



Financial Services Act 1986 (Repealed)

1986 CHAPTER 60

PART I

REGULATION OF INVESTMENT BUSINESS

CHAPTER XIV

PREVENTION OF RESTRICTIVE PRACTICES

Examination of rules and practices

119 Recognised self-regulating organisations, investment exchanges and clearing houses.

- (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—
- [^{F1}(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.

Status: Point in time view as at 01/05/2001.

Changes to legislation: Financial Services Act 1986 (Repealed), Chapter XIV is up to date with all changes known to be in force on or before 09 June 2024.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)

- (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—
- [^{F2}(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,
 - (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 [^{F3}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 [^{F4}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 [^{F5}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; . . . ^{F6}
- [^{F7}(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

Status: Point in time view as at 01/05/2001.

Changes to legislation: Financial Services Act 1986 (Repealed), Chapter XIV is up to date with all changes known to be in force on or before 09 June 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)

- (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.]

Textual Amendments

- F1** 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)**
- F2** S. 119(2)(a)—(c) substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 14(3)**
- F3** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 14(4)(a)**
- F4** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 14(4)(b)**
- F5** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 14(5)(a)**
- F6** Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 206(1), 212, Sch. 23 para. 14(5)(b), **Sch. 24**
- F7** 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)

- C1** S. 119 amended (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **ss. 154, 155, 169(4)**
- C2** 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.

- (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.

Status: Point in time view as at 01/05/2001.

Changes to legislation: Financial Services Act 1986 (Repealed), Chapter XIV is up to date with all changes known to be in force on or before 09 June 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)

- (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.

- (1) The Secretary of State shall not make a delegation order transferring any function to a designated agency unless he is satisfied that any [^{F8}statements of principle, rules, 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 [^{F9}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 [^{F9}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 [^{F10}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 [^{F11}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 [^{F11}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

F8 Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 15\(2\)](#)

F9 Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 15\(3\)](#)

Status: Point in time view as at 01/05/2001.

Changes to legislation: Financial Services Act 1986 (Repealed), Chapter XIV is up to date with all changes known to be in force on or before 09 June 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)

F10 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 15(4)

F11 Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 15(5)

Modifications etc. (not altering text)

C3 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)

C4 S. 121(1)(2) amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para.35.

Consultation with Director General of Fair Trading

122 Reports by Director General of Fair Trading.

- (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 [^{F12}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, [^{F13}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 [^{F14}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 [^{F15}rules, statements of principle, regulations, codes of practice, guidance, arrangements] or matters, or any such [^{F15}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.

Status: Point in time view as at 01/05/2001.

Changes to legislation: Financial Services Act 1986 (Repealed), Chapter XIV is up to date with all changes known to be in force on or before 09 June 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)

- (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.
- (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

- F12** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 16\(2\)](#)
- F13** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 16\(3\)](#)
- F14** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 16\(4\)\(a\)](#)
- F15** 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.

- (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 [F16(6)] to (8) of section 85 of the ^{M1}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 [F17] but as if, in subsection (7) of that

Status: Point in time view as at 01/05/2001.

Changes to legislation: Financial Services Act 1986 (Repealed), Chapter XIV is up to date with all changes known to be in force on or before 09 June 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)

section, for the words from “anyone” to “the Commission” there was substituted “the Director”].

Textual Amendments

F16 “(6)” substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 para. 26](#)

F17 Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 para. 26](#)

Marginal Citations

M1 [1973 c. 41](#).

Consequential exemptions from competition law

124 The Fair Trading Act 1973.

- (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 [^{F18}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 [^{F19}the Competition 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 [^{F20}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 [^{F20}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,

Status: Point in time view as at 01/05/2001.

Changes to legislation: Financial Services Act 1986 (Repealed), Chapter XIV is up to date with all changes known to be in force on or before 09 June 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)

the Commission, in making their report on that reference, shall exclude from their consideration the question whether the [^{F20}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

- F18** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), **Sch. 23 para. 17(2)**
- F19** Words in [s. 124\(3\)](#) substituted (1.4.1999) by [S.I. 1999/506](#), **art. 21**
- F20** Words substituted as provided by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), **Sch. 23 para. 17(3)**
(a)

[^{F21}125 The Competition Act 1998: Chapter I prohibition.

