



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXVIII

#### MISCELLANEOUS

##### *Schemes for reviewing past business*

#### **404 Schemes for reviewing past business.**

- (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”).
- (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.

*Status: Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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.

**Modifications etc. (not altering text)**

C1 S. 404 modified (6.8.2001) by S.I. 2001/2512, arts. 1(1), 6(1)

VALID FROM 12/10/2010

**Rules under s.404: supplementary**

- <sup>F1</sup>  
<sup>F1</sup> 404A
- (1) Rules under section 404 may make provision—
    - (a) specifying the activities and requirements in relation to which relevant firms are to carry out investigations under consumer redress schemes;
    - (b) setting out, in relation to any specified description of case, examples of things done, or omitted to be done, that are to be regarded as constituting a failure to comply with a requirement;
    - (c) setting out, in relation to any specified description of case, matters to be taken into account, or steps to be taken, by relevant firms for the purpose of—
      - (i) assessing evidence as to a failure to comply with a requirement; or
      - (ii) determining whether such a failure has caused (or may cause) loss or damage to consumers;
    - (d) as to the kinds of redress that are, or are not, to be made to consumers in specified descriptions of case and the way in which redress is to be determined in specified descriptions of case;
    - (e) as to the things that relevant firms are, or are not, to do in establishing and operating consumer redress schemes;
    - (f) securing that relevant firms are not required to investigate anything occurring after a specified date;
    - (g) specifying the times by which anything required to be done under any consumer redress scheme is to be done;
    - (h) requiring relevant firms to provide information to the Authority;

**Status:** Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (i) authorising one or more competent persons to do anything for the purposes of, or in connection with, the establishment or operation of any consumer redress scheme;
  - (j) for the nomination or approval by the Authority of persons authorised under paragraph (i);
  - (k) as to the circumstances in which, instead of a relevant firm, the Authority (or one or more competent persons acting on the Authority's behalf) may carry out the investigation and take the other relevant steps under any consumer redress scheme;
  - (l) as to the powers to be available to those carrying out an investigation by virtue of paragraph (k);
  - (m) as to the enforcement of any redress (for example, in the case of a money award, as a debt owed by a relevant firm).
- (2) The only examples that may be set out in the rules as a result of subsection (1)(b) are examples of things done, or omitted to be done, that have been, or would be, held by a court or tribunal to constitute a failure to comply with a requirement.
- (3) Matters may not be set out in the rules as a result of subsection (1)(c) if they have not been, or would not be, taken into account by a court or tribunal for the purpose mentioned there.
- (4) The Authority must exercise the power conferred as a result of subsection (1)(d) so as to secure that, in relation to any description of case, the only kinds of redress to be made are those which it considers to be just in relation to that description of case.
- (5) In acting under subsection (4), the Authority must have regard (among other things) to the nature and extent of the losses or damage in question.
- (6) The provision that may be made under subsection (1)(h) includes provision applying (with or without modifications)—
- (a) any provision of section 165; or
  - (b) any provision of Part 11 relating to that section.
- (7) The reference in subsection (1)(k) to the other relevant steps under any consumer redress scheme is a reference to the Authority making the determinations mentioned in section 404(6) and (7) (with the firm still required to make the redress).
- (8) If the rules include provision under subsection (1)(k), they must also include provision for—
- (a) giving warning and decision notices, and
  - (b) conferring rights on relevant firms to refer matters to the Tribunal,
- in relation to any determination mentioned in section 404(6) and (7) made by the Authority.
- (9) Nothing in this section is to be taken as limiting the power conferred by section 404.]

#### Textual Amendments

- F1** Ss. 404-404G and preceding cross-heading substituted (12.10.2010) for s. 404 and preceding cross-heading by [Financial Services Act 2010 \(c. 28\)](#), [ss. 14, 26\(3\)](#); [S.I. 2010/2480](#), [art. 2](#)

