



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXV

#### INJUNCTIONS AND RESTITUTION

##### *Restitution orders*

#### **382 Restitution orders.**

- (1) The court may, on the application of the [<sup>F1</sup>appropriate regulator] or the Secretary of State, make an order under subsection (2) if it is satisfied that a person has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—
  - (a) that profits have accrued to him as a result of the contravention; or
  - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.
- (2) The court may order the person concerned to pay to the [<sup>F2</sup>regulator concerned] such sum as appears to the court to be just having regard—
  - (a) in a case within paragraph (a) of subsection (1), to the profits appearing to the court to have accrued;
  - (b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect;
  - (c) in a case within both of those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.
- (3) Any amount paid to the [<sup>F3</sup>regulator concerned] in pursuance of an order under subsection (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.
- (4) On an application under subsection (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes—

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- (a) establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of that subsection;
  - (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in paragraph (b) of that subsection and, if so, the extent of that loss or adverse effect; and
  - (c) determining how any amounts are to be paid or distributed under subsection (3).
- (5) The court may require any accounts or other information supplied under subsection (4) to be verified in such manner as it may direct.
- (6) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.
- (7) Nothing in this section affects the right of any person other than the [<sup>F4</sup>appropriate regulator] or the Secretary of State to bring proceedings in respect of the matters to which this section applies.
- (8) “Qualifying person” means a person appearing to the court to be someone—
- (a) to whom the profits mentioned in subsection (1)(a) are attributable; or
  - (b) who has suffered the loss or adverse effect mentioned in subsection (1)(b).
- (9) “Relevant requirement”—
- (a) in relation to an application by the [<sup>F5</sup>appropriate regulator], means a requirement—
    - (i) [<sup>F6</sup>which is imposed by or under this Act or by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order]; <sup>F7</sup>...
    - (ii) which is imposed by or under any other Act and whose contravention constitutes an offence [<sup>F8</sup>mentioned in section 402(1)]; [<sup>F9</sup>or
    - (iii) which is imposed by the Alternative Investment Fund Managers Regulations 2013;]
  - (b) in relation to an application by the Secretary of State, means a requirement which is imposed by or under this Act and whose contravention constitutes an offence which the Secretary of State has power to prosecute under this Act.
- (10) In the application of subsection (9) to Scotland—
- <sup>F10</sup>(a) .....
  - (b) in paragraph (b) omit “which the Secretary of State has power to prosecute under this Act”.
- [<sup>F11</sup>(11) The PRA is the “appropriate regulator” in the case of a contravention of—
- (a) a requirement that is imposed by the PRA under any provision of this Act,
  - (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA, or
  - (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA.
- (12) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” is whichever of the PRA or the FCA (or both)

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is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.

- (13) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is the regulator which has power to prosecute the offence (see section 401).
- (14) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.
- (15) The Treasury may by order amend the definition of “appropriate regulator”.]

### Textual Amendments

- F1** Words in s. 382(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 21\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F2** Words in s. 382(2) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 21\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F3** Words in s. 382(3) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 21\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F4** Words in s. 382(7) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 21\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F5** Words in s. 382(9)(a) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 21\(5\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F6** S. 382(9)(a)(i) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 21\(5\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F7** Word in s. 382(9)(a) omitted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\), reg. 1](#), [Sch. 1 para. 28\(a\)](#)
- F8** Words in s. 382(9)(a)(ii) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 21\(5\)\(c\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F9** S. 382(9)(a)(iii) and word inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\), reg. 1](#), [Sch. 1 para. 28\(b\)](#)
- F10** S. 382(10)(a) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 21\(6\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F11** S. 382(11)-(15) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 21\(7\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3](#), [Sch.](#)

### Modifications etc. (not altering text)

- C1** S. 382 extended (with modifications) (1.12.2001) by [S.I. 2001/2657, arts. 1\(1\), 2](#) (which was revoked (8.10.2001) by [S.I. 2001/3083, arts. 1\(2\), 23](#)); [S.I. 2001/3538, art. 2\(1\)](#)  
S. 382 extended (with modifications) (1.12.2001) by [S.I. 2001/3083, arts. 1\(2\), 2](#); [S.I. 2001/3538, art. 2\(1\)](#)

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- C2** S. 382 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, **12(2)**
- C3** S. 382 applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), **16(2)**
- C4** S. 382 applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), **18(3)**
- C5** S. 382 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services Act 2012 \(Consumer Credit\) Order 2013 \(S.I. 2013/1882\)](#), arts. 1(1), **3(9)**
- C6** S. 382(3)-(5)(8) applied (with modifications) (26.11.2001) by [S.I. 2001/3755](#), **regs. 1, 9(7)(9)** (with regs. 39, 45)

### **383 Restitution orders in cases of market abuse.**

- (1) The court may, on the application of the [<sup>F12</sup>FCA], make an order under subsection (4) if it is satisfied that a person (“the person concerned”)—
  - (a) has engaged in market abuse, or
  - (b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by the person concerned, would amount to market abuse,
 and the condition mentioned in subsection (2) is fulfilled.
- (2) The condition is—
  - (a) that profits have accrued to the person concerned as a result; or
  - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result.
- (3) But the court may not make an order under subsection (4) if it is satisfied that—
  - (a) the person concerned believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1); or
  - (b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of subsection (1).
- (4) The court may order the person concerned to pay to the [<sup>F13</sup>FCA] such sum as appears to the court to be just having regard—
  - (a) in a case within paragraph (a) of subsection (2), to the profits appearing to the court to have accrued;
  - (b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect;
  - (c) in a case within both of those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.
- (5) Any amount paid to the [<sup>F14</sup>FCA] in pursuance of an order under subsection (4) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.
- (6) On an application under subsection (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes—
  - (a) establishing whether any and, if so, what profits have accrued to him as mentioned in subsection (2)(a);

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- (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in subsection (2)(b) and, if so, the extent of that loss or adverse effect; and
  - (c) determining how any amounts are to be paid or distributed under subsection (5).
- (7) The court may require any accounts or other information supplied under subsection (6) to be verified in such manner as it may direct.
- (8) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.
- (9) Nothing in this section affects the right of any person other than the [F15FCA] to bring proceedings in respect of the matters to which this section applies.
- (10) “Qualifying person” means a person appearing to the court to be someone—
- (a) to whom the profits mentioned in paragraph (a) of subsection (2) are attributable; or
  - (b) who has suffered the loss or adverse effect mentioned in paragraph (b) of that subsection.

#### Textual Amendments

- F12** Word in s. 383(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 22](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F13** Word in s. 383(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 22](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F14** Word in s. 383(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 22](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F15** Word in s. 383(9) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 22](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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