- (1) The Chapter I prohibition does not apply to an agreement for the constitution of—
- (a) a recognised self-regulating organisation,
 - (b) a recognised investment exchange, or
 - (c) a recognised clearing house,
- to the extent to which the agreement relates to the regulating provisions of the body concerned.
- (2) Subject to subsection (3) below, the Chapter I prohibition does not apply to an agreement for the constitution of—
- (a) a self-regulating organisation,
 - (b) an investment exchange, or
 - (c) a clearing house,
- to the extent to which the agreement relates to the regulating provisions of the body concerned.
- (3) The exclusion provided by subsection (2) above applies only if—
- (a) the body has applied for a recognition order in accordance with the provisions of this Act; and
 - (b) the application has not been determined.
- (4) The Chapter I prohibition does not apply to a decision made by—
- (a) a recognised self-regulating organisation,
 - (b) a recognised investment exchange, or
 - (c) a recognised clearing house,
- to the extent to which the decision relates to any of that body's regulating provisions or specified practices.
- (5) The Chapter I prohibition does not apply to the specified practices of—
- (a) a recognised self-regulating organisation, a recognised investment exchange or a recognised clearing house; or
 - (b) a person who is subject to—
 - (i) the rules of one of those bodies, or

Status: Point in time view as at 01/05/2001.

Changes to legislation: Financial Services Act 1986 (Repealed), Chapter XIV is up to date with all changes known to be in force on or before 09 June 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)

- (ii) the statements of principle, rules, regulations or codes of practice made by a designated agency in the exercise of functions transferred to it by a delegation order.
- (6) The Chapter I prohibition does not apply to any agreement the parties to which consist of or include—
 - (a) a recognised self-regulating organisation, a recognised investment exchange or a recognised clearing house; or
 - (b) a person who is subject to—
 - (i) the rules of one of those bodies, or
 - (ii) the statements of principle, rules, regulations or codes of practice made by a designated agency in the exercise of functions transferred to it by a delegation order,to the extent to which the agreement consists of provisions the inclusion of which is required or contemplated by any of the body’s regulating provisions or specified practices or by the statements of principle, rules, regulations or codes of practice of the agency.
- (7) The Chapter I prohibition does not apply to—
 - (a) any clearing arrangements; or
 - (b) any agreement between a recognised investment exchange and a recognised clearing house, to the extent to which the agreement consists of provisions the inclusion of which in the agreement is required or contemplated by any clearing arrangements.
- (8) If the recognition order in respect of a body of the kind mentioned in subsection (1) (a), (b) or (c) above is revoked, subsections (1) and (4) to (7) above are to have effect as if that body had continued to be recognised until the end of the period of six months beginning with the day on which the revocation took effect.
- (9) In this section—
 - “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;
 - “regulating provisions” means—
 - (a) in relation to a self-regulating organisation, any rules made, or guidance issued, by the organisation;
 - (b) in relation to an investment exchange, any rules made, or guidance issued, by the exchange;
 - (c) in relation to a clearing house, any rules made, or guidance issued, by the clearing house;
 - “specified practices” means—
 - (a) in the case of a recognised self-regulating organisation, the practices mentioned in section 119(2)(a)(ii) and (iii) above (read with section 119(5) and (6)(a));
 - (b) in the case of a recognised investment exchange, the practices mentioned in section 119(2)(b)(ii) and (iii) above (read with section 119(5) and (6)(b));
 - (c) in the case of a recognised clearing house, the practices mentioned in section 119(2)(c)(ii) and (iii) above (read with section 119(5) and (6)(b));
 - (d) in the case of a person who is subject to the statements of principle, rules, regulations or codes of practice issued or made by a designated

Status: Point in time view as at 01/05/2001.

Changes to legislation: Financial Services Act 1986 (Repealed), Chapter XIV is up to date with all changes known to be in force on or before 09 June 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)

agency in the exercise of functions transferred to it by a delegation order, the practices mentioned in section 121(2)(c) above (read with section 121(4));

and expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.]

