



# 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 Authority 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 Authority 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 Authority 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—

*Status: Point in time view as at 20/07/2012. This version of this provision has been superseded.*

*Changes to legislation: Financial Services and Markets Act 2000, Section 382 is up to date with all changes known to be in force on or before 23 July 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) 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 Authority 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 Authority, means a requirement—
    - (i) which is imposed by or under this Act [<sup>F1</sup>or by any directly applicable Community regulation [<sup>F2</sup>or decision] made under the markets in financial instruments directive [<sup>F3</sup>or the UCITS directive][<sup>F4</sup>or by the emission allowance auctioning regulation]]; or
    - (ii) which is imposed by or under any other Act and whose contravention constitutes an offence which the Authority has power to prosecute under this Act;
  - (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—
- (a) in paragraph (a)(ii) for “which the Authority has power to prosecute under this Act” substitute “mentioned in paragraph (a) or (b) of section 402(1); and
  - (b) in paragraph (b) omit “which the Secretary of State has power to prosecute under this Act”.”

#### Textual Amendments

- F1** Words in s. 382(9)(a)(i) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), [Sch. 5 para. 14](#)
- F2** Words in s. 382(9)(a)(i) inserted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(29\)\(a\)](#)
- F3** Words in s. 382(9)(a)(i) inserted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(29\)\(b\)](#)
- F4** Words in s. 382(9)(a)(i) inserted (20.7.2012) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2012 \(S.I. 2012/1906\)](#), arts. 1, [3\(12\)](#)

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**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)**
- 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(3)-(5)(8) applied (with modifications) (26.11.2001) by S.I. 2001/3755, **regs. 1, 9(7)(9)** (with **regs. 39, 45**)

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