



# Financial Services Act 1986

## 1986 CHAPTER 60

### PART X

#### MISCELLANEOUS AND SUPPLEMENTARY

#### **187 Exemption from liability for damages**

- (1) Neither a recognised self-regulating organisation nor any of its officers or servants or members of its governing body shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions to which this subsection applies unless the act or omission is shown to have been in bad faith.
- (2) The functions to which subsection (1) above applies are the functions of the organisation so far as relating to, or to matters arising out of—
  - (a) the rules, practices, powers and arrangements of the organisation to which the requirements in paragraphs 1 to 6 of Schedule 2 to this Act apply ;
  - (b) the obligations with which paragraph 7 of that Schedule requires the organisation to comply ;
  - (c) any guidance issued by the organisation ;
  - (d) the powers of the organisation under section 53(2), 64(4), 72(5), 73(5) or 105(2)(a) above ; or
  - (e) the obligations to which the organisation is subject by virtue of this Act.
- (3) No designated agency or transferee body nor any member, officer or servant of a designated agency or transferee body shall be liable in damages for anything done or omitted in the discharge or purported discharge of the functions exercisable by the agency by virtue of a delegation order or, as the case may be, the functions exercisable by the body by virtue of a transfer order unless the act or omission is shown to have been in bad faith.
- (4) Neither the competent authority nor any member, officer, or servant of that authority shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions of the authority under Part IV of this Act unless the act or omission is shown to have been in bad faith.

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- (5) The functions to which subsections (1) and (3) above apply also include any functions exercisable by a recognised self-regulating organisation, designated agency or transferee body on behalf of another body by virtue of arrangements made pursuant to paragraph 4(2) of Schedule 2, paragraph 4(6) of Schedule 3, paragraph 3(2) of Schedule 4 or paragraph 3(2) of Schedule 7 to this Act or of such arrangements as are mentioned in section 39(4)(6) above.
- (6) A recognised professional body may make it a condition of any certificate issued by it for the purposes of Part I of this Act that neither the body nor any of its officers or servants or members of its governing body is to be liable in damages for anything done or omitted in the discharge or purported discharge of any functions to which this subsection applies unless the act or omission is shown to have been in bad faith.
- (7) The functions to which subsection (6) above applies are the functions of the body so far as relating to, or to matters arising out of—
  - (a) the rules, practices and arrangements of the body to which the requirements in paragraphs 2 to 5 of Schedule 3 to this Act apply ;
  - (b) the obligations with which paragraph 6 of that Schedule requires the body to comply ;
  - (c) any guidance issued by the body in respect of any matters dealt with by such rules as are mentioned in paragraph (a) above;
  - (d) the powers of the body under the provisions mentioned in subsection (1)(d) above or under section 54(3) above ; or
  - (e) the obligations to which the body is subject by virtue of this Act.

**188 Jurisdiction as respects actions concerning designated agency etc.**

- (1) Proceedings arising out of any act or omission (or proposed act or omission) of a designated agency, transferee body or the competent authority in the discharge or purported discharge of any of its functions under this Act may be brought in the High Court or the Court of Session.
- (2) At the end of Schedule 5 to the Civil Jurisdiction and Judgments Act 1982 (exclusion of certain proceedings from the provisions of Schedule 4 to that Act which determine whether the courts in each part of the United Kingdom have jurisdiction in proceedings) there shall be inserted—

*“Proceedings concerning financial services agencies*

10           Such proceedings as are mentioned in section 188 of the Financial Services Act 1986.”.

**189 Restriction of Rehabilitation of Offenders Act 1974**

- (1) The Rehabilitation of Offenders Act 1974 shall have effect subject to the provisions of this section in cases where the spent conviction is for—
  - (a) an offence involving fraud or other dishonesty ; or
  - (b) an offence under legislation (whether or not of the United Kingdom) relating to companies (including insider dealing), building societies, industrial and provident societies, credit unions, friendly societies, insurance, banking or other financial services, insolvency, consumer credit or consumer protection.

