



# Financial Services Act 1986 (Repealed)

## 1986 CHAPTER 60

### PART I **U.K.**

#### REGULATION OF INVESTMENT BUSINESS

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

- C1** Pt. I (ss. 1-128) amended (S.) (22.5.2000) by S.I. 2000/121, regs. 1, 37, **Sch. 2**
- C2** Pt. I (ss. 1-128): power to modify conferred (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 89, 124(3), **Sch. 14 para. 9(c)**

### CHAPTER I **U.K.**

#### PRELIMINARY

#### **1 Investments and investment business. **U.K.****

- (1) In this Act, unless the context otherwise requires, “investment” means any asset, right or interest falling within any paragraph in Part I of Schedule 1 to this Act.
- (2) In this Act “investment business” means the business of engaging in one or more of the activities which fall within the paragraphs in Part II of that Schedule and are not excluded by Part III of that Schedule.
- (3) For the purposes of this Act a person carries on investment business in the United Kingdom if he—
  - (a) carries on investment business from a permanent place of business maintained by him in the United Kingdom; or
  - (b) engages in the United Kingdom in one or more of the activities which fall within the paragraphs in Part II of that Schedule and are not excluded by Part III or IV of that Schedule and his doing so constitutes the carrying on by him of a business in the United Kingdom.

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(4) Parts I to IV of that Schedule shall be construed in accordance with Part V.

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

- C3** Definition in s. 1(2) applied by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [s. 76\(8\)](#) (as substituted by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), [s. 47\(3\)](#)).

## 2 Power to extend or restrict scope of Act. **U.K.**

- (1) The Secretary of State may by order amend Schedule 1 to this Act so as—
- (a) to extend or restrict the meaning of investment for the purposes of all or any provisions of this Act; or
  - (b) to extend or restrict for the purposes of all or any of those provisions the activities that are to constitute the carrying on of investment business or the carrying on of such business in the United Kingdom.
- (2) The amendments that may be made for the purposes of subsection (1)(b) above include amendments conferring powers on the Secretary of State, whether by extending or modifying any provision of that Schedule which confers such powers or by adding further such provisions.
- (3) An order under this section which extends the meaning of investment or extends the activities that are to constitute the carrying on of investment business or the carrying on of such business in the United Kingdom shall be laid before Parliament after being made and shall cease to have effect at the end of the period of twenty-eight days beginning with the day on which it is made (but without prejudice to anything done under the order or to the making of a new order) unless before the end of that period the order is approved by a resolution of each House of Parliament.
- (4) In reckoning the period mentioned in subsection (3) above no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (5) Any order under this section to which subsection (3) above does not apply shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) An order under this section may contain such transitional provisions as the Secretary of State thinks necessary or expedient.

#### Subordinate Legislation Made

- P1** [S. 2](#): s. 2 power exercised by [S.I. 1991/1104](#).  
[S. 2](#): ss. 2 and 46 (with s. 75(9)) power exercised by [S.I.1991/1516](#).
- P2** [S. 2](#): for previous exercises of this power, see Index to Government Orders.

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## CHAPTER II **U.K.**

### RESTRICTION ON CARRYING ON BUSINESS

#### 3 **Persons entitled to carry on investment business. **U.K.****

No person shall carry on, or purport to carry on, investment business in the United Kingdom unless he is an authorised person under Chapter III or an exempted person under Chapter IV of this Part of this Act.

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

- C4** S. 3 restricted (1.1.1993) by S.I. 1992/3218, **reg. 5(1)(b)**.  
s. 3 excluded (until 1.1.1997) by S.I. 1995/3271, **art. 7**  
Ss. 3, 4 excluded (1.1.1996) by S.I. 1995/3275, **reg. 5(1)(a)** (with **reg. 5(2)**)

#### 4 **Offences. **U.K.****

- (1) Any person who carries on, or purports to carry on, investment business in contravention of section 3 above shall be guilty of an offence and 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.
- (2) In proceedings brought against any person for an offence under this section 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.

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

- C5** S. 4 restricted (1.1.1993) by S.I. 1992/3218, **reg. 5(1)(b)**.  
ss. 3, 4 excluded (1.1.1996) by S.I. 1995/3275, **reg. 5(1)(a)** (with **reg. 5(2)**)

#### 5 **Agreements made by or through unauthorised persons. **U.K.****

- (1) Subject to subsection (3) below, any agreement to which this subsection applies—
- (a) which is entered into by a person in the course of carrying on investment business in contravention of section 3 above; or
  - (b) which is entered into—
    - (i) by a person who is an authorised person or an exempted person in respect of the investment business in the course of which he enters into the agreement; but
    - (ii) in consequence of anything said or done by a person in the course of carrying on investment business in contravention of that section,
- shall be unenforceable against the other party; and that party shall be entitled to recover any money or other property paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result of having parted with it.

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- (2) The compensation recoverable under subsection (1) above shall be such as the parties may agree or as the court may, on the application of either party, determine.
- (3) A court may allow an agreement to which subsection (1) above applies to be enforced or money and property paid or transferred under it to be retained if it is satisfied—
  - (a) in a case within paragraph (a) of that subsection, that the person mentioned in that paragraph reasonably believed that his entering into the agreement did not constitute a contravention of section 3 above;
  - (b) in a case within paragraph (b) of that subsection, that the person mentioned in sub-paragraph (i) of that paragraph did not know that the agreement was entered into as mentioned in sub-paragraph (ii) of that paragraph; and
  - (c) in either case, that it is just and equitable for the agreement to be enforced or, as the case may be, for the money or property paid or transferred under it to be retained.
- (4) Where a person elects not to perform an agreement which by virtue of this section is unenforceable against him or by virtue of this section recovers money paid or other property transferred by him under an agreement he shall repay any money and return any other property received by him under the agreement.
- (5) Where any property transferred under an agreement to which this section applies has passed to a third party the references to that property in subsections (1), (3) and (4) above shall be construed as references to its value at the time of its transfer under the agreement.
- (6) A contravention of section 3 above shall not make an agreement illegal or invalid to any greater extent than is provided in this section.
- (7) Subsection (1) above applies to any agreement the making or performance of which by the person seeking to enforce it or from whom money or other property is recoverable under this section constitutes an activity which falls within any paragraph of Part II of Schedule 1 to this Act and is not excluded by Part III or IV of that Schedule.

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

- C6 S. 5 extended (with modifications) (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 2**  
 C7 S. 5(1)(b)(i) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.2.**

**6 Injunctions and restitution orders. U.K.**

- (1) If, on the application of the Secretary of State, the court is satisfied—
  - (a) that there is a reasonable likelihood that a person will contravene section 3 above; or
  - (b) that any person has contravened that section and that there is a reasonable likelihood that the contravention will continue or be repeated,
 the court may grant an injunction restraining the contravention or, in Scotland, an interdict prohibiting the contravention.
- (2) If, on the application of the Secretary of State, the court is satisfied that a person has entered into any transaction in contravention of section 3 above the court may order that person and any other person who appears to the court to have been knowingly

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- concerned in the contravention to take such steps as the court may direct for restoring the parties to the position in which they were before the transaction was entered into.
- (3) The court may, on the application of the Secretary of State, make an order under subsection (4) below or, in relation to Scotland, under subsection (5) below if satisfied that a person has been carrying on investment business in contravention of section 3 above and—
- (a) that profits have accrued to that person as a result of carrying on that business; or
  - (b) that one or more investors have suffered loss or been otherwise adversely affected as a result of his contravention of section 47 or 56 below or failure to act substantially in accordance with any of the rules or regulations made under Chapter V of this Part of this Act.
- (4) The court may under this subsection order the person concerned to pay into court, or appoint a receiver to recover from him, such sum as appears to the court to be just having regard—
- (a) in a case within paragraph (a) of subsection (3) above, to the profits appearing to the court to have accrued;
  - (b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect; or
  - (c) in a case within both paragraphs (a) and (b) of that subsection, to the profits and to the extent of the loss or other adverse effect.
- (5) The court may under this subsection order the person concerned to pay to the applicant such sum as appears to the court to be just having regard to the considerations mentioned in paragraphs (a) to (c) or subsection (4) above.
- (6) Any amount paid into court by or recovered from a person in pursuance of an order under subsection (4) or (5) above shall be paid out to such person or distributed among such persons as the court may direct, being a person or persons appearing to the court to have entered into transactions with that person as a result of which the profits mentioned in paragraph (a) of subsection (3) above have accrued to him or the loss or other adverse effect mentioned in paragraph (b) of that subsection has been suffered.
- (7) On an application under subsection (3) above the court may require the person concerned to furnish it with such accounts or other information as it may require for establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of that subsection and for determining how any amounts are to be paid or distributed under subsection (6) above; and the court may require any such accounts or other information to be verified in such manner as it may direct.
- (8) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.
- (9) Nothing in this section affects the right of any person other than the Secretary of State to bring proceedings in respect of any of the matters to which this section applies.

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

**C8** S. 6 restricted (1.11.1992) by [S.R. 1980/346](#), Order 93, rule 7 (as inserted by [S.R. 1992/399](#), [rule15](#)).

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## CHAPTER III **U.K.**

### AUTHORISED PERSONS

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

**C9** Chapters III–XI (ss. 7–111): certain functions transferred by [S.I. 1990/354](#), [art. 5](#)

#### *Members of recognised self-regulating organisations*

### 7 **Authorisation by membership of recognised self-regulating organisation. **U.K.****

- (1) Subject to subsection (2) below, a member of a recognised self-regulating organisation is an authorised person by virtue of his membership of that organisation.
- (2) This section does not apply to a member who is an authorised person by virtue of section 22 or 23 below or an insurance company which is an authorised person by virtue of section 31 below.

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

**C10** [S. 7](#) amended (1.1.1993) by [S.I. 1992/3218](#), [reg. 48\(1\)](#).  
[s. 7](#) extended (1.1.1996) by [S.I. 1995/3275](#), [reg. 21\(1\)](#)

### 8 **Self-regulating organisations. **U.K.****

- (1) In this Act a “self-regulating organisation” means a body (whether a body corporate or an unincorporated association) which regulates the carrying on of investment business of any kind by enforcing rules which are binding on persons carrying on business of that kind either because they are members of that body or because they are otherwise subject to its control.
- (2) In this Act references to the members of a self-regulating organisation are references to the persons who, whether or not members of the organisation, are subject to its rules in carrying on the business in question.
- (3) In this Act references to the rules of a self-regulating organisation are references to the rules (whether or not laid down by the organisation itself) which the organisation has power to enforce in relation to the carrying on of the business in question or which relate to the admission and expulsion of members of the organisation or otherwise to its constitution.
- (4) In this Act references to guidance issued by a self-regulating organisation are references to guidance issued or any recommendation made by it to all or any class of its members or persons seeking to become members which would, if it were a rule, fall within subsection (3) above.

### 9 **Applications for recognition. **U.K.****

- (1) A self-regulating organisation may apply to the Secretary of State for an order declaring it to be a recognised self-regulating organisation for the purposes of this Act.

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- (2) Any such application—
  - (a) shall be made in such manner as the Secretary of State may direct; and
  - (b) shall be accompanied by such information as the Secretary of State may reasonably require for the purpose of determining the application.
- (3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.
- (4) The directions and requirements given or imposed under subsections (2) and (3) above may differ as between different applications.
- (5) Any information to be furnished to the Secretary of State under this section shall, if he so requires, be in such form or verified in such manner as he may specify.
- (6) Every application shall be accompanied by a copy of the applicant's rules and of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form.

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

C11 S. 9 amended (14.6.2000) by 2000 c. 8, ss. 431(1), 432(2), Sch. 21 para. 1(1)

## 10 Grant and refusal of recognition. **U.K.**

- (1) The Secretary of State may, on an application duly made in accordance with section 9 above and after being furnished with all such information as he may require under that section, make or refuse to make an order ("a recognition order") declaring the applicant to be a recognised self-regulating organisation.
- (2) Subject to subsection (4) below and to Chapter XIV of this Part of this Act, the Secretary of State shall make a recognition order if it appears to him from the information furnished by the organisation making the application and having regard to any other information in his possession that the requirements of subsection (3) below and of Schedule 2 to this Act are satisfied as respects that organisation.
- (3) Where there is a kind of investment business with which the organisation is not concerned, its rules must preclude a member from carrying on investment business of that kind unless he is an authorised person otherwise than by virtue of his membership of the organisation or an exempted person in respect of that business.
- (4) The Secretary of State may refuse to make a recognition order in respect of an organisation if he considers that its recognition is unnecessary having regard to the existence of one or more other organisations which are concerned with investment business of a kind with which the applicant is concerned and which have been or are likely to be recognised under this section.
- (5) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect specifying a requirement which in the opinion of the Secretary of State is not satisfied, stating that the application is refused on the ground mentioned in subsection (4) above or stating that it is refused by virtue of Chapter XIV.
- (6) A recognition order shall state the date on which it takes effect.



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

- C12** S. 10 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.3**.  
s. 10(3) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 3**

## **11 Revocation of recognition. U.K.**

- (1) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him—
  - (a) that section 10(3) above or any requirement of Schedule 2 to this Act is not satisfied in the case of the organisation to which the recognition order relates (“the recognised organisation”);
  - (b) that the recognised organisation has failed to comply with any obligation to which it is subject by virtue of this Act; or
  - (c) that the continued recognition of the organisation is undesirable having regard to the existence of one or more other organisations which have been or are to be recognised under section 10 above.
- (2) An order revoking a recognition order shall state the date on which it takes effect and that date shall not be earlier than three months after the day on which the revocation order is made.
- (3) Before revoking a recognition order the Secretary of State shall give written notice of his intention to do so to the recognised organisation, take such steps as he considers reasonably practicable for bringing the notice to the attention of members of the organisation and publish it in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.
- (4) A notice under subsection (3) above shall state the reasons for which the Secretary of State proposes to act and give particulars of the rights conferred by subsection (5) below.
- (5) An organisation on which a notice is served under subsection (3) above, any member of the organisation and any other person who appears to the Secretary of State to be affected may within three months after the date of service or publication, or within such longer time as the Secretary of State may allow, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State; and the Secretary of State shall have regard to any representations made in accordance with this subsection in determining whether to revoke the recognition order.
- (6) If in any case the Secretary of State considers it essential to do so in the interests of investors he may revoke a recognition order without regard to the restriction imposed by subsection (2) above and notwithstanding that no notice has been given or published under subsection (3) above or that the time for making representations in pursuance of such a notice has not expired.
- (7) An order revoking a recognition order may contain such transitional provisions as the Secretary of State thinks necessary or expedient.
- (8) A recognition order may be revoked at the request or with the consent of the recognised organisation and any such revocation shall not be subject to the restrictions imposed by subsections (1) and (2) or the requirements of subsections (3) to (5) above.



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- (9) On making an order revoking a recognition order the Secretary of State shall give the organisation written notice of the making of the order, take such steps as he considers reasonably practicable for bringing the making of the order to the attention of members of the organisation and publish a notice of the making of the order in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.

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

- C13** S. 11 amended (14.6.2000) by 2000 c. 8, ss. 431(1), 432(2), **Sch. 21 para. 1(3)(a)(6)**  
**C14** S. 11(2)-(7)(9) applied (with modifications) (*temp.* from 26.11.2001 until 1.12.2001) by S.I. 2001/3755, regs. 7, 50, **Sch. 6 para. 4** (with regs. 39, 45); S.I. 2001/3538, **art. 2(1)**  
**C15** S. 11(2)-(5)(7)(9) applied (with modifications) (*temp.* from 26.11.2001 until 1.12.2001) by S.I. 2001/3755, regs. 13, 50, **Sch. 2 para. 1(5), Sch. 6 para. 9(a)** (with regs. 39, 45); S.I. 2001/3538, **art. 2(1)**  
**C16** S. 11(2)-(9) applied (with modifications) (19.12.1995) by S.I. 1995/3272, **reg. 7(2)**

**12 Compliance orders. U.K.**

- (1) If at any time it appears to the Secretary of State—  
(a) that subsection (3) of section 10 above or any requirement of Schedule 2 to this Act is not satisfied in the case of a recognised organisation; or  
(b) that a recognised organisation has failed to comply with any obligation to which it is subject by virtue of this Act,  
he may, instead of revoking the recognition order under section 11 above, make an application to the court under this section.
- (2) If on any such application the court decides that subsection (3) of section 10 or the requirement in question is not satisfied or, as the case may be, that the organisation has failed to comply with the obligation in question it may order the organisation to take such steps as the court directs for securing that that subsection or requirement is satisfied or that that obligation is complied with.
- (3) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

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

- C17** S. 12 applied (25.4.1991) by **Companies Act 1989** (c. 40, SIF 27), ss. 154, 155, 169(2)  
**C18** S. 12: certain functions transferred by S.I. 1990/354, **art. 4(5)**  
**C19** S. 12 amended (14.6.2000) by 2000 c. 8, ss. 431(1), 432(2), **Sch. 21 para. 1(3)(b)(6)**  
**C20** S. 12 applied (with modifications) (15.8.1995) by S.I. 1995/2049, **regs. 6, 7-18**

**13 Alteration of rules for protection of investors. U.K.**

(1) . . . . .<sup>F1</sup>

[<sup>F2</sup>(2) If at any time it appears to the Secretary of State that—

- (a) a recognised self-regulating organisation is concerned with two or more kinds of investment business, and

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- (b) the requirement in paragraph 3(1) of Schedule 2 to this Act is not satisfied in respect of investment business of one or more but not all of those kinds, he may, instead of revoking the recognition order or making an application under section 12 above, direct the organisation to alter, or himself alter, its rules so that they preclude a member from carrying on investment business of a kind in respect of which that requirement is not satisfied, unless he is an authorised person otherwise than by virtue of membership of the organisation or is an exempted person in respect of that business.]
- [<sup>F3</sup>(3) A direction under this section is enforceable on the application of the Secretary of State by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.]
- (4) ..... <sup>F4</sup>
- (7) Section 11(2) to (7) and (9) above shall, with the necessary modifications, have effect in relation to any direction given or alteration made by the Secretary of State under subsection (2) above as they have effect in relation to an order revoking a recognition order.
- (8) The fact that the rules of a recognised organisation have been altered by or pursuant to a direction given by the Secretary of State or pursuant to an order made by the court under this section shall not preclude their subsequent alteration or revocation by that organisation.

#### Textual Amendments

- F1** S. 13(1) repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 206(1), 212, Sch. 23 Pt. I para. 1(2), [Sch. 24](#)
- F2** S. 13(2) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 Pt. I para. 1\(3\)](#)
- F3** S. 13(3) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 Pt. I para. 1\(4\)](#)
- F4** S. 13(4)–(6) repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 206(1), 212, Sch. 23 Pt. I para. 1(5), [Sch. 24](#)

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

- C21** S. 13 amended (14.6.2000) by [2000 c. 8](#), ss. 431(1), 432(2), [Sch. 21 para. 1\(4\)](#)
- C22** S. 13(2) amended (1.1.1993) by [S.I. 1992/3218](#), reg. 55, [Sch. 9 para.4](#).  
s. 13(2) extended (1.1.1996) by [S.I. 1995/3275](#), reg. 32, [Sch. 7 para. 4](#)

## 14 Notification requirements. **U.K.**

- (1) The Secretary of State may make regulations requiring a recognised organisation to give him forthwith notice of the occurrence of such events relating to the organisation or its members as are specified in the regulations and such information in respect of those events as is so specified.
- (2) The Secretary of State may make regulations requiring a recognised organisation to furnish him at such times or in respect of such periods as are specified in the regulations with such information relating to the organisation or its members as is so specified.
- (3) The notices and information required to be given or furnished under the foregoing provisions of this section shall be such as the Secretary of State may reasonably require for the exercise of his functions under this Act.

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- (4) Regulations under the foregoing provisions of this section may require information to be given in a specified form and to be verified in a specified manner.
- (5) Any notice or information required to be given or furnished under the foregoing provisions of this section shall be given in writing or in such other manner as the Secretary of State may approve.
- (6) Where a recognised organisation amends, revokes or adds to its rules or guidance it shall within seven days give the Secretary of State written notice of the amendment, revocation or addition; but notice need not be given of the revocation of guidance other than such as is mentioned in section 9(6) above or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned.
- (7) Contravention of, or of regulations under, this section shall not be an offence.

*Persons authorised by recognised professional bodies*

**15 Authorisation by certification by recognised professional body. U.K.**

- (1) A person holding a certificate issued for the purposes of this Part of this Act by a recognised professional body is an authorised person.
- (2) Such a certificate may be issued by a recognised professional body to an individual, a body corporate, a partnership or an unincorporated association.
- (3) A certificate issued to a partnership—
  - (a) shall be issued in the partnership name; and
  - (b) shall authorise the carrying on of investment business in that name by the partnership to which the certificate is issued, by any partnership which succeeds to that business or by any person who succeeds to that business having previously carried it on in partnership;

and, in relation to a certificate issued to a partnership constituted under the law of England and Wales or Northern Ireland or the law of any other country or territory under which a partnership is not a legal person, references in this Act to the person who holds the certificate or is certified shall be construed as references to the persons or person for the time being authorised by the certificate to carry on investment business as mentioned in paragraph (b) above.

**16 Professional bodies. U.K.**

- (1) In this Act a “professional body” means a body which regulates the practice of a profession and references to the practice of a profession do not include references to carrying on a business consisting wholly or mainly of investment business.
- (2) In this Act references to the members of a professional body are references to individuals who, whether or not members of the body, are entitled to practise the profession in question and, in practising it, are subject to the rules of that body.
- (3) In this Act references to the rules of a professional body are references to the rules (whether or not laid down by the body itself) which the body has power to enforce in relation to the practice of the profession in question and the carrying on of investment business by persons practising that profession or which relate to the grant, suspension

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or withdrawal of certificates under section 15 above, the admission and expulsion of members or otherwise to the constitution of the body.

- (4) In this Act references to guidance issued by a professional body are references to guidance issued or any recommendation made by it to all or any class of its members or persons seeking to become members, or to persons or any class of persons who are or are seeking to be certified by the body, and which would, if it were a rule, fall within subsection (3) above.

## 17 Applications for recognition. **U.K.**

- (1) A professional body may apply to the Secretary of State for an order declaring it to be a recognised professional body for the purposes of this Act.
- (2) Subsections (2) to (6) of section 9 above shall have effect in relation to an application under subsection (1) above as they have effect in relation to an application under subsection (1) of that section.

## 18 Grant and refusal of recognition. **U.K.**

- (1) The Secretary of State may, on an application duly made in accordance with section 17 above and after being furnished with all such information as he may require under that section, make or refuse to make an order (“a recognition order”) declaring the applicant to be a recognised professional body.
- (2) The Secretary of State may make a recognition order if it appears to him from the information furnished by the body making the application and having regard to any other information in his possession that the requirements of subsection (3) below and of Schedule 3 to this Act are satisfied as respects that body.
- (3) The body must have rules which impose acceptable limits on the kinds of investment business which may be carried on by persons certified by it and the circumstances in which they may carry on such business and which preclude a person certified by that body from carrying on any investment business outside those limits unless he is an authorised person otherwise than by virtue of the certification or an exempted person in respect of that business.
- (4) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect, stating the reasons for the refusal.
- (5) A recognition order shall state the date on which it takes effect.

## 19 Revocation of recognition. **U.K.**

- (1) A recognition order under section 18 above may be revoked by a further order made by the Secretary of State if at any time it appears to him—
- (a) that section 18(3) above or any requirement of Schedule 3 to this Act is not satisfied in the case of the body to which the recognition order relates; or
  - (b) that the body has failed to comply with any obligation to which it is subject by virtue of this Act.
- (2) Subsections (2) to (9) of section 11 above shall have effect in relation to the revocation of a recognition order under this section as they have effect in relation to the revocation of a recognition order under subsection (1) of that section.

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## 20 Compliance orders. **U.K.**

- (1) If at any time it appears to the Secretary of State—
  - (a) that subsection (3) of section 18 above or any requirement of Schedule 3 to this Act is not satisfied in the case of a recognised professional body; or
  - (b) that such a body has failed to comply with any obligation to which it is subject by virtue of this Act,he may, instead of revoking the recognition order under section 19 above, make an application to the court under this section.
- (2) If on any such application the court decides that subsection (3) of section 18 above or the requirement in question is not satisfied or, as the case may be, that the body has failed to comply with the obligation in question it may order the body to take such steps as the court directs for securing that that subsection or requirement is satisfied or that that obligation is complied with.
- (3) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

## 21 Notification requirements. **U.K.**

- (1) The Secretary of State may make regulations requiring a recognised professional body to give him forthwith notice of the occurrence of such events relating to the body, its members or persons certified by it as are specified in the regulations and such information in respect of those events as is so specified.
- (2) The Secretary of State may make regulations requiring a recognised professional body to furnish him at such times or in respect of such periods as are specified in the regulations with such information relating to the body, its members and persons certified by it as is so specified.
- (3) The notices and information required to be given or furnished under the foregoing provisions of this section shall be such as the Secretary of State may reasonably require for the exercise of his functions under this Act.
- (4) Regulations under the foregoing provisions of this section may require information to be given in a specified form and to be verified in a specified manner.
- (5) Any notice or information required to be given or furnished under the foregoing provisions of this section shall be given in writing or in such other manner as the Secretary of State may approve.
- (6) Where a recognised professional body amends, revokes or adds to its rules or guidance it shall within seven days give the Secretary of State written notice of the amendment, revocation or addition; but—
  - (a) notice need not be given of the revocation of guidance other than such as is mentioned in section 9(6) above or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned; and
  - (b) notice need not be given in respect of any rule or guidance, or rules or guidance of any description, in the case of which the Secretary of State has waived compliance with this subsection by notice in writing to the body concerned; and any such waiver may be varied or revoked by a further notice in writing.

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(7) Contravention of, or of regulations under, this section shall not be an offence.

### *Insurance companies*

#### **22 Authorised insurers. U.K.**

A body which is authorised under section 3 or 4 of the <sup>M1</sup>Insurance Companies Act 1982 to carry on insurance business which is investment business and carries on such insurance business in the United Kingdom is an authorised person as respects—

- (a) any insurance business which is investment business; and
- (b) any other investment business which that body may carry on without contravening section 16 of that Act.

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

**C23** S. 22 amended (1.7.1994) by S.I. 1994/1696, **reg. 57**

#### **Marginal Citations**

**M1** 1982 c. 50.

### *Friendly societies*

#### **[<sup>F5</sup>23 Friendly societies. U.K.]**

A friendly society which carries on investment business in the United Kingdom is an authorised person as respects any investment business which it carries on for or in connection with any of the activities mentioned in Schedule 2 to the Friendly Societies Act 1992.]

#### **Textual Amendments**

**F5** S. 23 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. 1 para.1** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

### *Collective investment schemes*

#### **24 Operators and trustees of recognised schemes. U.K.**

The operator or trustee of a scheme recognised under section 86 below is an authorised person as respects—

- (a) investment business which consists in operating or acting as trustee in relation to that scheme; and
- (b) any investment business which is carried on by him in connection with or for the purposes of that scheme.



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VALID FROM 06/01/1997

*[ Investment companies with variable capital ]*

**24A** <sup>F6</sup> **Investment companies with variable capital** **U.K.**

An investment company with variable capital is an authorised person as respects—

- (a) investment business which consists in operating the collective investment scheme constituted by the company; and
- (b) any investment business which is carried on by the company in connection with or for the purposes of operating that scheme.

**Textual Amendments**

**F6** S. 24A inserted (6.1.1997) by S.I. 1996/2827, reg. 75, Sch. 8 para. 11

*Persons authorised by the Secretary of State*

**25** **Authorisation by Secretary of State.** **U.K.**

A person holding an authorisation granted by the Secretary of State under the following provisions of this Chapter is an authorised person.

**26** **Applications for authorisation.** **U.K.**

- (1) An application for authorisation by the Secretary of State may be made by—
  - (a) an individual;
  - (b) a body corporate;
  - (c) a partnership; or
  - (d) an unincorporated association.
- (2) Any such application—
  - (a) shall be made in such manner as the Secretary of State may direct;
  - (b) shall contain or be accompanied by—
    - (i) information as to the investment business which the applicant proposes to carry on and the services which he will hold himself out as able to provide in the carrying on of that business; and
    - (ii) such other information as the Secretary of State may reasonably require for the purpose of determining the application; and
  - (c) shall contain the address of a place in the United Kingdom for the service on the applicant of any notice or other document required or authorised to be served on him under this Act.
- (3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.
- (4) The directions and requirements given or imposed under subsections (2) and (3) above may differ as between different applications.

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- (5) Any information to be furnished to the Secretary of State under this section shall, if he so requires, be in such form or verified in such manner as he may specify.

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

- C24** S. 26 amended (1.1.1993) by S.I. 1992/3218, **reg.49**.  
s. 26 extended (1.1.1996) by S.I. 1995/3275, **reg. 22**
- C25** S. 26(2)(5) applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg. 95(2)**.