*Status: Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 12/10/2010

#### **404B Complaints to the ombudsman scheme**

- (1) If—
  - (a) a consumer makes a complaint under the ombudsman scheme in respect of an act or omission of a relevant firm, and
  - (b) at the time the complaint is made, the subject-matter of the complaint falls to be dealt with (or has been dealt with) under a consumer redress scheme,the way in which the complaint is to be determined by the ombudsman is to be as mentioned in subsection (4).
- (2) If a consumer—
  - (a) is not satisfied with a determination made by a relevant firm under a consumer redress scheme, or
  - (b) considers that a relevant firm has failed to make a determination in accordance with a consumer redress scheme,the consumer may, in respect of that determination or failure, make a complaint under the ombudsman scheme.
- (3) A complaint mentioned in subsection (1) or (2) is referred to in the following provisions of this section as a “relevant complaint”.
- (4) A relevant complaint is to be determined by reference to what, in the opinion of the ombudsman, the determination under the consumer redress scheme should be or should have been (subject to subsection (5)).
- (5) If, in determining a relevant complaint, the ombudsman determines that the firm should make (or should have made) a payment of an amount to the consumer, the amount awarded by the ombudsman (a “money award”) must not exceed the monetary limit (within the meaning of section 229).
- (6) But the ombudsman may recommend that the firm pay a larger amount.
- (7) A money award—
  - (a) may specify the date by which the amount awarded is to be paid;
  - (b) may provide for interest to be payable, at a rate specified in the award, on any amount which is not paid by that date; and
  - (c) is enforceable by the consumer in accordance with Part 3 or 3A of Schedule 17 (as the case may be).
- (8) If, in determining a relevant complaint, the ombudsman determines that the firm should take (or should have taken) particular action in relation to the consumer, the ombudsman may direct the firm to take that action.
- (9) Compliance with a direction under subsection (8) is enforceable, on the application of the consumer, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (10) In consequence of the provision made by this section, sections 228(2) and 229 do not apply in relation to relevant complaints; but all other provision made by or under Part 16 applies in relation to those complaints.

**Status:** Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (11) The compulsory jurisdiction of the ombudsman scheme is to include the jurisdiction resulting from this section.
- (12) Nothing in subsection (1) is to be taken as requiring the ombudsman to determine a complaint in any case where (apart from that subsection) the complaint would not fall to be determined (whether as a result of rules made under Schedule 17 or otherwise).
- (13) Nothing in subsection (2) is to be taken as conferring an entitlement on a person who, for the purposes of the ombudsman scheme, is not an eligible complainant in relation to the subject-matter of the determination mentioned there.

#### Textual Amendments

- F1** Ss. 404-404G and preceding cross-heading substituted (12.10.2010) for s. 404 and preceding cross-heading by [Financial Services Act 2010 \(c. 28\)](#), **ss. 14, 26(3)**; S.I. 2010/2480, **art. 2**

VALID FROM 12/10/2010

#### 404C Enforcement

The following provisions—

- (a) Part 14 (disciplinary measures), and
  - (b) so much of this Act as relates to any provision of that Part,
- (which apply only in relation to authorised persons) are also to apply in relation to relevant firms which are not (or are no longer) authorised persons.

#### Textual Amendments

- F1** Ss. 404-404G and preceding cross-heading substituted (12.10.2010) for s. 404 and preceding cross-heading by [Financial Services Act 2010 \(c. 28\)](#), **ss. 14, 26(3)**; S.I. 2010/2480, **art. 2**

VALID FROM 12/10/2010

#### 404D Applications to Tribunal to quash rules or provision of rules

- (1) Any person may apply to the Tribunal for a review of any rules made under section 404.
- (2) The Tribunal may—
  - (a) dismiss the application; or
  - (b) make an order (a “quashing order”) quashing any rules made under section 404 or any provision of those rules.
- (3) An application may be made only if permission to make it has first been obtained from the Tribunal.
- (4) The Tribunal may grant permission to make an application only if it considers that the applicant has a sufficient interest in the matter to which the application relates.