- (2) Nothing in section 4(1) (restriction on evidence as to spent convictions in proceedings) shall prevent the determination in any proceedings specified in Part I of Schedule 14 to this Act of any issue, or prevent the admission or requirement in any such proceedings of any evidence, relating to a person's previous convictions for any such offence as is mentioned in subsection (1) above or to circumstances ancillary thereto.
- (3) A conviction for any such offence as is mentioned in subsection (1) above shall not be regarded as spent for the purposes of section 4(2) (questions relating to an individual's previous convictions) if—
- (a) the question is put by or on behalf of a person specified in the first column of Part II of that Schedule and relates to an individual (whether or not the person questioned) specified in relation to the person putting the question in the second column of that Part; and
  - (b) the person questioned is informed when the question is put that by virtue of this section convictions for any such offence are to be disclosed.
- (4) Section 4(3)(b) (spent conviction not to be ground for excluding person from office, occupation etc.) shall not prevent a person specified in the first column of Part III of that Schedule from taking such action as is specified in relation to that person in the second column of that Part by reason, or partly by reason, of a spent conviction for any such offence as is mentioned in subsection (1) above of an individual who is—
- (a) the person in respect of whom the action is taken ;
  - (b) as respects action within paragraph 1 or 4 of that Part, an associate of that person ; or
  - (c) as respects action within paragraph 1 of that Part consisting of a decision to refuse or revoke an order declaring a collective investment scheme to be an authorised unit trust scheme or a recognised scheme, the operator or trustee of the scheme or an associate of his,
- or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.
- (5) Parts I, II and III of that Schedule shall have effect subject to Part IV.
- (6) In this section and that Schedule " associate " means—
- (a) in relation to a body corporate, a director, manager or controller;
  - (b) in relation to a partnership, a partner or manager;
  - (c) in relation to a registered friendly society, a trustee, manager or member of the committee of the society;
  - (d) in relation to an unincorporated association, a member of its governing body or an officer, manager or controller ; \*
  - (e) in relation to an individual, a manager.
- (7) This section and that Schedule shall apply to Northern Ireland with the substitution for the references to the said Act of 1974 and section 4(1), (2) and (3)(b) of that Act of references to the Rehabilitation of Offenders (Northern Ireland) Order 1978 and Article 5(1), (2) and (3)(b) of that Order.

## **190 Data protection**

An order under section 30 of the Data Protection Act 1984 (exemption from subject access provisions of data held for the purpose of discharging designated functions conferred by or under enactments relating to the regulation of financial services etc.)

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may designate for the purposes of that section as if they were functions conferred by or under such an enactment as is there mentioned—

- (a) any functions of a recognised self-regulating organisation in connection with the admission or expulsion of members, the suspension of a person's membership or the supervision or regulation of persons carrying on investment business by virtue of membership of the organisation;
- (b) any functions of a recognised professional body in connection with the issue of certificates for the purposes of Part I of this Act, the withdrawal or suspension of such certificates or the supervision or regulation of persons carrying on investment business by virtue of certification by that body;
- (c) any functions of a recognised self-regulating organisation for friendly societies in connection with the supervision or regulation of its member societies.

## **191 Occupational pension schemes**

- (1) Subject to the provisions of this section, a person who apart from this section would not be regarded as carrying on investment business shall be treated as doing so if he engages in the activity of management falling within paragraph 14 of Schedule 1 to this Act in a case where the assets referred to in that paragraph are held for the purposes of an occupational pension scheme.
- (2) Subsection (1) above does not apply where all decisions, or all day to day decisions, in the carrying on of that activity so far as relating to assets which are investments are taken on behalf of the person concerned by—
  - (a) an authorised person ;
  - (b) an exempted person who in doing so is acting in the course of the business in respect of which he is exempt ; or
  - (c) a person who does not require authorisation to manage the assets by virtue of Part IV of Schedule 1 to this Act.
- (3) The Secretary of State may by order direct that a person of such description as is specified in the order shall not by virtue of this section be treated as carrying on investment business where the assets are held for the purposes of an occupational pension scheme of such description as is so specified, being a scheme in the case of which it appears to the Secretary of State that management by an authorised or exempted person is unnecessary having regard to the size of the scheme and the control exercisable over its affairs by the members.
- (4) An order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) For the purposes of subsection (1) above paragraph 14 of Schedule 1 to this Act shall be construed without reference to paragraph 22 of that Schedule.

## **192 International obligations**

- (1) If it appears to the Secretary of State—
  - (a) that any action proposed to be taken by a recognised self-regulating organisation, designated agency, transferee body or competent authority would be incompatible with Community obligations or any other international obligations of the United Kingdom ; or

- (b) that any action which that organisation, agency, body or authority has power to take is required for the purpose of implementing any such obligations, he may direct the organisation, agency, body or authority not to take or, as the case may be, to take the action in question.
- (2) Subsection (1) above applies also to an approved exchange within the meaning of Part V of this Act in respect of any action which it proposes to take or has power to take in respect of rules applying to a prospectus by virtue of a direction under section 162(3) above.
- (3) A direction under this section may include such supplementary or incidental requirements as the Secretary of State thinks necessary or expedient.
- (4) Where the function of making or revoking a recognition order in respect of a self-regulating organisation is exercisable by a designated agency any direction under subsection (1) above in respect of that organisation shall be a direction requiring the agency to give the organisation such a direction as is specified in the direction given by the Secretary of State.
- (5) Any direction under this section shall, on the application of the person by whom it was given, be enforceable by mandamus or, in Scotland, by an order for specific performance under section 91 of the Court of Session Act 1868.