**27 Grant and refusal of authorisation. U.K.**

- (1) The Secretary of State may, on an application duly made in accordance with section 26 above and after being furnished with all such information as he may require under that section, grant or refuse the application.
- (2) The Secretary of State shall grant the application if it appears to him from the information furnished by the applicant and having regard to any other information in his possession that the applicant is a fit and proper person to carry on the investment business and provide the services described in the application.
- (3) In determining whether to grant or refuse an application the Secretary of State may take into account any matter relating to any person who is or will be employed by or associated with the applicant for the purposes of the business in question, to any person who is or will be acting as an appointed representative in relation to that business and—
- (a) if the applicant is a body corporate, to any director or controller of the body, to any other body corporate in the same group or to any director or controller of any such other body corporate;
  - (b) if the applicant is a partnership, to any of the partners;
  - (c) if the applicant is an unincorporated association, to any member of the governing body of the association or any officer or controller of the association.
- (4) In determining whether to grant or refuse an application the Secretary of State may also have regard to any business which the applicant proposes to carry on in connection with his investment business.
- (5) In the case of an applicant who is authorised to carry on investment business in a member State other than the United Kingdom the Secretary of State shall have regard to that authorisation.
- (6) An authorisation granted to a partnership—
- (a) shall be granted in the partnership name; and
  - (b) shall authorise the carrying on of investment business in that name (or with the Secretary of State's consent in any other name) by the partnership to which the authorisation is granted, by any partnership which succeeds to that business or by any person who succeeds to that business having previously carried it on in partnership;

and, in relation to an authorisation granted to a partnership constituted under the law of England and Wales or Northern Ireland or the law of any other country or territory under which a partnership is not a legal person, references in this Act to the holder of the authorisation or the authorised person shall be construed as references

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to the persons or person for the time being authorised by the authorisation to carry on investment business as mentioned in paragraph (b) above.

- (7) An authorisation granted to an unincorporated association shall apply to the carrying on of investment business in the name of the association and in such manner as may be specified in the authorisation.
- (8) The Secretary of State shall give an applicant for authorisation written notice of the grant of authorisation specifying the date on which it takes effect.

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

- C26** S. 27 amended (1.1.1993) by S.I. 1992/3218, **reg.50**.  
s. 27 extended by S.I. 1995/3275, **reg. 23(1)(2)**  
s. 27 applied (with modifications) (18.7.1996) by S.I. 1996/1669, **reg. 9(1)**

## 28 **Withdrawal and suspension of authorisation.** **U.K.**

- (1) The Secretary of State may at any time withdraw or suspend any authorisation granted by him if it appears to him—
  - (a) that the holder of the authorisation is not a fit and proper person to carry on the investment business which he is carrying on or proposing to carry on; or
  - (b) without prejudice to paragraph (a) above, that the holder of the authorisation has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act.
- (2) For the purposes of subsection (1)(a) above the Secretary of State may take into account any such matters as are mentioned in section 27(3) and (4) above.
- (3) Where the holder of the authorisation is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in paragraph (b) of subsection (1) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules; and where he is a person certified by a recognised professional body the rules, prohibitions and requirements referred to in that paragraph include the rules of that body which regulate the carrying on by him of investment business and any prohibition or requirement imposed by virtue of those rules.
- (4) The suspension of an authorisation shall be for a specified period or until the occurrence of a specified event or until specified conditions are complied with; and while an authorisation is suspended the holder shall not be an authorised person.
- (5) Any period, event or conditions specified under subsection (4) above in the case of an authorisation may be varied by the Secretary of State on the application of the holder.

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

- C27** S. 28: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(c)**.  
**C28** S. 28 applied (with modifications) (18.7.1996) by S.I. 1996/1669, **reg. 9(2)**  
s. 28(1)(a) modified (1.1.1996) by S.I. 1995/3275, **reg. 32, Sch. 7 para. 5**

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**C29** S. 28(1)(a) amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para.5.

**29 Notice of proposed refusal, withdrawal or suspension. U.K.**

- (1) Where the Secretary of State proposes—
- (a) to refuse an application under section 26 or 28(5) above; or
  - (b) to withdraw or suspend an authorisation,
- he shall give the applicant or the authorised person written notice of his intention to do so, stating the reasons for which he proposes to act.
- (2) In the case of a proposed withdrawal or suspension the notice shall state the date on which it is proposed that the withdrawal or suspension should take effect and, in the case of a proposed suspension, its proposed duration.
- (3) Where the reasons stated in a notice under this section relate specifically to matters which—
- (a) refer to a person identified in the notice other than the applicant or the holder of the authorisation; and
  - (b) are in the opinion of the Secretary of State prejudicial to that person in any office or employment,
- the Secretary of State shall, unless he considers it impracticable to do so, serve a copy of the notice on that person.
- (4) A notice under this section shall give particulars of the right to require the case to be referred to the Tribunal under Chapter IX of this Part of this Act.
- (5) Where a case is not required to be referred to the Tribunal by a person on whom a notice is served under this section the Secretary of State shall, at the expiration of the period within which such a requirement can be made—
- (a) give that person written notice of the refusal, withdrawal or suspension; or
  - (b) give that person written notice of the grant of the application or, as the case may be, written notice that the authorisation is not to be withdrawn or suspended;
- and the Secretary of State may give public notice of any decision notified by him under paragraph (a) or (b) above and the reasons for the decision except that he shall not do so in the case of a decision notified under paragraph (b) unless the person concerned consents to his doing so.

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

**C30** S. 29 applied (with modifications) (12.2.1992) by S.I. 1992/225, reg. 96(5)(6).

s. 29(1) modified (1.1.1996) by S.I. 1995/3275, reg. 17(9)(a)

s. 29(4) modified (1.1.1996) by S.I. 1995/3275, reg. 17(9)(b)

S. 29: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, Sch. 2 para. 4(c).

**30 Withdrawal of applications and authorisations by consent. U.K.**

- (1) An application under section 26 above may be withdrawn before it is granted or refused; and, subject to subsections (2) and (3) below, an authorisation granted under

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section 27 above may be withdrawn by the Secretary of State at the request or with the consent of the authorised person.

- (2) The Secretary of State may refuse to withdraw any such authorisation if he considers that the public interest requires any matter affecting the authorised person to be investigated as a preliminary to a decision on the question whether the Secretary of State should in respect of that person exercise his powers under section 28 above or under any other provision of this Part of this Act.
- (3) The Secretary of State may also refuse to withdraw an authorisation where in his opinion it is desirable that a prohibition or restriction should be imposed on the authorised person under Chapter VI of this Part of this Act or that a prohibition or restriction imposed on that person under that Chapter should continue in force.
- (4) The Secretary of State may give public notice of any withdrawal of authorisation under subsection (1) above.

#### *Persons authorised in other member States*

### **31 Authorisation in other member State. U.K.**

- (1) A person carrying on investment business in the United Kingdom is an authorised person if—
  - (a) he is established in a member State other than the United Kingdom;
  - (b) the law of that State recognises him as a national of that or another member State; and
  - (c) he is for the time being authorised under that law to carry on investment business or investment business of any particular kind.
- (2) For the purposes of this Act a person is established in a member State other than the United Kingdom if his head office is situated in that State and he does not transact investment business from a permanent place of business maintained by him in the United Kingdom.
- (3) This section applies to a person only if the provisions of the law under which he is authorised to carry on the investment business in question—
  - (a) afford to investors in the United Kingdom protection, in relation to his carrying on of that business, which is at least equivalent to that provided for them by the provisions of this Chapter relating to members of recognised self-regulating organisations or to persons authorised by the Secretary of State; or
  - (b) satisfy the conditions laid down by a Community instrument for the co-ordination or approximation of the laws, regulations or administrative provisions of member States relating to the carrying on of investment business or investment business of the relevant kind.
- (4) A certificate issued by the Secretary of State and for the time being in force to the effect that the provisions of the law of a member State comply with the requirements of subsection (3)(a) above, either as respects all investment business or as respects investment business of a particular kind, shall be conclusive evidence of that matter but the absence or revocation of such a certificate shall not be regarded as indicating that those requirements are not complied with.
- (5) This section shall not apply to a person by virtue of paragraph (b) of subsection (3) above unless the authority by which he is authorised to carry on the investment

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business in question certifies that he is authorised to do so under a law which complies with the requirements of that paragraph.

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

- C31** S. 31 amended (1.1.1993) by S.I. 1992/3218, **reg.51**.  
 s. 31 extended (1.1.1996) by S.I. 1995/3275, **reg. 24**

**32 Notice of commencement of business. U.K.**

- (1) A person who is an authorised person by virtue of section 31 above shall be guilty of an offence unless, not less than seven days before beginning to carry on investment business in the United Kingdom, he has given notice of his intention to do so to the Secretary of State either in writing or in such other manner as the Secretary of State may approve.
- (2) The notice shall contain—
- (a) information as to the investment business which that person proposes to carry on in the United Kingdom and the services which he will hold himself out as able to provide in the carrying on of that business;
  - (b) information as to the authorisation of that person in the member State in question;
  - (c) the address of a place (whether in the United Kingdom or elsewhere) for the service on that person of any notice or other document required or authorised to be served on him under this Act;
  - (d) such other information as may be prescribed;
- and the notice shall comply with such requirements as to the form in which any information is to be given and as to its verification as may be prescribed.
- (3) A notice by a person claiming to be authorised by virtue of subsection (3)(b) of section 31 above shall be accompanied by a copy of the certificate required by subsection (5) of that section.
- (4) A person guilty of an offence under subsection (1) above shall be liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (5) In proceedings brought against any person for an offence under subsection (1) 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.

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

- C32** S. 32(2)(a) amended (1.1.1993) by S.I. 1992/3218, **reg. 55, Sch. 9 para.6**.  
 s. 32(2)(a) modified (1.1.1996) by S.I. 1995/3275, **reg. 32, Sch. 7 para. 6**

**33 Termination and suspension of authorisation. U.K.**

- (1) If it appears to the Secretary of State that a person who is an authorised person by virtue of section 31 above has contravened any provision of this Act or of any rules or regulations made under it or, in purported compliance with any such provision, has



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furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act the Secretary of State may direct—

- (a) that he shall cease to be an authorised person by virtue of that section; or
  - (b) that he shall not be an authorised person by virtue of that section for a specified period or until the occurrence of a specified event or until specified conditions are complied with.
- (2) In the case of a person who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in subsection (1) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules; and in the case of a person who is certified by a recognised professional body the rules, prohibitions and requirements referred to in that subsection include the rules of that body which regulate the carrying on by him of investment business and any prohibition or requirement imposed by virtue of those rules.
- (3) Any period, event or condition specified in a direction under subsection (1)(b) above may be varied by the Secretary of State on the application of the person to whom the direction relates.
- (4) The Secretary of State shall consult the relevant supervisory authority before giving a direction under this section unless he considers it essential in the interests of investors that the direction should be given forthwith but in that case he shall consult the authority immediately after giving the direction and may then revoke or vary it if he considers it appropriate to do so.
- (5) The Secretary of State shall revoke a direction under this section if he is satisfied, after consulting the relevant supervisory authority, that it will secure that the person concerned will comply with the provisions mentioned in subsection (1) above.
- (6) In this section “the relevant supervisory authority” means the authority of the member State where the person concerned is established which is responsible for supervising the carrying on of investment business of the kind which that person is or was carrying on.

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

- C33** S. 33: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, Sch. 2 para. 4(c).
- C34** S. 33(1): certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, Sch. 2 para.2.

### 34 Notice of proposed termination or suspension. U.K.

- (1) Where the Secretary of State proposes—
- (a) to give a direction under section 33 above; or
  - (b) to refuse an application under subsection (3) of that section,
- he shall give the authorised person written notice of his intention to do so, stating the reasons for which he proposes to act.
- (2) In the case of a proposed direction under section 33 above the notice shall state the date on which it is proposed that the direction should take effect and, in the case of a proposed direction under subsection (1)(b) of that section, its proposed duration.

**Status:** Point in time view as at 01/01/1997. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** *Financial Services Act 1986 (Repealed)*, Part I is up to date with all changes known to be in force on or before 05 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)

- (3) Where the reasons stated in a notice under this section relate specifically to matters which—
- (a) refer to a person identified in the notice other than the authorised person; and
  - (b) are in the opinion of the Secretary of State prejudicial to that person in any office or employment,
- the Secretary of State shall, unless he considers it impracticable to do so, serve a copy of the notice on that other person.
- (4) A notice under this section shall give particulars of the right to require the case to be referred to the Tribunal under Chapter IX of this Part of this Act.
- (5) Where a case is not required to be referred to the Tribunal by a person on whom a notice is served under this section the Secretary of State shall, at the expiration of the period within which such a requirement can be made—
- (a) give that person written notice of the direction or refusal; or
  - (b) give that person written notice that the direction is not to be given or, as the case may be, of the grant of the application;
- and the Secretary of State may give public notice of any decision notified by him under paragraph (a) or (b) above and the reasons for the decision except that he shall not do so in the case of a decision within paragraph (b) unless the person concerned consents to his doing so.

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

**C35** *S. 34*: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by *S.I. 1992/1315*, *art. 4*, **Sch. 2 para. 4(c)**.

## CHAPTER IV U.K.

### EXEMPTED PERSONS

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

**C36** Chapters III–XI (ss. 7–111): certain functions transferred by *S.I. 1990/354*, **art. 5**

#### *The Bank of England*

**35** **The Bank of England.** U.K.

The Bank of England is an exempted person.

#### *Recognised investment exchanges and clearing houses*

**36** **Investment exchanges.** U.K.

- (1) A recognised investment exchange is an exempted person as respects anything done in its capacity as such which constitutes investment business.

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- (2) In this Act references to the rules of an investment exchange are references to the rules made or conditions imposed by it with respect to the matters dealt with in Schedule 4 to this Act, with respect to the admission of persons to or their exclusion from the use of its facilities or otherwise relating to its constitution.
- (3) In this Act references to guidance issued by an investment exchange are references to guidance issued or any recommendation made by it to all or any class of its members or users or persons seeking to become members of the exchange or to use its facilities and which would, if it were a rule, fall within subsection (2) above.

### 37 Grant and revocation of recognition. **U.K.**

- (1) Any body corporate or unincorporated association may apply to the Secretary of State for an order declaring it to be a recognised investment exchange for the purposes of this Act.
- (2) Subsections (2) to (5) of section 9 above shall have effect in relation to an application under subsection (1) above as they have effect in relation to an application under subsection (1) of that section; and every application under subsection (1) above shall be accompanied by—
  - (a) a copy of the applicant's rules;
  - (b) a copy of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form; and
  - (c) particulars of any arrangements which the applicant has made or proposes to make for the provision of clearing services.
- (3) The Secretary of State may, on an application duly made in accordance with subsection (1) above and after being furnished with all such information as he may require in connection with the application, make or refuse to make an order ("a recognition order") declaring the applicant to be a recognised investment exchange for the purposes of this Act.
- (4) Subject to Chapter XIV of this Part of this Act, the Secretary of State may make a recognition order if it appears to him from the information furnished by the exchange making the application and having regard to any other information in his possession that the requirements of Schedule 4 to this Act are satisfied as respects that exchange.
- (5) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect stating the reasons for the refusal.
- (6) A recognition order shall state the date on which it takes effect.
- (7) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him—
  - (a) that any requirement of Schedule 4 to this Act is not satisfied in the case of the exchange to which the recognition order relates; or
  - (b) that the exchange has failed to comply with any obligation to which it is subject by virtue of this Act;

and subsections (2) to (9) of section 11 above shall have effect in relation to the revocation of a recognition order under this subsection as they have effect in relation to the revocation of such an order under subsection (1) of that section.

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- (8) Section 12 above shall have effect in relation to a recognised investment exchange and the requirements and obligations referred to in subsection (7) above as it has effect in relation to the requirements and obligations there mentioned.

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

**C37** S. 37(7)(a) modified (1.3.1994) by S.I. 1994/188, reg. 4(b)

**C38** Ss. 37(7)(b), 39(7)(b) applied (25.4.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 154, 155, 169(2)

**38 Clearing houses. U.K.**

- (1) A recognised clearing house is an exempted person as respects anything done by it in its capacity as a person providing clearing services for the transaction of investment business.
- (2) In this Act references to the rules of a clearing house are references to the rules made or conditions imposed by it with respect to the provision by it or its members of clearing services under clearing arrangements, that is to say, arrangements with a recognised investment exchange for the provision of clearing services in respect of transactions effected on the exchange.
- (3) In this Act references to guidance issued by a clearing house are references to guidance issued or any recommendation made by it to all or any class of its members or persons using or seeking to use its services and which would, if it were a rule, fall within subsection (2) above.

**39 Grant and revocation of recognition. U.K.**

- (1) Any body corporate or unincorporated association may apply to the Secretary of State for an order declaring it to be a recognised clearing house for the purposes of this Act.
- (2) Subsections (2) to (5) of section 9 above shall have effect in relation to an application under subsection (1) above as they have effect in relation to an application under subsection (1) of that section; and any application under subsection (1) above shall be accompanied by—
- (a) a copy of the applicant's rules;
  - (b) a copy of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form; and
  - (c) particulars of any recognised investment exchange with which the applicant proposes to make clearing arrangements and of any other person (whether or not such an exchange) for whom the applicant provides clearing services.
- (3) The Secretary of State may, on an application duly made in accordance with subsection (1) above and after being furnished with all such information as he may require in connection with the application, make or refuse to make an order ("a recognition order") declaring the applicant to be a recognised clearing house for the purposes of this Act.
- (4) Subject to Chapter XIV of this Part of this Act, the Secretary of State may make a recognition order if it appears to him from the information furnished by the clearing house making the application and having regard to any other information in his possession that the clearing house—

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- (a) has financial resources sufficient for the proper performance of its functions;
  - (b) has adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules or, as respects monitoring, arrangements providing for that function to be performed on behalf of the clearing house (and without affecting its responsibility) by another body or person who is able and willing to perform it;
  - (c) provides or is able to provide clearing services which would enable a recognised investment exchange to make arrangements with it that satisfy the requirements of Schedule 4 to this Act; and
  - (d) is able and willing to comply with duties corresponding to those imposed in the case of a recognised investment exchange by paragraph 5 of that Schedule.
- (5) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect stating the reasons for the refusal.
- (6) A recognition order shall state the date on which it takes effect.
- (7) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him—
  - (a) that any requirement of subsection (4) above is not satisfied in the case of the clearing house; or
  - (b) that the clearing house has failed to comply with any obligation to which it is subject by virtue of this Act;and subsections (2) to (9) of section 11 above shall have effect in relation to the revocation of a recognition order under this subsection as they have effect in relation to the revocation of such an order under subsection (1) of that section.
- (8) Section 12 above shall have effect in relation to a recognised clearing house and the requirements and obligations referred to in subsection (7) above as it has effect in relation to the requirements and obligations there mentioned.

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

**C39** Ss. 37(7)(b), 39(7)(b) applied (25.4.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 154, 155, 169(2)

**40 Overseas investment exchanges and clearing houses. U.K.**

- (1) Any application under section 37(1) or 39(1) above by a body or association whose head office is situated in a country outside the United Kingdom shall contain the address of a place in the United Kingdom for the service on that body or association of notices or other documents required or authorised to be served on it under this Act.
- (2) In relation to any such body or association sections 37(4) and 39(4) above shall have effect with the substitution for the requirements there mentioned of the following requirements, that is to say—
  - (a) that the body or association is, in the country in which its head office is situated, subject to supervision which, together with the rules and practices of that body or association, is such that investors in the United Kingdom are afforded protection in relation to that body or association at least equivalent to that provided by the provisions of this Act in relation to investment exchanges and clearing houses in respect of which recognition orders are made otherwise than by virtue of this subsection; and

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- (b) that the body or association is able and willing to co-operate, by the sharing of information and otherwise, with the authorities, bodies and persons responsible in the United Kingdom for the supervision and regulation of investment business or other financial services; and
  - (c) that adequate arrangements exist for such co-operation between those responsible for the supervision of the body or association in the country mentioned in paragraph (a) above and the authorities, bodies and persons mentioned in paragraph (b) above.
- (3) In determining whether to make a recognition order by virtue of subsection (2) above the Secretary of State may have regard to the extent to which persons in the United Kingdom and persons in the country mentioned in that subsection have access to the financial markets in each others' countries.
- (4) In relation to a body or association declared to be a recognised investment exchange or recognised clearing house by a recognition order made by virtue of subsection (2) above—
- (a) the reference in section 36(2) above to the matters dealt with in Schedule 4 to this Act shall be construed as a reference to corresponding matters;
  - (b) sections 37(7) and (8) and 39(7) and (8) above shall have effect as if the requirements mentioned in section 37(7)(a) and in section 39(7)(a) were those of subsection (2)(a) and (b) above; and
  - (c) the grounds on which the order may be revoked under section 37(7) or 39(7) above shall include the ground that it appears to the Secretary of State that revocation is desirable in the interests of investors and potential investors in the United Kingdom.
- (5) In this section “country” includes any territory or any part of a country or territory.
- (6) A body or association declared to be a recognised investment exchange or recognised clearing house by a recognition order made by virtue of subsection (2) above is in this Act referred to as an “overseas investment exchange” or an “overseas clearing house”.

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

C40 S. 40(2) modified (1.3.1994) by S.I. 1994/188, reg. 4(b)

**41 Notification requirements. U.K.**

- (1) The Secretary of State may make regulations requiring a recognised investment exchange or recognised clearing house to give him forthwith notice of the occurrence of such events relating to the exchange or clearing house as are specified in the regulations and such information in respect of those events as is so specified.
- (2) The Secretary of State may make regulations requiring a recognised investment exchange or recognised clearing house to furnish him at such times or in respect of such periods as are specified in the regulations with such information relating to the exchange or clearing house as is so specified.
- (3) The notices and information required to be given or furnished under the foregoing provisions of this section shall be such as the Secretary of State may reasonably require for the exercise of his functions under this Act.



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- (4) Regulations under the foregoing provisions of this section may require information to be given in a specified form and to be verified in a specified manner.
- (5) Where a recognised investment exchange—
  - (a) amends, revokes or adds to its rules or guidance; or
  - (b) makes, terminates or varies any clearing arrangements,it shall within seven days give written notice to the Secretary of State of the amendment, revocation or addition or, as the case may be, of the matters mentioned in paragraph (b) above.
- (6) Where a recognised clearing-house—
  - (a) amends, revokes or adds to its rules or guidance; or
  - (b) makes a change in the persons for whom it provides clearing services,it shall within seven days give written notice to the Secretary of State of the amendment, revocation or addition or, as the case may be, of the change.
- (7) Notice need not be given under subsection (5) or (6) above of the revocation of guidance other than such as is mentioned in section 37(2)(b) or 39(2)(b) above or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned.

#### *Other exemptions*

#### **42 Lloyd's. U.K.**

The Society of Lloyd's and persons permitted by the Council of Lloyd's to act as underwriting agents at Lloyd's are exempted persons as respects investment business carried on in connection with or for the purpose of insurance business at Lloyd's.

#### **43 Listed money market institutions. U.K.**

- (1) A person for the time being included in a list maintained by the Bank of England for the purposes of this section ("a listed institution") is an exempted person in respect of, and of anything done for the purposes of, any transaction to which Part I or Part II of Schedule 5 to this Act applies and in respect of any arrangements made by him with a view to other persons entering into a transaction to which Part III of that Schedule applies.
- (2) The conditions imposed by the Bank of England for admission to the list referred to in this section and the arrangements made by it for a person's admission to and removal from the list shall require the approval of the Treasury; and this section shall cease to have effect if that approval is withdrawn but without prejudice to its again having effect if approval is given for fresh conditions or arrangements.
- (3) The Bank of England shall publish the list as for the time being in force and provide a certified copy of it at the request of any person wishing to refer to it in legal proceedings.
- (4) Such a certified copy shall be evidence or, in Scotland, sufficient evidence of the contents of the list; and a copy purporting to be certified by or on behalf of the Bank shall be deemed to have been duly certified unless the contrary is shown.

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

- C41** S. 43 amended by SI 1990/696, art. 2  
 S. 43 amended (1.1.1993) by S.I. 1992/3218, **reg.52**.  
 s. 43 extended (1.1.1996) by S.I. 1995/3275, **reg. 26(1)**  
 s. 43 applied (with modifications) (18.7.1996) by S.I. 1996/1669, **reg. 9(3)**

**44 Appointed representatives. U.K.**

- (1) An appointed representative is an exempted person as respects investment business carried on by him as such a representative.
- (2) For the purposes of this Act an appointed representative is a person—
  - (a) who is employed by an authorised person (his “principal”) under a contract for services which—
    - (i) requires or permits him to carry on investment business to which this section applies; and
    - (ii) complies with subsections (4) and (5) below; and
  - (b) for whose activities in carrying on the whole or part of that investment business his principal has accepted responsibility in writing;  
 and the investment business carried on by an appointed representative as such is the investment business for which his principal has accepted responsibility.
- (3) This section applies to investment business carried on by an appointed representative which consists of—
  - (a) procuring or endeavouring to procure the persons with whom he deals to enter into investment agreements with his principal or (if not prohibited by his contract) with other persons;
  - (b) giving advice to the persons with whom he deals about entering into investment agreements with his principal or (if not prohibited by his contract) with other persons; or
  - (c) giving advice as to the sale of investments issued by his principal or as to the exercise of rights conferred by an investment whether or not issued as aforesaid.
- (4) If the contract between an appointed representative and his principal does not prohibit the representative from procuring or endeavouring to procure persons to enter into investment agreements with persons other than his principal it must make provision for enabling the principal either to impose such a prohibition or to restrict the kinds of investment to which those agreements may relate or the other persons with whom they may be entered into.
- (5) If the contract between an appointed representative and his principal does not prohibit the representative from giving advice about entering into investment agreements with persons other than his principal it must make provision for enabling the principal either to impose such a prohibition or to restrict the kinds of advice which the representative may give by reference to the kinds of investment in relation to which or the persons with whom the representative may advise that investment agreements should be made.
- (6) The principal of an appointed representative shall be responsible, to the same extent as if he had expressly authorised it, for anything said or done or omitted by the

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representative in carrying on the investment business for which he has accepted responsibility.

- (7) In determining whether an authorised person has complied with—
- (a) any provision contained in or made under this Act; or
  - (b) any rules of a recognised self-regulating organisation or recognised professional body,
- anything which a person who at the material time is or was an appointed representative of the authorised person has said, done or omitted as respects investment business for which the authorised person has accepted responsibility shall be treated as having been said, done or omitted by the authorised person.
- (8) Nothing in subsection (7) above shall cause the knowledge or intentions of an appointed representative to be attributed to his principal for the purpose of determining whether the principal has committed a criminal offence unless in all the circumstances it is reasonable for them to be attributed to him.
- (9) In this Act “investment agreement” means any agreement the making or performance of which by either party constitutes an activity which falls within any paragraph of Part II of Schedule 1 to this Act or would do so apart from Parts III and IV of that Schedule.

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

- C42** S. 44 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.7**.  
**C43** S. 44(2) applied (1.4.1994) by S.I. 1993/1933, **reg. 13(6)**.  
s. 44 extended (1.1.1997) by S.I. 1995/3275, **reg. 27**  
s. 44 modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 7**

**45 Miscellaneous exemptions. U.K.**

- (1) Each of the following persons is an exempted person to the extent specified in relation to that person—
- (a) [<sup>F7</sup>the Public Trustee] when acting in the exercise of his functions under section 9 of the <sup>M2</sup>Administration of Estates Act 1925;
  - (b) the Probate Judge of the High Court of Northern Ireland when acting in the exercise of his functions under section 3 of the <sup>M3</sup>Administration of Estates Act (Northern Ireland) 1955;
  - (c) the Accountant General of the Supreme Court when acting in the exercise of his functions under Part VI of the <sup>M4</sup>Administration of Justice Act 1982;
  - (d) the Accountant of Court when acting in the exercise of his functions in connection with the consignment or deposit of sums of money;
  - (e) the Public Trustee when acting in the exercise of his functions under the <sup>M5</sup>Public Trustee Act 1906;
  - (f) the Master of the Court of Protection when acting in the exercise of his functions under Part VII of the <sup>M6</sup>Mental Health Act 1983;
  - (g) the Official Solicitor to the Supreme Court when acting as judicial trustee under the <sup>M7</sup>Judicial Trustees Act 1896;
  - (h) a registrar of a county court when managing funds paid into court;
  - (i) a sheriff clerk when acting in the exercise of his functions in connection with the consignment or deposit of sums of money;

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- (j) a person acting in his capacity as manager of a fund established under section 22 [<sup>F8</sup>or 22A] of the <sup>M8</sup>Charities Act 1960 [<sup>F9</sup>, section 24 or 25 of the Charities Act 1993], section 25 of the <sup>M9</sup>Charities Act (Northern Ireland) 1964, section 11 of the <sup>M10</sup>Trustee Investments Act 1961 or section 42 of the <sup>M11</sup>Administration of Justice Act 1982;
  - (k) the Central Board of Finance of the Church of England or a Diocesan Authority within the meaning of the <sup>M12</sup>Church Funds Investment Measure 1958 when acting in the exercise of its functions under that Measure;
  - (l) a person acting in his capacity as an official receiver within the meaning of section 399 of the <sup>M13</sup>Insolvency Act 1986 or in that capacity within the meaning of any corresponding provision in force in Northern Ireland.
- (2) Where a bankruptcy order is made in respect of an authorised person or of a person whose authorisation is suspended under section 28 above or who is the subject of a direction under section 33(1)(b) above or a winding-up order is made in respect of a partnership which is such a person, the trustee in bankruptcy or liquidator acting in his capacity as such is an exempted person but—
- (a) sections 48 to 71 below and, so far as relevant to any of those provisions, Chapter IX of this Part of this Act; and
  - (b) sections 104, 105 and 106 below,
- shall apply to him to the same extent as they applied to the bankrupt or partnership and, if the bankrupt or partnership was subject to the rules of a recognised self-regulating organisation or recognised professional body, he shall himself also be subject to those rules.
- (3) In the application of subsection (2) above to Scotland—
- (a) for the reference to a bankruptcy order being made in respect of a person there shall be substituted a reference to the estate of that person being sequestrated;
  - (b) the reference to a winding-up order in respect of a partnership is a reference to such an order made under section 72 below;
  - (c) for the reference to the trustee in bankruptcy there shall be substituted a reference to the interim trustee or permanent trustee within the meaning of the <sup>M14</sup>Bankruptcy (Scotland) Act 1985; and
  - (d) for the references to the bankrupt there shall be substituted references to the debtor.
- (4) In the application of subsection (2) above to Northern Ireland for the reference to a bankruptcy order there shall be substituted a reference to an order of adjudication of bankruptcy and the reference to a trustee in bankruptcy shall include a reference to an assignee in bankruptcy.

