



# Criminal Justice Act 1993

## 1993 CHAPTER 36

### PART V

#### INSIDER DEALING

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

**C1** Pt. V (ss. 52-64) applied (E.W.N.I) (1.12.2001) by 2000 c. 8, s. 402(1)(a); S.I. 2001/3538, art. 2(1)

*The offence of insider dealing*

**52 The offence.**

- (1) An individual who has information as an insider is guilty of insider dealing if, in the circumstances mentioned in subsection (3), he deals in securities that are price-affected securities in relation to the information.
- (2) An individual who has information as an insider is also guilty of insider dealing if—
  - (a) he encourages another person to deal in securities that are (whether or not that other knows it) price-affected securities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place in the circumstances mentioned in subsection (3); or
  - (b) he discloses the information, otherwise than in the proper performance of the functions of his employment, office or profession, to another person.
- (3) The circumstances referred to above are that the acquisition or disposal in question occurs on a regulated market, or that the person dealing relies on a professional intermediary or is himself acting as a professional intermediary.
- (4) This section has effect subject to section 53.

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### **53 Defences.**

- (1) An individual is not guilty of insider dealing by virtue of dealing in securities if he shows—
  - (a) that he did not at the time expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the securities, or
  - (b) that at the time he believed on reasonable grounds that the information had been disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information, or
  - (c) that he would have done what he did even if he had not had the information.
- (2) An individual is not guilty of insider dealing by virtue of encouraging another person to deal in securities if he shows—
  - (a) that he did not at the time expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the securities, or
  - (b) that at the time he believed on reasonable grounds that the information had been or would be disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information, or
  - (c) that he would have done what he did even if he had not had the information.
- (3) An individual is not guilty of insider dealing by virtue of a disclosure of information if he shows—
  - (a) that he did not at the time expect any person, because of the disclosure, to deal in securities in the circumstances mentioned in subsection (3) of section 52; or
  - (b) that, although he had such an expectation at the time, he did not expect the dealing to result in a profit attributable to the fact that the information was price-sensitive information in relation to the securities.
- (4) Schedule 1 (special defences) shall have effect.
- (5) The Treasury may by order amend Schedule 1.
- (6) In this section references to a profit include references to the avoidance of a loss.

#### *Interpretation*

### **54 Securities to which Part V applies.**

- (1) This Part applies to any security which—
  - (a) falls within any paragraph of Schedule 2; and
  - (b) satisfies any conditions applying to it under an order made by the Treasury for the purposes of this subsection;and in the provisions of this Part (other than that Schedule) any reference to a security is a reference to a security to which this Part applies.
- (2) The Treasury may by order amend Schedule 2.

### **55 “Dealing” in securities.**

- (1) For the purposes of this Part, a person deals in securities if—

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- (a) he acquires or disposes of the securities (whether as principal or agent); or
  - (b) he procures, directly or indirectly, an acquisition or disposal of the securities by any other person.
- (2) For the purposes of this Part, “acquire”, in relation to a security, includes—
- (a) agreeing to acquire the security; and
  - (b) entering into a contract which creates the security.
- (3) For the purposes of this Part, “dispose”, in relation to a security, includes—
- (a) agreeing to dispose of the security; and
  - (b) bringing to an end a contract which created the security.
- (4) For the purposes of subsection (1), a person procures an acquisition or disposal of a security if the security is acquired or disposed of by a person who is—
- (a) his agent,
  - (b) his nominee, or
  - (c) a person who is acting at his direction,
- in relation to the acquisition or disposal.
- (5) Subsection (4) is not exhaustive as to the circumstances in which one person may be regarded as procuring an acquisition or disposal of securities by another.

## **56 “Inside information”, etc.**

- (1) For the purposes of this section and section 57, “inside information” means information which—
- (a) relates to particular securities or to a particular issuer of securities or to particular issuers of securities and not to securities generally or to issuers of securities generally;
  - (b) is specific or precise;
  - (c) has not been made public; and
  - (d) if it were made public would be likely to have a significant effect on the price of any securities.
- (2) For the purposes of this Part, securities are “price-affected securities” in relation to inside information, and inside information is “price-sensitive information” in relation to securities, if and only if the information would, if made public, be likely to have a significant effect on the price of the securities.
- (3) For the purposes of this section “price” includes value.

## **57 “Insiders”.**

- (1) For the purposes of this Part, a person has information as an insider if and only if—
- (a) it is, and he knows that it is, inside information, and
  - (b) he has it, and knows that he has it, from an inside source.
- (2) For the purposes of subsection (1), a person has information from an inside source if and only if—
- (a) he has it through—
    - (i) being a director, employee or shareholder of an issuer of securities; or

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- (ii) having access to the information by virtue of his employment, office or profession; or
- (b) the direct or indirect source of his information is a person within paragraph (a).