### **193 Exemption from Banking Act 1979**

- (1) Section 1(1) of the Banking Act 1979 (control of deposit-taking) shall not apply to the acceptance of a deposit by an authorised or exempted person in the course or for the purpose of engaging in any activity falling within paragraph 12 of Schedule 1 to this Act with or on behalf of the person by whom or on whose behalf the deposit is made or any activity falling within paragraph 13, 14 or 16 of that Schedule on behalf of that person.
- (2) Subsection (1) above applies to an exempted person only if the activity is one in respect of which he is exempt; and for the purposes of that subsection the paragraphs of Schedule 1 there mentioned shall be construed without reference to Parts III and IV of that Schedule.
- (3) This section is without prejudice to any exemption from the said Act of 1979 which applies to an authorised or exempted person apart from this section.

### **194 Transfers to or from recognised clearing houses**

- (1) In section 5 of the Stock Exchange (Completion of Bargains) Act 1976 (protection of trustees etc. in case of transfer of shares etc. to or from a stock exchange nominee)—
- (a) for the words " a stock exchange nominee ", in the first place where they occur, there shall be substituted the words " a recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange " ;
- (b) for those words in the second place where they occur there shall be substituted the words " such a clearing house or nominee " ;
- (c) at the end there shall be added the words " ; but no person shall be a nominee for the purposes of this section unless he is a person designated for the purposes of this section in the rules of the recognised investment exchange in question " .

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- (2) The provisions of that section as amended by subsection (1) above shall become subsection (1) of that section and after that subsection there shall be inserted—
- “(2) In this section " a recognised clearing house " means a recognised clearing house within the meaning of the Financial Services Act 1986 acting in relation to a recognised investment exchange within the meaning of that Act and " a recognised investment exchange has the same meaning as in that Act.”
- (3) In Article 7 of the Stock Exchange (Completion of Bargains) (Northern Ireland) Order 1977 (protection of trustees etc. in case of transfer of shares etc. to or from a stock exchange nominee)—
- (a) for the words " a stock exchange nominee ", in the first place where they occur, there shall be substituted the words " a recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange " ;
- (b) for those words in the second place where they occur there shall be substituted the words " such a clearing house or nominee " ;
- (c) at the end there shall be added the words " ; but no person shall be a nominee for the purposes of this Article unless he is a person designated for the purposes of this Article in the rules of the recognised investment exchange in question " .
- (4) The provisions of that Article as amended by subsection (3) above shall become paragraph (1) of that Article and after that paragraph there shall be inserted—
- “(2) In this Article " a recognised clearing house " means a recognised clearing house within the meaning of the Financial Services Act 1986 acting in relation to a recognised investment exchange within the meaning of that Act and " a recognised investment exchange " has the same meaning as in that Act.”
- (5) In subsection (4) of section 185 of the Companies Act 1985 (exemption from duty to issue certificates in respect of shares etc. in cases of allotment or transfer to a stock exchange nominee)—
- (a) for the words " a stock exchange nominee " in the first place where they occur there shall be substituted the words " a recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange " ;
- (b) for those words in the second place where they occur there shall be substituted the words " such a clearing house or nominee " ;
- (c) at the end of the first paragraph in that subsection there shall be inserted the words " ; but no person shall be a nominee for the purposes of this section unless he is a person designated for the purposes of this section in the rules of the recognised investment exchange in question " ; and
- (d) for the second paragraph in that subsection there shall be substituted—
- “‘Recognised clearing house ’ means a recognised clearing house within the meaning of the Financial Services Act 1986 acting in relation to a recognised investment exchange and ' recognised investment exchange ' has the same meaning as in that Act.”.
- (6) In paragraph (4) of Article 195 of the Companies (Northern Ireland) Order 1986 (duty to issue certificates in respect of shares etc. in cases of allotment or transfer unless it is to a stock exchange nominee)—
- (a) for the words " a stock exchange nominee " in the first place where they occur there shall be substituted the words " a recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange " ;

- (b) for those words in the second place where they occur there shall be substituted the words " such a clearing house or nominee " ;
- (c) at the end of the first sub-paragraph in that paragraph there shall be inserted the words " ; but no person shall be a nominee for the purposes of this Article unless he is a person designated for the purposes of this Article in the rules of the recognised investment exchange in question " ; and
- (d) for the second sub-paragraph in that paragraph there shall be substituted " ' recognised clearing house ' means a recognised clearing house within the meaning of the Financial Services Act 1986 acting in relation to a recognised investment exchange and ' recognised investment exchange ' has the same meaning as in that Act. "

### **195 Offers of short-dated debentures**

As respects debentures which, under the terms of issue, must be repaid within less than one year of the date of issue—

- (a) section 79(2) of the Companies Act 1985 (offer of debentures of oversea company deemed not to be an offer to the public if made to professional investor) shall apply for the purposes of Chapter I of Part III of that Act as well as for those of Chapter II of that Part; and
- (b) Article 89(2) of the Companies (Northern Ireland) Order 1986 (corresponding provisions for Northern Ireland) shall apply for the purposes of Chapter I of Part IV of that Order as well as for those of Chapter II of that Part.

