant written notice of its decision.
- (3) If the Authority proposes to refuse the application, it must give the applicant a warning notice.
- (4) If the Authority decides to refuse the application, it must give the applicant a decision notice.
- (5) If the Authority gives the applicant a decision notice, he may refer the matter to the Tribunal.

Approval

59 Approval for particular arrangements

- (1) An authorised person (“A”) must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by A in relation to the carrying on by A of a regulated activity, unless the Authority approves the performance by that person of the controlled function to which the arrangement relates.
- (2) An authorised person (“A”) must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by a contractor of A in relation to the carrying on by A of a regulated activity, unless the Authority approves the performance by that person of the controlled function to which the arrangement relates.
- (3) “Controlled function” means a function of a description specified in rules.
- (4) The Authority may specify a description of function under subsection (3) only if, in relation to the carrying on of a regulated activity by an authorised person, it is satisfied that the first, second or third condition is met.
- (5) The first condition is that the function is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the authorised person’s affairs, so far as relating to the regulated activity.
- (6) The second condition is that the function will involve the person performing it in dealing with customers of the authorised person in a manner substantially connected with the carrying on of the regulated activity.
- (7) The third condition is that the function will involve the person performing it in dealing with property of customers of the authorised person in a manner substantially connected with the carrying on of the regulated activity.
- (8) Neither subsection (1) nor subsection (2) applies to an arrangement which allows a person to perform a function if the question of whether he is a fit and proper person to perform the function is reserved under any of the single market directives to an authority in a country or territory outside the United Kingdom.
- (9) In determining whether the first condition is met, the Authority may take into account the likely consequences of a failure to discharge that function properly.
- (10) “Arrangement”—
 - (a) means any kind of arrangement for the performance of a function of A which is entered into by A or any contractor of his with another person; and
 - (b) includes, in particular, that other person’s appointment to an office, his becoming a partner or his employment (whether under a contract of service or otherwise).
- (11) “Customer”, in relation to an authorised person, means a person who is using, or who is or may be contemplating using, any of the services provided by the authorised person.

60 Applications for approval

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

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- (2) The application must—
 - (a) be made in such manner as the Authority may direct; and
 - (b) contain, or be accompanied by, such information as the Authority may reasonably require.
- (3) At any time after receiving the application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- (4) The Authority may require an applicant to present information which he is required to give under this section in such form, or to verify it in such a way, as the Authority may direct.
- (5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.
- (6) “The authorised person concerned” includes a person who has applied for permission under Part IV and will be the authorised person concerned if permission is given.

61 Determination of applications

- (1) The Authority may grant an application made under section 60 only if it is satisfied that the person in respect of whom the application is made (“the candidate”) is a fit and proper person to perform the function to which the application relates.
- (2) In deciding that question, the Authority may have regard (among other things) to whether the candidate, or any person who may perform a function on his behalf—
 - (a) has obtained a qualification,
 - (b) has undergone, or is undergoing, training, or
 - (c) possesses a level of competence,required by general rules in relation to persons performing functions of the kind to which the application relates.
- (3) The Authority must, before the end of the period of three months beginning with the date on which it receives an application made under section 60 (“the period for consideration”), determine whether—
 - (a) to grant the application; or
 - (b) to give a warning notice under section 62(2).
- (4) If the Authority imposes a requirement under section 60(3), the period for consideration stops running on the day on which the requirement is imposed but starts running again—
 - (a) on the day on which the required information is received by the Authority; or
 - (b) if the information is not provided on a single day, on the last of the days on which it is received by the Authority.
- (5) A person who makes an application under section 60 may withdraw his application by giving written notice to the Authority at any time before the Authority determines it, but only with the consent of—
 - (a) the candidate; and
 - (b) the person by whom the candidate is to be retained to perform the function concerned, if not the applicant.

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

- (1) If the Authority decides to grant an application made under section 60 (“an application”), it must give written notice of its decision to each of the interested parties.
- (2) If the Authority proposes to refuse an application, it must give a warning notice to each of the interested parties.
- (3) If the Authority decides to refuse an application, it must give a decision notice to each of the interested parties.
- (4) If the Authority decides to refuse an application, each of the interested parties may refer the matter to the Tribunal.
- (5) “The interested parties”, in relation to an application, are—
 - (a) the applicant;
 - (b) the person in respect of whom the application is made (“A”); and
 - (c) the person by whom A’s services are to be retained, if not the applicant.

63 Withdrawal of approval

- (1) The Authority may withdraw an approval given under section 59 if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.
- (2) When considering whether to withdraw its approval, the Authority may take into account any matter which it could take into account if it were considering an application made under section 60 in respect of the performance of the function to which the approval relates.
- (3) If the Authority proposes to withdraw its approval, it must give each of the interested parties a warning notice.
- (4) If the Authority decides to withdraw its approval, it must give each of the interested parties a decision notice.
- (5) If the Authority decides to withdraw its approval, each of the interested parties may refer the matter to the Tribunal.
- (6) “The interested parties”, in relation to an approval, are—
 - (a) the person on whose application it was given (“A”);
 - (b) the person in respect of whom it was given (“B”); and
 - (c) the person by whom B’s services are retained, if not A.