*Status: Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) The general rule is that, in determining an application, the Tribunal is to apply the principles applicable on an application for judicial review.
- (6) If (or so far as) an application relates to an example set out in the rules as a result of section 404A(1)(b), the Tribunal may determine whether the example constitutes a failure to comply with the requirement in question.
- (7) If (or so far as) an application relates to a matter set out in the rules as a result of section 404A(1)(c), the Tribunal may determine whether the matter should be taken into account as mentioned in that provision.
- (8) In the case of an application within subsection (6) or (7), the Tribunal's jurisdiction under that subsection is in addition to its jurisdiction under subsection (5).
- (9) A quashing order may be enforced as if it were an order made, on an application for judicial review, by the High Court or, in Scotland, the Court of Session.
- (10) The Tribunal may award damages to the applicant if—
  - (a) the application includes a claim for damages arising from any matter to which the application relates; and
  - (b) the Tribunal is satisfied that an award would have been made by the High Court or, in Scotland, the Court of Session if the claim had been made in an action begun in that court by the applicant when making the application.
- (11) An award of damages under subsection (10) may be enforced as if it were an award made by the High Court or, in Scotland, the Court of Session.
- (12) In the case of any proceedings under this section, the judge presiding at the proceedings must be—
  - (a) a judge of the High Court or the Court of Appeal or a judge of the Court of Session; or
  - (b) such other person as may be agreed from time to time by—
    - (i) the Lord Chief Justice, the Lord President or the Lord Chief Justice of Northern Ireland (as the case may be); and
    - (ii) the Senior President of Tribunals.
- (13) Section 133 does not apply in the case of an application under this section, but—
  - (a) Tribunal Procedure Rules may make provision for the suspension of rules made under section 404 or of any provision of those rules, pending determination of the application; and
  - (b) in the case of an application within subsection (6) or (7), the Tribunal may consider any evidence relating to the application's subject-matter, whether or not it was available at the time the rules were made.
- (14) If—
  - (a) the Tribunal refuses to grant permission to make an application under this section, and
  - (b) on an appeal by the applicant, the Court of Appeal grants the permission, the Court of Appeal may go on to decide the application under this section.

**Status:** Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### Textual Amendments

- F1** Ss. 404-404G and preceding cross-heading substituted (12.10.2010) for s. 404 and preceding cross-heading by [Financial Services Act 2010 \(c. 28\)](#), **ss. 14, 26(3)**; S.I. 2010/2480, **art. 2**

VALID FROM 12/10/2010

### 404E Meaning of “consumers”

- (1) For the purposes of sections 404 to 404B “consumers” means persons who—
  - (a) have used, or may have contemplated using, any of the services within subsection (2); or
  - (b) have relevant rights or interests in relation to any of the services within that subsection.
- (2) The services within this subsection are services provided by—
  - (a) authorised persons in carrying on regulated activities;
  - (b) authorised persons in carrying on a consumer credit business in connection with the accepting of deposits;
  - (c) authorised persons in communicating, or approving the communication by others of, invitations or inducements to engage in investment activity;
  - (d) authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services;
  - (e) persons acting as appointed representatives; or
  - (f) payment service providers in providing payment services.
- (3) A person (“P”) has a “relevant right or interest” in relation to any services within subsection (2) if P has a right or interest—
  - (a) which is derived from, or is otherwise attributable to, the use of the services by others; or
  - (b) which may be adversely affected by the use of the services by persons acting on P's behalf or in a fiduciary capacity in relation to P.
- (4) If a person is providing a service within subsection (2) as a trustee, the persons who have been, or may have been, beneficiaries of the trust are to be treated as persons who have used, or may have contemplated using, the service.
- (5) A person who deals with another person (“B”) in the course of B providing a service within subsection (2) is to be treated as using the service.
- (6) In this section—
  - “accepting”, in relation to deposits, includes agreeing to accept;
  - “consumer credit business” has the same meaning as in the Consumer Credit Act 1974 (see section 189(1));
  - “credit institution” has the meaning given by section 138(1B);
  - “engage in investment activity” has the meaning given by section 21;
  - “payment services” has the same meaning as in the Payment Services Regulations 2009;



*Status: Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“payment service provider” means a person who is a payment service provider for the purposes of those regulations as a result of falling within any of paragraphs (a) to (e) of the definition in regulation 2(1);

“relevant ancillary services” has the meaning given by section 138(1C).

