



# Financial Services Act 1986

## 1986 CHAPTER 60

### PART I

#### REGULATION OF INVESTMENT BUSINESS

#### CHAPTER VIII

##### COLLECTIVE INVESTMENT SCHEMES

##### *Powers of intervention*

#### 91 Directions

(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.

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*Status: This is the original version (as it was originally enacted).*

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- (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in relation to a scheme in the case of which the order declaring it to be an authorised unit trust scheme has been revoked if a direction under that subsection was already in force at the time of revocation.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, 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.

## **92 Notice of directions**

- (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.

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*Status: This is the original version (as it was originally enacted).*

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- (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 reasons 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**

- (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.
- (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.