### **196 Financial assistance for employees' share schemes**

- (1) Section 153 of the Companies Act 1985 (transactions not prohibited by section 151) shall be amended as follows.
- (2) After subsection (4)(b) there shall be inserted—
  - “(bb) without prejudice to paragraph (b), the provision of financial assistance by a company or any of its subsidiaries for the purposes of or in connection with anything done by the company (or a company connected with it) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company between, and involving the acquisition of beneficial ownership of those shares by, any of the following persons—
    - (i) the bona fide employees or former employees of that company or of another company in the same group; or
    - (ii) the wives, husbands, widows, widowers, children or step-children under the age of eighteen of any such employees or former employees.”.
- (3) After subsection (4) there shall be inserted—
  - “(5) For the purposes of subsection (4)(bb) a company is connected with another company if—
    - (a) they are in the same group ; or
    - (b) one is entitled, either alone or with any other company in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all

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circumstances at any general meeting of the other company or of its holding company;

and in this section " group ", in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company.”.

(4) Article 163 of the Companies (Northern Ireland) Order 1986 (transactions not prohibited by Article 161) shall be amended as follows.

(5) After paragraph (4)(b) there shall be inserted—

“(bb) without prejudice to sub-paragraph (b), the provision of financial assistance by a company or any of its subsidiaries for the purposes of or in connection with anything done by the company (or a company connected with it) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company between, and involving the acquisition of beneficial ownership of those shares by, any of the following persons—

(i) the bona fide employees or former employees of that company or of another company in the same group; or

(ii) the wives, husbands, widows, widowers, children, step-children or adopted children under the age of eighteen of such employees of former employees.”

(6) After paragraph (4) there shall be inserted—

“(5) For the purposes of paragraph (4)(bb) a company is connected with another company if—

(a) they are in the same group; or

(b) one is entitled, either alone or with any other company in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other company or of its holding company;

and in this Article " group ", in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company.”.

## **197 Disclosure of interests in shares: interest held by market maker**

(1) In section 209 of the Companies Act 1985 (interests to be disregarded for purposes of sections 198 to 202)—

(a) in subsection (1)(f) after the word "jobber" there shall be inserted the words " or market maker " ;

(b) after subsection (4) there shall be inserted—

“(4A) A person is a market maker for the purposes of subsection (1)(f) if—

(a) he holds himself out at all normal times in compliance with the rules of a recognised investment exchange other than an overseas investment exchange (within the meaning of the Financial Services Act 1986) as willing to buy and sell securities at prices specified by him ; and

(b) is recognised as doing so by that investment exchange;



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and an interest of such a person in shares is an exempt interest if he carries on business as a market maker in the United Kingdom, is subject to such rules in the carrying on of that business and holds the interest for the purposes of that business.”.

(2) In Article 217 of the Companies (Northern Ireland) Order 1986 (interests to be disregarded for purposes of Articles 206 to 210 (disclosure of interests in shares))—

- (a) in paragraph (1)(d) after the word "jobber" there shall be inserted the words " or market maker " ;
- (b) after paragraph (4) there shall be inserted—

“(4A) A person is a market maker for the purposes of paragraph (1)(d) if—

- (a) he holds himself out at all normal times in compliance with the rules of a recognised investment exchange other than an overseas investment exchange (within the meaning of the Financial Services Act 1986) as willing to buy and sell securities at prices specified by him ; and
- (b) is recognised as doing so by that investment exchange,

and an interest of such a person in shares is an exempt interest if he carries on business as a market maker in the United Kingdom, is subject to such rules in the carrying on of that business and holds the interest for the purposes of that business.”.

## **198 Power to petition for winding up ect. on information obtained under Act**

(1) In section 440 of the Companies Act 1985—

- (a) after the words " section 437 " there shall be inserted the words " above or section 94 of the Financial Services Act 1986 " ; and
- (b) after the words " 448 below " there shall be inserted the words " or section 105 of that Act ".

(2) In section 8 of the Company Directors Disqualification Act 1986—

- (a) after the words " the Companies Act" there shall be inserted the words " or section 94 or 177 of the Financial Services Act 1986 " ; and
- (b) for the words " that Act " there shall be substituted the words " the Companies Act or section 105 of the Financial Services Act 1986 ".

(3) In Article 433 of the Companies (Northern Ireland) Order 1986—

- (a) after the words " Article 430 " there shall be inserted the words " or section 94 of the Financial Services Act 1986 " ; and
- (b) after the word " 441 " there shall be inserted the words " or section 105 of that Act ".

