



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART II

#### REGULATED AND PROHIBITED ACTIVITIES

##### *Enforceability of agreements*

#### 26 Agreements made by unauthorised persons.

- (1) An agreement made by a person in the course of carrying on a regulated activity in contravention of the general prohibition is unenforceable against the other party.
- (2) The other party is entitled to recover—
  - (a) any money or other property paid or transferred by him under the agreement; and
  - (b) compensation for any loss sustained by him as a result of having parted with it.
- (3) “Agreement” means an agreement—
  - (a) made after this section comes into force; and
  - (b) the making or performance of which constitutes, or is part of, the regulated activity in question.
- (4) This section does not apply if the regulated activity is accepting deposits.

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

- C1** S. 26(1)(2) applied (1.12.2001) by [S.I. 2001/2657](#), [arts. 1\(1\), 5\(1\)\(4\)](#) (which was revoked (8.10.2001) by [S.I. 2001/3083](#), [arts. 1\(2\), 23](#)); [S.I. 2001/3538](#), [art. 2\(1\)](#)  
S. 26(1)(2) applied (1.12.2001) by [S.I. 2001/3083](#), [arts. 1\(2\), 5\(1\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

*Status: Point in time view as at 21/07/2018.*

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## [<sup>F1</sup>26A Agreements relating to credit

- (1) An agreement that is made by an authorised person in contravention of section 20 is unenforceable against the other party if the agreement is entered into in the course of carrying on a credit-related regulated activity involving matters falling within section 23(1C)(a).
- (2) The other party is entitled to recover—
  - (a) any money or other property paid or transferred by that party under the agreement, and
  - (b) compensation for any loss sustained by that party as a result of having parted with it.
- (3) In subsections (1) and (2) “agreement” means an agreement—
  - (a) which is made after this section comes into force, and
  - (b) the making or performance of which constitutes, or is part of, the credit-related regulated activity.
- (4) If the administration of an agreement involves the carrying on of a credit-related regulated activity, the agreement may not be enforced by a person for the time being exercising the rights of the lender under the agreement unless that person
  - [ <sup>F2</sup>(a) has permission, given under Part 4A or resulting from any other provision of this Act, in relation to that activity
  - [ <sup>F3</sup>(b) is an appointed representative in relation to that activity,
  - (c) is an exempt person in relation to that activity, or
  - (d) is a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity].
- (5) If the taking of steps to procure payment of debts due under an agreement involves the carrying on of a credit-related regulated activity, the agreement may not be enforced by a person for the time being exercising the rights of the lender under the agreement unless
  - [ <sup>F4</sup>(a) the agreement is enforced in accordance with permission—
    - [ <sup>F5</sup>(i) given under Part 4A to the person enforcing the agreement, or
    - [ <sup>F5</sup>(ii) resulting from any other provision of this Act.
  - [ <sup>F6</sup>(b) that person is an appointed representative in relation to that activity,
  - (c) that person is an exempt person in relation to that activity, or
  - (d) that person is a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.]]

### Textual Amendments

- F1** S. 26A inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 5](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F2** Words in s. 26A(4) renumbered as s. 26A(4)(a) (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), [ss. 27\(2\)\(a\)](#), 41(3); [S.I. 2016/627, reg. 2\(1\)\(u\)](#)
- F3** S. 26A(4)(b)-(d) inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), [ss. 27\(2\)\(b\)](#), 41(3); [S.I. 2016/627, reg. 2\(1\)\(u\)](#)

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- F4** Words in s. 26A(5) renumbered as s. 26A(5)(a) (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\), ss. 27\(3\)\(a\), 41\(3\); S.I. 2016/627, reg. 2\(1\)\(u\)](#)
- F5** Words in s. 26A(5) renumbered as s. 26A(5)(a)(i)(ii) (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\), ss. 27\(3\)\(a\), 41\(3\); S.I. 2016/627, reg. 2\(1\)\(u\)](#)
- F6** S. 26A(5)(b)-(d) inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\), ss. 27\(3\)\(b\), 41\(3\); S.I. 2016/627, reg. 2\(1\)\(u\)](#)

## 27 Agreements made through unauthorised persons.

[<sup>F7</sup>(1) This section applies to an agreement that—

- (a) is made by an authorised person (“the provider”) in the course of carrying on a regulated activity,
- (b) is not made in contravention of the general prohibition,
- (c) if it relates to a credit-related regulated activity, is not made in contravention of section 20, and
- (d) is made in consequence of something said or done by another person (“the third party”) in the course of—
  - (i) a regulated activity carried on by the third party in contravention of the general prohibition, or
  - (ii) a credit-related regulated activity carried on by the third party in contravention of section 20.

[<sup>F8</sup>(1ZA) But this section does not apply to a regulated credit agreement or a regulated consumer hire agreement unless the provider knows before the agreement is made that the third party had some involvement in the making of the agreement or matters preparatory to its making.]

(1A) [<sup>F9</sup>An agreement to which this section applies] is unenforceable against the other party.]

