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# Financial Services Act 1986 (Repealed)

## 1986 CHAPTER 60

### PART I

#### REGULATION OF INVESTMENT BUSINESS

### CHAPTER III

#### AUTHORISED PERSONS

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

**C1** 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.**

- (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.

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

**C2** [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\(1\)](#)

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

- (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.**

- (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.
- (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)**

**C3** 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.**

- (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

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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.

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

- C4 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.

- (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

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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.
- (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)**

- C5 S. 11 amended (14.6.2000) by 2000 c. 8, ss. 431(1), 432(2), **Sch. 21 para. 1(3)(a)(6)**
- C6 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)**
- C7 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)**
- C8 S. 11(2)-(9) applied (with modifications) (19.12.1995) by S.I. 1995/3272, **reg. 7(2)**

## 12 Compliance orders.

- (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,

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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)**

- C9** S. 12 applied (25.4.1991) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 154, 155, 169(2)**
- C10** S. 12: certain functions transferred by [S.I. 1990/354](#), **art. 4(5)**
- C11** S. 12 amended (14.6.2000) by [2000 c. 8](#), **ss. 431(1), 432(2)**, [Sch. 21 para. 1\(3\)\(b\)\(6\)](#)
- C12** 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.**

(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
- (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.

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#### **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)**

- C13** S. 13 amended (14.6.2000) by [2000 c. 8](#), ss. 431(1), 432(2), **Sch. 21 para. 1(4)**
- C14** 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.**

- (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.
- (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.**

- (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.

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- (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.

- (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 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.

- (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.

- (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.

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- (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.**

- (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.

## **20 Compliance orders.**

- (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.**

- (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,



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

### *Insurance companies*

## **22 Authorised insurers.**

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.

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

**C15** S. 22 amended (1.7.1994) by S.I. 1994/1696, reg. 57

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#### **Marginal Citations**

**M1** 1982 c. 50.

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### *Friendly societies*

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

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. I 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.**

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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#### *[ Investment companies with variable capital]*

#### **24A** <sup>F6</sup> **Investment companies with variable capital**

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](#)

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### *Persons authorised by the Secretary of State*

## **25 Authorisation by Secretary of State.**

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.**

- (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.
- (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)**

**C16** 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**

**C17** S. 26(2)(5) applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg. 95(2)**.

## **27 Grant and refusal of authorisation.**

- (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.

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- (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 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.

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

- C18** 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.**

- (1) The Secretary of State may at any time withdraw or suspend any authorisation granted by him if it appears to him—

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- (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.

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

- C19** 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)**.
- C20** 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**
- C21** 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.**

- (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,

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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)**

- C22** 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.**

- (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 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.

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### *Persons authorised in other member States*

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

- (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 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)**

- C23** 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.**

- (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.

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- (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)**

- C24** 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.**

- (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 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.



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- (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)**

- C25** 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).
- C26** 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.**

- (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.
- (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—

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- (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.

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

**C27** 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)**.

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