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Financial Services Act 1986 (Repealed)

1986 CHAPTER 60

PART VII

INSIDER DEALING

F1 173

Textual Amendments

F1 S. 173 repealed (1.3.1994) by 1993 c. 36, ss. 78(3), 79(14), **Sch. 6 Pt.I**; S.I. 1994/242, art. 2, **Sch. Appendix**

F2 174

Textual Amendments

F2 S. 174 repealed (1.3.1994) by 1993 c. 36, ss. 78(3), 79(14), **Sch. 6 Pt.I**; S.I. 1994/242, art. 2, **Sch. Appendix**

F3 175

Textual Amendments

F3 S. 175 repealed (1.3.1994) by 1993 c. 36, ss. 78(3), 79(14), **Sch. 6 Pt.I**; S.I. 1994/242, art. 2, **Sch. Appendix**

F4 176

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Textual Amendments

- F4** S. 176 repealed (1.3.1994) by 1993 c. 36, ss. 78(3), 79(14), **Sch. 6 Pt.I**; S.I. 1994/242, art. 2, **Sch.** Appendix

177 Investigations into insider dealing.

- (1) If it appears to the Secretary of State that there are circumstances suggesting that [^{F5}an offence under Part V of the Criminal Justice Act 1993 (insider dealing) may have been committed], he may appoint one or more competent inspectors to carry out such investigations as are requisite to establish whether or not any such [^{F5}offence has been committed] and to report the results of their investigations to him.
- (2) The appointment under this section of an inspector may limit the period during which he is to continue his investigation or confine it to particular matters.
- [^{F6}(2A) At any time during the investigation the Secretary of State may vary the appointment by limiting or extending the period during which the inspector is to continue his investigation or by confining the investigation to particular matters.]
- (3) If the inspectors consider that any person is or may be able to give information concerning any such [^{F7}offence] they may require that person—
 - (a) to produce to them any documents in his possession or under his control [^{F8}which appear to them to be relevant to the investigation]
 - (b) to attend before them; and
 - (c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give;
 and it shall be the duty of that person to comply with that requirement.
- (4) An inspector may examine on oath any person who he considers is or may be able to give information concerning any such [^{F9}offence], and may administer an oath accordingly.
- (5) The inspectors shall make such interim reports to the Secretary of State as they think fit or he may direct and on the conclusion of the investigation they shall make a final report to him.
- [^{F10}(5A) If the Secretary of State thinks fit, he may direct the inspector to take no further steps in the investigation or to take only such further steps as are specified in the direction; and where an investigation is the subject of such a direction, the inspectors shall make a final report to the Secretary of State only where the Secretary of State directs them to do so.]
- (6) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.
- (7) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.

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- [^{F11}(8) A person shall not under this section be required to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—
- (a) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
 - (b) the making of the requirement was authorised by the Secretary of State.]
- (9) Where a person claims a lien on a document its production under this section shall be without prejudice to his lien.
- (10) In this section “document” includes information recorded in any form; and in relation to information recorded otherwise than in legible form [^{F12}the power to require its production includes power to require the production of] a copy of the information in legible form.
- [^{F13}(11) A person who is convicted on a prosecution instituted as a result of an investigation under this section may in the same proceedings be ordered to pay the expenses of the investigation to such an extent as may be specified in the order.

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

Textual Amendments

- F5** Words in s. 177(1) substituted (1.3.1994) by 1993 c. 36, s. 78(3), **Sch. 5 para. 9(1)**; S.I. 1994/242, art. 2, **Sch.**
- F6** S. 177(2A) inserted by **Companies Act 1989 (c. 40, SIF 27), s. 74(2)**
- F7** Word in s. 177(3) substituted (1.3.1994) by 1993 c. 36, s. 78(3), **Sch. 5 para. 9(2)(a)**; S.I. 1994/242, art. 2, **Sch.**
- F8** Words in s. 177(3)(a) substituted (1.3.1994) by 1993 c. 36, s. 78(3), **Sch. 5 para. 9(2)(b)**; 1994/242, art. 2, **Sch.**
- F9** Word in s. 177(4) substituted (1.3.1994) by 1993 c. 36, s. 78(3), **Sch. 5 para. 9(3)**; 1994/242, art. 2, **Sch.**
- F10** S. 177(5A) inserted by **Companies Act 1989 (c. 40, SIF 27), s. 74(3)**
- F11** S. 177(8) substituted by **Companies Act 1989 (c. 40, SIF 27), s. 74(4)**
- F12** Words substituted by **Companies Act 1989 (c. 40, SIF 27), s. 74(5)**
- F13** S. 177(11) inserted by **Companies Act 1989 (c. 40, SIF 27), s. 74(6)**

178 Penalties for failure to co-operate with s. 177 investigations.

- (1) If any person—
- (a) refuses to comply with any request under subsection (3) of section 177 above; or
 - (b) refuses to answer any question put to him by the inspectors appointed under that section with respect to any matter relevant for establishing whether or not any suspected [^{F14}offence has been committed],
- the inspectors may certify that fact in writing to the court and the court may inquire into the case.
- (2) If, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement which may be offered in defence, the court is satisfied that

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he did without reasonable excuse refuse to comply with such a request or answer any such question, the court may—

- (a) punish him in like manner as if he had been guilty of contempt of the court; or
- (b) direct that the Secretary of State may exercise his powers under this section in respect of him;

and the court may give a direction under paragraph (b) above notwithstanding that the offender is not within the jurisdiction of the court if the court is satisfied that he was notified of his right to appear before the court and of the powers available under this section.