VALID FROM 12/10/2010

#### 404F Other definitions etc

- (1) For the purposes of sections 404 to 404B—
  - “redress” includes—
    - (a) interest; and
    - (b) a remedy or relief which could not be awarded in legal proceedings;
  - “specified” means specified in rules made under section 404.
- (2) In determining for the purposes of those sections whether an authorised person has failed to comply with a requirement, anything which an appointed representative has done or omitted as respects business for which the authorised person has accepted responsibility is to be treated as having been done or omitted by the authorised person.
- (3) References in those sections to the failure by a relevant firm to comply with a requirement applicable to the carrying on by it of any activity include anything done, or omitted to be done, by it in carrying on the activity—
  - (a) which is in breach of a duty or other obligation, prohibition or restriction; or
  - (b) which otherwise gives rise to the availability of a remedy or relief in legal proceedings.
- (4) It does not matter whether—
  - (a) the duty or other obligation, prohibition or restriction, or
  - (b) the remedy or relief,
 arises as a result of any provision made by or under this or any other Act, a rule of law or otherwise.
- (5) References in sections 404 to 404B to a relevant firm include—
  - (a) a person who was at any time a relevant firm but has subsequently ceased to be one; and
  - (b) a person who has assumed a liability (including a contingent one) incurred by a relevant firm in respect of a failure by the firm to comply with a requirement applicable to the carrying on by it of any activity.
- (6) References in those sections to the carrying on of an activity by a relevant firm are, accordingly, to be read in that case with the appropriate modifications.
- (7) If the Authority varies a permission or authorisation of a person so as to impose requirements on the person to establish and operate a scheme which corresponds to, or is similar to, a consumer redress scheme, the provision that may be included in the permission or authorisation as varied includes—
  - (a) provision imposing requirements on the person corresponding to those that could be included in rules made under section 404; and



**Status:** Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(b) provision corresponding to section 404B.

(8) In subsection (7) the reference to the variation of a permission or authorisation by the Authority is a reference to—

- (a) the variation under section 44 or 45 of a Part IV permission; or
- (b) the variation under regulation 8 or 11 of the Payment Services Regulations 2009 of an authorisation under those regulations.

VALID FROM 12/10/2010

#### **404G Power to widen the scope of consumer redress schemes**

- (1) The Treasury may by order amend the definition of “relevant firms” in section 404 or the definition of “consumers” in section 404E (or both).
- (2) An order under this section may make consequential amendments of any provision of sections 404 to 404F.]

#### **Textual Amendments**

- F1** Ss. 404-404G and preceding cross-heading substituted (12.10.2010) for s. 404 and preceding cross-heading by [Financial Services Act 2010 \(c. 28\)](#), **ss. 14, 26(3)**; [S.I. 2010/2480](#), **art. 2**

### *Third countries*

#### **405 Directions.**

- (1) For the purpose of implementing a third country decision, the Treasury may direct the Authority to—
  - (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
  - (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;

**Status:** Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) [F<sup>2</sup>Article 23(5) of the banking consolidation directive];
- (c) Article 29b(4) of the first non-life insurance directive; or
- (d) Article 32b(4) of the first life insurance directive.

#### Textual Amendments

**F2** Words in s. 405(5)(b) substituted (22.11.2000) by S.I. 2000/2952, reg. 8(3)

#### Commencement Information

**II** S. 405 wholly in force at 1.12.2001; s. 405 not in force at Royal Assent see s. 431(2); s. 405 (except (1)(c)(d)) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 405 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

### 406 Interpretation of section 405.

- (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.

### 407 Consequences of a direction under section 405.

- (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)—
  - (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)—

**Status:** Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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.

#### Commencement Information

**I2** S. 407 wholly in force at 1.12.2001; s. 407 not in force at Royal Assent see s. 431(2); s. 407(1)(2) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 407 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

#### 408 EFTA firms.

- (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.
- (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.

#### Commencement Information

**I3** S. 408 wholly in force at 1.12.2001; s. 408 not in force at Royal Assent see s. 431(2); s. 408 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 408 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

*Status: Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### **409 Gibraltar.**

- (1) The Treasury may by order—
  - (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;
  - (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*

#### **410 International obligations.**

- (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 <sup>M1</sup>Court of Session Act 1988.
- (4) “Relevant person” means—

**Status:** Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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

**Modifications etc. (not altering text)**

C2 S. 410 applied (1.12.2001) by S.I. 1995/1537, reg. 23(3) (as amended (1.12.2001) by S.I. 2001/3649, arts. 1, 509(d))

**Marginal Citations**

M1 1988 c. 36.