#### Textual Amendments

- F7** Words in s. 45(1)(a) substituted (1.7.1995) by 1994 c. 36, s. 21(1), **Sch. 1 para. 10** (with s. 20); S.I. 1995/1317, **art. 2**
- F8** Words in s. 45(1)(j) inserted (1.9.1992) by Charities Act 1992 (c. 41), s. 78(1), **Sch. 6 para. 14**; S.I. 1992/1900, **art. 2, Sch. 1**.
- F9** Words in s. 45(1)(j) inserted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), **Sch. 6 para. 22**.

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

- C44** S. 45 (1)(j) restricted (1.12.1999) by S.I. 1999/2999, **art. 2**
- C45** s. 45(2) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 8**.

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s. 45 modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 8**

#### Marginal Citations

- M2** 1925 c. 23.
- M3** 1955 c. 24 (N.I.).
- M4** 1982 c. 53.
- M5** 1906 c. 55.
- M6** 1983 c. 20.
- M7** 1896 c. 35.
- M8** 1960 c. 58.
- M9** 1964 c. 33. (N.I.).
- M10** 1961 c. 62.
- M11** 1982 c. 53.
- M12** 1958 No. 1.
- M13** 1986 c. 45.
- M14** 1985 c. 66.

### Supplemental

#### 46 Power to extend or restrict exemptions. **U.K.**

- (1) The Secretary of State may by order provide—
- (a) for exemptions additional to those specified in the foregoing provisions of this Chapter; or
  - (b) for removing or restricting any exemption conferred by section 42, 43 or 45 above;
- and any such order may contain such transitional provisions as the Secretary of State thinks necessary or expedient.
- (2) An order making such provision as is mentioned in paragraph (a) of subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament; and no order making such provision as is mentioned in paragraph (b) of that subsection shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

### CHAPTER V **U.K.**

#### CONDUCT OF INVESTMENT BUSINESS

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

- C46** Chapters III–XI (ss. 7–111): certain functions transferred by S.I. 1990/354, **art. 5**

#### 47 Misleading statements and practices. **U.K.**

- (1) Any person who—
- (a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive or dishonestly conceals any material facts; or

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- (b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,  
 is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) to enter or offer to enter into, or to refrain from entering or offering to enter into, an investment agreement or to exercise, or refrain from exercising, any rights conferred by an investment.
- (2) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any investments is guilty of an offence if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.
- (3) In proceedings brought against any person for an offence under subsection (2) above it shall be a defence for him to prove that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the matters mentioned in that subsection.
- (4) Subsection (1) above does not apply unless—
- (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the United Kingdom;
  - (b) the person on whom the inducement is intended to or may have effect is in the United Kingdom; or
  - (c) the agreement is or would be entered into or the rights are or would be exercised in the United Kingdom.
- (5) Subsection (2) above does not apply unless—
- (a) the act is done or the course of conduct is engaged in in the United Kingdom; or
  - (b) the false or misleading impression is created there.
- (6) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven 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.

**[<sup>F10</sup>47A Statements of principle. U.K.]**

- (1) The Secretary of State may issue statements of principle with respect to the conduct and financial standing expected of persons authorised to carry on investment business.
- (2) The conduct expected may include compliance with a code or standard issued by another person, as for the time being in force, and may allow for the exercise of discretion by any person pursuant to any such code or standard.
- (3) Failure to comply with a statement of principle under this section is a ground for the taking of disciplinary action or the exercise of powers of intervention, but it does not of itself give rise to any right of action by investors or other persons affected or affect the validity of any transaction.



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- (4) The disciplinary action which may be taken by virtue of subsection (3) is—
- (a) the withdrawal or suspension of authorisation under section 28 or the termination or suspension of authorisation under section 33,
  - (b) the giving of a disqualification direction under section 59,
  - (c) the making of a public statement under section 60, or
  - (d) the application by the Secretary of State for an injunction, interdict or other order under section 61(1);
- and the reference in that subsection to powers of intervention is to the powers conferred by Chapter VI of this Part.
- (5) Where a statement of principle relates to compliance with a code or standard issued by another person, the statement of principle may provide—
- (a) that failure to comply with the code or standard shall be a ground for the taking of disciplinary action, or the exercise of powers of intervention, only in such cases and to such extent as may be specified; and
  - (b) that no such action shall be taken, or any such power exercised, except at the request of the person by whom the code or standard in question was issued.
- (6) The Secretary of State shall exercise his powers in such manner as appears to him appropriate to secure compliance with statements of principle under this section.]

#### Textual Amendments

- F10** S. 47A inserted by Companies Act 1989 (c. 40, SIF 27), s. 192 and brought into force by S.I. 1990/354, art. 3

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

- C47** S. 47A: certain functions transferred by SI 1990/354, art. 4(3)(a)
- C48** S. 47A: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, Sch. 2 para.3.  
S. 47A amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para.9.  
s. 47A amended (1.7.1994) by S.I. 1994/1696, reg. 58(1)  
s. 47A modified (1.1.1996) by S.I. 1995/3275, reg. 32, Sch. 7 para. 9(1)(2)  
s. 47A extended (1.1.1996) by S.I. 1995/3275, reg. 32, Sch. 7 Pt. II para. 4(1)  
s. 47A extended (1.1.1996) by S.I. 1995/3275, reg. 58, Sch. 11 para. 4(1)
- C49** S. 47A(1)(4) amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para. 9(1).  
s. 47A(4) extended (1.1.1996) by S.I. 1995/3275, reg. 32, Sch. 7 para. 9(1)(2)

#### [<sup>F11</sup>47B Modification or waiver of statements of principle in particular cases. U.K.]

- (1) The relevant regulatory authority may on the application of any person—
- (a) modify a statement of principle issued under section 47A so as to adapt it to his circumstances or to any particular kind of business carried on by him, or
  - (b) dispense him from compliance with any such statement of principle, generally or in relation to any particular kind of business carried on by him.
- (2) The powers conferred by this section shall not be exercised unless it appears to the relevant regulatory authority—

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- (a) that compliance with the statement of principle in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and
  - (b) that the exercise of those powers will not result in any undue risk to investors.
- (3) The powers conferred by this section may be exercised unconditionally or subject to conditions; and section 47A(3) applies in the case of failure to comply with a condition as in the case of failure to comply with a statement of principle.
- (4) The relevant regulatory authority for the purposes of this section is—
- (a) in the case of a member of a recognised self-regulating organisation or professional body, in relation to investment business in the carrying on of which he is subject to the rules of the organisation or body, that organisation or body;
  - (b) in any other case, or in relation to other investment business, the Secretary of State.
- (5) The references in paragraph 4(1) of Schedule 2 and paragraph 4(2) of Schedule 3 (requirements for recognition of self-regulating organisations and professional bodies) to monitoring and enforcement of compliance with statements of principle include monitoring and enforcement of compliance with conditions imposed by the organisation or body under this section.]

#### Textual Amendments

**F11** S. 47B inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), s. 192

## 48 Conduct of business rules. **U.K.**

- (1) The Secretary of State may make rules regulating the conduct of investment business by authorised persons but those rules shall not apply to . . . <sup>F12</sup> persons certified by a recognised professional body in respect of investment business in the carrying on of which they are subject to the rules of the . . . <sup>F12</sup> body.
- (2) Rules under this section may in particular make provision—
- (a) prohibiting a person from carrying on, or holding himself out as carrying on—
    - (i) investment business of any kind specified in the rules; or
    - (ii) investment business of a kind or on a scale other than that notified by him to the Secretary of State in connection with an application for authorisation under Chapter III of this Part of this Act, in a notice under section 32 above or in accordance with any provision of the rules or regulations in that behalf;
  - (b) prohibiting a person from carrying on investment business in relation to persons other than those of a specified class or description;
  - (c) regulating the manner in which a person may hold himself out as carrying on investment business;
  - (d) regulating the manner in which a person makes a market in any investments;
  - (e) as to the form and content of advertisements in respect of investment business;
  - (f) requiring the principals of appointed representatives to impose restrictions on the investment business carried on by them;

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- (g) requiring the disclosure of the amount or value, or of arrangements for the payment or provision, of commissions or other inducements in connection with investment business and restricting the matters by reference to which or the manner in which their amount or value may be determined;
  - (h) enabling or requiring information obtained by an authorised person in the course of carrying on one part of his business to be withheld by him from persons with whom he deals in the course of carrying on another part and for that purpose enabling or requiring persons employed in one part of that business to withhold information from those employed in another part;
  - (i) as to the circumstances and manner in which and the time when or the period during which action may be taken for the purpose of stabilising the price of investments of any specified description;
  - (j) for arrangements for the settlement of disputes;
  - (k) requiring the keeping of accounts and other records, as to their form and content and for their inspection;
  - (l) requiring a person to whom the rules apply to make provision for the protection of investors in the event of the cessation of his investment business in consequence of his death, incapacity or otherwise.
- (3) Subsection (2) above is without prejudice to the generality of subsection (1) above and accordingly rules under this section may make provision for matters other than those mentioned in subsection (2) or further provision as to any of the matters there mentioned except that they shall not impose limits on the amount or value of commissions or other inducements paid or provided in connection with investment business.
- (4) Rules under this section may also regulate or prohibit the carrying on in connection with investment business of any other business or the carrying on of any other business which is held out as being for the purposes of investment.
- (5) In paragraph (e) of subsection (2) above “advertisement” does not include any advertisement which is subject to section 154 below or which is required or permitted to be published by listing rules under Part IV of this Act and relates to securities which have been admitted to listing under that Part; <sup>F13</sup> . . .
- (6) Nothing done in conformity with rules made under paragraph (h) of subsection (2) above shall be regarded as a contravention of section 47 above.
- (7) Section 47(2) above shall not be regarded as contravened by anything done for the purpose of stabilising the price of investments if it is done in conformity with rules made under this section and—
- (a) <sup>F14</sup>(i) in respect of investments which fall within any of paragraphs 1 to 5 of Schedule 1 to this Act and are specified by the rules; and  
<sup>F15</sup>(ii) during such period before or after the issue of those investments as is specified by the rules <sup>F16</sup>or]
  - <sup>F16</sup>(b) (i) in respect of such investments as are mentioned in subparagraph (a) (i) above; and  
(ii) during a period starting with the date of the first public announcement of an offer of those investments which states the price or the minimum price at which the investments are to be sold and ending on the 30th day after the closing date specified in the announcement for acceptances of such offer.]

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- [<sup>F17</sup>(7A) For the purposes of subparagraph (b)(ii) of subsection (7) above “an offer” means an offer for cash (other than in relation to the issue of the investments in question) where either—
- (a) the investments have been admitted to dealing on a recognised investment exchange or any other exchange of repute outside the United Kingdom; or
  - (b) the offer is on the occasion of such admission or conditional on such admission;
- and the total cost of the investments subject to the offer at the price stated in the first public announcement mentioned in subsection (7) above is at least £15,000,000 (or the equivalent in the currency or unit of account in which the price is stated on the date of the announcement).]
- (8) The Secretary of State may by order amend subsection (7) above—
- (a) by restricting or extending the kinds of investment to which it applies;
  - (b) by restricting it so as to apply only in relation to the issue of investments in specified circumstances or by extending it, in respect of investments of any kind specified in the order, so as to apply to things done during a specified period before or after events other than the issue of those investments.
- (9) No order shall be made under subsection (8) above unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (10) Rules under this section may contain such incidental and transitional provisions as the Secretary of State thinks necessary or expedient.
- [<sup>F18</sup>(11) Section 63A below (application of designated rules) has effect as regards the application of rules under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.]

#### Textual Amendments

- F12** Words repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 206(1), 212, [Sch. 23 Pt. I para. 2\(2\)](#), [Sch. 24](#)
- F13** Words in [s. 48\(5\)](#) repealed (19.6.1995) by [S.I. 1995/1537](#), reg. 17, [Sch. 2 Pt. II para. 5\(a\)](#)
- F14** Word inserted by [S.I. 1988/717](#), [art. 2\(a\)](#)
- F15** Word substituted by [S.I. 1988/717](#), [art. 2\(b\)](#)
- F16** [S. 48\(7\)\(b\)](#) and word immediately preceding it inserted by [S.I. 1988/717](#), [art. 2\(c\)](#)
- F17** [S. 48\(7A\)](#) inserted by [S.I. 1988/717](#), [art. 2\(d\)](#)
- F18** [S. 48\(11\)](#) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 2\(3\)](#)

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

- C50** [S. 48](#): certain functions transferred by [S.I. 1990/354](#), [art. 4\(5\)](#)
- C51** [S. 48](#) amended (1.1.1993) by [S.I. 1992/3218](#), reg. 55, [Sch. 9 para. 10](#).
- C52** [S. 48\(1\)\(2\)](#) amended (1.1.1993) by [S.I. 1992/3218](#), reg. 55, [Sch. 9 para. 10\(1\)](#).  
[s. 48](#) amended (1.7.1994) by [S.I. 1994/1669](#), [reg. 58\(2\)](#)  
[s. 48](#) extended (1.1.1996) by [S.I. 1995/3275](#), reg. 32, [Sch. 7 para. 10\(1\)](#)  
[s. 48](#) modified (1.1.1996) by [S.I. 1995/3275](#), reg. 32, [Sch. 7 para. 10\(2\)](#)  
[s. 48](#) extended (1.1.1996) by [S.I. 1995/3275](#), reg. 32, [Sch. 7 para. 10\(2\)](#)
- C53** [S. 48\(8\)](#) extended by [S.I. 1986/1034 \(N.I. 8\)](#), [art. 15\(2\)](#) as substituted by [S.I. 1989/2404 \(N.I. 18\)](#) art.

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## 49 Financial resources rules. **U.K.**

- [<sup>F19</sup>(1) The Secretary of State may make rules requiring—
- (a) a person authorised to carry on investment business by virtue of section 25 or 31 above, or
  - (b) a member of a recognised self-regulating organisation carrying on investment business in the carrying on of which he is subject to the rules of the organisation,
- to have and maintain in respect of that business such financial resources as are required by the rules.]
- (2) Without prejudice to the generality of subsection (1) above, rules under this section may—
- (a) impose requirements which are absolute or which are to vary from time to time by reference to such factors as are specified in or determined in accordance with the rules;
  - (b) impose requirements which take account of any business (whether or not investment business) carried on by the person concerned in conjunction with or in addition to the business mentioned in subsection (1) above;
  - (c) make provision as to the assets, liabilities and other matters to be taken into account in determining a person’s financial resources for the purposes of the rules and the extent to which and the manner in which they are to be taken into account for that purpose.
- [<sup>F20</sup>(3) Section 63A below (application of designated rules) has effect as regards the application of rules under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.]

### Textual Amendments

**F19** S. 49(1) substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 3(2)**

**F20** S. 49(3) inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 3(3)**

### Modifications etc. (not altering text)

**C54** S. 49: certain functions transferred by S.I. 1990/354, **art. 4(5)**

**C55** S. 49 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 11(1)**.

s. 49 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 11(1)**

**C56** S. 49(2) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 11(2)**.

s. 49(2) modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 11(2)**

## 50 Modification of conduct of business and financial resources rules for particular cases. **U.K.**

- (1) The Secretary of State may, on the application of any person to whom any rules made under section 48 or 49 above apply, alter the requirements of the rules so as to adapt them to the circumstances of that person or to any particular kind of business carried on or to be carried on by him.
- (2) The Secretary of State shall not exercise the powers conferred by subsection (1) above in any case unless it appears to him that—

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- (a) compliance with the requirements in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors; and
  - (b) the exercise of those powers will not result in any undue risk to investors.
- (3) The powers conferred by subsection (1) above may be exercised unconditionally or subject to conditions.
- [<sup>F21</sup>(4) The powers conferred by subsection (1) above shall not be exercised in a case where the powers conferred by section 63B below are exercisable (powers of recognised self-regulating organisation in relation to designated rules).]

#### Textual Amendments

**F21** S. 50(4) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 4](#)

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

**C57** S. 50: certain functions transferred by SI 1990/354, art. 4(5)

## 51 Cancellation rules. **U.K.**

- (1) The Secretary of State may make rules for enabling a person who has entered or offered to enter into an investment agreement with an authorised person to rescind the agreement or withdraw the offer within such period and in such manner as may be prescribed.
- (2) Without prejudice to the generality of subsection (1) above, rules under this section may make provision—
- (a) for requiring the service of notices with respect to the rights exercisable under the rules;
  - (b) for the restitution of property and the making or recovery of payments where those rights are exercised; and
  - (c) for such other incidental matters as the Secretary of State thinks necessary or expedient.

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

**C58** S. 51(1) amended (1.1.1993) by [S.I. 1992/3218](#), reg. 55, [Sch. 9 para. 12\(1\)](#).  
 s. 51 extended (1.1.1996) by [S.I. 1995/3275](#), reg. 32, [Sch. 7 para. 12](#)

## 52 Notification regulations. **U.K.**

- (1) The Secretary of State may make regulations requiring authorised persons to give him forthwith notice of the occurrence of such events as are specified in the regulations and such information in respect of those events as is so specified.
- (2) The Secretary of State may make regulations requiring authorised persons to furnish him at such times or in respect of such periods as are specified in the regulations with such information as is so specified.
- (3) Regulations under this section shall not apply to a member of a recognised self-regulating organisation or a person certified by a recognised professional body unless



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he carries on investment business in the carrying on of which he is [<sup>F22</sup>not subject to the rules of that organisation or body].

- (4) Without prejudice to the generality of subsections (1) and (2) above, regulations under this section may relate to—
- (a) the nature of the investment business being carried on;
  - (b) the nature of any other business carried on with or for the purposes of the investment business;
  - (c) any proposal of an authorised person to alter the nature or extent of any business carried on by him;
  - (d) any person becoming or ceasing to be a person of the kind to whom regard could be had by the Secretary of State under subsection (3) of section 27 above in deciding an application for authorisation under that section;
  - (e) the financial position of an authorised person as respects his investment business or any other business carried on by him;
  - (f) any property managed, and any property or money held, by an authorised person on behalf of other persons.
- (5) Regulations under this section may require information to be given in a specified form and to be verified in a specified manner.
- (6) Any notice or information required to be given or furnished under this section shall be given in writing or in such other manner as the Secretary of State may approve.

#### Textual Amendments

**F22** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 Pt. I para. 5](#)

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

**C59** [S. 52](#): certain functions transferred by [S.I. 1990/354](#), [art. 4\(5\)](#)

**C60** [S. 52](#) amended (1.1.1993) by [S.I. 1992/3218](#), [reg. 55](#), [Sch. 9 para.13](#).

[s. 52](#) amended (1.7.1994) by [S.I. 1994/1696](#), [reg. 58\(3\)](#)

[s. 52](#) extended (1.1.1996) by [S.I. 1995/3275](#), [reg. 32](#), [Sch. 7 para. 13](#)

## 53 Indemnity rules. **U.K.**

- (1) The Secretary of State may make rules concerning indemnity against any claim in respect of any description of civil liability incurred by an authorised person in connection with his investment business.
- (2) Rules under this section shall not apply to a member of a recognised self-regulating organisation or a person certified by a recognised professional body in respect of investment business in the carrying on of which he is subject to the rules of the organisation or body unless that organisation or body has requested that rules under this section should apply to him; and any such request shall not be capable of being withdrawn after rules giving effect to it have been made but without prejudice to the power of the Secretary of State to revoke the rules if he thinks fit.
- (3) For the purpose of providing indemnity the rules—
- (a) may authorise the Secretary of State to establish and maintain a fund or funds;

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- (b) may authorise the Secretary of State to take out and maintain insurance with insurers authorised to carry on insurance business under the law of the United Kingdom or any other member State;
  - (c) may require any person to whom the rules apply to take out and maintain insurance with any such insurer.
- (4) Without prejudice to the generality of the foregoing provisions, the rules may—
- (a) specify the terms and conditions on which, and the extent to which, indemnity is to be available and any circumstances in which the right to it is to be excluded or modified;
  - (b) provide for the management, administration and protection of any fund maintained by virtue of subsection (3)(a) above and require persons to whom the rules apply to make payments to any such fund;
  - (c) require persons to whom the rules apply to make payments by way of premium on any insurance policy maintained by the Secretary of State by virtue of subsection (3)(b) above;
  - (d) prescribe the conditions which an insurance policy must satisfy for the purposes of subsection (3)(c) above;
  - (e) authorise the Secretary of State to determine the amount which the rules require to be paid to him or an insurer, subject to such limits or in accordance with such provisions as may be prescribed by the rules;
  - (f) specify circumstances in which, where sums are paid by the Secretary of State or an insurer in satisfaction of claims against a person subject to the rules, proceedings may be taken against that person by the Secretary of State or the insurer;
  - (g) specify circumstances in which persons are exempt from the rules;
  - (h) empower the Secretary of State to take such steps as he considers necessary or expedient to ascertain whether or not the rules are being complied with; and
  - (i) contain incidental or supplementary provisions.

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

**C61** S. 53 (other than subsection (2)) applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg.111**.

**C62** S. 53(1) amended (1.1.1993) by S.I. 1992/3218, **reg. 55, Sch. 9 para.14**.  
 s. 53 extended (1.1.1996) by S.I. 1995/3275, **reg. 32, Sch. 7 para. 14**

**54 Compensation fund. U.K.**

- (1) The Secretary of State may by rules establish a scheme for compensating investors in cases where persons who are or have been authorised persons are unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with their investment businesses.
- (2) Without prejudice to the generality of subsection (1) above, rules under this section may—
  - (a) provide for the administration of the scheme and, subject to the rules, the determination and regulation of any matter relating to its operation by a body appearing to the Secretary of State to be representative of, or of any class of, authorised persons;
  - (b) establish a fund out of which compensation is to be paid;

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- (c) provide for the levying of contributions from, or from any class of, authorised persons and otherwise for financing the scheme and for the payment of contributions and other money into the fund;
  - (d) specify the terms and conditions on which, and the extent to which, compensation is to be payable and any circumstances in which the right to compensation is to be excluded or modified;
  - (e) provide for treating compensation payable under the scheme in respect of a claim against any person as extinguishing or reducing the liability of that person in respect of the claim and for conferring on the body administering the scheme a right of recovery against that person, being, in the event of his insolvency, a right not exceeding such right, if any, as the claimant would have had in that event; and
  - (f) contain incidental and supplementary provisions.
- (3) A scheme under this section shall not be made so as to apply to persons who are members of a recognised self-regulating organisation except after consultation with that organisation or, except at the request of a recognised professional body, to persons who are certified by it and subject to its rules in carrying on all the investment business carried on by them; and no scheme applying to such persons shall be made unless the Secretary of State is satisfied that the rules establishing it make sufficient provision—
- (a) for the administration of the scheme by a body on which the interests of those persons are adequately represented; and
  - (b) for securing that the amounts which they are liable to contribute reflect, so far as practicable, the amount of the claims made or likely to be made in respect of those persons.
- (4) Where a scheme applies to such persons as are mentioned in subsection (3) above the rules under this section may—
- (a) constitute the recognised self-regulating organisation or recognised professional body in question as the body administering the scheme in relation to those persons;
  - (b) provide for the levying of contributions from that organisation or body instead of from those persons; and
  - (c) establish a separate fund for the contributions and compensation payable in respect of those persons, with or without provision for payments and repayments in specified circumstances between that and any other fund established by the scheme.
- (5) A request by a recognised professional body under subsection (3) above shall not be capable of being withdrawn after rules giving effect to it have been made but without prejudice to the power of the Secretary of State to revoke the rules if he thinks fit.
- (6) Rules may be made—
- (a) for England and Wales, under sections 411 and 412 of the <sup>M15</sup>Insolvency Act 1986;
  - (b) for Scotland—
    - (i) under the said section 411; and
    - (ii) in relation to the application of this section where the persons who are or have been authorised persons are persons whose estates may be sequestrated under the <sup>M16</sup>Bankruptcy (Scotland) Act 1985, by the Secretary of State under this section; and

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- (c) for Northern Ireland, under [<sup>F23</sup>Article 359 of the Insolvency (Northern Ireland) Order 1989] and section 65 of the <sup>M17</sup>Judicature (Northern Ireland) Act 1978,

for the purpose of integrating any procedure for which provision is made by virtue of subsection (2)(e) above into the general procedure on a winding-up, bankruptcy or sequestration.

#### Textual Amendments

**F23** Words in s. 54(6)(c) substituted (N.I.) (1.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), **Sch. 9 Pt. II para. 46**; S.R. 1991/411, **art.2**.

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

**C63** S. 54 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.15**.

**C64** S. 54(1)(2)(6) applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg. 105(6)**.

**C65** S. 54(2) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 15(b)**.

s. 54 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 15**

#### Marginal Citations

**M15** 1986 c. 45.

**M16** 1985 c. 66.

**M17** 1978 c. 23.

## 55 Clients' money. **U.K.**

- (1) The Secretary of State may make regulations with respect to money (in this section referred to as “clients’ money”) which authorised persons, or authorised persons of any description, hold in such circumstances as are specified in the regulations.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may—
  - (a) provide that clients’ money held by an authorised person is held on trust;
  - (b) require clients’ money to be paid into an account the title of which contains the word “client” and which is with an institution of a kind specified in the regulations or, in the case of . . . <sup>F24</sup> a person certified by a recognised professional body, by the rules of that . . . <sup>F24</sup> body;
  - (c) make provision with respect to the opening and keeping of clients’ accounts, including provision as to the circumstances in which money other than clients’ money may be paid into such accounts and the circumstances in which and the persons to whom money held in such accounts may be paid out;
  - (d) require the keeping of accounts and records in respect of clients’ money;
  - (e) require any such accounts to be examined by an accountant having such qualifications as are specified in the regulations and require the accountant to report to the Secretary of State, or in the case of . . . <sup>F24</sup> a person certified by a recognised professional body, to that . . . <sup>F24</sup> body, whether in his opinion the provisions of the regulations have been complied with and on such other matters as may be specified in the regulations;
  - (f) authorise the retention, to such extent and in such cases as may be specified in regulations, of so much of clients’ money as represents interest.

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- (3) Where an authorised person is required to have an auditor; whether by virtue of any provision contained in or made under any enactment (including this Act) or of the rules of any such . . . <sup>F25</sup> body as is mentioned in paragraph (b) of subsection (2) above, the regulations may require the examination and report referred to in paragraph (e) of that subsection to be carried out and made by that auditor.
- (4) An institution with which an account is kept in pursuance of regulations made under this section does not incur any liability as constructive trustee where money is wrongfully paid from the account unless the institution permits the payment with knowledge that it is wrongful or having deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.
- (5) In the application of this section to Scotland for the reference to money being held on trust there shall be substituted a reference to its being held as agent for the person who is entitled to call for it to be paid over to him or to be paid on his direction or to have it otherwise credited to him.
- [<sup>F26</sup>(6) Section 63A below (application of designated regulations) has effect as regards the application of regulations under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.]