## **199 Powers of entry**

(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath laid by or on behalf of the Secretary of State that there are reasonable grounds for believing—

- (a) that an offence has been committed under section 4, 47, 57, 130, 133 or 171(2) or (3) above or section 1, 2, 4 or 5 of the Company Securities (Insider

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Dealing) Act 1985 and that there are on any premises documents relevant to the question whether that offence has been committed ; or

- (b) that there are on any premises owned or occupied by a person whose affairs, or any aspect of whose affairs, are being investigated under section 105 above documents whose production has been required under that section and which have not been produced in compliance with that requirement;

but paragraph (b) above applies only if the person there mentioned is an authorised person, a person whose authorisation has been suspended or who is the subject of a direction under section 33(1)(6) above or an appointed representative of an authorised person.

- (2) A justice of the peace may issue a warrant under this section if satisfied on information on oath laid by an inspector appointed under section 94 above that there are reasonable grounds for believing that there are on any premises owned or occupied by—

- (a) the manager, trustee or operator of any scheme the affairs of which are being investigated under subsection (1) of that section ; or
- (b) a manager, trustee or operator whose affairs are being investigated under that subsection,

any documents whose production has been required under that section and which have not been produced in compliance with that requirement.

- (3) A warrant under this section shall authorise a constable, together with any other person named in it and any other constables—

- (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1)(a) or (b) or, as the case may be, in subsection (2) above or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of any such documents ; and
- (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.

- (4) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

- (5) Any documents of which possession is taken under this section may be retained—

- (a) for a period of three months; or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person for an offence under this Act or section 1, 2, 4 or 5 of the said Act of 1985, until the conclusion of those proceedings.

- (6) Any person who obstructs the exercise of any rights conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (3)(d) above shall be guilty of an offence and liable—

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

- (7) The functions to which section 114 above applies shall include the functions of the Secretary of State under this section ; but if any of those functions are transferred under

that section the transfer may be subject to a reservation that they are to be exercisable by the Secretary of State concurrently with the designated agency and, in the case of functions exercisable by virtue of subsection (1)(a) above, so as to be exercisable by the agency subject to such conditions or restrictions as the Secretary of State may from time to time impose.

- (8) In the application of this section to Scotland the references to a justice of the peace shall include references to a sheriff and for references to the laying of information on oath there shall be substituted references to furnishing evidence on oath; and in the application of this section to Northern Ireland for references to the laying of information on oath there shall be substituted references to making a complaint on oath.
- (9) In this section " documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form.

## **200 False and misleading statements**

- (1) A person commits an offence if—
- (a) for the purposes of or in connection with any application under this Act; or
  - (b) in purported compliance with any requirement imposed on him by or under this Act,
- he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.
- (2) A person commits an offence if, not being an authorised person or exempted person, he—
- (a) describes himself as such a person ; or
  - (b) so holds himself out as to indicate or be reasonably understood to indicate that he is such a person
- (3) A person commits an offence if, not having a status to which this subsection applies, he—
- (a) describes himself as having that status, or
  - (b) so holds himself out as to indicate; or be reasonably understood to indicate that he has that status.
- (4) Subsection (3) above applies to the status of recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house.
- (5) A person guilty of an offence under subsection (1) above shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both ;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (6) A person guilty of an offence under subsection (2) or (3) above shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the fifth level on the standard scale or to both.

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- (7) Where a contravention of subsection (2) or (3) above involves a public display of the offending description or other matter the maximum fine that may be imposed under subsection (6) above shall be an amount equal to the fifth level on the standard scale multiplied by the number of days for which the display has continued.
- (8) In proceedings brought against any person for an offence under subsection (2) or (3) above it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

## **201 Prosecutions**

- (1) Proceedings in respect of an offence under any provision of this Act other than section 133 or 185 shall not be instituted—
  - (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions; or
  - (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.
- (2) Proceedings in respect of an offence under section 133 above shall not be instituted—
  - (a) in England and Wales, except by or with the consent of the Secretary of State, the Industrial Assurance Commissioner or the Director of Public Prosecutions; or
  - (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.
- (3) Proceedings in respect of an offence under section 185 above shall not be instituted—
  - (a) in England and Wales, except by or with the consent of the Treasury or the Director of Public Prosecutions; or
  - (b) in Northern Ireland, except by or with the consent of the Treasury or the Director of Public Prosecutions for Northern Ireland.
- (4) The functions to which section 114 above applies shall include the function of the Secretary of State under subsection (1) above to institute proceedings but any transfer of that function shall be subject to a reservation that it is to be exercisable by him concurrently with the designated agency and so as to be exercisable by the agency subject to such conditions or restrictions as the Secretary of State may from time to time impose.

## **202 Offences by bodies corporate, partnerships and unincorporated associations**

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity ; or
  - (b) a controller of the body corporate,
 he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by the members subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

- (3) Where a partnership is guilty of an offence under this Act every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, shall also be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (4) Where an unincorporated association (other than a partnership) is guilty of an offence under this Act—
- (a) every officer of the association who is bound to fulfil any duty of which the breach is the offence; or
  - (b) if there is no such officer, every member of the governing body other than a member who is proved to have been ignorant of or to have attempted to prevent the commission of the offence,
- shall also be guilty of the offence and be liable to be proceeded against and punished accordingly.