(2) The other party is entitled to recover—

- (a) any money or other property paid or transferred by him under the agreement; and
- (b) compensation for any loss sustained by him as a result of having parted with it.

(3) “Agreement” means an agreement—

- (a) made after this section comes into force; and
- (b) the making or performance of which constitutes, or is part of, the regulated activity in question carried on by the provider.

(4) This section does not apply if the regulated activity is accepting deposits.

[<sup>F10</sup>(5) For the purposes of subsection (1ZA)—

“regulated consumer hire agreement” has the meaning given by article 60N of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);

“regulated credit agreement” has the meaning given by article 60B of that Order.]

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#### Textual Amendments

- F7** S. 27(1)(1A) substituted for s. 27(1) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 6](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F8** S. 27(1ZA) inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), [ss. 28\(2\)](#), 41(3); S.I. 2016/627, [reg. 2\(1\)\(v\)](#)
- F9** Words in s. 27(1A) substituted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), [ss. 28\(3\)](#), 41(3); S.I. 2016/627, [reg. 2\(1\)\(v\)](#)
- F10** S. 27(5) inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), [ss. 28\(4\)](#), 41(3); S.I. 2016/627, [reg. 2\(1\)\(v\)](#)

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

- C2** S. 27(1)(2) applied (1.12.2001) by [S.I. 2001/2657](#), [arts. 1\(1\)](#), 5(2)(5) (which was revoked (8.10.2001) by [S.I. 2001/3083](#), [arts. 1\(2\)](#), 23); [S.I. 2001/3538](#), [art. 2\(1\)](#)
- S. 27(1)(2) applied (1.12.2001) by [S.I. 2001/3083](#), [arts. 1\(2\)](#), 5(2); [S.I. 2001/3538](#), [art. 2\(1\)](#)

## 28 Agreements made unenforceable by section 26 or 27<sup>F11</sup>: general cases].

- (1) This section applies to an agreement which is unenforceable because of section 26 or 27<sup>F12</sup>, other than an agreement entered into in the course of carrying on a credit-related regulated activity].
- (2) The amount of compensation recoverable as a result of that section is—
  - (a) the amount agreed by the parties; or
  - (b) on the application of either party, the amount determined by the court.
- (3) If the court is satisfied that it is just and equitable in the circumstances of the case, it may allow—
  - (a) the agreement to be enforced; or
  - (b) money and property paid or transferred under the agreement to be retained.
- (4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the court must—
  - (a) if the case arises as a result of section 26, have regard to the issue mentioned in subsection (5); or
  - (b) if the case arises as a result of section 27, have regard to the issue mentioned in subsection (6).
- (5) The issue is whether the person carrying on the regulated activity concerned reasonably believed that he was not contravening the general prohibition by making the agreement.
- (6) The issue is whether the provider knew that the third party was (in carrying on the regulated activity) contravening the general prohibition.
- (7) If the person against whom the agreement is unenforceable—
  - (a) elects not to perform the agreement, or
  - (b) as a result of this section, recovers money paid or other property transferred by him under the agreement,
 he must repay any money and return any other property received by him under the agreement.

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- (8) If property transferred under the agreement has passed to a third party, a reference in section 26 or 27 or this section to that property is to be read as a reference to its value at the time of its transfer under the agreement.
- (9) The commission of an authorisation offence does not make the agreement concerned illegal or invalid to any greater extent than is provided by section 26 or 27.

#### Textual Amendments

- F11** Words in s. 28 heading inserted (1.4.2013) by **Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 7(b)** (with **Sch. 20**); **S.I. 2013/423, art. 3, Sch.**
- F12** Words in s. 28(1) inserted (1.4.2013) by **Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 7(a)** (with **Sch. 20**); **S.I. 2013/423, art. 3, Sch.**

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

- C3** S. 28 applied (with modifications) (1.12.2001) by **S.I. 2001/2657, arts. 1(1), 5(6)** (which was revoked (8.10.2001) by **S.I. 2001/3083, arts. 1(2), 23**); **S.I. 2001/3538, art. 2(1)**
- S. 28 applied (with modifications) (1.12.2001) by **S.I. 2001/3083, arts. 1(2), 5(6)**; **S.I. 2001/3538, art. 2(1)**

### [<sup>F13</sup>28A Credit-related agreements made unenforceable by section 26, 26A or 27

- (1) This section applies to an agreement that—
  - (a) is entered into in the course of carrying on a credit-related regulated activity, and
  - (b) is unenforceable because of section 26, 26A or 27.
- (2) The amount of compensation recoverable as a result of that section is—
  - (a) the amount agreed by the parties, or
  - (b) on the application of either party, the amount specified in a written notice given by the FCA to the applicant.
- (3) If on application by the relevant firm the FCA is satisfied that it is just and equitable in the circumstances of the case, it may by written notice to the applicant allow—
  - (a) the agreement to be enforced, or
  - (b) money paid or property transferred under the agreement to be retained.
- (4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the FCA must—
  - (a) if the case arises as a result of section 26 or 26A, have regard to the issue mentioned in subsection (5), or
  - (b) if the case arises as a result of section 27, have regard to the issue mentioned in subsection (6).
- (5) The issue is whether the relevant firm reasonably believed that by making the agreement the relevant firm was neither contravening the general prohibition nor contravening section 20.
- (6) The issue is whether the provider knew that the third party was (in carrying on the credit-related regulated activity) either contravening the general prohibition or contravening section 20.