#### Textual Amendments

- F24** Words repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 206(1), 212, [Sch. 23 Pt. I para. 6\(2\)](#), [Sch. 24](#)
- F25** Words repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 206(1), 212, [Sch. 23 Pt. I para. 6\(3\)](#), [Sch. 24](#)
- F26** [S. 55\(6\)](#) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 Pt. I para. 6\(4\)](#)

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

- C66** [S. 55](#): certain functions transferred by [S.I. 1990/354](#), [art. 4\(5\)](#)  
[S. 55](#) amended (1.1.1993) by [S.I. 1992/3218](#), [reg. 55](#), [Sch. 9 para.16](#).  
[s.55](#) extended (1.1.1996) by [S.I. 1995/3275](#), [reg. 32](#), [Sch. 7 para. 16](#)

## 56 Unsolicited calls. **U.K.**

- (1) Except so far as permitted by regulations made by the Secretary of State, no person shall in the course of or in consequence of an unsolicited call—
- made on a person in the United Kingdom; or
  - made from the United Kingdom on a person elsewhere,
- by way of business enter into an investment agreement with the person on whom the call is made or procure or endeavour to procure that person to enter into such an agreement.
- (2) A person shall not be guilty of an offence by reason only of contravening subsection (1) above, but subject to subsection (4) below—
- any investment agreement which is entered into in the course of or in consequence of the unsolicited call shall not be enforceable against the person on whom the call was made; and

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- (b) that person shall be entitled to recover any money or other property paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result of having parted with it.
- (3) The compensation recoverable under subsection (2) above shall be such as the parties may agree or as a court may, on the application of either party, determine.
- (4) A court may allow an agreement to which subsection (2) above applies to be enforced or money and property paid or transferred under it to be retained if it is satisfied—
  - (a) that the person on whom the call was made was not influenced, or not influenced to any material extent, by anything said or done in the course of or in consequence of the call;
  - (b) without prejudice to paragraph (a) above, that the person on whom the call was made entered into the agreement—
    - (i) following discussions between the parties of such a nature and over such a period that his entering into the agreement can fairly be regarded as a consequence of those discussions rather than the call; and
    - (ii) was aware of the nature of the agreement and any risks involved in entering into it; or
  - (c) that the call was not made by—
    - (i) the person seeking to enforce the agreement or to retain the money or property or a person acting on his behalf or an appointed representative whose principal he was; or
    - (ii) a person who has received or is to receive, or in the case of an appointed representative whose principal has received or is to receive, any commission or other inducement in respect of the agreement from a person mentioned in sub-paragraph (i) above.
- (5) Where a person elects not to perform an agreement which by virtue of this section is unenforceable against him or by virtue of this section recovers money paid or other property transferred by him under an agreement he shall repay any money and return any other property received by him under the agreement.
- (6) Where any property transferred under an agreement to which this section applies has passed to a third party the references to that property in this section shall be construed as references to its value at the time of its transfer under the agreement.
- [<sup>F27</sup>(7) Section 63A below (application of designated regulations) has effect as regards the application of regulations under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.

As it applies to such persons in respect of such business the reference in subsection (1) above to conduct permitted by regulations made by the Secretary of State shall be construed—

- (a) where or to the extent that the regulations do not apply, as a reference to conduct permitted by the rules of the organisation; and
- (b) where or to the extent that the regulations do apply but are expressed to have effect subject to the rules of the organisation, as a reference to conduct permitted by the regulations together with the rules of the organisation.



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- (7A) In the application of this section to anything done by a person certified by a recognised professional body in carrying on investment business in the carrying on of which he is subject to the rules of the body, the reference in subsection (1) above to conduct permitted by regulations made by the Secretary of State shall be construed as a reference to conduct permitted by the rules of the body.]
- (8) In this section “unsolicited call” means a personal visit or oral communication made without express invitation.

#### Textual Amendments

**F27** S. 56(7)(7A) substituted for subsection (7) by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 Pt. I para. 7

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

**C67** S. 56: certain functions transferred by S.I. 1990/354, art. 4(5)

## 57 Restrictions on advertising. **U.K.**

- (1) Subject to section 58 below, no person other than an authorised person shall issue or cause to be issued an investment advertisement in the United Kingdom unless its contents have been approved by an authorised person.
- (2) In this Act “an investment advertisement” means any advertisement inviting persons to enter or offer to enter into an investment agreement or to exercise any rights conferred by an investment to acquire, dispose of, underwrite or convert an investment or containing information calculated to lead directly or indirectly to persons doing so.
- (3) Subject to subsection (4) below, any person who contravenes this section shall be guilty of an offence and liable—
- on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
  - on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (4) A person who in the ordinary course of a business other than investment business issues an advertisement to the order of another person shall not be guilty of an offence under this section if he proves that he believed on reasonable grounds that the person to whose order the advertisement was issued was an authorised person, that the contents of the advertisement were approved by an authorised person or that the advertisement was permitted by or under section 58 below.
- (5) If in contravention of this section a person issues or causes to be issued an advertisement inviting persons to enter or offer to enter into an investment agreement or containing information calculated to lead directly or indirectly to persons doing so, then, subject to subsection (8) below—
- he shall not be entitled to enforce any agreement to which the advertisement related and which was entered into after the issue of the advertisement; and
  - the other party shall be entitled to recover any money or other property paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result of having parted with it.

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- (6) If in contravention of this section a person issues or causes to be issued an advertisement inviting persons to exercise any rights conferred by an investment or containing information calculated to lead directly or indirectly to persons doing so, then, subject to subsection (8) below—
- (a) he shall not be entitled to enforce any obligation to which a person is subject as a result of any exercise by him after the issue of the advertisement of any rights to which the advertisement related; and
  - (b) that person shall be entitled to recover any money or other property paid or transferred by him under any such obligation, together with compensation for any loss sustained by him as a result of having parted with it.
- (7) The compensation recoverable under subsection (5) or (6) above shall be such as the parties may agree or as a court may, on the application of either party, determine.
- (8) A court may allow any such agreement or obligation as is mentioned in subsection (5) or (6) above to be enforced or money or property paid or transferred under it to be retained if it is satisfied—
- (a) that the person against whom enforcement is sought or who is seeking to recover the money or property was not influenced, or not influenced to any material extent, by the advertisement in making his decision to enter into the agreement or as to the exercise of the rights in question; or
  - (b) that the advertisement was not misleading as to the nature of the investment, the terms of the agreement or, as the case may be, the consequences of exercising the rights in question and fairly stated any risks involved in those matters.
- (9) Where a person elects not to perform an agreement or an obligation which by virtue of subsection (5) or (6) above is unenforceable against him or by virtue of either of those subsections recovers money paid or other property transferred by him under an agreement or obligation he shall repay any money and return any other property received by him under the agreement or, as the case may be, as a result of exercising the rights in question.
- (10) Where any property transferred under an agreement or obligation to which subsection (5) or (6) above applies has passed to a third party the references to that property in this section shall be construed as references to its value at the time of its transfer under the agreement or obligation.

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

- C68** S. 57: excluded by S.I. 1988/716, **arts. 3(1)**, 4(2), 5(2), 6, 7(2), 8, 9
- C69** S. 57: excluded by S.I. 1988/316, **arts. 3(1)(2)**, 4(1), 5, 6(2), 7(2), 10(1), 11, 12
- C70** S. 57: excluded by S.I. 1990/27, **art. 2**
- C71** S. 57: excluded (S.) by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), **s. 31(2)**
- C72** S. 57 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.17**.  
 s. 57 excluded (19.6.1995) by S.I. 1995/1266, **arts. 3(1)(2)**, 4(1), 5(1)(2), 6(1), 7, 8(2), 9(2), 10(2), 11(2), 12(1), 13, 14, 15, 16(1), 17, 18  
 s. 57 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 17**  
 s. 57 restricted (15.7.1996) by S.I. 1996/1586, **regs. 3-18**  
 s. 57 excluded (19.6.1995) by S.I. 1995/1536, **arts. 3(1)**, 4(2), 5(2), 6, 7(2), 8(1), 11-15

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## 58 Exceptions from restrictions on advertising. **U.K.**

- (1) Section 57 above does not apply to—
- (a) any advertisement issued or caused to be issued by, and relating only to investments issued by—
    - (i) the government of the United Kingdom, of Northern Ireland or of any country or territory outside the United Kingdom;
    - (ii) a local authority in the United Kingdom or elsewhere;
    - (iii) the Bank of England or the central bank of any country or territory outside the United Kingdom; or
    - (iv) any international organisation the members of which include the United Kingdom or another member State;
  - (b) any advertisement issued or caused to be issued by a person who is exempt under section 36, 38, 42, 43, 44 or 45 above, or by virtue of an order under section 46 above, if the advertisement relates to a matter in respect of which he is exempt.
  - (c) any advertisement which is issued or caused to be issued by a national of a member State other than the United Kingdom in the course of investment business lawfully carried on by him in such a State and which confirms with any rules made under section 48(2)(e) above;
  - (d) any advertisement which—
    - (i) is subject to section 154 below; or
    - (ii) consists of or any part of listing particulars, supplementary listing particulars <sup>F28</sup>, a prospectus approved in accordance with listing rules made under section 144(2) or 156A(1) below, a solamentary prospectus approved in accordance with listing rules made for the purposes of section 147(1) below as applied by section 154A or 156A(3) below] or any other document required or permitted to be published by listing rules under Part IV of this Act <sup>F29</sup> . . . .
- <sup>F30</sup>(2) . . . . .
- (3) Section 57 above does not apply to an advertisement issued in such circumstances as may be specified in an order made by the Secretary of State for the purpose of exempting from that section—
- (a) advertisements appearing to him to have a private character, whether by reason of a connection between the person issuing them and those to whom they are issued or otherwise;
  - (b) advertisements appearing to him to deal with investment only incidentally;
  - (c) advertisements issued to persons appearing to him to be sufficiently expert to understand any risks involved; or
  - (d) such other classes of advertisement as he thinks fit.
- (4) An order under subsection (3) above may require any person who by virtue of the order is authorised to issue an advertisement to comply with such requirements as are specified in the order.
- (5) An order made by virtue of paragraph (a), (b) or (c) of subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament; and no order shall be made by virtue of paragraph (d) of that subsection unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

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- (6) [<sup>F31</sup>Subsections (1)(c) above does] not apply to any advertisement relating to an investment falling within paragraph 5 of Schedule 1 to this Act.

#### Textual Amendments

- F28** Words in s. 58(1)(d)(ii) inserted (19.6.1995) by S.I. 1995/1537, reg. 17, **Sch. 2 Pt. II para. 6(a)**  
**F29** Words in s. 58(1)(d)(ii) repealed (19.6.1995) by S.I. 1995/1537, reg. 17, **Sch. 2 para. 5(b)**  
**F30** S. 58(2) repealed (19.6.1995) by S.I. 1995/1537, reg. 17, **Sch. 2 Pt. II para. 5(c)**  
**F31** Words in s. 58(6) substituted (19.6.1995) by S.I. 1995/1537, **reg. 17**, SCh. 2 Pt. II para. 6(b)

## 59 Employment of prohibited persons. **U.K.**

- (1) If it appears to the Secretary of State that any individual is not a fit and proper person to be employed in connection with investment business or investment business of a particular kind he may direct that he shall not, without the written consent of the Secretary of State, be employed in connection with investment business or, as the case may be, investment business of that kind—
- (a) by authorised persons or exempted persons; or
  - (b) by any specified person or persons, or by persons of any specified description, falling within paragraph (a) above.
- (2) A direction under this section (“a disqualification direction”) shall specify the date on which it is to take effect and a copy of it shall be served on the person to whom it relates.
- (3) Any consent by the Secretary of State to the employment of a person who is the subject of a disqualification direction may relate to employment generally or to employment of a particular kind, may be given subject to conditions and restrictions and may be varied by him from time to time.
- (4) Where the Secretary of State proposes—
- (a) to give a disqualification direction in respect of any person; or
  - (b) to refuse an application for his consent under this section or for the variation of such consent,
- he shall give that person or the applicant written notice of his intention to do so, stating the reasons for which he proposes to act and giving particulars of the right to require the case to be referred to the Tribunal under Chapter IX of this Part of this Act.
- (5) Any person who accepts or continues in any employment in contravention of a disqualification direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.
- (6) It shall be the duty of an authorised person and an appointed representative to take reasonable care not to employ or continue to employ a person in contravention of a disqualification direction.
- (7) The Secretary of State may revoke a disqualification direction.
- (8) In this section references to employment include references to employment otherwise than under a contract of service.

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

- C73** S. 59 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.18**.  
s. 59 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 18**

**60 Public statement as to person’s misconduct. U.K.**

- (1) If it appears to the Secretary of State that a person who is or was an authorised person by virtue of section 22, 24, 25 or 31 above has contravened—
  - (a) any provision of rules or regulations made under this Chapter or of section 56 or 59 above; or
  - (b) any condition imposed under section 50 above,he may publish a statement to that effect.
- (2) Before publishing a statement under subsection (1) above the Secretary of State shall give the person concerned written notice of the proposed statement and of the reasons for which he proposes to act.
- (3) Where the reasons stated in the notice relate specifically to matters which—
  - (a) refer to a person identified in the notice other than the person who is or was the authorised person; and
  - (b) are in the opinion of the Secretary of State prejudicial to that person in any office or employment,the Secretary of State shall, unless he considers it impracticable to do so, serve a copy of the notice on that other person.
- (4) A notice under this section shall give particulars of the right to have the case referred to the Tribunal under Chapter IX of this Part of this Act.
- (5) Where a case is not required to be referred to the Tribunal by a person on whom a notice is served under this section the Secretary of State shall, at the expiration of the period within which such a requirement can be made, give that person written notice that the statement is or is not to be published; and if it is to be published the Secretary of State shall after publication send a copy of it to that person and to any person on whom a copy of the notice under subsection (2) above was served.

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

- C74** S. 60: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(c)**.  
S. 60 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.19**.
- C75** S. 60(1)(3) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 19(a)(b)**.  
s. 60(1)(3) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 19**  
s. 60 extended (6.1.1997) by S.I. 1996/2827, **reg. 18(6)**

**61 Injunctions and restitution orders. U.K.**

- (1) If on the application of the Secretary of State the court is satisfied—
  - (a) that there is a reasonable likelihood that any person will contravene any provision of—

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- (i) rules or regulations made under this Chapter;
  - (ii) sections 47, 56, 57, or 59 above;
  - (iii) any requirements imposed by an order under section 58(3) above; or
  - (iv) the rules of a recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house to which that person is subject and which regulate the carrying on by him of investment business,
- or any condition imposed under section 50 above;
- (b) that any person has contravened any such provision or condition and that there is a reasonable likelihood that the contravention will continue or be repeated; or
  - (c) that any person has contravened any such provision or condition and that there are steps that could be taken for remedying the contravention,
- the court may grant an injunction restraining the contravention or, in Scotland, an interdict prohibiting the contravention or, as the case may be, make an order requiring that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct to remedy it.
- (2) No application shall be made by the Secretary of State under subsection (1) above in respect of any such rules as are mentioned in subsection (1)(a)(iv) above unless it appears to him that the organisation, body, exchange or clearing house is unable or unwilling to take appropriate steps to restrain the contravention or to require the person concerned to take such steps as are mentioned in subsection (1) above.
  - (3) The court may, on the application of the Secretary of State, make an order under subsection (4) below or, in relation to Scotland, under subsection (5) below if satisfied—
    - (a) that profits have accrued to any person as a result of his contravention of any provision or condition mentioned in subsection (1)(a) above; or
    - (b) that one or more investors have suffered loss or been otherwise adversely affected as a result of that contravention.
  - (4) The court may under this subsection order the person concerned to pay into court, or appoint a receiver to recover from him, such sum as appears to the court to be just having regard—
    - (a) in a case within paragraph (a) of subsection (3) above, to the profits appearing to the court to have accrued;
    - (b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect; or
    - (c) in a case within both paragraphs (a) and (b) of that subsection, to the profits and to the extent of the loss or other adverse effect.
  - (5) The court may under this subsection order the person concerned to pay to the applicant such sum as appears to the court to be just having regard to the considerations mentioned in paragraphs (a) to (c) of subsection (4) above.
  - (6) Any amount paid into court by or recovered from a person in pursuance of an order under subsection (4) or (5) above shall be paid out to such person or distributed among such persons as the court may direct, being a person or persons appearing to the court to have entered into transactions with that person as a result of which the profits mentioned in paragraph (a) of subsection (3) above have accrued to him or the loss or adverse effect mentioned in paragraph (b) of that subsection has been suffered.



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- (7) On an application under subsection (3) above the court may require the person concerned to furnish it with such accounts or other information as it may require for establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of that subsection and for determining how any amounts are to be paid or distributed under subsection (6) above; and the court may require any such accounts or other information to be verified in such manner as it may direct.
- (8) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.
- (9) Nothing in this section affects the right of any person other than the Secretary of State to bring proceedings in respect of the matters to which this section applies.

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

- C76** S. 61 applied (25.4.1991) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 154, 155, 169(1)**
- C77** S. 61: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by [S.I. 1992/1315, art. 4, Sch. 2 para. 4\(c\)](#).  
S. 61 restricted (1.11.1992) by [S.R. 1980/346, Order 93, rule 7](#) (as inserted by [S.R. 1992/399, rule 15](#)).  
s. 61 extended (6.1.1997) by [S.I. 1996/2827, reg. 18\(6\)](#)  
s. 61(2)-(9) applied (with modifications) (19.12.1995) by [S.I. 1995/3272, reg. 9\(2\)](#)
- C78** S. 61(3): certain functions of the Secretary of State transferred to The Securities and Investments Board subject to a reservation that they are to be exercisable by the Secretary of State concurrently (6.2.1991) by [S.I. 1991/200, art. 3\(1\)](#).
- C79** S. 61(6)(7) applied (with modifications) (*temp.* from 26.11.2001 until 1.12.2001) by [S.I. 2001/3755, regs 9\(7\), 50, Sch. 6 para. 6\(a\)](#) (with [regs. 39, 45](#)); [S.I. 2001/3538, art. 2\(1\)](#)

## 62 Actions for damages. **U.K.**

- (1) Without prejudice to section 61 above, a contravention of—
  - (a) any rules or regulations made under this Chapter;
  - (b) any conditions imposed under section 50 above;
  - (c) any requirements imposed by an order under section 58(3) above;
  - (d) the duty imposed by section 59(6) above,shall be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty.
- (2) Subsection (1) applies also to a contravention by a member of a recognised self-regulating organisation or a person certified by a recognised professional body of any rules of the organisation or body relating to a matter in respect of which rules or regulations have been or could be made under this Chapter in relation to an authorised person who is not such a member or so certified.
- (3) Subsection (1) above does not apply—
  - (a) to a contravention of rules made under section 49 or conditions imposed under section 50 in connection with an alteration of the requirements of those rules; or
  - (b) by virtue of subsection (2) above to a contravention of rules relating to a matter in respect of which rules have been or could be made under section 49.

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- (4) A person shall not be guilty of an offence by reason of any contravention to which subsection (1) above applies or of a contravention of rules made under section 49 above or such conditions as are mentioned in subsection (3)(a) above and no such contravention shall invalidate any transaction.

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

- C80** S. 62 saved by S.I. 1991/488, **art.4**  
**C81** S. 62 extended (6.1.1997) by S.I. 1996/2827, **reg.18(6)**

**[<sup>F32</sup>62A Restriction of right of action. U.K.]**

- (1) No action in respect of a contravention to which section 62 above applies shall lie at the suit of a person other than a private investor, except in such circumstances as may be specified by regulations made by the Secretary of State.
- (2) The meaning of the expression “private investor” for the purposes of subsection (1) shall be defined by regulations made by the Secretary of State.
- (3) Regulations under subsection (1) may make different provision with respect to different cases.
- (4) The Secretary of State shall, before making any regulations affecting the right to bring an action in respect of a contravention of any rules or regulations made by a person other than himself, consult that person.]

**Textual Amendments**

- F32** S. 62A inserted (the insertion being partly in force by S.I. 1990/354, **art. 3** but otherwise 1.4.1991 subject to transitional provisions and savings) by **Companies Act 1989 (c. 40, SIF 27), s. 193(1); S.I. 1991/488, arts. 3, 4**

**63 Gaming contracts. U.K.**

- (1) No contract to which this section applies shall be void or unenforceable by reason of—
- section 18 of the <sup>M18</sup>Gaming Act 1845, section 1 of the <sup>M19</sup>Gaming Act 1892 or any corresponding provisions in force in Northern Ireland; or
  - any rule of the law of Scotland whereby a contract by way of gaming or wagering is not legally enforceable.
- (2) This section applies to any contract entered into by either or each party by way of business and the making or performance of which by either party constitutes an activity which falls within paragraph 12 of Schedule 1 to this Act or would do so apart from Parts III and IV of that Schedule.

**Marginal Citations**

- M18** 1845 c. 109.  
**M19** 1892 c. 9.

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[<sup>F33</sup>**63A Application of designated rules and regulations to members of self-regulating organisations.** **U.K.**

- (1) The Secretary of State may in rules and regulations under—
  - (a) section 48 (conduct of business rules),
  - (b) section 49 (financial resources rules),
  - (c) section 55 (clients' money regulations), or
  - (d) section 56 (regulations as to unsolicited calls),designate provisions which apply, to such extent as may be specified, to a member of a recognised self-regulating organisation in respect of investment business in the carrying on of which he is subject to the rules of the organisation.
- (2) It may be provided that the designated rules or regulations have effect, generally or to such extent as may be specified, subject to the rules of the organisation.
- (3) A member of a recognised self-regulating organisation who contravenes a rule or regulation applying to him by virtue of this section shall be treated as having contravened the rules of the organisation.
- (4) It may be provided that, to such extent as may be specified, the designated rules or regulations may not be modified or waived (under section 63B below or section 50) in relation to a member of a recognised self-regulating organisation.

Where such provision is made any modification or waiver previously granted shall cease to have effect, subject to any transitional provision or saving contained in the rules or regulations.

- (5) Except as mentioned in subsection (1), the rules and regulations referred to in that subsection do not apply to a member of a recognised self-regulating organisation in respect of investment business in the carrying on of which he is subject to the rules of the organisation.]

**Textual Amendments**

**F33** Ss. 63A, 63B inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 194

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

**C82** S. 63A: functions transferred by [S.I. 1990/354](#), art. 4(2)(a)

[<sup>F34</sup>**63B Modification or waiver of designated rules and regulations.** **U.K.**

- (1) A recognised self-regulating organisation may on the application of a member of the organisation—
  - (a) modify a rule or regulation designated under section 63A so as to adapt it to his circumstances or to any particular kind of business carried on by him, or
  - (b) dispense him from compliance with any such rule or regulation, generally or in relation to any particular kind of business carried on by him.
- (2) The powers conferred by this section shall not be exercised unless it appears to the organisation—
  - (a) that compliance with the rule or regulation in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and

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- (b) that the exercise of those powers will not result in any undue risk to investors.
- (3) The powers conferred by this section may be exercised unconditionally or subject to conditions; and section 63A(3) applies in the case of a contravention of a condition as in the case of contravention of a designated rule or regulation.
- (4) The reference in paragraph 4(1) of Schedule 2 (requirements for recognition of self-regulating organisations) to monitoring and enforcement of compliance with rules and regulations includes monitoring and enforcement of compliance with conditions imposed by the organisation under this section.]

#### Textual Amendments

**F34** Ss. 63A, 63B inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 194

#### [<sup>F35</sup> 63C Codes of practice. **U.K.**

- (1) The Secretary of State may issue codes of practice with respect to any matters dealt with by statements of principle issued under section 47A or by rules or regulations made under any provision of this Chapter.
- (2) In determining whether a person has failed to comply with a statement of principle—
  - (a) a failure by him to comply with any relevant provision of a code of practice may be relied on as tending to establish failure to comply with the statement of principle, and
  - (b) compliance by him with the relevant provisions of a code of practice may be relied on as tending to negative any such failure.
- (3) A contravention of a code of practice with respect to a matter dealt with by rules or regulations shall not of itself give rise to any liability or invalidate any transaction; but in determining whether a person’s conduct amounts to contravention of a rule or regulation—
  - (a) contravention by him of any relevant provision of a code of practice may be relied on as tending to establish liability, and
  - (b) compliance by him with the relevant provisions of a code of practice may be relied on as tending to negative liability.
- (4) Where by virtue of section 63A (application of designated rules and regulations to members of self-regulating organisations) rules or regulations—
  - (a) do not apply, to any extent, to a member of a recognised self-regulating organisation, or
  - (b) apply, to any extent, subject to the rules of the organisation,
 a code of practice with respect to a matter dealt with by the rules or regulations may contain provision limiting its application to a corresponding extent.]

#### Textual Amendments

**F35** S. 63C added by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 195

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

**C83** S. 63C: certain functions transferred by [S.I. 1990/354](#), art. 4(3)(b)

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## CHAPTER VI **U.K.**

### POWERS OF INTERVENTION

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

**C84** Chapters III–XI (ss. 7–111): certain functions transferred by [S.I. 1990/354](#), [art. 5](#)

#### **64** **Scope of powers.** **U.K.**

- (1) The powers conferred on the Secretary of State by this Chapter shall be exercisable in relation to any authorised person or, except in the case of the power conferred by section 65 below, any appointed representative of his if it appears to the Secretary of State—
  - (a) that the exercise of the powers is desirable for the protection of investors;
  - (b) that the authorised person is not fit to carry on investment business of a particular kind or to the extent to which he is carrying it on or proposing to carry it on; or
  - (c) that the authorised person has contravened any provision of this Act or of any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act.
- (2) For the purposes of subsection (1)(b) above the Secretary of State may take into account any matters that could be taken into account in deciding whether to withdraw or suspend an authorisation under Chapter III of this Part of this Act.
- (3) The powers conferred by this Chapter may be exercised in relation to a person whose authorisation is suspended under section 28 above or who is the subject of a direction under section 33(1)(b) above and references in this Chapter to an authorised person shall be construed accordingly.
- (4) The powers conferred by this Chapter shall not be exercisable in relation to—
  - (a) an authorised person who is a member of a recognised self-regulating organisation or a person certified by a recognised professional body and is subject to the rules of such an organisation or body in carrying on all the investment business carried on by him; or
  - (b) an appointed representative whose principal or, in the case of such a representative with more than one principal, each of whose principals is a member of such an organisation or body and is subject to the rules of such an organisation or body in carrying on the investment business in respect of which his principal or each of his principals has accepted responsibility for his activities;

except that the powers conferred by virtue of section 67(1)(b) below may on any of the grounds specified in subsection (1) above be exercised in relation to such a person at the request of any such organisation of which he or, in the case of an appointed representative, any of his principals is a member or any such body by which he or, as the case may be, any of his principals is certified.

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

- C85** S. 64 applied (with modifications) (15.8.1995) by S.I. 1995/2049, **regs. 6, 7-18**
- C86** S. 64(1) amended (1.1.1993) by S.I. 1992/3218, **reg. 55, Sch. 9 para.20.**  
s. 64 modified (1.7.1994) by S.I. 1994/1696, **reg. 59(1)**  
s. 64 modified (1.1.1996) by S.I. 1995/3275, **reg. 32, Sch. 7 para. 20**

**65 Restriction of business. U.K.**

- (1) The Secretary of State may prohibit an authorised person from—
- (a) entering into transactions of any specified kind or entering into them except in specified circumstances or to a specified extent;
  - (b) soliciting business from persons of a specified kind or otherwise than from such persons or in a specified country or territory outside the United Kingdom;
  - (c) carrying on business in a specified manner or otherwise than in a specified manner.
- (2) A prohibition under this section may relate to transactions entered into in connection with or for the purposes of investment business or to other business which is carried on in connection with or for the purposes of investment business.

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

- C87** S. 65(1) amended (1.1.1993) by S.I. 1992/3218, **reg. 55, Sch. 9 para.21.**  
s. 65 modified (1.7.1994) by S.I. 1994/1696, **reg. 59(2)**  
s. 65 extended (1.1.1996) by S.I. 1995/3275, **reg. 32, Sch. 7 para.21**  
s. 65 applied (with modifications) by S.I. 1995/2049, **regs. 6, 7-18**

**66 Restriction on dealing with assets. U.K.**

- (1) The Secretary of State may prohibit an authorised person or appointed representative from disposing of or otherwise dealing with any assets, or any specified assets, of that person or, as the case may be, representative in any specified manner or otherwise than in a specified manner.
- (2) A prohibition under this section may relate to assets outside the United Kingdom.

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

- C88** S. 66 amended (1.1.1993) by S.I. 1992/3218, **reg. 55, Sch. 9 para.22.**
- C89** S. 66(1) amended (1.1.1993) by S.I. 1992/3218, **reg. 55, Sch. 9 para. 22(a).**  
s. 66 applied (with modifications) (15.8.1995) by S.I. 1995/2049, **regs. 6, 7-18**

**67 Vesting of assets in trustee. U.K.**

- (1) The Secretary of State may impose a requirement that all assets, or all assets of any specified class or description, which at any time while the requirement is in force—
- (a) belong to an authorised person or appointed representative; or



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- (b) belong to investors and are held by or to the order of an authorised person or appointed representative,  
shall be transferred to and held by a trustee approved by the Secretary of State.
- (2) Where a requirement is imposed under this section it shall be the duty of the authorised person or, as the case may be, appointed representative to transfer the assets to the trustee and to give him all such other assistance as may be required to enable him to discharge his functions in accordance with the requirement.
- (3) Assets held by a trustee in accordance with a requirement under this section shall not be released or dealt with except in accordance with directions given by the Secretary of State or in such circumstances as may be specified by him.
- (4) A requirement under this section may relate to assets outside the United Kingdom.

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

C90 S. 67 amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para.23.

C91 S. 67(1)(b) amended (1.1.1993) by S.I. 1992/3218, reg. 16(3).

**68 Maintenance of assets in United Kingdom. U.K.**

- (1) The Secretary of State may require an authorised person or appointed representative to maintain in the United Kingdom assets of such value as appears to the Secretary of State to be desirable with a view to ensuring that the authorised person or, as the case may be, appointed representative will be able to meet his liabilities in respect of investment business carried on by him in the United Kingdom.
- (2) The Secretary of State may direct that for the purposes of any requirement under this section assets of any specified class or description shall or shall not be taken into account.