### **203 Jurisdiction and procedure in respect of offences**

- (1) Summary proceedings for an offence under this Act may, without prejudice to any jurisdiction exercisable apart from this section, be taken against any body corporate or unincorporated association at any place at which it has a place of business and against an individual at any place where he is for the time being.
- (2) Proceedings for an offence alleged to have been committed under this Act by an unincorporated association shall be brought in the name of the association (and not in that of any of its members) and for the purposes of any such proceedings any rules of court relating to the service of documents shall have effect as if the association were a corporation.
- (3) Section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980 (procedure on charge of offence against a corporation) shall have effect in a case in which an unincorporated association is charged in England and Wales with an offence under this Act in like manner as they have effect in the case of a corporation.
- (4) In relation to any proceedings on indictment in Scotland for an offence alleged to have been committed under this Act by an unincorporated association, section 74 of the Criminal Procedure (Scotland) Act 1975 (proceedings on indictment against bodies corporate) shall have effect as if the association were a body corporate.
- (5) Section 18 of the Criminal Justice Act (Northern Ireland) 1945 and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (procedure on charge of offence against a corporation) shall have effect in a case in which an unincorporated association is charged in Northern Ireland with an offence under this Act in like manner as they have effect in the case of a corporation.
- (6) A fine imposed on an unincorporated association on its conviction of an offence under this Act shall be paid out of the funds of the association.

### **204 Service of notices**

- (1) This section has effect in relation to any notice, direction or other document required or authorised by or under this Act to be given to or served on any person other than the Secretary of State, the Chief Registrar of friendly societies or the Registrar of Friendly Societies for Northern Ireland.

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- (2) Any such document may be given to or served on the person in question—
- (a) by delivering it to him ;
  - (b) by leaving it at his proper address ; or
  - (c) by sending it by post to him at that address.
- (3) Any such document may—
- (a) in the case of a body corporate, be given to or served on the secretary or clerk of that body ;
  - (b) in the case of a partnership, be given to or served on any partner;
  - (c) in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of the association ;
  - (d) in the case of an appointed representative, be given to or served on his principal.
- (4) For the purposes of this section and section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person is his last known address (whether of his residence or of a place where he carries on business or is employed) and also any address applicable in his case under the following provisions—
- (a) in the case of a member of a recognised self-regulating organisation or a person certified by a recognised professional body who does not have a place of business in the United Kingdom, the address of that organisation or body;
  - (b) in the case of a body corporate, its secretary or its clerk, the address of its registered or principal office in the United Kingdom ;
  - (c) in the case of an unincorporated association (other than a partnership) or a member of its governing body, its principal office in the United Kingdom.
- (5) Where a person has notified the Secretary of State of an address or a new address at which documents may be given to or served on him under this Act that address shall also be his proper address for the purposes mentioned in subsection (4) above or, as the case may be, his proper address for those purposes in substitution for that previously notified.

## **205 Regulations, rules and orders**

- (1) The Secretary of State may make regulations prescribing anything which by this Act is authorised or required to be prescribed.
- (2) Subject to subsection (5) below, any power of the Secretary of State to make regulations, rules or orders under this Act shall be exercisable by statutory instrument.
- (3) Subject to subsection (5) below, any regulations, rules or orders made under this Act by the Secretary of State may make different provision for different cases.
- (4) Except as otherwise provided, a statutory instrument containing regulations or rules under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Subsections (2) and (3) above do not apply to a recognition order, an order declaring a collective investment scheme to be an authorised unit trust scheme or a recognised scheme or to an order revoking any such order.

## **206 Publication of information and advice**

- (1) The Secretary of State may publish information or give advice, or arrange for the publication of information or the giving of advice, in such form and manner as he considers appropriate with respect to—
  - (a) the operation of this Act and the rules and regulations made under it, including in particular the rights of investors, the duties of authorised persons and the steps to be taken for enforcing those rights or complying with those duties;
  - (b) any matters relating to the functions of the Secretary of State under this Act or any such rules or regulations ;
  - (c) any other matters about which it appears to him to be desirable to publish information or give advice for the protection of investors or any class of investors.
- (2) The Secretary of State may offer for sale copies of information published under this section and may, if he thinks fit, make a reasonable charge for advice given under this section at any person's request.
- (3) This section shall not be construed as authorising the disclosure of restricted information within the meaning of section 179 above in any case in which it could not be disclosed apart from the provisions of this section.
- (4) The functions to which section 114 above applies shall include the functions of the Secretary of State under this section.