*Tax treatment of levies and repayments*

**411 Tax treatment of levies and repayments.**

<sup>F3</sup>(1) .....

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

**“76A Levies and repayments under the Financial Services and Markets Act 2000.**

- (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.

**76B Levies and repayments under the Financial Services and Markets Act 2000: investment companies.**

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

**Status:** Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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).”

#### Textual Amendments

**F3** S. 411(1) repealed (1.12.2001) by S.I. 2001/3629, arts. 1(2)(a), 109, Sch.

### *Gaming contracts*

#### **412 Gaming contracts.**

- (1) No contract to which this section applies is void or unenforceable because of—
- (a) section 18 of the <sup>M2</sup>Gaming Act 1845, section 1 of the <sup>M3</sup>Gaming Act 1892 or Article 170 of the <sup>M4</sup>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.

**Status:** Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

#### Commencement Information

- I4** S. 412 wholly in force at 1.12.2001; s. 412 not in force at Royal Assent see s. 431(2); s. 412 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 412 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

#### Marginal Citations

- M2** 1845 c. 109.  
**M3** 1892 c. 9.  
**M4** S.I. 1985/1204 (N.I. 11).

VALID FROM 01/04/2007

### *F<sup>4</sup>Trade-matching and reporting systems*

#### Textual Amendments

- F4** Ss. 412A, 412B and preceding cross-heading inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007](#) (S.I. 2007/126), regs. 1(2), 3(5), **Sch. 5 para. 18**

#### **412A Approval and monitoring of trade-matching and reporting systems**

- (1) A relevant system is an approved relevant system if it is approved by the Authority under subsection (2) for the purposes of Article 25.5 of the markets in financial instruments directive; and references in this section and section 412B to an “approved relevant system” are to be read accordingly.
- (2) The Authority must approve a relevant system if, on an application by the operator of the system, it is satisfied that the arrangements established by the system for reporting transactions comply with Article 12(1) of Commission Regulation 1287/2006 of 10 August 2006 <sup>F5</sup> (“the Regulation”).
- (3) Section 51(3) and (4) applies to an application under this section as it applies to an application under Part 4.
- (4) If, at any time after approving a relevant system under subsection (2), the Authority is not satisfied as mentioned in that subsection, it may suspend or withdraw the approval.
- (5) The Authority must keep under review the arrangements established by an approved relevant system for reporting transactions for the purpose of ensuring that the arrangements comply with Article 12(1) of the Regulation; and for the purposes of this subsection the Authority must have regard to information provided to it under subsections (6) and (7).
- (6) The operator of an approved relevant system must make reports to the Authority at specified intervals containing specified information relating to—
  - (a) the system,



*Status: Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the reports made by the system in accordance with Article 25 of the markets in financial instruments directive and the Regulation, and

(c) the transactions to which those reports relate.

“Specified” means specified by the Authority.

(7) The Authority may by written notice require the operator of an approved relevant system to provide such additional information as may be specified in the notice, by such reasonable time as may be so specified, about any of the matters mentioned in subsection (6).

(8) The recipient of a notice under subsection (7) must provide the information by the time specified in the notice.

(9) In this section and section 412B, “relevant system” means a trade-matching or reporting system of a kind described in Article 12 of the Regulation.

#### Textual Amendments

**F5** OJ No L 241, 2.9.2006, p. 1.

#### **412B Procedure for approval and suspension or withdrawal of approval**

(1) If the Authority approves a relevant system, it must give the operator of the system written notice specifying the date from which the approval has effect.

(2) If the Authority proposes to refuse to approve a relevant system, it must give the operator of the system a warning notice.

(3) If the Authority decides to refuse to approve a relevant system, it must give the operator of the system a decision notice.

(4) If the Authority proposes to suspend or withdraw its approval in relation to an approved relevant system, it must give the operator of the system a warning notice.

(5) If the Authority decides to suspend or withdraw its approval in relation to an approved relevant system, it must give the operator of the system a decision notice specifying the date from which the suspension or withdrawal is to take effect.