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

C92 S. 68 applied (with modifications) (15.8.1995) by S.I. 1995/2049, regs. 6, 7-18

**69 Rescission and variation. U.K.**

The Secretary of State may, either of his own motion or on the application of a person on whom a prohibition or requirement has been imposed under this Chapter, rescind or vary the prohibition or requirement if it appears to the Secretary of State that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

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

C93 S. 69 applied (12.2.1992) by S.I. 1992/225, reg. 96(5)(6).

s. 69 applied (with modifications) (15.8.1995) by S.I. 1995/2049, regs. 6, 7-18

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## 70 Notices. **U.K.**

- (1) The power to impose, rescind or vary a prohibition or requirement under this Chapter shall be exercisable by written notice served by the Secretary of State on the person concerned; and any such notice shall take effect on such date as is specified in the notice.
- (2) If the Secretary of State refuses to rescind or vary a prohibition or requirement on the application of the person to whom it applies he shall serve that person with a written notice of the refusal.
- (3) A notice imposing a prohibition or requirement, or varying a prohibition or requirement otherwise than on the application of the person to whom it applies, and a notice under subsection (2) above shall state the reasons for which the prohibition or requirement was imposed or varied or, as the case may be, why the application was refused.
- (4) Where the reasons stated in a notice to which subsection (3) above applies relate specifically to matters which—
  - (a) refer to a person identified in the notice other than the person to whom the prohibition or requirement applies; and
  - (b) are in the opinion of the Secretary of State prejudicial to that person in any office or employment,
 the Secretary of State shall, unless he considers it impracticable to do so, serve a copy of the notice on that person.
- (5) A notice to which subsection (3) above applies shall give particulars of the right to have the case referred to the Tribunal under Chapter IX of this Part of this Act.
- (6) The Secretary of State may give public notice of any prohibition or requirement imposed by him under this Chapter and of the rescission and variation of any such prohibition or requirement; and any such notice may, if the Secretary of State thinks fit, include a statement of the reasons for which the prohibition or requirement was imposed, rescinded or varied.

### Modifications etc. (not altering text)

- C94** [S. 70\(2\)-\(6\)](#) applied (12.2.1992) by [S.I. 1992/225](#), [reg. 96\(5\)\(6\)](#).  
[s. 70](#) applied (with modifications) (15.8.1995) by [S.I. 1995/2049](#), [regs. 6, 7-18](#)

## 71 Breach of prohibition or requirement. **U.K.**

- (1) Sections 60, 61, and 62 above shall have effect in relation to a contravention of a prohibition or requirement imposed under this Chapter as they have effect in relation to any such contravention as is mentioned in those sections.
- (2) In its application by virtue of this section, section 62(2) shall have effect with the substitution—
  - (a) for the reference to the rules of a recognised self-regulating organisation of a reference to any prohibition or requirement imposed by it in the exercise of powers for purposes corresponding to those of this Chapter; and
  - (b) for the reference to the rules of a recognised professional body of a reference to any prohibition or requirement imposed in the exercise of powers for such

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purposes by that body or by any other body or person having functions in respect of the enforcement of the recognised professional body's rules relating to the carrying on of investment business.

- (3) This section is without prejudice to any equitable remedy available in respect of property which by virtue of a requirement under section 67 above is subject to a trust.

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

C95 S. 71 restricted (1.11.1992) by S.R. 1980/346, Order 93, rule 7 (as inserted by S.R. 1992/399, rule15).

## CHAPTER VII U.K.

### WINDING UP AND ADMINISTRATION ORDERS

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

C96 Chapters III–XI (ss. 7–111): certain functions transferred by S.I. 1990/354, art. 5

## 72 Winding up orders. U.K.

- (1) On a petition presented by the Secretary of State by virtue of this section, the court having jurisdiction under the <sup>M20</sup>Insolvency Act 1986 may wind up an authorised person or appointed representative to whom this subsection applies if—
- (a) the person is unable to pay his debts within the meaning of section 123 or, as the case may be, section 221 of that Act; or
  - (b) the court is of the opinion that it is just and equitable that the person should be wound up.
- (2) Subsection (1) above applies to any authorised person, any person whose authorisation is suspended under section 28 above or who is the subject of a direction under section 33(1)(b) above or any appointed representative who is—
- (a) a company within the meaning of section 735 of the <sup>M21</sup>Companies Act 1985;
  - (b) an unregistered company within the meaning of section 220 of the Insolvency Act 1986;
  - (c) an oversea company within the meaning of section 744 of the Companies Act 1985; or
  - (d) a partnership.
- (3) For the purposes of a petition under subsection (1) above a person who defaults in an obligation to pay any sum due and payable under any investment agreement shall be deemed to be unable to pay his debts.
- (4) Where a petition is presented under subsection (1) above for the winding up of a partnership on the ground mentioned in paragraph (b) of subsection (1) above or, in Scotland, on a ground mentioned in paragraph (a) or (b) of that subsection, the court shall have jurisdiction and the Insolvency Act 1986 shall have effect as if the partnership were an unregistered company within the meaning of section 220 of that Act.

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- (5) The Secretary of State shall not present a petition under subsection (1) above for the winding up of any person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body and is subject to the rules of the organisation or body in the carrying on of all investment business carried on by him, unless that organisation or body has consented to his doing so.

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

C97 S. 72 applied (with modifications) (15.8.1995) by S.I. 1995/2049, regs. 6, 7-18

**Marginal Citations**

M20 1986 c. 45.

M21 1985 c. 6.

**73 Winding up orders: Northern Ireland. U.K.**

- (1) On a petition presented by the Secretary of State by virtue of this section, the High Court in Northern Ireland may wind up an authorised person or appointed representative to whom this subsection applies if—
- (a) the person is unable to pay his debts within the meaning of [F36]Article 103 or, as the case may be, Article 185 of the Insolvency (Northern Ireland) Order 1989]; or
  - (b) the court is of the opinion that it is just and equitable that the person should be wound up.
- (2) Subsection (1) above applies to any authorised person, any person whose authorisation is suspended under section 28 above or who is the subject of a direction under section 33(1)(b) above or any appointed representative who is—
- (a) a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986;
  - (b) an unregistered company within the meaning of [F36]Article 184 of the Insolvency (Northern Ireland) Order 1989]; or
  - (c) a Part XXIII company within the meaning of Article 2 of [F36]the Companies (Northern Ireland) Order 1986]; or
  - (d) a partnership.
- (3) For the purposes of a petition under subsection (1) above a person who defaults in an obligation to pay any sum due and payable under any investment agreement shall be deemed to be unable to pay his debts.
- (4) Where a petition is presented under subsection (1) above for the winding up of a partnership on the ground mentioned in paragraph (b) of subsection (1) above, the High Court in Northern Ireland shall have jurisdiction and the [F36]Insolvency (Northern Ireland) Order 1989] shall have effect as if the partnership were an unregistered company within the meaning of [F36]Article 184] of that Order.
- (5) The Secretary of State shall not present a petition under subsection (1) above for the winding up of any person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body and is subject to the rules of the organisation or body in the carrying on of all

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investment business carried on by him, unless that organisation or body has consented to his doing so.

#### Textual Amendments

**F36** Words in s. 73(1)(a),(2)(b),(c) and (4) substituted (N.I.)(1. 10. 1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), **Sch. 9 Pt. II para. 47**; S.R. 1991/411, **art.2**.

## 74 Administration orders. **U.K.**

A petition may be presented under section 9 of the <sup>M22</sup>Insolvency Act 1986 (applications for administration orders) in relation to a company to which section 8 of that Act applies [<sup>F37</sup>, or under Article 22 of the Insolvency (Northern Ireland) Order 1989 (applications for administration orders) in relation to a company to which Article 21 of that Order applies,] which is an authorised person, a person whose authorisation is suspended under section 28 above or who is the subject of a direction under section 33(1)(b) above or an appointed representative—

- (a) in the case of an authorised person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body, by that organisation or body; and
- (b) in the case of an appointed representative or an authorised person who is not authorised as mentioned in paragraph (a) above or is so authorised but is not subject to the rules of the organisation or body in question in the carrying on of all investment business carried on by him, by the Secretary of State.

#### Textual Amendments

**F37** Words in s. 74 inserted (N.I.)(1. 10. 1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), **Sch. 9 Pt. II para. 48**; S.R. 1991/411, **art.2**.

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

**C98** S. 74 applied (with modifications) (15.8.1995) by S.I. 1995/2049, **regs. 6, 7-18**

#### Marginal Citations

**M22** 1986 c. 45.

## CHAPTER VIII **U.K.**

### COLLECTIVE INVESTMENT SCHEMES

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

**C99** Chapters III–XI (ss. 7–111): certain functions transferred by S.I. 1990/354, **art. 5**

**C100** Ch. VIII (ss. 75–95): certain functions transferred by S.I. 1988/738, **art. 3(1)(2)(3)**

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## *Preliminary*

### **75 Interpretation. U.K.**

- (1) In this Act “a collective investment scheme” means, subject to the provisions of this section, any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (2) The arrangements must be such that the persons who are to participate as mentioned in subsection (1) above (in this Act referred to as “participants”) do not have day to day control over the management of the property in question, whether or not they have the right to be consulted or to give directions; and the arrangements must also have either or both of the characteristics mentioned in subsection (3) below.
- (3) Those characteristics are—
  - (a) that the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
  - (b) that the property in question is managed as a whole by or on behalf of the operator of the scheme.
- (4) Where any arrangements provide for such pooling as is mentioned in paragraph (a) of subsection (3) above in relation to separate parts of the property in question, the arrangements shall not be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.
- (5) Arrangements are not a collective investment scheme if—
  - (a) the property to which the arrangements relate (other than cash awaiting investment) consists of investments falling within any of paragraphs 1 to 5, 6 (so far as relating to units in authorised unit trust schemes and recognised schemes) and 10 of Schedule 1 to this Act;
  - (b) each participant is the owner of a part of that property and entitled to withdraw it at any time; and
  - (c) the arrangements do not have the characteristics mentioned in paragraph (a) of subsection (3) above and have those mentioned in paragraph (b) of that subsection only because the parts of the property belonging to different participants are not bought and sold separately except where a person becomes or ceases to be a participant.
- (6) The following are not collective investment schemes—
  - (a) arrangements operated by a person otherwise than by way of business;
  - (b) arrangements where each of the participants carries on a business other than investment business and enters into the arrangements for commercial purposes related to that business;
  - (c) arrangements where each of the participants is a body corporate in the same group as the operator;
  - (d) arrangements where—
    - (i) each of the participants is a bona fide employee or former employee (or the wife, husband, widow, widower, child or step-child under the



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- age of eighteen of such an employee or former employee) of a body corporate in the same group as the operator; and
- (ii) the property to which the arrangements relate consists of shares or debentures (as defined in paragraph 20(4) of Schedule 1 to this Act) in or of a member of that group;
- (e) arrangements where the receipt of the participants' contributions constitutes the acceptance of deposits in the course of a business which is a deposit-taking business for the purposes of the<sup>M23</sup> Banking Act 1979 and does not constitute a transaction prescribed for the purposes of section 2 of that Act by regulations made by the Treasury;
- (f) franchise arrangements, that is to say, arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the good-will attached to it;
- (g) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;
- (h) arrangements under which the rights or interests of the participants are investments falling within paragraph 5 of Schedule 1 to this Act;
- (i) arrangements the purpose of which is the provision of clearing services and which are operated by an authorised person, a recognised clearing house or a recognised investment exchange;
- (j) contracts of insurance;
- (k) occupational pension schemes.
- [<sup>F38</sup>(l) arrangements which by virtue of [<sup>F39</sup>any of paragraphs 34 to 36] of Schedule 1 to this Act are not collective investment schemes for the purposes of that Schedule.]
- (7) No body incorporated under the law of, or of any part of, the United Kingdom relating to building societies or industrial and provident societies or registered under any such law relating to friendly societies, and no other body corporate other than an open-ended investment company, shall be regarded as constituting a collective investment scheme.
- (8) In this Act—
- “a unit trust scheme” means a collective investment scheme under which the property in question is held on trust for the participants;
- “an open-ended investment company” means a collective investment scheme under which—
- (a) the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that body; and
- (b) the rights of the participants are represented by shares in or securities of that body which—
- (i) the participants are entitled to have redeemed or repurchased, or which (otherwise than under Chapter VII of Part V of the<sup>M24</sup> Companies Act 1985 or the corresponding Northern Ireland provision) are redeemed or repurchased from them by, or out of funds provided by, that body; or

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(ii) the body ensures can be sold by the participants on an investment exchange at a price related to the value of the property to which they relate;

“trustee”, in relation to a unit trust scheme, means the person holding the property in question on trust for the participants and, in relation to a collective investment scheme constituted under the law of a country or territory outside the United Kingdom, means any person who (whether or not under a trust) is entrusted with the custody of the property in question;

“units” means the rights or interests (however described) of the participants in a collective investment scheme;

“the operator”, in relation to a unit trust scheme with a separate trustee, means the manager and, in relation to an open-ended investment company, means that company.

(9) If an order under section 2 above amends the references to a collective investment scheme in Schedule 1 to this Act it may also amend the provisions of this section.

#### Textual Amendments

**F38** S. 75(6)(l) substituted for paragraphs (l) to (n) as provided by S.I. 1990/349, **art. 6(b)** (paragraphs (l) to (n) added as provided by S.I. 1988/803, **art. 5** (which was revoked by S.I. 1990/349, **art. 8(c))**)

**F39** Words in s. 75(6)(l) substituted (1.1.1997) by S.I. 1996/2996, **art. 3(1)**

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

**C101** S. 75(6) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 22**

**C102** S. 75(6) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 24.**

s. 75 applied (1.5.1995) by 1995 c. 4, s. 127(17) (with Sch. 8 paras. 55(2), 57(1))

#### Marginal Citations

**M23** 1979 c. 37.

**M24** 1985 c. 6.

### *Promotion of schemes*

## 76 Restrictions on promotion. **U.K.**

(1) Subject to subsections (2), (3) and (4) below, an authorised person shall not—

- (a) issue or cause to be issued in the United Kingdom any advertisement inviting persons to become or offer to become participants in a collective investment scheme or containing information calculated to lead directly or indirectly to persons becoming or offering to become participants in such a scheme; or
- (b) advise or procure any person in the United Kingdom to become or offer to become a participant in such a scheme,

unless the scheme is an authorised unit trust scheme or a recognised scheme under the following provisions of this Chapter.

(2) Subsection (1) above shall not apply if the advertisement is issued to or the person mentioned in paragraph (b) of that subsection is—

- (a) an authorised person; or

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- (b) a person whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, to which the scheme relates.
- (3) Subsection (1) above shall not apply to anything done in accordance with regulations made by the Secretary of State for the purpose of exempting from that subsection the promotion otherwise than to the general public of schemes of such descriptions as are specified in the regulations.
- (4) The Secretary of State may by regulations make provision for exempting single property schemes from subsection (1) above.
- (5) For the purposes of subsection (4) above a single property scheme is a scheme which has the characteristics mentioned in subsection (6) below and satisfies such other requirements as are specified in the regulations conferring the exemption.
- (6) The characteristics referred to above are—
  - (a) that the property subject to the scheme (apart from cash or other assets held for management purposes) consists of—
    - (i) a single building (or a single building with ancillary buildings) managed by or on behalf of the operator of the scheme; or
    - (ii) a group of adjacent or contiguous buildings managed by him or on his behalf as a single enterprise,  
with or without ancillary land and with or without furniture, fittings or other contents of the building or buildings in question; and
  - (b) that the units of the participants in the scheme are either dealt in on a recognised investment exchange or offered on terms such that any agreement for their acquisition is conditional on their admission to dealings on such an exchange.
- (7) Regulations under subsection (4) above may contain such supplementary and transitional provisions as the Secretary of State thinks necessary and may also contain provisions imposing obligations or liabilities on the operator and trustee (if any) of an exempted scheme, including, to such extent as he thinks appropriate, provisions for purposes corresponding to those for which provision can be made under section 85 below in relation to authorised unit trust schemes.

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

**C103** S. 76 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.25**.

s. 76 extended (1.1.1996) by S.I. 1995/3275, reg. 37, **Sch. 7 para. 23**

*Authorised unit trust schemes*

**77 Applications for authorisation. U.K.**

- (1) Any application for an order declaring a unit trust scheme to be an authorised unit trust scheme shall be made by the manager and trustee, or proposed manager and trustee, of the scheme and the manager and trustee shall be different persons.
- (2) Any such application—
  - (a) shall be made in such manner as the Secretary of State may direct; and

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- (b) shall contain or be accompanied by such information as he may reasonably require for the purpose of determining the application.
- (3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.
- (4) The directions and requirements given or imposed under subsections (2) and (3) above may differ as between different applications.
- (5) Any information to be furnished to the Secretary of State under this section shall, if he so requires, be in such form or verified in such manner as he may specify.

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

C104 S. 77(2) extended (1.12.2001) by S.I. 2001/2957, art. 8(3); S.I. 2001/3538, art. 2(1)

**78 Authorisation orders. U.K.**

- (1) The Secretary of State may, on an application duly made in accordance with section 77 above and after being furnished with all such information as he may require under that section, make an order declaring a unit trust scheme to be an authorised unit trust scheme for the purposes of this Act if—
  - (a) it appears to him that the scheme complies with the requirements of the regulations made under section 81 below and that the following provisions of this section are satisfied; and
  - (b) he has been furnished with a copy of the trust deed and a certificate signed by a solicitor to the effect that it complies with such of those requirements as relate to its contents.
- (2) The manager and the trustee must be persons who are independent of each other.
- (3) The manager and the trustee must each be a body corporate incorporated in the United Kingdom or another member State, the affairs of each must be administered in the country in which it is incorporated, each must have a place of business in the United Kingdom and, if the manager is incorporated in another member State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 86 below.
- (4) The manager and the trustee must each be an authorised person and neither must be prohibited from acting as manager or trustee, as the case may be, by or under rules under section 48 above, by or under the rules of any recognised self-regulating organisation of which the manager or trustee is a member or by a prohibition imposed under section 65 above.
- (5) The name of the scheme must not be undesirable or misleading; and the purposes of the scheme must be reasonably capable of being successfully carried into effect.
- (6) The participants must be entitled to have their units redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme; but a scheme shall be treated as complying with this subsection if it requires the manager to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in this subsection.

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- (7) The Secretary of State shall inform the applicants of his decision on the application not later than six months after the date on which the application was received.
- (8) On making an order under this section the Secretary of State may issue a certificate to the effect that the scheme complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument.

## 79 **Revocation of authorisation.** U.K.

- (1) The Secretary of State may revoke an order declaring a unit trust scheme to be an authorised unit trust scheme if it appears to him—
  - (a) that any of the requirements for the making of the order are no longer satisfied;
  - (b) that it is undesirable in the interests of the participants or potential participants that the scheme should continue to be authorised; or
  - (c) without prejudice to paragraph (b) above, that the manager or trustee of the scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act.
- (2) For the purposes of subsection (1)(b) above the Secretary of State may take into account any matter relating to the scheme, the manager or trustee, a director or controller of the manager or trustee or any person employed by or associated with the manager or trustee in connection with the scheme.
- (3) In the case of a manager or trustee who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in subsection (1)(c) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules.
- (4) The Secretary of State may revoke an order declaring a unit trust scheme to be an authorised unit trust scheme at the request of the manager or trustee of the scheme; but he may refuse to do so if he considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the order should be revoked or that revocation would not be in the interests of the participants or would be incompatible with a Community obligation.

## 80 **Representations against refusal or revocation.** U.K.

- (1) Where the Secretary of State proposes—
  - (a) to refuse an application for an order under section 78 above; or
  - (b) to revoke such an order otherwise than at the request of the manager or trustee of the scheme,he shall give the applicants or, as the case may be, the manager and trustee of the scheme written notice of his intention to do so, stating the reasons for which he proposes to act and giving particulars of the rights conferred by subsection (2) below.
- (2) A person on whom a notice is served under subsection (1) above may, within twenty-one days of the date of service, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.

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- (3) The Secretary of State shall have regard to any representations made in accordance with subsection (2) above in determining whether to refuse the application or revoke the order, as the case may be.

## 81 Constitution and management. **U.K.**

- (1) The Secretary of State may make regulations as to the constitution and management of authorised unit trust schemes, the powers and duties of the manager and trustee of any such scheme and the rights and obligations of the participants in any such scheme.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may make provision—
- (a) as to the issue and redemption of the units under the scheme;
  - (b) as to the expenses of the scheme and the means of meeting them;
  - (c) for the appointment, removal, powers and duties of an auditor for the scheme;
  - (d) for restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;
  - (e) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records;
  - (f) requiring the preparation of periodical reports with respect to the scheme and the furnishing of those reports to the participants and to the Secretary of State; and
  - (g) with respect to the amendment of the scheme.
- (3) Regulations under this section may make provision as to the contents of the trust deed, including provision requiring any of the matters mentioned in subsection (2) above to be dealt with in the deed; but regulations under this section shall be binding on the manager, trustee and participants independently of the contents of the deed and, in the case of the participants, shall have effect as if contained in it.
- (4) Regulations under this section shall not impose limits on the remuneration payable to the manager of a scheme.
- (5) Regulations under this section may contain such incidental and transitional provisions as the Secretary of State thinks necessary or expedient.

### Modifications etc. (not altering text)

C105 S. 81 amended (6.1.1997) by S.I. 1996/2827, reg. 6(1)

## 82 Alteration of schemes and changes of manager or trustee. **U.K.**

- (1) The manager of an authorised unit trust scheme shall give written notice to the Secretary of State of—
- (a) any proposed alteration to the scheme; and
  - (b) any proposal to replace the trustee of the scheme;
- and any notice given in respect of a proposed alteration involving a change in the trust deed shall be accompanied by a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the regulations made under section 81 above.



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- (2) The trustee of an authorised unit trust scheme shall give written notice to the Secretary of State of any proposal to replace the manager of the scheme.
- (3) Effect shall not be given to any such proposal unless—
  - (a) the Secretary of State has given his approval to the proposal; or
  - (b) one month has elapsed since the date on which the notice was given under subsection (1) or (2) above without the Secretary of State having notified the manager or trustee that the proposal is not approved.
- (4) Neither the manager nor the trustee of an authorised unit trust scheme shall be replaced except by persons who satisfy the requirements of section 78(2) to (4) above.

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

**C106** S. 82(1) extended (1.12.2001) by S.I. 2001/2957 art. 5(1)(b)(3); S.I. 2001/3538, art. 2(1)

**83 Restrictions on activities of manager. U.K.**

- (1) The manager of an authorised unit trust scheme shall not engage in any activities other than those mentioned in subsection (2) below.
- (2) Those activities are—
  - (a) acting as manager of—
    - (i) a unit trust scheme;
    - (ii) an open-ended investment company or any other body corporate whose business consists of investing its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of its funds by or on behalf of that body; or
    - (iii) any other collective investment scheme under which the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
  - (b) activities for the purposes of or in connection with those mentioned in paragraph (a) above.
- (3) A prohibition under section 65 above may prohibit the manager of an authorised unit trust scheme from inviting persons in any specified country or territory outside the United Kingdom to become participants in the scheme.

**84 Avoidance of exclusion clauses. U.K.**

Any provision of the trust deed of an authorised unit trust scheme shall be void in so far as it would have the effect of exempting the manager or trustee from liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the scheme.

**85 Publication of scheme particulars. U.K.**

- (1) The Secretary of State may make regulations requiring the manager of an authorised unit trust scheme to submit to him and publish or make available to the public on request a document (“scheme particulars”) containing information about the scheme and complying with such requirements as are specified in the regulations.

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- (2) Regulations under this section may require the manager of an authorised unit trust scheme to submit and publish or make available revised or further scheme particulars if—
- (a) there is a significant change affecting any matter contained in such particulars previously published or made available whose inclusion was required by the regulations; or
  - (b) a significant new matter arises the inclusion of information in respect of which would have been required in previous particulars if it had arisen when those particulars were prepared.
- (3) Regulations under this section may provide for the payment, by the person or persons who in accordance with the regulations are treated as responsible for any scheme particulars, of compensation to any person who has become or agreed to become a participant in the scheme and suffered loss as a result of any untrue or misleading statement in the particulars or the omission from them of any matter required by the regulations to be included.
- (4) Regulations under this section shall not affect any liability which any person may incur apart from the regulations.

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

**C107** S. 85 amended (6.1.1997) by S.I. 1996/2827, reg. 6(1)

*Recognition of overseas schemes*

**86 Schemes constituted in other member States. U.K.**

- (1) Subject to subsection (2) below, a collective investment scheme constituted in a member State other than the United Kingdom is a recognised scheme if it satisfies such requirements as are prescribed for the purposes of this section.
- (2) Not less than two months before inviting persons in the United Kingdom to become participants in the scheme the operator of the scheme shall give written notice to the Secretary of State of his intention to do so, specifying the manner in which the invitation is to be made; and the scheme shall not be a recognised scheme by virtue of this section if within two months of receiving the notice the Secretary of State notifies—
- (a) the operator of the scheme; and
  - (b) the authorities of the State in question who are responsible for the authorisation of collective investment schemes,
- that the manner in which the invitation is to be made does not comply with the law in force in the United Kingdom.
- (3) The notice to be given to the Secretary of State under subsection (2) above—
- (a) shall be accompanied by a certificate from the authorities mentioned in subsection (2)(b) above to the effect that the scheme complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument;

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- (b) shall contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and
  - (c) shall contain or be accompanied by such other information and documents as may be prescribed.
- (4) A notice given by the Secretary of State under subsection (2) above shall give the reasons for which he considers that the law in force in the United Kingdom will not be complied with and give particulars of the rights conferred by subsection (5) below.
- (5) A person on whom a notice is served by the Secretary of State under subsection (2) above may, within twenty-one days of the date of service, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.
- (6) The Secretary of State may in the light of any representations made in accordance with subsection (5) above withdraw his notice and in that event the scheme shall be a recognised scheme from the date on which the notice is withdrawn.
- (7) Rules under section 48 above shall not apply to investment business in respect of which the operator or trustee of a scheme recognised under this section is an authorised person by virtue of section 24 above except so far as they make provision as respects—
- (a) procuring persons to become participants in the scheme and advising persons on the scheme and the exercise of the rights conferred by it;
  - (b) matters incidental to those mentioned in paragraph (a) above.
- [<sup>F40</sup>This subsection also applies to statements of principle under section 47A and codes of practice under section 63A so far as they relate to matters falling within the rule-making power in section 48.]
- (8) For the purposes of this section a collective investment scheme is constituted in a member State if—
- (a) it is constituted under the law of that State by a contract or under a trust and is managed by a body corporate incorporated under that law; or
  - (b) it takes the form of an open-ended investment company incorporated under that law.
- (9) If the operator of a scheme recognised under this section gives written notice to the Secretary of State stating that he desires the scheme no longer to be recognised under this section it shall cease to be so recognised when the notice is given.

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**Textual Amendments**

**F40** Words added by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 Pt. I para. 8](#)

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

**C108** [S. 86](#): certain functions transferred by [S.I. 1990/354](#), [art. 4\(5\)](#)

**87 Schemes authorised in designated countries or territories. U.K.**

- (1) Subject to subsection (3) below, a collective investment scheme which is not a recognised scheme by virtue of section 86 above but is managed in and authorised

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under the law of a country or territory outside the United Kingdom is a recognised scheme if—

- (a) that country or territory is designated for the purposes of this section by an order made by the Secretary of State; and
  - (b) the scheme is of a class specified by the order.
- (2) The Secretary of State shall not make an order designating any country or territory for the purposes of this section unless he is satisfied that the law under which collective investment schemes of the class to be specified by the order are authorised and supervised in that country or territory affords to investors in the United Kingdom protection at least equivalent to that provided for them by this Chapter in the case of an authorised unit trust scheme.
- (3) A scheme shall not be recognised by virtue of this section unless the operator of the scheme gives written notice to the Secretary of State that he wishes it to be recognised; and the scheme shall not be recognised if within such period from receiving the notice as may be prescribed the Secretary of State notifies the operator that the scheme is not to be recognised.
- (4) The notice given by the operator under subsection (3) above—
- (a) shall contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and
  - (b) shall contain or be accompanied by such information and documents as may be prescribed.
- (5) Section 85 above shall have effect in relation to a scheme recognised under this section as it has effect in relation to an authorised unit trust scheme, taking references to the manager as references to the operator and, in the case of an operator who is not an authorised person, references to publishing particulars as references to causing them to be published; and regulations made by virtue of this subsection may make provision whereby compliance with any requirements imposed by or under the law of a country or territory designated under this section is treated as compliance with any requirement of the regulations.
- (6) An order under subsection (1) above may contain such transitional provisions as the Secretary of State thinks necessary or expedient and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **88 Other overseas schemes. U.K.**

- (1) The Secretary of State may, on the application of the operator of a scheme which—
- (a) is managed in a country or territory outside the United Kingdom; but
  - (b) does not satisfy the requirements mentioned in section 86(1) above and in relation to which there is no relevant order under section 87(1) above,
- make an order declaring the scheme to be a recognised scheme if it appears to him that it affords adequate protection to the participants, makes adequate provision for the matters dealt with by regulations under section 81 above and satisfies the following provisions of this section.
- (2) The operator must be a body corporate or the scheme must take the form of an open-ended investment company.