## **207 Interpretation**

- (1) In this Act, except where the context otherwise requires—
  - " appointed representative " has the meaning given in section 44 above;
  - " authorised person " means a person authorised under Chapter III of Part I of this Act;
  - " authorised unit trust scheme " means a unit trust scheme declared by an order of the Secretary of State for the time being in force to be an authorised unit trust scheme for the purposes of this Act;
  - " body corporate " includes a body corporate constituted under the law of a country or territory outside the United Kingdom;
  - " certified " and " certification " mean certified or certification by a recognised professional body for the purposes of Part I of this Act;
  - " clearing arrangements " has the meaning given in section 38(2) above;
  - " competent authority " means the competent authority for the purposes of Part IV of this Act; " collective investment scheme " has the meaning given in section 75 above;
  - " delegation order " and " designated agency " have the meaning given in section 114(3) above ;
  - " director ", in relation to a body corporate, includes a person occupying in relation to it the position of a director (by whatever name called) and any person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act;
  - " exempted person " means a person exempted under Chapter IV of Part I of this Act;

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" group ", in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company;

" guidance ", in relation to a self-regulating organisation, professional body, investment exchange, clearing house or designated agency, has the meaning given in section 8(4), 16(4), 36(3), 38(3) or 114(12) above ;

" investment advertisement" has the meaning given in section 57(2) above;

" investment agreement" has the meaning given in section 44(9) above;

" listing particulars" has the meaning given in section 144(2) above;

" member ", in relation to a self-regulating organisation or professional body, has the meaning given in section 8(2) or 16(2) above ;

" occupational pension scheme" means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category;

" operator ", in relation to a collective investment scheme, shall be construed in accordance with section 75(8) above;

" open-ended investment company " has the meaning given in section 75(8) above ;

" overseas investment exchange " and " overseas clearing house" mean a recognised investment exchange or recognised clearing house in the case of which the recognition order was made by virtue of section 40 above;

" participant" has the meaning given in section 75(2) above;

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

" prescribed " means prescribed by regulations made by the Secretary of State;

" principal", in relation to an appointed representative, has the meaning given in section 44 above ;

" private company " has the meaning given in section 1(3) of the Companies Act 1985 or the corresponding Northern Ireland provision;

" recognised clearing house " means a body declared by an order of the Secretary of State for the time being in force to be a recognised clearing house for the purposes of this Act;

" recognised investment exchange " means a body declared by an order of the Secretary of State for the time being in force to be a recognised investment exchange for the purposes of this Act;

" recognised professional body " means a body declared by an order of the Secretary of State for the time being in force to be a recognised professional body for the purposes of this Act;

" recognised scheme " means a scheme recognised under section 86, 87 or 88 above ;

" recognised self-regulating organisation" means a body declared by an order of the Secretary of State for the time being in force to be a recognised self-regulating organisation for the purposes of this Act;



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" recognised self-regulating organisation for friendly societies " has the meaning given in paragraph 1 of Schedule 11 to this Act;

" recognition order " means an order declaring a body to be a recognised self-regulating organisation, self-regulating organisation for friendly societies, professional body, investment exchange or clearing house ;

" registered friendly society " means—

(a) a society which is a friendly society within the meaning of section 7(1)(o) of the Friendly Societies Act 1974 and is registered within the meaning of that Act; or

(b) a society which is a friendly society within the meaning of section 1(1) of the Friendly Societies Act (Northern Ireland) 1970 and is registered or deemed to be registered under that Act;

" rules ", in relation to a self-regulating organisation, professional body, investment exchange or clearing house, has the meaning given in section 8(3), 16(3), 36(2) or 38(2) above;

" transfer order " and " transferee body " have the meaning given in paragraph 28(4) of Schedule 11 to this Act;

" the Tribunal " means the Financial Services Tribunal;

" trustee ", in relation to a collective investment scheme, has the meaning given in section 75(8) above ;

" unit trust scheme " and " units " have the meaning given in section 75(8) above.

- (2) In this Act " advertisement" includes every form of advertising, whether in a publication, by the display of notices, signs, labels or showcards, by means of circulars, catalogues, price lists or other documents, by an exhibition of pictures or photographic or cinematographic films, by way of sound broadcasting or television, by the distribution of recordings, or in any other manner; and references to the issue of an advertisement shall be construed accordingly.
- (3) For the purposes of this Act an advertisement or other information issued outside the United Kingdom shall be treated as issued in the United Kingdom if it is directed to persons in the United Kingdom or is made available to them otherwise than in a newspaper, journal, magazine or other periodical publication published and circulating principally outside the United Kingdom or in a sound or television broadcast transmitted principally for reception outside the United Kingdom.
- (4) The Independent Broadcasting Authority shall not be regarded as contravening any provision of this Act by reason of broadcasting an advertisement in accordance with the provisions of the Broadcasting Act 1981.
- (5) In this Act " controller " means—
- (a) in relation to a body corporate, a person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 15 per cent, or more of the voting power at any general meeting of the body corporate or another body corporate of which it is a subsidiary ; and
- (b) in relation to an unincorporated association—
- (i) any person in accordance with whose directions or instructions, either alone or with those of any associate or associates, the officers or members of the governing body of the association are accustomed to act (but disregarding advice given in a professional capacity); and