Textual Amendments

F21 S. 125 substituted (1.3.2000) by 1998 c. 41, s. 3(1)(b)(2), **Sch. 2**, para. 1(2) (with s. 73); S.I. 2000/344, art. 2, **Sch.**

[^{F22}126 The Competition Act 1980.

- (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 ^{M2}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.]

Textual Amendments

F22 S. 126 repealed (1.3.2000) by 1998 c. 41, ss. 3(1)(b), 74(3), 76(3), **Sch. 2 Pt. I** para. 1(3), **Sch. 14 Pt. I** (with s. 73); S.I. 2000/344, art. 2, **Sch.**

Marginal Citations

M2 1980 c. 21.

Recognised professional bodies

[^{F23}127 Application of Competition Act 1998 in relation to recognised professional bodies: Chapter 2001I prohibition.

- (1) This section applies to—
 - (a) any agreement for the constitution of a recognised professional body to the extent to which it relates to the rules or guidance of that body relating to the carrying on of investment business by persons certified by it (“investment business rules”); and
 - (b) any other agreement, the parties to which consist of or include—
 - (i) a recognised professional body,
 - (ii) a person certified by such a body, or
 - (iii) a member of such a body,
 and which contains a provision required or contemplated by that body’s investment business rules.
- (2) If it appears to the Treasury, in relation to some or all of the provisions of an agreement to which this section applies—

Status: Point in time view as at 01/05/2001.

Changes to legislation: Financial Services Act 1986 (Repealed), Chapter XIV is up to date with all changes known to be in force on or before 09 June 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)

- (a) that the provisions in question 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) that the effect of restricting, distorting or preventing competition which the provisions in question do have, or are intended or are likely to have, is not greater than is necessary for the protection of investors,the Treasury may make a declaration to that effect.
- (3) If the Treasury make a declaration under this section, the Chapter I prohibition does not apply to the agreement to the extent to which the agreement consists of provisions to which the declaration relates.
- (4) If the Treasury are satisfied that there has been a material change of circumstances, they may—
 - (a) revoke a declaration made under this section, if they consider that the grounds on which it was made no longer exist;
 - (b) vary such a declaration, if they consider that there are grounds for making a different declaration; or
 - (c) make a declaration even though they have notified the Director of their intention not to do so.
- (5) If the Treasury make, vary or revoke a declaration under this section they must notify the Director of their decision.
- (6) If the Director proposes to exercise any Chapter III powers in respect of any provisions of an agreement to which this section applies, he must—
 - (a) notify the Treasury of his intention to do so; and
 - (b) give the Treasury particulars of the agreement and such other information—
 - (i) as he considers will assist the Treasury to decide whether to exercise their powers under this section; or
 - (ii) as the Treasury may request.
- (7) The Director may not exercise his Chapter III powers in respect of any provisions of an agreement to which this section applies, unless the Treasury—
 - (a) have notified him that they have not made a declaration in respect of those provisions under this section and that they do not intend to make such a declaration; or
 - (b) have revoked a declaration under this section and a period of six months beginning with the date on which the revocation took effect has expired.
- (8) A declaration under this section ceases to have effect if the agreement to which it relates ceases to be one to which this section applies.
- (9) In this section—

“the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,

“Chapter III powers” means the powers given to the Director by Chapter III of Part I of that Act so far as they relate to the Chapter I prohibition, and expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (10) In this section references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice.

Status: Point in time view as at 01/05/2001.

Changes to legislation: Financial Services Act 1986 (Repealed), Chapter XIV is up to date with all changes known to be in force on or before 09 June 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)

- (11) In the application of this section to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.]

Textual Amendments

F23 S. 127 substituted (1.3.2000) by 1998 c. 41, ss. 3(1), 74(1), **Sch. 2 Pt. I para. 1(4)** (with s. 73); with S.I. 2000/344, art. 2, **Sch.**

Supplemental

128 Supplementary provisions.

- (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 ^{M3}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

M3 1868 c. 100.

Status:

Point in time view as at 01/05/2001.

Changes to legislation:

Financial Services Act 1986 (Repealed), Chapter XIV is up to date with all changes known to be in force on or before 09 June 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.