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- (3) Subject to subsection (4) below, the operator and the trustee, if any, must be fit and proper persons to act as operator or, as the case may be, as trustee; and for that purpose the Secretary of State may take into account any matter relating to—
  - (a) any person who is or will be employed by or associated with the operator or trustee for the purposes of the scheme;
  - (b) any director or controller of the operator or trustee;
  - (c) any other body corporate in the same group as the operator or trustee and any director or controller of any such other body.
- (4) Subsection (3) above does not apply to an operator or trustee who is an authorised person and not prohibited from acting as operator or trustee, as the case may be, by or under rules under section 48 above, by or under the rules of any recognised self-regulating organisation of which he is a member or by any prohibition imposed under section 65 above.
- (5) If the operator is not an authorised person he must have a representative in the United Kingdom who is an authorised person and has power to act generally for the operator and to accept service of notices and other documents on his behalf.
- (6) The name of the scheme must not be undesirable or misleading; and the purposes of the scheme must be reasonably capable of being successfully carried into effect.
- (7) The participants must be entitled to have their units redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme; but a scheme shall be treated as complying with this subsection if it requires the operator to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in this subsection.
- (8) Subsections (2) to (5) of section 77 above shall apply also to an application under this section.
- (9) So much of section 82 above as applies to an alteration of the scheme shall apply also to a scheme recognised under this section, taking references to the manager as references to the operator and with the omission of the requirement relating to the solicitor's certificate; and if the operator or trustee of any such scheme is to be replaced the operator or, as the case may be, the trustee, or in either case the person who is to replace him, shall give at least one month's notice to the Secretary of State.
- (10) Section 85 above shall have effect in relation to a scheme recognised under this section as it has effect in relation to an authorised unit trust scheme, taking references to the manager as references to the operator and, in the case of an operator who is not an authorised person, references to publishing particulars as references to causing them to be published.

## 89 Refusal and revocation of recognition. **U.K.**

- (1) The Secretary of State may at any time direct that a scheme shall cease to be recognised by virtue of section 87 above or revoke an order under section 88 above if it appears to him—
  - (a) that it is undesirable in the interests of the participants or potential participants in the United Kingdom that the scheme should continue to be recognised;

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- (b) without prejudice to paragraph (a) above, that the operator or trustee of the scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act; or
  - (c) in the case of an order under section 88 that any of the requirements for the making of the order are no longer satisfied.
- (2) For the purposes of subsection (1)(a) above the Secretary of State may take into account any matter relating to the scheme the operator or trustee, a director or controller of the operator or trustee or any person employed by or associated with the operator or trustee in connection with the scheme.
- (3) In the case of an operator or trustee who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in subsection (1) (b) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules.
- (4) The Secretary of State may give such a direction or revoke such an order as is mentioned in subsection (1) above at the request of the operator or trustee of the scheme; but he may refuse to do so if he considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the direction should be given or the order revoked or that the direction or revocation would not be in the interests of the participants.
- (5) Where the Secretary of State proposes—
- (a) to notify the operator of a scheme under section 87(3) above; or
  - (b) to give such a direction or to refuse to make or to revoke such an order as is mentioned in subsection (1) above,
- he shall give the operator written notice of his intention to do so, stating the reasons for which he proposes to act and giving particulars of the rights conferred by subsection (6) below.
- (6) A person on whom a notice is served under subsection (5) above may, within twenty-one days of the date of service, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.
- (7) The Secretary of State shall have regard to any representations made in accordance with subsection (6) above in determining whether to notify the operator, give the direction or refuse to make or revoke the order, as the case may be.

## 90 **Facilities and information in the United Kingdom. U.K.**

- (1) The Secretary of State may make regulations requiring operators of recognised schemes to maintain in the United Kingdom, or in such part or parts of it as may be specified in the regulations, such facilities as he thinks desirable in the interests of participants and as are specified in the regulations.
- (2) The Secretary of State may by notice in writing require the operator of any recognised scheme to include such explanatory information as is specified in the notice in any investment advertisement issued or caused to be issued by him in the United Kingdom in which the scheme is named.



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### *Powers of intervention*

#### **91 Directions. U.K.**

- (1) If it appears to the Secretary of State—
- (a) that any of the requirements for the making of an order declaring a scheme to be an authorised unit trust scheme are no longer satisfied;
  - (b) that the exercise of the power conferred by this subsection is desirable in the interests of participants or potential participants in the scheme; or
  - (c) without prejudice to paragraph (b) above, that the manager or trustee of such a scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act,
- he may give a direction under subsection (2) below.
- (2) A direction under this subsection may—
- (a) require the manager of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme on a date specified in the direction until such further date as is specified in that or another direction;
  - (b) require the manager and trustee of the scheme to wind it up by such date as is specified in the direction or, if no date is specified, as soon as practicable.
- (3) The revocation of the order declaring an authorised unit trust scheme to be such a scheme shall not affect the operation of any direction under subsection (2) above which is then in force; and a direction may be given under that subsection in relation to a scheme in the case of which the order declaring it to be an authorised unit trust scheme has been revoked if a direction under that subsection was already in force at the time of revocation.
- (4) Sections 60, 61 and 62 above shall have effect in relation to a contravention of a direction under subsection (2) above as they have effect in relation to any such contravention as is mentioned in those sections.
- (5) If it appears to the Secretary of State—
- (a) that the exercise of the power conferred by this subsection is desirable in the interests of participants or potential participants in a scheme recognised under section 87 or 88 above who are in the United Kingdom;
  - (b) without prejudice to paragraph (a) above, that the operator of such a scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act; or
  - (c) that any of the requirements for the recognition of a scheme under section 88 above are no longer satisfied,
- he may direct that the scheme shall not be a recognised scheme for a specified period or until the occurrence of a specified event or until specified conditions are complied with.
- (6) For the purposes of subsections (1)(b) and (5)(a) above the Secretary of State may take into account any matter relating to the scheme, the manager, operator or trustee,

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a director or controller of the manager, operator or trustee or any person employed by or associated with the manager, operator or trustee in connection with the scheme.

- (7) In the case of a manager, operator or trustee who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in subsections (1)(c) and (5)(b) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules.
- (8) The Secretary of State may, either of his own motion or on the application of the manager, trustee or operator of the scheme concerned, withdraw or vary a direction given under this section if it appears to the Secretary of State that it is no longer necessary for the direction to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

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

C109 S. 91 restricted (1.11.1992) by S.R. 1980/346, Order 93, rule 7 (as inserted by S.R. 1992/399, rule15).

**92 Notice of directions. U.K.**

- (1) The power to give a direction under section 91 above in relation to a scheme shall be exercisable by written notice served by the Secretary of State on the manager and trustee or, as the case may be, on the operator of the scheme and any such notice shall take effect on such date as is specified in the notice.
- (2) If the Secretary of State refuses to withdraw or vary a direction on the application of the manager, trustee or operator of the scheme concerned he shall serve that person with a written notice of refusal.
- (3) A notice giving a direction, or varying it otherwise than on the application of the manager, trustee or operator concerned, or refusing to withdraw or vary a direction on the application of such a person shall state the reason for which the direction was given or varied or, as the case may be, why the application was refused.
- (4) The Secretary of State may give public notice of a direction given by him under section 91 above and of any withdrawal or variation of such a direction; and any such notice may, if the Secretary of State thinks fit, include a statement of the reasons for which the direction was given, withdrawn or varied.

**93 Applications to the court. U.K.**

- (1) In any case in which the Secretary of State has power to give a direction under section 91(2) above in relation to an authorised unit trust scheme or, by virtue of subsection (3) of that section, in relation to a scheme which has been such a scheme, he may apply to the court—
  - (a) for an order removing the manager or trustee, or both the manager and trustee, of the scheme and replacing either or both of them with a person or persons nominated by him and appearing to him to satisfy the requirements of section 78 above; or
  - (b) if it appears to the Secretary of State that no, or no suitable, person satisfying those requirements is available, for an order removing the manager or trustee, or both the manager and trustee, and appointing an authorised person to wind the scheme up.

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- (2) On an application under this section the court may make such order as it thinks fit; and the court may, on the application of the Secretary of State, rescind any such order as is mentioned in paragraph (b) of subsection (1) above and substitute such an order as is mentioned in paragraph (a) of that subsection.
- (3) The Secretary of State shall give written notice of the making of an application under this section to the manager and trustee of the scheme concerned and take such steps as he considers appropriate for bringing the making of the application to the attention of the participants.
- (4) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.
- (5) Section 83 above shall not apply to a manager appointed by an order made on an application under subsection (1)(b) above.

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

**C110** S. 93(1) amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para.26.  
s. 93(1) extended (1.1.1996) by S.I. 1995/3275, reg. 37, Sch. 7 para. 24

*Supplemental*

**94 Investigations. U.K.**

- (1) The Secretary of State may appoint one or more competent inspectors to investigate and report on—
  - (a) the affairs of, or of the manager or trustee of, any authorised unit trust scheme;
  - (b) the affairs of, or of the operator or trustee of, any recognised scheme so far as relating to activities carried on in the United Kingdom; or
  - (c) the affairs of, or of the operator or trustee of, any other collective investment scheme,if it appears to the Secretary of State that it is in the interests of the participants to do so or that the matter is of public concern.
- (2) An inspector appointed under subsection (1) above to investigate the affairs of, or of the manager, trustee or operator of, any scheme may also, if he thinks it necessary for the purposes of that investigation, investigate the affairs of, or of the manager, trustee or operator of, any other such scheme as is mentioned in that subsection whose manager, trustee or operator is the same person as the manager, trustee or operator of the first-mentioned scheme.
- (3) Sections 434 to 436 of the <sup>M25</sup>Companies Act 1985 (production of documents and evidence to inspectors), . . . <sup>F41</sup>, shall apply in relation to an inspector appointed under this section as they apply to an inspector appointed under section 431 of that Act but with the modifications specified in subsection (4) below.
- (4) In the provisions applied by subsection (3) above for any reference to a company . . . <sup>F42</sup> there shall be substituted a reference to the scheme under investigation by virtue of this section . . . <sup>F42</sup> and any reference to an officer . . . <sup>F42</sup> of the company shall include a reference to any director of the manager, trustee or operator of the scheme.

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- (5) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session except that a lawyer may be required to furnish the name and address of his client.
- (6) Where a person claims a lien on a document its production under this section shall be without prejudice to the lien.
- [<sup>F43</sup>(7) Nothing in this section requires a person (except as mentioned in subsection (7A) below) to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—
- (a) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
  - (b) the making of the requirement was authorised by the Secretary of State.
- (7A) Subsection (7) does not apply where the person owing the obligation of confidence or the person to whom it is owed is—
- (a) the manager, operator or trustee of the scheme under investigation, or
  - (b) a manager, operator or trustee whose own affairs are under investigation.]

(8) An inspector appointed under this section may, and if so directed by the Secretary of State shall, make interim reports to the Secretary of State and on the conclusion of his investigation shall make a final report to him.

[<sup>F44</sup>(8A) If it appears to the Secretary of State that matters have come to light in the course of the inspectors' investigation which suggest that a criminal offence has been committed, and those matters have been referred to the appropriate prosecuting authority, he may direct the inspectors to take no further steps in the investigation or to take only such further steps as are specified in the direction.

(8B) Where an investigation is the subject of a direction under subsection (8A), the inspectors shall make a final report to the Secretary of State only where the Secretary of State directs them to do so.]

(9) Any such report shall be written or printed as the Secretary of State may direct and the Secretary of State may, if he thinks fit—

    - (a) furnish a copy, on request and on payment of the prescribed fee, to the manager, trustee or operator or any participant in a scheme under investigation or any other person whose conduct is referred to in the report; and
    - (b) cause the report to be published.

[<sup>F45</sup>(10) A person who is convicted on a prosecution instituted as a result of an investigation under this section may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Secretary of State may determine in respect of general staff costs and overheads.]

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#### Textual Amendments

- F41** Words repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 212, [Sch. 24](#)  
**F42** Words repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 212, [Sch. 24](#)  
**F43** [S. 94\(7\)\(7A\)](#) substituted for subsection (7) by [Companies Act 1989 \(c. 40, SIF 27\)](#), [s. 72\(2\)](#)  
**F44** [S. 94\(8A\)\(8B\)](#) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), [s. 72\(3\)](#)  
**F45** [S. 94\(10\)](#) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), [s. 72\(4\)](#)

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

- C111** [S. 94](#): certain functions transferred by [S.I. 1988/738](#), [art. 3\(4\)](#)

#### Marginal Citations

- M25** [1985 c. 6](#).

## 95 Contraventions. **U.K.**

- (1) A person who contravenes any provision of this Chapter, a manager or trustee of an authorised unit trust scheme who contravenes any regulations made under section 81 above and a person who contravenes any other regulations made under this Chapter shall be treated as having contravened rules made under Chapter V of this Part of this Act or, in the case of a person who is an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.
- (2) Subsection (1) above applies also to any contravention by the operator of a recognised scheme of a requirement imposed under section 90(2) above.
- [<sup>F46</sup>(3) The disciplinary action which may be taken by virtue of section 47A(3) (failure to comply with statement of principle) includes—
- (a) the giving of a direction under section 91(2), and
  - (b) the application by the Secretary of State for an order under section 93;
- and subsection (6) of section 47A (duty of the Secretary of State as to exercise of powers) has effect accordingly.]

#### Textual Amendments

- F46** [S. 95\(3\)](#) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 9](#)

## CHAPTER IX **U.K.**

### THE TRIBUNAL

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

- C112** Chapters III–XI (ss. 7–111): certain functions transferred by [S.I. 1990/354](#), [art. 5](#)  
**C113** Chapter IX (ss. 96–101) applied with modifications (12.2.1992) by [S.I. 1992/225](#), reg. 96(7)

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## 96 The Financial Services Tribunal. **U.K.**

- (1) For the purposes of this Act there shall be a Tribunal known as the Financial Services Tribunal (in this Act referred to as “the Tribunal”).
- (2) There shall be a panel of not less than ten persons to serve as members of the Tribunal when nominated to do so in accordance with subsection (3) below; and that panel shall consist of—
  - (a) persons with legal qualifications appointed by the Lord Chancellor after consultation with the Lord Advocate, including at least one person qualified in Scots law; and
  - (b) persons appointed by the Secretary of State who appear to him to be qualified by experience or otherwise to deal with the cases that may be referred to the Tribunal.
- (3) Where a case is referred to the Tribunal the Secretary of State shall nominate three persons from the panel to serve as members of the Tribunal in respect of that case and nominate one of them to be chairman.
- (4) The person nominated to be chairman of the Tribunal in respect of any case shall be a person with legal qualifications and, so far as practicable, at least one of the other members shall be a person with recent practical experience in business relevant to the case.
- (5) If while a case is being dealt with by the Tribunal one of the three persons serving as members in respect of that case becomes unable to act the case may, with the consent of the Secretary of State and of the person or persons at whose request the case was referred to the Tribunal, be dealt with by the other two members.
- (6) Schedule 6 to this Act shall have effect as respects the Tribunal and its proceedings.

### Modifications etc. (not altering text)

**C114** It is provided that ss. 96, 97(6), 99-101, Sch. 6 shall continue (with modifications) (1.12.2001) by S.I. 2001/3592, arts. 105, 108 (with art. 23(2))

**C115** S. 96: functions of the Lord Advocate transferred to the Secretary of State, and all property, rights and liabilities to which the Lord Advocate is entitled or subject in connection with any such function transferred to the Secretary for Scotland (19.5.1999) by S.I. 1999/678, arts. 2, 3, Sch. (with art. 7)

**C116** S. 96(2)(a): transfer of certain functions (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

**C117** S. 96(2)(a): Certain functions made exercisable (30.6.1999) by S.I. 1999/1748, art. 3, Sch. 1 para. 9

## 97 References to the Tribunal. **U.K.**

- (1) Any person—
  - (a) on whom a notice is served under section 29, 34, 59(4), 60(2) or 70 above; or
  - (b) on whom a copy of a notice under section 29, 34, 60(2) or 70 above is served or on whom the Secretary of State considers that a copy of such a notice would have been served if it had been practicable to do so,
 may within twenty-eight days of the date of service of the notice require the Secretary of State to refer the matter to which the notice relates to the Tribunal and, subject to the provisions of this section, the Secretary of State shall refer that matter accordingly.



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- (2) The Secretary of State need not refer a matter to the Tribunal at the request of the person on whom a notice was served under section 29, 34, 59(4) or 60(2) above if within the period mentioned in subsection (1) above he—
- (a) decides to grant the application or, as the case may be, decides not to withdraw or suspend the authorisation, give the direction or publish the statement to which the notice relates; and
  - (b) gives written notice of his decision to that person.
- (3) The Secretary of State need not refer a matter to the Tribunal at the request of the person on whom a notice is served under section 70 above if—
- (a) that matter is the refusal of an application for the rescission or variation of a prohibition or requirement and within the period mentioned in subsection (1) above he—
    - (i) decides to grant the application; and
    - (ii) gives written notice of his decision to that person; or
  - (b) that matter is the imposition or variation of a prohibition or requirement, being a prohibition, requirement or variation which has not yet taken effect, and within the period mentioned in subsection (1) above and before the prohibition, requirement or variation takes effect he—
    - (i) decides to rescind the prohibition or requirement or decides not to make the variation; and
    - (ii) gives written notice of his decision to that person.
- (4) Where the notice served on a person under section 29 or 34 above—
- (a) proposed the withdrawal of an authorisation or the giving of a direction under section 33(1)(a) above; or
  - (b) proposed the suspension of an authorisation or the giving of a direction under section 33(1)(b) above,
- and at any time within the period mentioned in subsection (1) above the Secretary of State serves a new notice on that person in substitution for that previously served, then, if the substituted notice complies with subsection (5) below, subsection (1) above shall have effect in relation to the substituted notice instead of the original notice and as if the period there mentioned were twenty-eight days after the date of service of the original notice or fourteen days after the date of service of the substituted notice, whichever ends later.
- (5) A notice served in substitution for a notice within subsection (4)(a) above complies with this subsection if it proposes—
- (a) the suspension of an authorisation or the giving of a direction under section 33(1)(b) above; or
  - (b) the exercise of the power conferred by section 60 above;
- and a notice served in substitution for a notice within subsection (4)(b) above complies with this subsection if it proposes a less severe suspension or direction under section 33(1)(b) or the exercise of the power conferred by section 60 above.
- (6) The reference of the imposition or variation of a prohibition or requirement under Chapter VI of this Part of this Act to the Tribunal shall not affect the date on which it comes into effect.

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

**C118** s. 97: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(c)**.

S. 97 amended (1.1.1993) by S.I. 1992/3218, reg. 15(5), **Sch. 4 para.2**.

s. 97 extended (1.1.1996) by S.I. 1996/3275, regs. 9(5), 20, 42(10), Sch. 4, para. 2, **Sch. 6, para. 8**

s. 97(1) modified (1.1.1996) by S.I. 1995/3275, **reg. 17(9)(c)**

**C119** It is provided that ss. 96, 97(6), 99-101, Sch. 6 shall continue (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 105, 108** (with art. 23(2))

## 98 Decisions on references by applicant or authorised person etc. **U.K.**

- (1) Where a case is referred to the Tribunal at the request of a person within section 97(1)
  - (a) above the Tribunal shall—
    - (a) investigate the case; and
    - (b) make a report to the Secretary of State stating what would in its opinion be the appropriate decision in the matter and the reasons for that opinion;
 and it shall be the duty of the Secretary of State to decide the matter forthwith in accordance with the Tribunal's report.
- (2) Where the matter referred to the Tribunal is the refusal of an application the Tribunal may under this section report that the appropriate decision would be to grant or refuse the application or—
  - (a) in the case of an application for the variation of a suspension, direction, consent, prohibition or requirement, to vary it in a specified manner;
  - (b) in the case of an application for the rescission of a prohibition or requirement, to vary the prohibition or requirement in a specified manner.
- (3) Where the matter referred to the Tribunal is any action of the Secretary of State other than the refusal of an application the Tribunal may report that the appropriate decision would be—
  - (a) to take or not to take the action taken or proposed to be taken by the Secretary of State or to take any other action that he could take under the provision in question; or
  - (b) to take instead or in addition any action that he could take in the case of the person concerned under any one or more of the provisions mentioned in subsection (4) below other than that under which he was acting or proposing to act.
- (4) Those provisions are sections 28, 33 and 60 above and Chapter VI of this Part of this Act; and sections 29, 34, 60(2) and (3) and 70(2) and (4) above shall not apply to any action taken by the Secretary of State in accordance with the Tribunal's report.
- (5) The Tribunal shall send a copy of its report under this section to the person at whose request the case was referred to it; and the Secretary of State shall serve him with a written notice of the decision made by him in accordance with the report.

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

**C120** S. 98: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(c)**.

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- C121** S. 98(2)(a) amended (1.1.1993) by S.I. 1992/3218, reg. 15(5), **Sch. 4 para. 3(1)(a)**.  
**C122** S. 98(2)(b) amended (1.1.1993) by S.I. 1992/3218, reg. 15(5), **Sch. 4 para. 3(1)(b)**.  
**C123** S. 98(3)(b) amended (1.1.1993) by S.I. 1992/3218, reg. 15(5), **Sch. 4 para. 3(2)**.  
s. 98 modified (1.1.1996) by S.I. 1995/3275, **reg. 9(5)**, Sch. 4 para. 3(1)(3)  
s. 98(3)(b) extended (1.1.1996) by S.I. 1995/3275, reg. 9(5), **Sch. 4**, para. 3(2)

## 99 Decisions on references by third parties. **U.K.**

Where a case is referred to the Tribunal at the request of a person within section 97(1) (b) above the Tribunal shall report to the Secretary of State whether the reasons stated in the notice in question which relate to that person are substantiated; and the Tribunal shall send a copy of the report to that person and to the person on whom the notice was served.

### Modifications etc. (not altering text)

- C124** It is provided that ss. 96, 97(6), 99-101, Sch. 6 shall continue (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 105, 108** (with art. 23(2))  
**C125** S. 99: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 4(c)**.

## 100 Withdrawal of reference. **U.K.**

- (1) A person who has required a case to be referred to the Tribunal may at any time before the conclusion of the proceedings before the Tribunal withdraw the reference.
- (2) The Secretary of State may at any such time withdraw any reference made at the request of a person on whom a notice was served under any of the provisions mentioned in subsection (1)(a) of section 97 above if he—
  - (a) decides as mentioned in subsection (2)(a) or (3)(a)(i) or (b)(i) of that section; and
  - (b) gives such a notice as is mentioned in subsection (2)(b) or (3)(a)(ii) or (b)(ii) of that section;but a reference shall not be withdrawn by virtue of such a decision and notice as are mentioned in paragraph (b) of subsection (3) unless the decision is made and the notice is given before the prohibition, requirement or variation has taken effect.
- (3) Where a case is withdrawn from the Tribunal under this section the Tribunal shall not further investigate the case or make a report under section 98 or 99 above; but where the reference is withdrawn otherwise than by the Secretary of State he may require the Tribunal to make a report to him on the results of its investigation up to the time when the reference was withdrawn.
- (4) Where two or more persons have required a case to be referred to the Tribunal the withdrawal of the reference by one or more of them shall not affect the functions of the Tribunal as respects the case so far as relating to a person who has not withdrawn the reference.
- (5) Where a person on whom a notice was served under section 29, 34 or 60 above withdraws a case from the Tribunal subsection (5) of each of those sections shall apply to him as if he had not required the case to be referred.

**Status:** Point in time view as at 01/01/1997. This version of this part contains provisions that are not valid for this point in time.

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

- C126** It is provided that ss. 96, 97(6), 99-101, Sch. 6 shall continue (with modifications) (1.12.2001) by S.I. 2001/3592, arts. 105, 108 (with art. 23(2))
- C127** S. 100: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, Sch. 2 para. 4(c).
- C128** S. 100(2) amended (1.1.1993) by S.I. 1992/3218, reg. 15(5), Sch. 4 para.4(1).  
 s. 100(2) extended (1.1.1996) by S.I. 1995/3275, reg. 9(5), Sch. 4 para. 4(1)  
 s. 100 modified (1.1.1996) by S.I. 1995/3275, reg. 9(5), Sch. 4 para. 4(2)

**101 Reports. U.K.**

- (1) In preparing its report on any case the Tribunal shall have regard to the need to exclude, so far as practicable, any matter which relates to the affairs of a particular person (not being a person who required or could have required the case to be referred to the Tribunal) where the publication of that matter would or might, in the opinion of the Tribunal, seriously and prejudicially affect the interests of that person.
- (2) The Secretary of State may, in such cases as he thinks fit, publish the report of the Tribunal and offer copies of any such report for sale.
- (3) The Secretary of State may, on request and on payment of the prescribed fee, supply a copy of a report of the Tribunal to any person whose conduct is referred to in the report or whose interests as a client or creditor are affected by the conduct of a person to whom the proceedings before the Tribunal related.
- (4) If the Secretary of State is of opinion that there is good reason for not disclosing any part of a report he may cause that part to be omitted from the report as published under subsection (2) or from the copy of it supplied under subsection (3) above.
- (5) A copy of a report of the Tribunal endorsed with a certificate signed by or on behalf of the Secretary of State stating that it is a true copy shall be admissible as evidence of the opinion of the Tribunal as to any matter referred to in the report; and a certificate purporting to be signed as aforesaid shall be deemed to have been duly signed unless the contrary is shown.

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

- C129** It is provided that ss. 96, 97(6), 99-101, Sch. 6 shall continue (with modifications) (1.12.2001) by S.I. 2001/3592, arts. 105, 108 (with art. 23(2))
- C130** S. 101: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, Sch. 2 para. 4(c).
- C131** S. 101(5) extended (12.2.1992) by S.I. 1992/225, reg.101.

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## CHAPTER X **U.K.**

### INFORMATION

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

**C132** Chapters III–XI (ss. 7–111): certain functions transferred by [S.I. 1990/354](#), [art. 5](#)

#### **102 Register of authorised persons and recognised organisations etc. **U.K.****

- (1) The Secretary of State shall keep a register containing an entry in respect of—
- (a) each person who is an authorised person by virtue of an authorisation granted by the Secretary of State;
  - (b) each other person who appears to him to be an authorised person by virtue of any provision of this Part of this Act;
  - (c) each recognised self-regulating organisation, recognised professional body, recognised investment exchange and recognised clearing house;
  - (d) each authorised unit trust scheme and recognised scheme;
  - (e) each person in respect of whom a direction under section 59 above is in force.
- (2) The entry in respect of each authorised person shall consist of—
- (a) a statement of the provision by virtue of which he is an authorised person;
  - (b) in the case of a person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body, the name and address of the organisation or body;
  - (c) in the case of a person who is an authorised person by virtue of section 25 or 31 above, information as to the services which that person holds himself out as able to provide;
  - (d) in the case of a person who is an authorised person by virtue of section 31 above, the address notified to the Secretary of State under section 32 above;
  - (e) in the case of a person who is an authorised person by virtue of any provision other than section 31 above, the date on which he became an authorised person by virtue of that provision; and
  - (f) such other information as the Secretary of State may determine.
- (3) The entry in respect of each such organisation, body, exchange or clearing house as is mentioned in subsection (1)(c) above shall consist of its name and address and such other information as the Secretary of State may determine.
- (4) The entry in respect of each such scheme as is mentioned in subsection (1)(d) above shall consist of its name and, in the case of an authorised unit trust scheme, the name and address of the manager and trustee and, in the case of a recognised scheme, the name and address of the operator and of any representative of the operator in the United Kingdom and, in either case, such other information as the Secretary of State may determine.
- (5) The entry in respect of each such person as is mentioned in subsection (1)(e) above shall include particulars of any consent for that person's employment given by the Secretary of State.
- (6) Where it appears to the Secretary of State that any person in respect of whom there is an entry in the register by virtue of subsection (1)(a) or (b) above has ceased to

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be an authorised person (whether by death, by withdrawal or other cessation of his authorisation, as a result of his ceasing to be a member of a recognised self-regulating organisation or otherwise) the Secretary of State shall make a note to that effect in the entry together with the reason why the person in question is no longer an authorised person.

(7) Where—

- (a) an organisation, body, exchange or clearing house in respect of which there is an entry in the register by virtue of paragraph (c) of subsection (1) above has ceased to be recognised or ceased to exist;
  - (b) an authorised unit trust scheme or recognised scheme in respect of which there is an entry in the register by virtue of paragraph (d) of that subsection has ceased to be authorised or recognised; or
  - (c) the direction applying to a person in respect of whom there is an entry in the register by virtue of paragraph (e) of that subsection has ceased to have effect,
- the Secretary of State shall make a note to that effect in the entry.

(8) An entry in respect of which a note is made under subsection (6) or (7) above may be removed from the register at the end of such period as the Secretary of State thinks appropriate.