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- (ii) any person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 15 per cent, or more of the voting power at any general meeting of the association ;
- and for the purposes of this subsection " associate ", in relation to any person, means that person's wife, husband or minor child or step-child, any body corporate of which that person is a director, any person who is an employee or partner of that person and, if that person is a body corporate, any subsidiary of that body corporate and any employee of any such subsidiary.
- (6) In this Act, except in relation to a unit trust scheme or a registered friendly society, " manager" means an employee who—
- (a) under the immediate authority of his employer is responsible, either alone or jointly with one or more other persons, for the conduct of his employer's business ; or
  - (b) under the immediate authority of his employer or of a person who is a manager by virtue of paragraph (a) above exercises managerial functions or is responsible for maintaining accounts or other records of his employer ;
- and, where the employer is not an individual, references in this subsection to the authority of the employer are references to the authority, in the case of a body corporate, of the directors, in the case of a partnership, of the partners and, in the case of an unincorporated association, of its officers or the members of its governing body.
- (7) In this Act " insurance business ", insurance company " and " contract of insurance " have the same meanings as in the Insurance Companies Act 1982.
- (8) Section 736 of the Companies Act 1985 (meaning of subsidiary and holding company) shall apply for the purposes of this Act.
- (9) In the application of this Act to Scotland, references to a matter being actionable at the suit of a person shall be construed as references to the matter being actionable at the instance of that person.
- (10) For the purposes of any provision of this Act authorising or requiring a person to do anything within a specified number of days no account shall be taken of any day which is a public holiday in any part of the United Kingdom.
- (11) Nothing in Part I of this Act shall be construed as applying to investment business carried on by any person when acting as agent or otherwise on behalf of the Crown.

## **208 Gibraltar**

- (1) Subject to the provisions of this section, section 31, 58(1)(c), 86 and 130(2)(c) and (d) above shall apply as if Gibraltar were a member State.
- (2) References in those provisions to a national of a member State shall, in relation to Gibraltar, be construed as references to a British Dependent Territories citizen or a body incorporated in Gibraltar.
- (3) In the case of a collective investment scheme constituted in Gibraltar the reference in subsection (3)(a) of section 86 above to a relevant Community instrument shall be taken as a reference to any Community instrument the object of which is the co-ordination or approximation of the laws, regulations or administrative provisions of member States relating to collective investment schemes of a kind which satisfy the requirements pie-scribed for the purposes of that section.

- (4) The Secretary of State may by regulations make such provision as appears to him to be necessary or expedient to secure—
- (a) that he may give notice under subsection (2) of section 86 above on grounds relating to the law of Gibraltar ; and
  - (b) that this Act applies as if a scheme which is constituted in a member State other than the United Kingdom and recognised in Gibraltar under provisions which appear to the Secretary of State to give effect to the provisions of a relevant Community instrument were a scheme recognised under that section.

## **209 Northern Ireland**

- (1) This Act extends to Northern Ireland.
- (2) Subject to any Order made after the passing of this Act by virtue of subsection (1)(a) of section 3 of the Northern Ireland Constitution Act 1973 the regulation of investment business, the official listing of securities and offers of unlisted securities shall not be transferred matters for the purposes of that Act but shall for the purposes of subsection (2) of that section be treated as specified in Schedule 3 to that Act.

## **210 Expenses and receipts**

- (1) Any expenses incurred by the Secretary of State under this Act shall be defrayed out of moneys provided by Parliament.
- (2) Any fees or other sums received by the Secretary of State under this Act shall be paid into the Consolidated Fund.
- (3) Subsections (1) and (2) above apply also to expenses incurred and fees received under this Act by the Chief Registrar of friendly societies; and any fees received under this Act by the Registrar of Friendly Societies for Northern Ireland shall be paid into the Consolidated Fund of Northern Ireland.

## **211 Commencement and transitional provisions**

- (1) This Act shall come into force on such day as the Secretary of State may by order appoint and different days may be appointed for different provisions or different purposes.
- (2) Subsection (1) above does not apply to section 195 which shall come into force when this Act is passed.
- (3) Schedule IS to this Act shall have effect with respect to the transitional matters there mentioned.

## **212 Short title, consequential amendments and repeals**

- (1) This Act may be cited as the Financial Services Act 1986.
- (2) The enactments and instruments mentioned in Schedule 16 to this Act shall have effect with the amendments there specified, being amendments consequential on the provisions of this Act.

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- (3) The enactments mentioned in Part I of Schedule 17 to this Act and the instruments mentioned in Part II of that Schedule are hereby repealed or revoked to the extent specified in the third column of those Parts.