## **58 Information “made public”.**

- (1) For the purposes of section 56, “made public”, in relation to information, shall be construed in accordance with the following provisions of this section; but those provisions are not exhaustive as to the meaning of that expression.
- (2) Information is made public if—
  - (a) it is published in accordance with the rules of a regulated market for the purpose of informing investors and their professional advisers;
  - (b) it is contained in records which by virtue of any enactment are open to inspection by the public;
  - (c) it can be readily acquired by those likely to deal in any securities—
    - (i) to which the information relates, or
    - (ii) of an issuer to which the information relates; or
  - (d) it is derived from information which has been made public.
- (3) Information may be treated as made public even though—
  - (a) it can be acquired only by persons exercising diligence or expertise;
  - (b) it is communicated to a section of the public and not to the public at large;
  - (c) it can be acquired only by observation;
  - (d) it is communicated only on payment of a fee; or
  - (e) it is published only outside the United Kingdom.

## **59 “Professional intermediary”.**

- (1) For the purposes of this Part, a “professional intermediary” is a person—
  - (a) who carries on a business consisting of an activity mentioned in subsection (2) and who holds himself out to the public or any section of the public (including a section of the public constituted by persons such as himself) as willing to engage in any such business; or
  - (b) who is employed by a person falling within paragraph (a) to carry out any such activity.
- (2) The activities referred to in subsection (1) are—
  - (a) acquiring or disposing of securities (whether as principal or agent); or
  - (b) acting as an intermediary between persons taking part in any dealing in securities.
- (3) A person is not to be treated as carrying on a business consisting of an activity mentioned in subsection (2)—
  - (a) if the activity in question is merely incidental to some other activity not falling within subsection (2); or
  - (b) merely because he occasionally conducts one of those activities.
- (4) For the purposes of section 52, a person dealing in securities relies on a professional intermediary if and only if a person who is acting as a professional intermediary carries out an activity mentioned in subsection (2) in relation to that dealing.

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## **60 Other interpretation provisions.**

- (1) For the purposes of this Part, “regulated market” means any market, however operated, which, by an order made by the Treasury, is identified (whether by name or by reference to criteria prescribed by the order) as a regulated market for the purposes of this Part.
- (2) For the purposes of this Part an “issuer”, in relation to any securities, means any company, public sector body or individual by which or by whom the securities have been or are to be issued.
- (3) For the purposes of this Part—
  - (a) “company” means any body (whether or not incorporated and wherever incorporated or constituted) which is not a public sector body; and
  - (b) “public sector body” means—
    - (i) the government of the United Kingdom, of Northern Ireland or of any country or territory outside the United Kingdom;
    - (ii) a local authority in the United Kingdom or elsewhere;
    - (iii) any international organisation the members of which include the United Kingdom or another member state;
    - (iv) the Bank of England; or
    - (v) the central bank of any sovereign State.
- (4) For the purposes of this Part, information shall be treated as relating to an issuer of securities which is a company not only where it is about the company but also where it may affect the company’s business prospects.

### *Miscellaneous*

## **61 Penalties and prosecution.**

- (1) An individual guilty of insider dealing shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding six months or to both; or
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding seven years or to both.
- (2) Proceedings for offences under this Part shall not be instituted in England and Wales except by or with the consent of—
  - (a) the Secretary of State; or
  - (b) the Director of Public Prosecutions.
- (3) In relation to proceedings in Northern Ireland for offences under this Part, subsection (2) shall have effect as if the reference to the Director of Public Prosecutions were a reference to the Director of Public Prosecutions for Northern Ireland.

## **62 Territorial scope of offence of insider dealing.**

- (1) An individual is not guilty of an offence falling within subsection (1) of section 52 unless—

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- (a) he was within the United Kingdom at the time when he is alleged to have done any act constituting or forming part of the alleged dealing;
  - (b) the regulated market on which the dealing is alleged to have occurred is one which, by an order made by the Treasury, is identified (whether by name or by reference to criteria prescribed by the order) as being, for the purposes of this Part, regulated in the United Kingdom; or
  - (c) the professional intermediary was within the United Kingdom at the time when he is alleged to have done anything by means of which the offence is alleged to have been committed.
- (2) An individual is not guilty of an offence falling within subsection (2) of section 52 unless—
- (a) he was within the United Kingdom at the time when he is alleged to have disclosed the information or encouraged the dealing; or
  - (b) the alleged recipient of the information or encouragement was within the United Kingdom at the time when he is alleged to have received the information or encouragement.

### **63 Limits on section 52.**

- (1) Section 52 does not apply to anything done by an individual acting on behalf of a public sector body in pursuit of monetary policies or policies with respect to exchange rates or the management of public debt or foreign exchange reserves.
- (2) No contract shall be void or unenforceable by reason only of section 52.

### **64 Orders.**

- (1) Any power under this Part to make an order shall be exercisable by statutory instrument.
- (2) No order shall be made under this Part unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (3) An order under this Part—
  - (a) may make different provision for different cases; and
  - (b) may contain such incidental, supplemental and transitional provisions as the Treasury consider expedient.

**Status:**

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