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

**C133** S. 102 modified by S.I. 1987/942, art. 9

S. 102 amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para.27.

s. 102 extended (1.1.1996) by S.I. 1995/3275, reg. 37, Sch. 7 para. 25

s. 102 modified (1.1.1996) by S.I. 1995/3275, reg. 28(1)

### **103 Inspection of register. U.K.**

- (1) The information contained in the entries included in the register otherwise than by virtue of section 102(1)(e) above shall be open to inspection; and the Secretary of State may publish the information contained in those entries in any form he thinks appropriate and may offer copies of any such information for sale.
- (2) A person shall be entitled to ascertain whether there is an entry in the register by virtue of subsection (1)(e) of section 102 above (not being an entry in respect of which there is a note under subsection (7) of that section) in respect of a particular person specified by him and, if there is such an entry, to inspect it.
- (3) Except as provided by subsection (2) above the information contained in the register by virtue of section 102(1)(e) above shall not be open to inspection by any person unless he satisfies the Secretary of State that he has a good reason for seeking the information.
- (4) A person to whom information is made available by the Secretary of State under subsection (3) above shall not, without the consent of the Secretary of State or of the person to whom the information relates, make use of it except for the purpose for which it was made available.
- (5) Information which by virtue of this section is open to inspection shall be open to inspection free of charge but only at such times and places as the Secretary of State



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may appoint; and a person entitled to inspect any information may obtain a certified copy of it from the Secretary of State on payment of the prescribed fee.

- (6) The register may be kept by the Secretary of State in such form as he thinks appropriate with a view to facilitating inspection of the information which it contains.

#### 104 Power to call for information. **U.K.**

- (1) The Secretary of State may by notice in writing require a person who is authorised to carry on investment business by virtue of section 22, 24, 25 or 31 above to furnish him with such information as he may reasonably require for the exercise of his functions under this Act.
- (2) The Secretary of State may by notice in writing require a recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house to furnish him with such information as he may reasonably require for the exercise of his functions under this Act.
- (3) The Secretary of State may require any information which he requires under this section to be furnished within such reasonable time and verified in such manner as he may specify.
- (4) Sections 60, 61 and 62 above shall have effect in relation to a contravention of a requirement imposed under subsection (1) above as they have effect in relation to a contravention of the provisions to which those sections apply.

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

**C134** S. 104 restricted (1.11.1992) by S.R. 1980/346, Order 93, rule 7 (as inserted by S.R. 1992/399, rule15).

S. 104 amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para.28.

s. 104 amended (1.7.1994) by S.I. 1994/1696, reg. 60(1)

**C135** S. 104(1) amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para. 28(a).

s. 104 extended (1.1.1996) by S.I. 1995/3275, reg. 37, Sch. 7 para. 26

#### 105 Investigation powers. **U.K.**

- (1) The powers of the Secretary of State under this section shall be exercisable in any case in which it appears to him that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any person so far as relevant to any investment business which he is or was carrying on or appears to the Secretary of State to be or to have been carrying on.
- (2) Those powers shall not be exercisable for the purpose of investigating the affairs of any exempted person unless he is an appointed representative or the investigation is in respect of investment business in respect of which he is not an exempted person and shall not be exercisable for the purpose of investigating the affairs of a member of a recognised self-regulating organisation or a person certified by a recognised professional body in respect of investment business in the carrying on of which he is subject to its rules unless—
- (a) that organisation or body has requested the Secretary of State to investigate those affairs; or

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- (b) it appears to him that the organisation or body is unable or unwilling to investigate them in a satisfactory manner.
- (3) The Secretary of State may require the person whose affairs are to be investigated (“the person under investigation”) or any connected person to attend before the Secretary of State at a specified time and place and answer questions or otherwise furnish information with respect to any matter relevant to the investigation.
- (4) The Secretary of State may require the person under investigation or any other person to produce at a specified time and place any specified documents which appear to the Secretary of State to relate to any matter relevant to the investigation; and—
- (a) if any such documents are produced, the Secretary of State may take copies or extracts from them or require the person producing them or any connected person to provide an explanation of any of them;
- (b) if any such documents are not produced, the Secretary of State may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (5) A statement by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.
- (6) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session except that a lawyer may be required to furnish the name and address of his client.
- (7) ..... <sup>F47</sup>
- (8) Where a person claims a lien on a document its production under this section shall be without prejudice to the lien.
- (9) In this section—
- “connected person”, in relation to any other person means—
- (a) any person who is or was that other person’s partner, employee, agent, appointed representative, banker, auditor or solicitor; and
- (b) where the other person is a body corporate, any person who is or was a director, secretary or controller of that body corporate or of another body corporate of which it is or was a subsidiary; and
- (c) where the other person is an unincorporated association, any person who is or was a member of the governing body or an officer or controller of the association; and
- (d) where the other person is an appointed representative, any person who is or was his principal; and
- (e) where the other person is the person under investigation (being a body corporate), any related company of that body corporate and any person who is a connected person in relation to that company;
- “documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, [<sup>F48</sup>the power to require its production includes power to require the production of] a copy of the information in legible form;

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“related company”, in relation to a person under investigation (being a body corporate), means any other body corporate which is or at any material time was—

- (a) a holding company or subsidiary of the person under investigation;
- (b) a subsidiary of a holding company of that person; or
- (c) a holding company of a subsidiary of that person,

and whose affairs it is in the Secretary of State’s opinion necessary to investigate for the purpose of investigating the affairs of that person.

- (10) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and 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.

- [<sup>F49</sup>(11) A person who is convicted on a prosecution instituted as a result of an investigation under this section may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Secretary of State may determine in respect of general staff costs and overheads.]

#### Textual Amendments

- F47** S. 105(7) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 73(2), 212, Sch. 24  
**F48** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 73(3)  
**F49** S. 105(11) inserted by Companies Act 1989 (c. 40, SIF 27), s. 73(4)

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

- C136** S. 105 applied (12.2.1992) by S.I. 1992/225, reg.110.  
s. 105 applied (with modifications) (15.8.1995) by S.I. 1995/2049, regs. 6, 7-18

## 106 Exercise of investigation powers by officer etc. **U.K.**

- (1) The Secretary of State may authorise any officer of his or any other competent person to exercise on his behalf all or any of the powers conferred by section 105 above but no such authority shall be granted except for the purpose of investigating the affairs, or any aspects of the affairs, of a person specified in the authority.
- (2) No person shall be bound to comply with any requirement imposed by a person exercising powers by virtue of an authority granted under this section unless he has, if required to do so, produced evidence of his authority.

- [<sup>F50</sup>(2A) A person shall not by virtue of an authority under this section be required to disclose any information or produce any documents in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (a) he is the person under investigation or a related company,
- (b) the person to whom the obligation of confidence is owed is the person under investigation or a related company,
- (c) the person to whom the obligation of confidence is owed consents to the disclosure or production, or

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- (d) the imposing on him of a requirement with respect to such information or documents has been specifically authorised by the Secretary of State.

In this subsection “documents”, “person under investigation” and “related company” have the same meaning as in section 105.]

- (3) Where the Secretary of State authorises a person other than one of his officers to exercise any powers by virtue of this section that person shall make a report to the Secretary of State in such manner as he may require on the exercise of those powers and the results of exercising them.

#### Textual Amendments

**F50** S. 106(2A) inserted by Companies Act 1989 (c. 40, SIF 27), s. 73(5)

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

**C137** S. 106 applied (12.2.1992) by S.I. 1992/225, reg.110.

S. 106 amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para.29.

s. 106 applied (with modifications) (15.8.1995) by S.I. 1995/2049, regs. 6, 7-18

s. 106 extended (1.1.1996) by S.I. 1995/3275, reg. 32, Sch. 7 para. 27

## CHAPTER XI U.K.

### AUDITORS

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

**C138** Chapters III–XI (ss. 7–111): certain functions transferred by S.I. 1990/354, art. 5

## 107 Appointment of auditors. U.K.

[<sup>F51</sup>(1) The Secretary of State may make rules requiring—

- (a) a person authorised to carry on investment business by virtue of section 25 or 31 above, or
- (b) a member of a recognised self-regulating organisation carrying on investment business in the carrying on of which he is subject to the rules of the organisation,

and who, apart from the rules, is not required by or under any enactment to appoint an auditor, to appoint as an auditor a person satisfying such conditions as to qualifications and otherwise as may be specified in or imposed under the rules.]

(2) Rules under this section may make provision—

- (a) specifying the manner in which and the time within which an auditor is to be appointed;
- (b) requiring the Secretary of State to be notified of any such appointment and enabling the Secretary of State to make an appointment if no appointment is made or notified as required by the rules;
- (c) with respect to the remuneration of an auditor appointed under the rules;
- (d) with respect to the term of office, removal and resignation of any such auditor;

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- (e) requiring any such auditor who is removed, resigns or is not reappointed to notify the Secretary of State whether there are any circumstances connected with his ceasing to hold office which he considers should be brought to the Secretary of State's attention.
- (3) An auditor appointed under the rules shall in accordance with the rules examine and report on the accounts of the authorised person in question and shall for that purpose have such duties and powers as are specified in the rules.
- [<sup>F52</sup>(4) In its application to members of recognised self-regulating organisations, this section has effect subject to section 107A below.]

#### Textual Amendments

**F51** S. 107(1) substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 10(2)**

**F52** S. 107(4) added by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 10(3)**

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

**C139** S. 107: certain functions transferred by S.I. 1990/354, **art. 4(5)**

S. 107 applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg.98.**

S. 107 amended (1.7.1994) by S.I. 1994/1696, **reg. 60(2)**

**C140** S. 107(3) amended (1.1.1993) by S.I. 1992/3218, **reg. 55, Sch. 9 para.30.**

s. 107(3) modified (1.1.1996) by S.I. 1995/3275, **reg. 32, Sch. 7 para. 28**

#### [<sup>F53</sup>107A] **Application of audit rules to members of self-regulating organisations. U.K.**

- (1) The Secretary of State may in rules under section 107 designate provisions which apply, to such extent as may be specified, to a member of a recognised self-regulating organisation in respect of investment business in the carrying on of which he is subject to the rules of the organisation.
- (2) It may be provided that the designated rules have effect, generally or to such extent as may be specified, subject to the rules of the organisation.
- (3) A member of a recognised self-regulating organisation who contravenes a rule applying to him by virtue of that section shall be treated as having contravened the rules of the organisation.
- (4) Except as mentioned above, rules made under section 107 do not apply to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.
- (5) A recognised self-regulating organisation may on the application of a member of the organisation—
- modify a rule designated under this section so as to adapt it to his circumstances or to any particular kind of business carried on by him, or
  - dispense him from compliance with any such rule, generally or in relation to any particular kind of business carried on by him.
- (6) The powers conferred by subsection (5) shall not be exercised unless it appears to the organisation—

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- (a) that compliance with the rule in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and
  - (b) that the exercise of those powers will not result in any undue risk to investors.
- (7) The powers conferred by subsection (5) may be exercised unconditionally or subject to conditions; and subsection (3) applies in the case of a contravention of a condition as in the case of contravention of a designated rule.
- (8) The reference in paragraph 4(1) of Schedule 2 (requirements for recognition of self-regulating organisations) to monitoring and enforcement of compliance with rules includes monitoring and enforcement of compliance with conditions imposed by the organisation under subsection (7).]

#### Textual Amendments

**F53** S. 107A inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), **Sch. 23 Pt. I para. 11**

### 108 Power to require second audit. **U.K.**

- (1) If in any case it appears to the Secretary of State that there is good reason to do so he may direct any person who is authorised to carry on investment business by virtue of section 25 or 31 above to submit for further examination by a person approved by the Secretary of State—
- (a) any accounts on which that person’s auditor has reported or any information given under section 52 or 104 above which has been verified by that auditor; or
  - (b) such matters contained in any such accounts or information as are specified in the direction;
- and the person making the further examination shall report his conclusions to the Secretary of State.
- (2) Any further examination and report required by a direction under this section shall be at the expense of the authorised person concerned and shall be carried out and made within such time as is specified in the direction or within such further time as the Secretary of State may allow.
- (3) The person carrying out an examination under this section shall have all the powers that were available to the auditor; and it shall be the duty of the auditor to afford him all such assistance as he may require.
- (4) Where a report made under this section relates to accounts which under any enactment are required to be sent to or made available for inspection by any person or to be delivered for registration, the report, or any part of it (or a note that such a report has been made) may be similarly sent, made available or delivered by the Secretary of State.

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

**C141** S. 108 applied (with modifications) (12.2.1992) by [S.I. 1992/225, reg.98](#).



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## 109 Communication by auditor with supervisory authorities. **U.K.**

- (1) No duty to which an auditor of an authorised person may be subject shall be regarded as contravened by reason of his communicating in good faith to the Secretary of State, whether or not in response to a request from him, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that person and which is relevant to any functions of the Secretary of State under this Act.
- (2) If it appears to the Secretary of State that any auditor or class of auditor to whom subsection (1) above applies is not subject to satisfactory rules made or guidance issued by a professional body specifying circumstances in which matters are to be communicated to the Secretary of State as mentioned in that subsection the Secretary of State may himself make rules applying to that auditor or that class of auditor and specifying such circumstances; and it shall be the duty of an auditor to whom the rules made by the Secretary of State apply to communicate a matter to the Secretary of State in the circumstances specified by the rules.
- (3) The matters to be communicated to the Secretary of State in accordance with any such rules or guidance may include matters relating to persons other than the authorised person.
- (4) No such rules as are mentioned in subsection (2) above shall be made by the Secretary of State unless a draft of them has been laid before and approved by a resolution of each House of Parliament.
- (5) This section applies to—
  - (a) the communication by an auditor to a recognised self-regulating organisation or recognised professional body of matters relevant to its function of determining whether a person is a fit and proper person to carry on investment business; and
  - (b) the communication to such an organisation or body or any other authority or person of matters relevant to its or his function of determining whether a person is complying with the rules applicable to his conduct of investment business,

as it applies to the communication to the Secretary of State of matters relevant to his functions under this Act.

### Modifications etc. (not altering text)

**C142** S. 109(1) amended by S.I. 1987/942, art. 10

S. 109(1) applied (with modifications) (12.2.1992) by S.I. 1992/225, reg.98.

S. 109(1) amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para.31.

s. 109(1) extended (1.1.1996) by S.I. 1995/3275, reg. 32, Sch. 7 para. 29

s. 109(1)(3) applied (with modifications) (18.7.1996) by S.I. 1996/1669, reg. 10(1)

## 110 Overseas business. **U.K.**

- (1) A person incorporated or having his head office outside the United Kingdom who is authorised as mentioned in subsection (1) of section 107 above may, whether or not he is required to appoint an auditor apart from the rules made under that subsection, appoint an auditor in accordance with those rules in respect of the investment business carried on by him in the United Kingdom and in that event that person shall be treated for the purposes of this Chapter as the auditor of that person.

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- (2) In the case of a person to be appointed as auditor of a person incorporated or having his head office outside the United Kingdom the conditions as to qualifications imposed by or under the rules made under that section may be regarded as satisfied by qualifications obtained outside the United Kingdom which appear to the Secretary of State to be equivalent.
- (3) A person incorporated or having his head office outside the United Kingdom shall not be regarded for the purposes of section 25 above as a fit and proper person to carry on investment business unless—
- (a) he has appointed an auditor in accordance with rules made under section 107 above in respect of the investment business carried on by him in the United Kingdom; or
  - (b) he has an auditor having qualifications, powers and duties appearing to the Secretary of State to be equivalent to those applying to an auditor appointed in accordance with those rules,
- and, in either case, the auditor is able and willing to communicate with the Secretary of State and other bodies and persons as mentioned in section 109 above.

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

**C143** S. 110 applied (with modifications) (12.2.1992) by S.I. 1992/225, reg.98.

**C144** S. 110(3) amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para.32.

s. 110(3) modified (1.1.1996) by S.I. 1995/3275, reg. 32, Sch. 7 para. 30

**111 Offences and enforcement. U.K.**

- (1) Any authorised person and any officer, controller or manager of an authorised person, who knowingly or recklessly furnishes an auditor appointed under the rules made under section 107 or a person carrying out an examination under section 108 above with information which the auditor or that person requires or is entitled to require and which is false or misleading in a material particular shall be guilty of an offence and 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.
- (2) The duty of an auditor under section 108(3) above shall be enforceable by mandamus or, in Scotland, by an order for specific performance under section 91 of the <sup>M26</sup>Court of Session Act 1868.
- (3) If it appears to the Secretary of State that an auditor has failed to comply with the duty mentioned in section 109(2) above, the Secretary of State may disqualify him from being the auditor of an authorised person or any class of authorised person; but the Secretary of State may remove any disqualification imposed under this subsection if satisfied that the person in question will in future comply with that duty.
- (4) An authorised person shall not appoint as auditor a person disqualified under subsection (3) above; and a person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body who contravenes this subsection shall be treated as having contravened the rules of the organisation or body.

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#### Marginal Citations

M26 1868 c. 100.

## CHAPTER XII U.K.

### FEES

#### 112 Application fees. U.K.

- (1) An applicant for a recognition order under Chapter III or IV of this Part of this Act shall pay such fees in respect of his application as may be required by a scheme made and published by the Secretary of State; and no application for such an order shall be regarded as duly made unless this subsection is complied with.
- (2) A scheme made for the purposes of subsection (1) above shall specify the time when the fees are to be paid and may—
  - (a) provide for the determination of the fees in accordance with a specified scale or other specified factors;
  - (b) provide for the return or abatement of any fees where an application is refused or withdrawn; and
  - (c) make different provision for different cases.
- (3) Any scheme made for the purposes of subsection (1) above shall come into operation on such date as is specified in the scheme (not being earlier than the day on which it is first published) and shall apply to applications made on or after the date on which it comes into operation.
- (4) The power to make a scheme for the purposes of subsection (1) above includes power to vary or revoke a previous scheme made under those provisions.
- (5) Every application under section 26, 77 or 88 above shall be accompanied by the prescribed fee and every notice given to the Secretary of State under section 32, 86(2) or 87(3) above shall be accompanied by such fee as may be prescribed; and no such application or notice shall be regarded as duly made or given unless this subsection is complied with.

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

C145 Ss. 112, 113: certain functions transferred by S.I. 1988/738, art. 3(1)(2)(3)

C146 S. 112(5) amended (6.1.1997) by S.I. 1996/2827, reg. 74(3)(a)

#### 113 Periodical fees. U.K.

- (1) Every recognised self-regulating organisation, recognised professional body, recognised investment exchange and recognised clearing house shall pay such periodical fees to the Secretary of State as may be prescribed.
- (2) So long as a body is authorised under section 22 above to carry on insurance business which is investment business it shall pay to the Secretary of State such periodical fees as may be prescribed.

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- [<sup>F54</sup>(3) So long as a friendly society is authorised under section 23 above to carry on investment business it shall pay to the Friendly Societies Commission such periodical fees as the Commission may by regulations specify.]
- (4) A person who is an authorised person by virtue of section 25 or 31 above shall pay such periodical fees to the Secretary of State as may be prescribed.
- (5) If a person fails to pay any fee which is payable by him under subsection (4) above the Secretary of State may serve on him a written notice requiring him to pay the fee within twenty-eight days of service of the notice; and if the fee is not paid within that period that person's authorisation shall cease to have effect unless the Secretary of State otherwise directs.
- (6) A direction under subsection (5) above may be given so as to have retrospective effect; and the Secretary of State may under that subsection direct that the person in question shall continue to be an authorised person only for such period as is specified in the direction.
- (7) Subsection (5) above is without prejudice to the recovery of any fee as a debt due to the Crown.
- (8) The manager of each authorised unit trust scheme and the operator of each recognised scheme shall pay such periodical fees to the Secretary of State as may be prescribed.

#### Textual Amendments

**F54** S. 113(3) substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, **Sch. 18 Pt. I para.2** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.4**; S.I. 1993/2213, art. 2(1), **Sch.5**.

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

**C147** Ss. 112, 113: certain functions transferred by S.I. 1988/738, **art. 3(1)(2)(3)**

**C148** S. 113 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.33**.

s. 113 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 31**

s. 113(8) amended (6.1.1997) by S.I. 1996/2827, **reg. 74(3)(b)**

## CHAPTER XIII **U.K.**

### TRANSFER OF FUNCTIONS TO DESIGNATED AGENCY

#### 114 **Power to transfer functions to designated agency. U.K.**

- (1) If it appears to the Secretary of State—
- (a) that a body corporate has been established which is able and willing to discharge all or any of the functions to which this section applies; and
  - (b) that the requirements of Schedule 7 to this Act are satisfied in the case of that body,
- he may, subject to the provisions of this section and Chapter XIV of this Part of this Act, make an order transferring all or any of those functions to that body.

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- (2) The body to which functions are transferred by the first order made under subsection (1) above shall be the body known as The Securities and Investments Board Limited if it appears to the Secretary of State that it is able and willing to discharge them, that the requirements mentioned in paragraph (b) of that subsection are satisfied in the case of that body and that he is not precluded from making the order by the subsequent provisions of this section or Chapter XIV of this Part of this Act.
- (3) An order under subsection (1) above is in this Act referred to as “a delegation order” and a body to which functions are transferred by a delegation order is in this Act referred to as “a designated agency”.
- (4) Subject to subsections (5) and (6) below, this section applies to any functions of the Secretary of State under Chapters II to XII of this Part of this Act and to his functions under paragraphs 23 and 25(2) of Schedule 1 and paragraphs 4, 5 and 15 of Schedule 15 to this Act.
- (5) This section does not apply to any functions under—
  - (a) section 31(4);
  - (b) section 46;
  - (c) section 48(8);
  - (d) section 58(3);
  - [<sup>F55</sup>(dd) section 62A;]
  - (e) section 86(1) or 87(1);
  - (f) section 96;
  - (g) section 109(2) above.
- (6) This section does not apply to the making or revocation of a recognition order in respect of an overseas investment exchange or overseas clearing house or the making of an application to the court under section 12 above in respect of any such exchange or clearing house.
- (7) Any function may be transferred by a delegation order either wholly or in part.
- (8) In the case of a function under section 6 or 72 or a function under section 61 which is exercisable by virtue of subsection (1)(a)(ii) or (iii) of that section, the transfer may be subject to a reservation that it is to be exercisable by the Secretary of State concurrently with the designated agency and any transfer of a function under section 94, 105 or 106 shall be subject to such a reservation.
- [<sup>F56</sup>(9) The Secretary of State shall not make a delegation order transferring any legislative functions unless—
  - (a) the agency has furnished him with a copy of the instruments it proposes to issue or make in the exercise of those functions, and
  - (b) he is satisfied that those instruments will afford investors an adequate level of protection and, in the case of such provisions as are mentioned in Schedule 8 to this Act, comply with the principles set out in that Schedule.

In this subsection “legislative functions” means the functions of issuing or making statements of principle, rules, regulations or codes of practice.]
- (10) The Secretary of State shall also before making a delegation order transferring any functions to a designated agency require it to furnish him with a copy of any guidance intended to have continuing effect which it proposes to issue in writing or other

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legible form and the Secretary of State may take any such guidance into account in determining whether he is satisfied as mentioned in subsection (9)(b) above.

- (11) No delegation order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (12) In this Act references to guidance issued by a designated agency are references to guidance issued or any recommendation made by it which is issued or made to persons generally or to any class of persons, being, in either case, persons who are or may be subject to [<sup>F57</sup> statements of principle, rules, regulations or codes of practice issued or made] by it, or who are or may be recognised or authorised by it, in the exercise of its functions under a delegation order.

#### Textual Amendments

- F55** S. 114(5)(dd) inserted by Companies Act 1989 (c. 40, SIF 27), s. 193(2)
- F56** S. 114(9) substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 Pt. I para. 12(2)
- F57** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 Pt. I para. 12(3)

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

- C149** S. 114: certain functions transferred by S.I. 1987/942, arts. 3, 4, Schs. 1, 2
- C150** S. 114: applied with modifications (25.4.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 154, 155, 168(1); S.I. 1991/878, art. 2, Sch.
- C151** S. 114: applied (1.10.1991) by S.I. 1990/1504 (N.I. 10), art. 91; S.R. 1991/438, art. 2(d).  
s. 114 extended (6.1.1997) by S.I. 1996/2827, reg. 73(1)(2)  
s. 114 extended (1.1.1996) by S.I. 1995/3275, reg. 56(2)

## 115 Resumption of transferred functions. **U.K.**

- (1) The Secretary of State may at the request or with the consent of a designated agency make an order resuming all or any of the functions transferred to the agency by a delegation order.
- (2) The Secretary of State may, in the circumstances mentioned in subsection (3), (4) or (5) below, make an order resuming—
- (a) all the functions transferred to a designated agency by a delegation order; or
  - (b) all, all legislative or all administrative functions transferred to a designated agency by a delegation order so far as relating to investments or investment business of any class.
- (3) An order may be made under subsection (2) above if at any time it appears to the Secretary of State that any of the requirements of Schedule 7 to this Act are not satisfied in the case of the agency.
- (4) An order may be made under subsection (2) above as respects functions relating to any class of investment or investment business if at any time it appears to the Secretary of State that the agency is unable or unwilling to discharge all or any of the transferred functions in respect of all or any investments or investment business falling within that class.
- [<sup>F58</sup>(5) Where the transferred functions consist of or include any legislative functions, an order may be made under subsection (2) above if at any time it appears to the Secretary of



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State that the instruments issued or made by the agency do not satisfy the requirements of section 114(9)(b) above.]

- (6) An order under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament; and no other order shall be made under this section unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (7) In [<sup>F59</sup>this section]—
- (a) “legislative functions” means [<sup>F59</sup>functions of issuing or making statements of principle, rules, regulations or codes of practice];
  - (b) “administrative functions” means functions other than legislative functions; but the resumption of legislative functions shall not deprive a designated agency of any function of prescribing fees to be paid or information to be furnished in connection with administrative functions retained by the agency; and the resumption of administrative functions shall extend to the function of prescribing fees to be paid and information to be furnished in connection with those administrative functions.

#### Textual Amendments

**F58** S. 115(5) substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 Pt. I para. 13(2)

**F59** Words substituted as provided by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 Pt. I para. 13(3)

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

**C152** S. 115 modified (N.I.)(1.10.1991) by S.I. 1990/1504, art. 91; S.R. 1991/438, art.2(d)

S. 115 modified (7.6.1992) by S.I. 1992/1315, art. 6(2).

**C153** S. 115(2) restricted by Companies Act 1989 (c. 40, SIF 27), s. 240(6)

#### 116 Status and exercise of transferred functions. **U.K.**

Schedule 9 to this Act shall have effect as respects the status of a designated agency and the exercise of the functions transferred to it by a delegation order.

#### 117 Reports and accounts. **U.K.**

- (1) A designated agency shall at least once in each year for which the delegation order is in force made a report to the Secretary of State on the discharge of the functions transferred to it by the order and on such other matters as the order may require.
- (2) The Secretary of State shall lay before Parliament copies of each report received by him under this section.
- (3) The Secretary of State may give directions to a designated agency with respect to its accounts and the audit of its accounts; and it shall be the duty of the agency to comply with the directions.
- (4) Subsection (3) above shall not apply to a designated agency which is a company to which [<sup>F60</sup>section 226] of the <sup>M27</sup>Companies Act 1985 applies; but the Secretary of State may require any designated agency (whether or not such a company) to comply with any provisions of that Act which would not otherwise apply to it or direct that any provision of that Act shall apply to the agency with such modifications as are

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specified in the direction; and it shall be the duty of the agency to comply with any such requirement or direction.

- (5) In subsection (4) above the references to the Companies Act 1985 and [F60 section 226] of that Act include references to the corresponding Northern Ireland provisions.

#### Textual Amendments

**F60** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 23, Sch. 10 para. 36(2)

#### Marginal Citations

**M27** 1985 c. 6.

### 118 Transitional and supplementary provisions. U.K.

- (1) A delegation order shall not affect anything previously done in the exercise of a function which is transferred by the order; and any order resuming a function shall not affect anything previously done by the designated agency in the exercise of a function which is resumed.
- (2) A delegation order and an order resuming any functions transferred by a delegation order may contain, or the Secretary of State may by a separate order under this section make, such transitional and other supplementary provisions as he thinks necessary or expedient in connection with the delegation order or the order resuming the functions in question.
- (3) The provisions that may be made under subsection (2) above in connection with a delegation order include, in particular, provisions—
  - (a) for modifying or excluding any provision of this Act in its application to any function transferred by the order;
  - (b) for applying to a designated agency, in connection with any such function, any provision applying to the Secretary of State which is contained in or made under any other enactment;
  - (c) for the transfer of any property, rights or liabilities from the Secretary of State to a designated agency;
  - (d) for the carrying on and completion by a designated agency of anything in process of being done by the Secretary of State when the order takes effect; and
  - (e) for the substitution of a designated agency for the Secretary of State in any instrument, contract or legal proceedings.
- (4) The provisions that may be made under subsection (2) above in connection with an order resuming any functions include, in particular, provisions—
  - (a) for the transfer of any property, rights or liabilities from the agency to the Secretary of State;
  - (b) for the carrying on and completion by the Secretary of State of anything in process of being done by the agency when the order takes effect;
  - (c) for the substitution of the Secretary of State for the agency in any instrument, contract or legal proceedings; and
  - (d) in a case where some functions remain with the agency, for modifying or excluding any provision of this Act in its application to any such functions.

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- (5) In a case where any function of a designated agency is resumed and is to be immediately transferred by a delegation order to another designated agency, the provisions that may be made under subsection (2) above may include provisions for any of the matters mentioned in paragraphs (a) to (c) of subsection (4) above, taking references to the Secretary of State as references to that other agency.
- (6) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Subordinate Legislation Made

- P3** For exercises of this power see the Index to Government Orders.
- P4** [S. 118\(2\)](#): S. 114(1) (with s. 118(2)) power exercised by S.I 1991/200.