- (3) Where the court gives a direction under subsection (2)(b) above in respect of an authorised person the Secretary of State may serve a notice on him—
 - (a) cancelling any authorisation of his to carry on investment business after the expiry of a specified period after the service of the notice;
 - (b) disqualifying him from becoming authorised to carry on investment business after the expiry of a specified period;
 - (c) restricting any authorisation of his in respect of investment business during a specified period to the performance of contracts entered into before the notice comes into force;
 - (d) prohibiting him from entering into transactions of a specified kind or entering into them except in specified circumstances or to a specified extent;
 - (e) prohibiting him from soliciting business from persons of a specified kind or otherwise than from such persons; or
 - (f) prohibiting him from carrying on business in a specified manner or otherwise than in a specified manner.
- (4) The period mentioned in paragraphs (a) and (c) of subsection (3) above shall be such period as appears to the Secretary of State reasonable to enable the person on whom the notice is served to complete the performance of any contracts entered into before the notice comes into force and to terminate such of them as are of a continuing nature.
- (5) Where the court gives a direction under subsection (2)(b) above in the case of an unauthorised person the Secretary of State may direct that any authorised person who knowingly transacts investment business of a specified kind, or in specified circumstances or to a specified extent, with or on behalf of that unauthorised person shall be treated as having contravened rules made under Chapter V of Part I of this Act or, in the case of a person who is an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.
- (6) A person shall not be treated for the purposes of subsection (2) above as having a reasonable excuse for refusing to comply with a request or answer a question in a case where the [F15]offence or suspected offence] being investigated relates to dealing by him on the instructions or for the account of another person, by reason that at the time of the refusal—
 - (a) he did not know the identity of that other person; or
 - (b) he was subject to the law of a country or territory outside the United Kingdom which prohibited him from disclosing information relating to the dealing without the consent of that other person, if he might have obtained that consent or obtained exemption from that law.
- (7) A notice served on a person under subsection (3) above may be revoked at any time by the Secretary of State by serving a revocation notice on him; and the Secretary of

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State shall revoke such a notice if it appears to him that he has agreed to comply with the relevant request or answer the relevant question.

(8) The revocation of such a notice as is mentioned in subsection (3)(a) above shall not have the effect of reviving the authorisation cancelled by the notice except where the person would (apart from the notice) at the time of the revocation be an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body; but nothing in this subsection shall be construed as preventing any person who has been subject to such a notice from again becoming authorised after the revocation of the notice.

(9) If it appears to the Secretary of State—

- (a) that a person on whom he serves a notice under subsection (3) above is an authorised person by virtue of an authorisation granted by a designated agency or by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body; or
- (b) that a person on whom he serves a revocation notice under subsection (7) above was such an authorised person at the time that the notice which is being revoked was served,

he shall serve a copy of the notice on that agency, organisation or body.

(10) The functions to which section 114 above applies shall include the functions of the Secretary of State under this section but any transfer of those functions shall be subject to a reservation that they are to be exercisable by him concurrently with the designated agency and so as to be exercisable by the agency subject to such conditions or restrictions as the [^{F16}Treasury] may from time to time impose.

Textual Amendments

- F14** Words in s. 178(1)(b) substituted (1.3.1994) by 1993 c. 36, ss. 78(3), 79(13), **Sch. 5 para. 10(1)**; S.I. 1994/242, art. 2, **Sch.**
- F15** Words in s. 178(6) substituted (1.3.1994) by 1993 c. 36, ss. 78(3), 79(13), **Sch. 5 para. 10(2)**; S.I. 1994/242, art. 2, **Sch.**
- F16** Words in s. 178(10) substituted (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para. 3.**

Modifications etc. (not altering text)

- C1** S. 178: certain functions transferred by S.I. 1987/942, **art. 5**
- C2** S. 178 extended by S.I. 1986/1034 (N.I. 8), **art. 16A(8)(11)** (as inserted by S.I. 1989/2404 (N.I. 18), **art. 31(11)**)
- C3** S. 178 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 39.**
- C4** S. 178(3)(4)(5) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 39(1)(a)(c)(d).**
 - s. 178(3) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 37(1)(a)**
 - s. 178(3) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 37(2)(a)**
 - s. 178(4) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 37(1)(c)**
 - s. 178(5) modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 37(1)(d)(e)**
 - s. 178(7) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 37(2)(b)**

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