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- (7) An application to the FCA under this section by the relevant firm may relate to specified agreements or to agreements of a specified description or made at a specified time.
- (8) “The relevant firm” means—
- (a) in a case falling within section 26, the person in breach of the general prohibition;
  - (b) in a case falling within section 26A or 27, the authorised person concerned.
- (9) If the FCA thinks fit, it may when acting under subsection (2)(b) or (3)—
- (a) limit the determination in its notice to specified agreements, or agreements of a specified description or made at a specified time;
  - (b) make the determination in its notice conditional on the doing of specified acts by the applicant.

#### Textual Amendments

**F13** Ss. 28A, 28B inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 8](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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

**C4** S. 28A applied (with modifications) (26.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Consumer Credit\) \(Miscellaneous Provisions\) Order 2014 \(S.I. 2014/208\)](#), arts. 1(3)(4), [2\(2\)](#)

### 28B Decisions under section 28A: procedure

- (1) A notice under section 28A(2)(b) or (3) must—
- (a) give the FCA's reasons for its determination, and
  - (b) give an indication of—
    - (i) the right to have the matter referred to the Tribunal that is conferred by subsection (3), and
    - (ii) the procedure on such a reference.
- (2) The FCA must, so far as it is reasonably practicable to do so, give a copy of the notice to any other person who appears to it to be affected by the determination to which the notice relates.
- (3) A person who is aggrieved by the determination of an application under section 28A(2)(b) or (3) may refer the matter to the Tribunal.]

#### Textual Amendments

**F13** Ss. 28A, 28B inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 8](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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## **29 Accepting deposits in breach of general prohibition.**

- (1) This section applies to an agreement between a person (“the depositor”) and another person (“the deposit-taker”) made in the course of the carrying on by the deposit-taker of accepting deposits in contravention of the general prohibition.
- (2) If the depositor is not entitled under the agreement to recover without delay any money deposited by him, he may apply to the court for an order directing the deposit-taker to return the money to him.
- (3) The court need not make such an order if it is satisfied that it would not be just and equitable for the money deposited to be returned, having regard to the issue mentioned in subsection (4).
- (4) The issue is whether the deposit-taker reasonably believed that he was not contravening the general prohibition by making the agreement.
- (5) “Agreement” means an agreement—
  - (a) made after this section comes into force; and
  - (b) the making or performance of which constitutes, or is part of, accepting deposits.

## **30 Enforceability of agreements resulting from unlawful communications.**

- (1) In this section—
  - “unlawful communication” means a communication in relation to which there has been a contravention of section 21(1);
  - “controlled agreement” means an agreement the making or performance of which by either party constitutes a controlled activity for the purposes of that section; and
  - “controlled investment” has the same meaning as in section 21.
- (2) If in consequence of an unlawful communication a person enters as a customer into a controlled agreement, it is unenforceable against him and he is entitled to recover—
  - (a) any money or other property paid or transferred by him under the agreement; and
  - (b) compensation for any loss sustained by him as a result of having parted with it.
- (3) If in consequence of an unlawful communication a person exercises any rights conferred by a controlled investment, no obligation to which he is subject as a result of exercising them is enforceable against him and he is entitled to recover—
  - (a) any money or other property paid or transferred by him under the obligation; and
  - (b) compensation for any loss sustained by him as a result of having parted with it.
- (4) But the court may allow—
  - (a) the agreement or obligation to be enforced, or
  - (b) money or property paid or transferred under the agreement or obligation to be retained,if it is satisfied that it is just and equitable in the circumstances of the case.
- (5) In considering whether to allow the agreement or obligation to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the court must have regard to the issues mentioned in subsections (6) and (7).

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- (6) If the applicant made the unlawful communication, the issue is whether he reasonably believed that he was not making such a communication.
- (7) If the applicant did not make the unlawful communication, the issue is whether he knew that the agreement was entered into in consequence of such a communication.
- (8) “Applicant” means the person seeking to enforce the agreement or obligation or retain the money or property paid or transferred.
- (9) Any reference to making a communication includes causing a communication to be made.
- (10) The amount of compensation recoverable as a result of subsection (2) or (3) is—
  - (a) the amount agreed between the parties; or
  - (b) on the application of either party, the amount determined by the court.
- (11) If a person elects not to perform an agreement or an obligation which (by virtue of subsection (2) or (3)) is unenforceable against him, he must repay any money and return any other property received by him under the agreement.
- (12) If (by virtue of subsection (2) or (3)) a person recovers money paid or property transferred by him under an agreement or obligation, he must repay any money and return any other property received by him as a result of exercising the rights in question.
- (13) If any property required to be returned under this section has passed to a third party, references to that property are to be read as references to its value at the time of its receipt by the person required to return it.

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

C5 S. 30 applied (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), regs. 1, **52(5)**



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