(6) Subsections (7) to (9) apply if—

(a) the Authority has suspended its approval in relation to an approved relevant system, and

(b) the operator of the system has applied for the suspension to be cancelled.

(7) The Authority must grant the application if it is satisfied as mentioned in section 412A(2); and in such a case the Authority must give written notice to the operator that the suspension is to be cancelled from the date specified in the notice.

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

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

**Status:** Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (10) A person who receives a decision notice under subsection (3), (5) or (9) may refer the matter to the Tribunal.]

### *Limitation on powers to require documents*

#### **413 Protected items.**

- (1) A person may not be required under this Act to produce, disclose or permit the inspection of 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.

#### **Modifications etc. (not altering text)**

- C3** S. 413 applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(b)(xiii)(c), 95, **Sch. 5 para. 8** (with reg. 3)
- C4** S. 413 applied (11.2.2010) by [The Cross-Border Payments in Euro Regulations 2010 \(S.I. 2010/89\)](#), reg. 19, **Sch. para. 6**
- C5** S. 413 applied (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xiv)(b), 62, **Sch. 3 para. 9** (with reg. 3)

### *Service of notices*

#### **414 Service of notices.**

- (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.
- (2) The regulations may, in particular, make provision—
- (a) as to the manner in which a document must be given;

**Status:** Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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 <sup>M5</sup>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.

#### Modifications etc. (not altering text)

- C6** S. 414 amended (1.12.2001) by S.I. 2001/2657, arts. 1(1), 10(7), 11(7) (which was revoked (8.10.2001) by S.I. 2001/3083, arts. 1(2), 23); S.I. 2001/3538, art. 2(1)  
S. 414 amended (1.12.2001) by S.I. 2001/3083, arts. 1(2), 10(7), 11(7); S.I. 2001/3538, art. 2(1)

#### Commencement Information

- I5** S. 414 wholly in force at 18.6.2001; s. 414 not in force at Royal Assent see s. 431(2); s. 414(1)-(3) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), Sch. Pt. 1; s. 414 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.

#### Marginal Citations

- M5** 1978 c. 30.

### Jurisdiction

#### 415 Jurisdiction in civil proceedings.

- (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.

#### Modifications etc. (not altering text)

- C7** S. 415 applied (1.12.2001) by S.I. 1995/1537, reg. 23(2) (as amended (1.12.2001) by S.I. 2001/3649, arts. 1, 509(c))  
**C8** S. 415 modified (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), 8, Sch. 2 para. 8

**Status:** Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

VALID FROM 08/04/2010

## *[<sup>F6</sup>Powers of the Authority*

### Textual Amendments

- F6** S. 415A and preceding cross-heading inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(1)(l), [Sch. 2 para. 30](#)

### **415A Powers of the Authority**

Any power which the Authority has under any provision of this Act is not limited in any way by any other power which it has under any other provision of this Act.]

### *Removal of certain unnecessary provisions*

### **416 Provisions relating to industrial assurance and certain other enactments.**

- (1) The following enactments are to cease to have effect—
  - (a) the <sup>M6</sup>Industrial Assurance Act 1923;
  - (b) the <sup>M7</sup>Industrial Assurance and Friendly Societies Act 1948;
  - (c) the <sup>M8</sup>Insurance Brokers (Registration) Act 1977.
- (2) The <sup>M9</sup>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.

### Commencement Information

- I6** S. 416 wholly in force at 1.12.2001; s. 416 not in force at Royal Assent see s. 431(2); s. 416(4)(5) in force at 25.2.2001 by [S.I. 2001/516, art. 2\(a\), Sch. Pt. 1](#); s. 416(1)(c)(3)(a) in force at 30.4.2001 by [S.I. 2001/1282, art. 2\(a\)](#); s. 416 in force at 1.12.2001 so far as not already in force (except sub-section (3)(b)(c) which are in force at 2.3.2002) by [S.I. 2001/3538, art. 2\(1\)\(4\)](#)

### Marginal Citations

- M6** 1923 c. 8.  
**M7** 1948 c. 39.

---

**Status:** Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

---

**M8** 1977 c. 46.

**M9** S.I. 1979/1574 (N.I. 13).

**Status:**

Point in time view as at 30/06/2004. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

Financial Services and Markets Act 2000, Part XXVIII is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.