Conduct

64 Conduct: statements and codes

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

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- (3) A code issued under subsection (2) may specify—
 - (a) descriptions of conduct which, in the opinion of the Authority, comply with a statement of principle;
 - (b) descriptions of conduct which, in the opinion of the Authority, do not comply with a statement of principle;
 - (c) factors which, in the opinion of the Authority, are to be taken into account in determining whether or not a person’s conduct complies with a statement of principle.
- (4) The Authority may at any time alter or replace a statement or code issued under this section.
- (5) If a statement or code is altered or replaced, the altered or replacement statement or code must be issued by the Authority.
- (6) A statement or code issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (7) A code published under this section and in force at the time when any particular conduct takes place may be relied on so far as it tends to establish whether or not that conduct complies with a statement of principle.
- (8) Failure to comply with a statement of principle under this section does not of itself give rise to any right of action by persons affected or affect the validity of any transaction.
- (9) A person is not to be taken to have failed to comply with a statement of principle if he shows that, at the time of the alleged failure, it or its associated code of practice had not been published.
- (10) The Authority must, without delay, give the Treasury a copy of any statement or code which it publishes under this section.
- (11) The power under this section to issue statements of principle and codes of practice—
 - (a) includes power to make different provision in relation to persons, cases or circumstances of different descriptions; and
 - (b) is to be treated for the purposes of section 2(4)(a) as part of the Authority’s rule-making functions.
- (12) The Authority may charge a reasonable fee for providing a person with a copy of a statement or code published under this section.
- (13) “Approved person” means a person in relation to whom the Authority has given its approval under section 59.

65 Statements and codes: procedure

- (1) Before issuing a statement or code under section 64, the Authority must publish a draft of it in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by —
 - (a) a cost benefit analysis; and

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- (b) notice that representations about the proposal may be made to the Authority within a specified time.
- (3) Before issuing the proposed statement or code, the Authority must have regard to any representations made to it in accordance with subsection (2)(b).
- (4) If the Authority issues the proposed statement or code it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (2)(b); and
 - (b) its response to them.
- (5) If the statement or code differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant—
 - (a) the Authority must (in addition to complying with subsection (4)) publish details of the difference; and
 - (b) those details must be accompanied by a cost benefit analysis.
- (6) Neither subsection (2)(a) nor subsection (5)(b) applies if the Authority considers—
 - (a) that, making the appropriate comparison, there will be no increase in costs; or
 - (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.
- (7) Subsections (1) to (6) do not apply if the Authority considers that the delay involved in complying with them would prejudice the interests of consumers.
- (8) A statement or code must state that it is issued under section 64.
- (9) The Authority may charge a reasonable fee for providing a copy of a draft published under subsection (1).
- (10) This section also applies to a proposal to alter or replace a statement or code.
- (11) “Cost benefit analysis” means an estimate of the costs together with an analysis of the benefits that will arise—
 - (a) if the proposed statement or code is issued; or
 - (b) if subsection (5)(b) applies, from the statement or code that has been issued.
- (12) “The appropriate comparison” means—
 - (a) in relation to subsection (2)(a), a comparison between the overall position if the statement or code is issued and the overall position if it is not issued;
 - (b) in relation to subsection (5)(b), a comparison between the overall position after the issuing of the statement or code and the overall position before it was issued.

66 Disciplinary powers

- (1) The Authority may take action against a person under this section if—
 - (a) it appears to the Authority that he is guilty of misconduct; and
 - (b) the Authority is satisfied that it is appropriate in all the circumstances to take action against him.
- (2) A person is guilty of misconduct if, while an approved person—
 - (a) he has failed to comply with a statement of principle issued under section 64;or

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- (b) he has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under this Act.
- (3) If the Authority is entitled to take action under this section against a person, it may—
 - (a) impose a penalty on him of such amount as it considers appropriate; or
 - (b) publish a statement of his misconduct.
- (4) The Authority may not take action under this section after the end of the period of two years beginning with the first day on which the Authority knew of the misconduct, unless proceedings in respect of it against the person concerned were begun before the end of that period.
- (5) For the purposes of subsection (4)—
 - (a) the Authority is to be treated as knowing of misconduct if it has information from which the misconduct can reasonably be inferred; and
 - (b) proceedings against a person in respect of misconduct are to be treated as begun when a warning notice is given to him under section 67(1).
- (6) “Approved person” has the same meaning as in section 64.
- (7) “Relevant authorised person”, in relation to an approved person, means the person on whose application approval under section 59 was given.

67 Disciplinary measures: procedure and right to refer to Tribunal

- (1) If the Authority proposes to take action against a person under section 66, it must give him a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (4) If the Authority decides to take action against a person under section 66, it must give him a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the Authority decides to take action against a person under section 66, he may refer the matter to the Tribunal.

68 Publication

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

69 Statement of policy

- (1) The Authority must prepare and issue a statement of its policy with respect to—
 - (a) the imposition of penalties under section 66; and
 - (b) the amount of penalties under that section.
- (2) The Authority's policy in determining what the amount of a penalty should be must include having regard to—
 - (a) the seriousness of the misconduct in question in relation to the nature of the principle or requirement concerned;
 - (b) the extent to which that misconduct was deliberate or reckless; and
 - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) The Authority may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replacement statement.
- (5) The Authority must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (6) A statement issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (7) The Authority may charge a reasonable fee for providing a person with a copy of the statement.
- (8) In exercising, or deciding whether to exercise, its power under section 66 in the case of any particular misconduct, the Authority must have regard to any statement of policy published under this section and in force at the time when the misconduct in question occurred.

70 Statements of policy: procedure

- (1) Before issuing a statement under section 69, the Authority must publish a draft of the proposed statement in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the Authority within a specified time.
- (3) Before issuing the proposed statement, the Authority must have regard to any representations made to it in accordance with subsection (2).
- (4) If the Authority issues the proposed statement it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (2); and
 - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant, the Authority must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

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

Breach of statutory duty

71 Actions for damages

- (1) A contravention of section 56(6) or 59(1) or (2) is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (2) In prescribed cases, a contravention of that kind which would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (3) “Private person” has such meaning as may be prescribed.