### 118 Transitional and supplementary provisions. **U.K.**

- (1) A delegation order shall not affect anything previously done in the exercise of a function which is transferred by the order; and any order resuming a function shall not affect anything previously done by the designated agency in the exercise of a function which is resumed.
- (2) A delegation order and an order resuming any functions transferred by a delegation order may contain, or the Secretary of State may by a separate order under this section make, such transitional and other supplementary provisions as he thinks necessary or expedient in connection with the delegation order or the order resuming the functions in question.
- (3) The provisions that may be made under subsection (2) above in connection with a delegation order include, in particular, provisions—
  - (a) for modifying or excluding any provision of this Act in its application to any function transferred by the order;
  - (b) for applying to a designated agency, in connection with any such function, any provision applying to the Secretary of State which is contained in or made under any other enactment;
  - (c) for the transfer of any property, rights or liabilities from the Secretary of State to a designated agency;
  - (d) for the carrying on and completion by a designated agency of anything in process of being done by the Secretary of State when the order takes effect; and
  - (e) for the substitution of a designated agency for the Secretary of State in any instrument, contract or legal proceedings.
- (4) The provisions that may be made under subsection (2) above in connection with an order resuming any functions include, in particular, provisions—
  - (a) for the transfer of any property, rights or liabilities from the agency to the Secretary of State;
  - (b) for the carrying on and completion by the Secretary of State of anything in process of being done by the agency when the order takes effect;
  - (c) for the substitution of the Secretary of State for the agency in any instrument, contract or legal proceedings; and

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- (d) in a case where some functions remain with the agency, for modifying or excluding any provision of this Act in its application to any such functions.
- (5) In a case where any function of a designated agency is resumed and is to be immediately transferred by a delegation order to another designated agency, the provisions that may be made under subsection (2) above may include provisions for any of the matters mentioned in paragraphs (a) to (c) of subsection (4) above, taking references to the Secretary of State as references to that other agency.
- (6) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## CHAPTER XIV U.K.

### PREVENTION OF RESTRICTIVE PRACTICES

#### *Examination of rules and practices*

#### 119 **Recognised self-regulating organisations, investment exchanges and clearing houses.** U.K.

- (1) The Secretary of State shall not make a recognition order in respect of a self-regulating organisation, investment exchange or clearing house unless he is satisfied that—
  - [<sup>F61</sup>(a) in the case of a self-regulating organisation, the rules and any guidance of which copies are furnished with the application for the order, together with any statements of principle, rules, regulations or codes of practice to which members of the organisation would be subject by virtue of Chapter V of this Part,
  - (b) in the case of an investment exchange, the rules and any guidance of which copies are furnished with the application for the order, together with any arrangements of which particulars are furnished with the application,
  - (c) in the case of a clearing house, the rules and any guidance of which copies are furnished with the application for the order,]

do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition or, if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.
- (2) The powers conferred by subsection (3) below shall be exercisable by the Secretary of State if at any time it appears to him that—
  - [<sup>F62</sup>(a) in the case of a self-regulating organisation—
    - (i) any rules made or guidance issued by the organisation,
    - (ii) any practices of the organisation, or
    - (iii) any practices of persons who are members of, or otherwise subject to the rules made by, the organisation,

together with any statements of principle, rules, regulations or codes of practice to which members of the organisation are subject by virtue of Chapter V of this Part,
  - (b) in the case of a recognised investment exchange—
    - (i) any rules made or guidance issued by the exchange,

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- (ii) any practices of the exchange, or
  - (iii) any practices of persons who are members of, or otherwise subject to the rules made by, the exchange,
- (c) in the case of a recognised clearing house—
- (i) any rules made or guidance issued by the clearing house,
  - (ii) any practices of the clearing house, or
  - (iii) any practices of persons who are members of, or otherwise subject to the rules made by, the clearing house,
- or any clearing arrangements made by the clearing house,]

have, or are intended or likely to have, to a significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is necessary for the protection of investors.

- (3) The powers exercisable under this subsection are—
- (a) to revoke the recognition order of the organisation, exchange or clearing house;
  - (b) to direct it to take specified steps for the purpose of securing that [<sup>F63</sup>its rules, or the] guidance, arrangements or practices in question do not have the effect mentioned in subsection (2) above;
  - (c) to make alterations in [<sup>F64</sup>its rules] for that purpose;

and subsections (2) to (5), (7) and (9) of section 11 above shall have effect in relation to the revocation of a recognition order under this subsection as they have effect in relation to the revocation of such an order under subsection (1) of that section.

- (4) Subsection (3)(c) above does not apply to an overseas investment exchange or overseas clearing house.

- (5) The practices referred to in [<sup>F65</sup>paragraph (a)(ii), (b)(ii) and (c)(ii)] of subsection (2) above are practices of the organisation, exchange or clearing house in its capacity as such, being, in the case of a clearing house, practices in respect of its clearing arrangements; . . . <sup>F66</sup>

- [<sup>F67</sup>(6) The practices referred to in paragraph (a)(iii), (b)(iii) and (c)(iii) of subsection (2) above are—

- (a) in relation to a recognised self-regulating organisation, practices in relation to business in respect of which the persons in question are subject to—
  - (i) the rules of the organisation, or
  - (ii) statements of principle, rules, regulations or codes of practice to which its members are subject by virtue of Chapter V of this Part, and which are required or contemplated by the rules of the organisation or by those statements, rules, regulations or codes, or by guidance issued by the organisation,
- (b) in relation to a recognised investment exchange or clearing house, practices in relation to business in respect of which the persons in question are subject to the rules of the exchange or clearing house, and which are required or contemplated by its rules or guidance,

or which are otherwise attributable to the conduct of the organisation, exchange or clearing house as such.]

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#### Textual Amendments

- F61** S. 119(1)(a)—(c) substituted for (1)(a)(b) by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 14(2)**
- F62** S. 119(2)(a)—(c) substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 14(3)**
- F63** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 14(4)(a)**
- F64** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 14(4)(b)**
- F65** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 14(5)(a)**
- F66** Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 206(1), 212, Sch. 23 para. 14(5)(b), **Sch. 24**
- F67** S. 119(6) inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 14(6)**

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

- C154** S. 119 amended (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **ss. 154, 155, 169(4)**
- C155** S. 119(1)(2) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.34.**  
 s. 119(1)(2) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 32**  
 s. 119(1)(2) amended (1.7.1994) by S.I. 1994/1696, **reg. 62(1)**

### 120 Modification of s. 119 where recognition function is transferred. **U.K.**

- (1) This section applies instead of section 119 above where the function of making or revoking a recognition order in respect of a self-regulating organisation, investment exchange or clearing house is exercisable by a designated agency.
- (2) The designated agency—
  - (a) shall send to the Secretary of State a copy of the rules and of any guidance or arrangements of which copies or particulars are furnished with any application made to the agency for a recognition order together with any other information supplied with or in connection with the application; and
  - (b) shall not make the recognition order without the leave of the Secretary of State;
 and he shall not give leave in any case in which he would (apart from the delegation order) have been precluded by section 119(1) above from making the recognition order.
- (3) A designated agency shall send the Secretary of State a copy of any notice received by it under section 14(6) or 41(5) or (6) above.
- (4) If at any time it appears to the Secretary of State in the case of a recognised self-regulating organisation, recognised investment exchange or recognised clearing house that there are circumstances such that (apart from the delegation order) he would have been able to exercise any of the powers conferred by subsection (3) of section 119 above he may, notwithstanding the delegation order, himself exercise the power conferred by paragraph (a) of that subsection or direct the designated agency to exercise the power conferred by paragraph (b) or (c) of that subsection in such manner as he may specify.

### 121 Designated agencies. **U.K.**

- (1) The Secretary of State shall not make a delegation order transferring any function to a designated agency unless he is satisfied that any <sup>F68</sup>statements of principle, rules,



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regulations, codes of practice] and guidance of which copies are furnished to him under section 114(9) or (10) above do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition or, if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.

(2) The powers conferred by subsection (3) below shall be exercisable by the Secretary of State if at any time it appears to him that—

- (a) any [<sup>F69</sup>statements of principle, rules, regulations or codes of practice issued or made] by a designated agency in the exercise of functions transferred to it by a delegation order or any guidance issued by a designated agency;
- (b) any practices of a designated agency; or
- (c) any practices of persons who are subject to [<sup>F69</sup>statements of principle, rules, regulations or codes of practice issued or made] by it in the exercise of those functions,

have, or are intended or are likely to have, to any significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is necessary for the protection of investors.

(3) The powers exercisable under this subsection are—

- (a) to make an order in respect of the agency under section 115(2) above as if the circumstances were such as are there mentioned; or
- (b) to direct the agency to take specified steps for the purpose of securing that the [<sup>F70</sup>statements of principle, rules, regulations, codes of practice], guidance or practices in question do not have the effect mentioned in subsection (2) above.

(4) The practices referred to in paragraph (b) of subsection (2) above are practices of the designated agency in its capacity as such; and the practices referred to in paragraph (c) of that subsection are practices in relation to business in respect of which the persons in question are subject to any such [<sup>F71</sup>statements of principle, rules, regulations, or codes of practice] as are mentioned in paragraph (a) of that subsection and which are required or contemplated by those [<sup>F71</sup>statements of principle, rules, regulations, or codes of practice] or by any such guidance as is there mentioned or are otherwise attributable to the conduct of the agency in its capacity as such.

#### Textual Amendments

- F68** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 15(2)
- F69** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 15(3)
- F70** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 15(4)
- F71** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 15(5)

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

- C156** S. 121 amended (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 154, 155, 169(4)
  - s. 121 extended (1.1.1996) by S.I. 1995/3275, reg. 32, Sch. 7 para. 33
  - s. 121 amended (1.7.1994) by S.I. 1994/1696, reg. 62(2)
- C157** S. 121(1)(2) amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para.35.

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### *Consultation with Director General of Fair Trading*

## **122 Reports by Director General of Fair Trading. U.K.**

- (1) The Secretary of State shall before deciding—
  - (a) whether to refuse to make, or to refuse leave for the making of, a recognition order in pursuance of section 119(1) or 120(2) above; or
  - (b) whether he is precluded by section 121(1) above from making a delegation order,

send to the Director General of Fair Trading (in this Chapter referred to as “the Director”) a copy of the rules [<sup>F72</sup>statements of principle, regulations and codes of practice] and of any guidance or arrangements which the Secretary of State is required to consider in making that decision together with such other information as the Secretary of State considers will assist the Director in discharging his functions under subsection (2) below.
- (2) The Director shall report to the Secretary of State whether, in his opinion, the rules, [<sup>F73</sup>statements of principle, regulations, codes of practice,] guidance or arrangements of which copies are sent to him under subsection (1) above have, or are intended or likely to have, to any significant extent the effect of restricting, distorting, or preventing competition and, if so, what that effect is likely to be; and in making any such decision as is mentioned in that subsection the Secretary of State shall have regard to the Director’s report.
- (3) The Secretary of State shall send the Director copies of any notice received by him under section 14(6), 41(5) or (6) or 120(3) above or under paragraph 4 of Schedule 9 to this Act together with such other information as the Secretary of State considers will assist the Director in discharging his functions under subsections (4) and (5) below.
- (4) The Director shall keep under review—
  - (a) the [<sup>F74</sup>rules, statements of principle, regulations, codes of practice, guidance and arrangements] mentioned in section 119(2) and 121(2) above; and
  - (b) the matters specified in the notices of which copies are sent to him under subsection (3) above;

and if at any time he is of the opinion that any such [<sup>F75</sup>rules, statements of principle, regulations, codes of practice, guidance, arrangements] or matters, or any such [<sup>F75</sup>rules, statements of principle, regulations, codes of practice, guidance or arrangements] taken together with any such matters, have, or are intended or likely to have, to any significant extent the effect mentioned in subsection (2) above, he shall make a report to the Secretary of State stating his opinion and what that effect is or is likely to be.
- (5) The Director may report to the Secretary of State his opinion that any such matter as is mentioned in subsection (4)(b) above does not in his opinion have, and is not intended or likely to have, to any significant extent the effect mentioned in subsection (2) above.
- (6) The Director may from time to time consider whether any such practices as are mentioned in section 119(2) or 121(2) above have, or are intended or likely to have, to any significant extent the effect mentioned in subsection (2) above and, if so, what that effect is or is likely to be; and if he is of that opinion he shall make a report to the Secretary of State stating his opinion and what the effect is or is likely to be.

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- (7) The Secretary of State shall not exercise his powers under section 119(3), 120(4) or 121(3) above except after receiving and considering a report from the Director under subsection (4) or (6) above.
- (8) The Director may, if he thinks fit, publish any report made by him under this section but shall exclude from a published report, so far as practicable, any matter which relates to the affairs of a particular person (other than the self-regulating organisation, investment exchange, clearing house or designated agency concerned) the publication of which would or might in his opinion seriously and prejudicially affect the interests of that person.

#### Textual Amendments

- F72** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 16(2)
- F73** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 16(3)
- F74** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 16(4)(a)
- F75** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 16(4)(b)

## 123 Investigations by Director General of Fair Trading. **U.K.**

- (1) For the purpose of investigating any matter with a view to its consideration under section 122 above the Director may by a notice in writing—
  - (a) require any person to produce, at a time and place specified in the notice, to the Director or to any person appointed by him for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the investigation; or
  - (b) require any person carrying on any business to furnish to the Director such information as may be specified or described in the notice, and specify the time within which, and the manner and form in which, any such information is to be furnished.
- (2) A person shall not under this section be required to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.
- (3) Subsections [F76(6)] to (8) of section 85 of the <sup>M28</sup>Fair Trading Act 1973 (enforcement provisions) shall apply in relation to a notice under this section as they apply in relation to a notice under subsection (1) of that section [F77but as if, in subsection (7) of that section, for the words from “anyone” to “the Commission” there was substituted “the Director”].

#### Textual Amendments

- F76** “(6)” substituted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 para. 26
- F77** Words inserted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 para. 26

#### Marginal Citations

- M28** 1973 c. 41.

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### *Consequential exemptions from competition law*

#### **124 The Fair Trading Act 1973. U.K.**

- (1) For the purpose of determining whether a monopoly situation within the meaning of the Fair Trading Act 1973 exists by reason of the circumstances mentioned in section 7(1)(c) of that Act, no account shall be taken of—
  - (a) the rules made or guidance issued by a recognised self-regulating organisation, recognised investment exchange or recognised clearing house or any conduct constituting such a practice as is mentioned in section 119(2) above;
  - (b) any clearing arrangements or any conduct required or contemplated by any such arrangements; or
  - (c) the <sup>F78</sup>statements of principle, rules, regulations, codes of practice or guidance issued or made] by a designated agency in the exercise of functions transferred to it by a delegation order or any conduct constituting such a practice as is mentioned in section 121(2) above.
- (2) Where a recognition order is revoked there shall be disregarded for the purpose mentioned in subsection (1) above any such conduct as is mentioned in that subsection which occurred while the order was in force.
- (3) Where on a monopoly reference under section 50 or 51 of the said Act of 1973 falling within section 49 of that Act the Monopolies and Mergers Commission find that a monopoly situation within the meaning of that Act exists and—
  - (a) that the person (or, if more than one, any of the persons) in whose favour it exists is subject to the rules of a recognised self-regulating organisation, recognised investment exchange or recognised clearing house or to the <sup>F79</sup>statements of principle, rules, regulations or codes of practice issued or made] by a designated agency in the exercise of functions transferred to it by a delegation order; or
  - (b) that any such person's conduct in carrying on any business to which those <sup>F79</sup>statements of principle, rules, regulations or codes of practice] relate is the subject of guidance issued by such an organisation, exchange, clearing house or agency; or
  - (c) that any such person is a party to any clearing arrangements; or
  - (d) that the person (or, if more than one, any of the persons) in whose favour the monopoly situation exists is such an organisation, exchange or clearing house as is mentioned in paragraph (a) above or a designated agency,

the Commission, in making their report on that reference, shall exclude from their consideration the question whether the <sup>F79</sup>statements of principle, rules, regulations, codes of practice], guidance or clearing arrangements or any acts or omissions of such an organisation, exchange, clearing house or agency as is mentioned in paragraph (d) above in its capacity as such operate, or may be expected to operate, against the public interest; and section 54(3) of that Act shall have effect subject to the provisions of this subsection.

#### **Textual Amendments**

**F78** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 17\(2\)](#)

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**F79** Words substituted as provided by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 17\(3\)](#)  
**(a)**

## 125 The Restrictive Trade Practices Act 1976. **U.K.**

- (1) The <sup>M29</sup>Restrictive Trade Practices Act 1976 shall not apply to any agreement for the constitution of a recognised self-regulating organisation, recognised investment exchange or recognised clearing house, including any term deemed to be contained in it by virtue of section 8(2) or 16(3) of that Act.
- (2) The said Act of 1976 shall not apply to any agreement the parties to which consist of or include—
  - (a) any such organisation, exchange or clearing house as is mentioned in subsection (1) above; or
  - (b) a person who is subject to the rules of any such organisation, exchange or clearing house or to the rules or regulations made by a designated agency in the exercise of functions transferred to it by a delegation order,  
by reason of any term the inclusion of which in the agreement is required or contemplated by the rules, regulations or guidance of that organisation, exchange, clearing house or agency.
- (3) The said Act of 1976 shall not apply to any clearing arrangements or to any agreement between a recognised investment exchange and a recognised clearing house by reason of any term the inclusion of which in the agreement is required or contemplated by any clearing arrangements.
- (4) Where the recognition order in respect of a self-regulating organisation, investment exchange or clearing house is revoked the foregoing provisions shall have effect as if the organisation, exchange or clearing house had continued to be recognised until the end of the period of six months beginning with the day on which the revocation takes effect.
- (5) Where an agreement ceases by virtue of this section to be subject to registration—
  - (a) the Director shall remove from the register maintained by him under the said Act of 1976 any particulars which are entered or filed in that register in respect of the agreement; and
  - (b) any proceedings in respect of the agreement which are pending before the Restrictive Practices Court shall be discontinued.
- (6) Where an agreement which has been exempt from registration by virtue of this section ceases to be exempt in consequence of the revocation of a recognition order, the time within which particulars of the agreement are to be furnished in accordance with section 24 of and Schedule 2 to the said Act of 1976 shall be the period of one month beginning with the day on which the agreement ceased to be exempt from registration.
- (7) Where in the case of an agreement registered under the said Act of 1976 a term ceases to fall within subsection (2) or (3) above in consequence of the revocation of a recognition order and particulars of that term have not previously been furnished to the Director under <sup>F80</sup>. . . that Act, those particulars shall be furnished to him within the period of one month beginning with the day on which the term ceased to fall within that subsection.
- (8) The <sup>M30</sup>Restrictive Trade Practices (Stock Exchange) Act 1984 shall cease to have effect.

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#### Textual Amendments

**F80** Words in s. 125(7) repealed (3.1.1995) by 1994 c. 40, ss. 39, 81, 82(2), Sch. 11 para. 8, Sch. 17

#### Marginal Citations

**M29** 1976 c. 34.

**M30** 1984 c. 2.

## 126 The Competition Act 1980. **U.K.**

- (1) No course of conduct constituting any such practice as is mentioned in section 119(2) or 121(2) above shall constitute an anti-competitive practice for the purposes of the <sup>M31</sup>Competition Act 1980.
- (2) Where a recognition order or delegation order is revoked, there shall not be treated as an anti-competitive practice for the purposes of that Act any such course of conduct as is mentioned in subsection (1) above which occurred while the order was in force.

#### Marginal Citations

**M31** 1980 c. 21.

### *Recognised professional bodies*

## 127 Modification of Restrictive Trade Practices Act 1976 in relation to recognised professional bodies. **U.K.**

- (1) This section applies to—
  - (a) any agreement for the constitution of a recognised professional body, including any term deemed to be contained in it by virtue of section 16(3) of the <sup>M32</sup>Restrictive Trade Practices Act 1976; and
  - (b) any other agreement—
    - (i) the parties to which consist of or include such a body, a person certified by such a body or a member of such a body; and
    - (ii) to which that Act applies by virtue of any term the inclusion of which in the agreement is required or contemplated by rules or guidance of that body relating to the carrying on of investment business by persons certified by it.
- (2) If it appears to the Secretary of State that the restrictions in an agreement to which this section applies—
  - (a) do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or
  - (b) if all or any of them have, or are intended or likely to have, that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors,

he may give a direction to the Director requiring him not to make an application to the Restrictive Practices Court under Part I of the said Act of 1976 in respect of the agreement.



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- (3) If it appears to the Secretary of State that one or more (but not all) of the restrictions in an agreement to which this section applies—
- (a) do not have, and are not intended or likely to have, to any significant extent the effect mentioned in subsection (2) above; or
  - (b) if they have, or are intended or likely to have, that effect to any significant extent that the effect is not greater than is necessary for the protection of investors,
- he may make a declaration to that effect and give notice of it to the Director and the Restrictive Practices Court.
- (4) The Restrictive Practices Court shall not in any proceedings begun by an application made after notice has been given to it of a declaration under this section make any finding or exercise any power under Part I of the said Act of 1976 in relation to a restriction in respect of which the declaration has effect.
- (5) The Director shall not make any application to the Restrictive Practices Court under Part I of the said Act of 1976 in respect of any agreement to which this section applies unless—
- (a) he has notified the Secretary of State of his intention to do so; and
  - (b) the Secretary of State has either notified him that he does not intend to give a direction or make a declaration under this section or has given him notice of a declaration in respect of it;
- and where the Director proposes to make any such application he shall furnish the Secretary of State with particulars of the agreement and the restrictions by virtue of which the said Act of 1976 applies to it and such other information as he considers will assist the Secretary of State in deciding whether to exercise his powers under this section or as the Secretary of State may request.
- (6) The Secretary of State may—
- (a) revoke a direction or declaration under this section;
  - (b) vary any such declaration; or
  - (c) give a direction or make a declaration notwithstanding a previous notification to the Director that he did not intend to give a direction or make a declaration,
- if he is satisfied that there has been a material change of circumstances such that the grounds for the direction or declaration have ceased to exist, that there are grounds for a different declaration or that there are grounds for giving a direction or making a declaration, as the case may be.
- (7) The Secretary of State shall give notice to the Director of the revocation of a direction and to the Director and the Restrictive Practices Court of the revocation or variation of a declaration; and no such variation shall have effect so as to restrict the powers of the Court in any proceedings begun by an application already made by the Director.
- (8) A direction or declaration under this section shall cease to have effect if the agreement in question ceases to be one to which this section applies.
- (9) This section applies to information provisions as it applies to restrictions.

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**Marginal Citations**

**M32** 1976 c. 34.

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### *Supplemental*

#### 128 **Supplementary provisions.** **U.K.**

- (1) Before the Secretary of State exercises a power under section 119(3)(b) or (c) above, his power to refuse leave under section 120(2) above or his power to give a direction under section 120(4) above in respect of a self-regulating organisation, investment exchange or clearing house, or his power under section 121(3)(b) above in respect of a designated agency, he shall—
  - (a) give written notice of his intention to do so to the organisation, exchange, clearing house or agency and take such steps (whether by publication or otherwise) as he thinks appropriate for bringing the notice to the attention of any other person who in his opinion is likely to be affected by the exercise of the power; and
  - (b) have regard to any representation made within such time as he considers reasonable by the organisation, exchange, clearing house or agency or by any such other person.
- (2) A notice under subsection (1) above shall give particulars of the manner in which the Secretary of State proposes to exercise the power in question and state the reasons for which he proposes to act; and the statement of reasons may include matters contained in any report received by him under section 122 above.
- (3) Any direction given under this Chapter 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 <sup>M33</sup> Court of Session Act 1868.
- (4) The fact that any rules or regulations made by a recognised self-regulating organisation, investment exchange or clearing house or by a designated agency have been altered by or pursuant to a direction given by the Secretary of State under this Chapter shall not preclude their subsequent alteration or revocation by that organisation, exchange, clearing house or agency.
- (5) In determining under this Chapter whether any guidance has, or is likely to have, any particular effect the Secretary of State and the Director may assume that the persons to whom it is addressed will act in conformity with it.

#### **Marginal Citations**

**M33** 1868 c. 100.

## [<sup>F81</sup>CHAPTER XV **U.K.**

### RELATIONS WITH OTHER REGULATORY AUTHORITIES]

#### **Textual Amendments**

**F81** Ch. XV (ss. 128A, 128B, 128C) inserted by [Companies Act 1989 \(c.40, SIF 27\)](#), s. 196

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## 128A Relevance of other controls. **U.K.**

In determining—

- (a) in relation to a self-regulating organisation, whether the requirements of Schedule 2 are met, or
- (b) in relation to a professional body, whether the requirements of Schedule 3 are met,

the Secretary of State shall take into account the effect of any other controls to which members of the organisation or body are subject.

### Modifications etc. (not altering text)

C158 S. 128A: functions transferred by S.I. 1990/354, art. 4(2)(b)

## [<sup>F82</sup>128B Relevance of information given and action taken by other regulatory authorities. **U.K.**

- (1) The following provisions apply in the case of—
  - (a) a person whose principal place of business is in a country or territory outside the United Kingdom, or
  - (b) a person whose principal business is other than investment business;and in relation to such a person “the relevant regulatory authority” means the appropriate regulatory authority in that country or territory or, as the case may be, in relation to his principal business.
- (2) The Secretary of State may regard himself as satisfied with respect to any matter relevant for the purposes of this Part if—
  - (a) the relevant regulatory authority informs him that it is satisfied with respect to that matter, and
  - (b) he is satisfied as to the nature and scope of the supervision exercised by that authority.
- (3) In making any decision with respect to the exercise of his powers under this Part in relation to any such person, the Secretary of State may take into account whether the relevant regulatory authority has exercised, or proposes to exercise, its powers in relation to that person.
- (4) The Secretary of State may enter into such arrangements with other regulatory authorities as he thinks fit for the purposes of this section.
- (5) Where any functions under this Part have been transferred to a designated agency, nothing in this section shall be construed as affecting the responsibility of the Secretary of State for the discharge of Community obligations or other international obligations of the United Kingdom.]

### Textual Amendments

F82 Ch. XV (ss. 128A, 128B, 128C) inserted by Companies Act 1989 (c.40, SIF 27), s. 196

### Modifications etc. (not altering text)

C159 S. 128B: certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, Sch. 2 para.5.

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**C160 S. 128B(1)–(4):** certain functions transferred by S.I. 1990/354, **art. 4(3)(c)**

**[<sup>F83</sup>128C Enforcement in support of overseas regulatory authority. U.K.]**

- (1) The Secretary of State may exercise his disciplinary powers or powers of intervention at the request of, or for the purpose of assisting, an overseas regulatory authority.
- (2) The disciplinary powers of the Secretary of State means his powers—
  - (a) to withdraw or suspend authorisation under section 28 or to terminate or suspend authorisation under section 33,
  - (b) to give a disqualification direction under section 59,
  - (c) to make a public statement under section 60, or
  - (d) to apply for an injunction, interdict or other order under section 61(1);
 and the reference to his powers of intervention is to the powers conferred by Chapter VI of this Part.
- (3) An “overseas regulatory authority” means an authority in a country or territory outside the United Kingdom which exercises—
  - (a) any function corresponding to—
    - (i) a function of the Secretary of State under this Act, the Insurance Companies Act 1982 or the Companies Act 1985,
    - (ii) a function under this Act of a designated agency, transferee body or competent authority, or
    - (iii) a function of the Bank of England under the Banking Act 1987, or
  - (b) any functions in connection with the investigation of, or the enforcement of rules (whether or not having the force of law) relating to, conduct of the kind prohibited by the Company Securities (Insider Dealing) Act 1985, or
  - (c) any function prescribed for the purposes of this subsection, being a function which in the opinion of the Secretary of State relates to companies or financial services.
- (4) In deciding whether to exercise those powers the Secretary of State may take into account, in particular—
  - (a) whether corresponding assistance would be given in that country or territory to an authority exercising regulatory functions in the United Kingdom;
  - (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
  - (c) the seriousness of the case and its importance to persons in the United Kingdom;
  - (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (5) The Secretary of State may decline to exercise those powers unless the overseas regulatory authority undertakes to make such contribution towards the cost of their exercise as the Secretary of State considers appropriate.
- (6) The reference in subsection (3)(c) to financial services includes, in particular, investment business, insurance and banking.]

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### Textual Amendments

**F83** Ch. XV (ss. 128A, 128B, 128C) inserted by [Companies Act 1989 \(c.40, SIF 27\)](#), [s. 196](#)

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### Modifications etc. (not altering text)

**C161** S. 128C: certain functions transferred by SI 1990/354, art. 4(3)(d)

**C162** S. 128C amended (1.1.1993) by S.I. 1992/3218, reg. 55, [Sch. 9 para.36](#).

**C163** S. 128C(1)(4)(5): certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, [Sch. 2 para.5](#).

**C164** S. 128C(1) amended (1.1.1993) by S.I. 1992/3218, reg. 55, [Sch. 9 para.36](#).

**Status:**

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**Changes to legislation:**

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