



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART II

#### REGULATED AND PROHIBITED ACTIVITIES

##### *Enforceability of agreements*

#### **28 Agreements made unenforceable by section 26 or 27<sup>[F1]</sup>: general cases].**

- (1) This section applies to an agreement which is unenforceable because of section 26 or 27<sup>[F2]</sup>, other than an agreement entered into in the course of carrying on a credit-related regulated activity].
- (2) The amount of compensation recoverable as a result of that section is—
  - (a) the amount agreed by the parties; or
  - (b) on the application of either party, the amount determined by the court.
- (3) If the court is satisfied that it is just and equitable in the circumstances of the case, it may allow—
  - (a) the agreement to be enforced; or
  - (b) money and property paid or transferred under the agreement to be retained.
- (4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the court must—
  - (a) if the case arises as a result of section 26, have regard to the issue mentioned in subsection (5); or
  - (b) if the case arises as a result of section 27, have regard to the issue mentioned in subsection (6).
- (5) The issue is whether the person carrying on the regulated activity concerned reasonably believed that he was not contravening the general prohibition by making the agreement.

*Changes to legislation: Financial Services and Markets Act 2000, Section 28 is up to date with all changes known to be in force on or before 19 July 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) View outstanding changes*

- (6) The issue is whether the provider knew that the third party was (in carrying on the regulated activity) contravening the general prohibition.
- (7) If the person against whom the agreement is unenforceable—
- (a) elects not to perform the agreement, or
  - (b) as a result of this section, recovers money paid or other property transferred by him under the agreement,
- he must repay any money and return any other property received by him under the agreement.
- (8) If property transferred under the agreement has passed to a third party, a reference in section 26 or 27 or this section to that property is to be read as a reference to its value at the time of its transfer under the agreement.
- (9) The commission of an authorisation offence does not make the agreement concerned illegal or invalid to any greater extent than is provided by section 26 or 27.

#### Textual Amendments

- F1** Words in s. 28 heading inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 7\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F2** Words in s. 28(1) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 7\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

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

- C1** S. 28 applied (with modifications) (1.12.2001) by [S.I. 2001/2657](#), [arts. 1\(1\)](#), 5(6) (which was revoked (8.10.2001) by [S.I. 2001/3083](#), [arts. 1\(2\)](#), 23); [S.I. 2001/3538](#), [art. 2\(1\)](#)
- S. 28 applied (with modifications) (1.12.2001) by [S.I. 2001/3083](#), [arts. 1\(2\)](#), 5(6); [S.I. 2001/3538](#), [art. 2\(1\)](#)

### Changes to legislation:

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### Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act power to apply conferred (temp. until 15.5.2039) by [2014 c. 21 s. 79\(4\)](#)
- Act power to apply conferred (temp. until 15.5.2039) by [2014 c. 21 s. 81\(10\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 17 Ch. 3B inserted by [2023 c. 29 s. 64\(3\)](#)
- Pt. 20C inserted by [2016 c. 14 s. 30\(3\)](#)
- s. 31(1)(aa) inserted by [2021 c. 22 s. 22\(2\)](#)
- s. 32A inserted by [2021 c. 22 s. 22\(3\)](#)
- s. 32A power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- s. 36A and cross-heading inserted by [2021 c. 22 s. 22\(4\)](#)
- s. 71J and cross-heading inserted by [2021 c. 22 Sch. 8 para. 4](#)
- s. 86(9A) inserted by [S.I. 2019/707 reg. 8\(9\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8(6)-(10) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 13(c))
- s. 87A(11) inserted by [S.I. 2019/707 reg. 10\(5\)](#) (This amendment not applied to legislation.gov.uk. Reg. 10(4)(5) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 15(b))
- s. 124(10)(c)(i) word omitted by [S.I. 2019/310 reg. 5\(11\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(11)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(e))
- s. 129(7)(a) word inserted by [S.I. 2019/310 reg. 5\(12\)\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(12)(a)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(f))
- s. 129(7)(c) omitted and word by [S.I. 2019/310 reg. 5\(12\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(12)(a)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(f))
- s. 204A(3)(fa) inserted by [S.I. 2024/705 Sch. 2 para. 1](#)
- s. 214(5A) inserted by [2021 c. 22 Sch. 8 para. 8](#)
- s. 234I(9) inserted by [2024 c. 13 Sch. 29 para. 3\(2\)](#)
- s. 234J(6) inserted by [2024 c. 13 Sch. 29 para. 3\(3\)](#)
- s. 261E(A1) inserted by [2023 c. 29 s. 64\(2\)\(a\)](#)
- s. 367A inserted by [2021 c. 22 Sch. 8 para. 10](#)
- s. 395(13)(h)(i) inserted by [2021 c. 22 Sch. 8 para. 12\(2\)\(c\)](#)
- s. 395(13)(bc)-(be) word inserted by [2021 c. 22 Sch. 8 para. 12\(2\)\(b\)](#)
- s. 395(14) inserted by [2021 c. 22 Sch. 8 para. 12\(3\)](#)
- s. 427A(3) words substituted by [2002 c. 40 Sch. 17 para. 59](#) (This amendment not applied to legislation.gov.uk. The Financial Services and Markets Act 2000 does not contain a section 427A.)
- Sch. 1ZA para. 32(c) and word inserted by [2021 c. 22 Sch. 8 para. 18](#)
- Sch. 2A para. 19(2)(b)(iia) inserted by [2023 c. 29 Sch. 10 para. 19\(a\)](#)
- Sch. 2A2B power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 2A power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 2B inserted by [2021 c. 22 Sch. 7](#)
- Sch. 2B power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 11A para. 5(3) inserted by [S.I. 2019/707 reg. 38\(5\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 38(2)-(5)(7)(8) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 20)

- Sch. 17A para. 12 words substituted by [S.I. 2019/662 reg. 13\(1\)](#) (This amendment not applied to [legislation.gov.uk](#). Reg. 13(1) substituted (25.6.2020) by S.I. 2020/646, regs. 1(2)(c), 11(3))