



# Financial Services (Banking Reform) Act 2013

## 2013 CHAPTER 33

### PART 4 **U.K.**

#### CONDUCT OF PERSONS WORKING IN FINANCIAL SERVICES SECTOR

##### *Offence*

### 36 **Offence relating to a decision causing a financial institution to fail** **U.K.**

- (1) A person (“S”) commits an offence if—
- (a) at a time when S is a senior manager in relation to a financial institution (“F”), S—
    - (i) takes, or agrees to the taking of, a decision by or on behalf of F as to the way in which the business of a group institution is to be carried on, or
    - (ii) fails to take steps that S could take to prevent such a decision being taken,
  - (b) at the time of the decision, S is aware of a risk that the implementation of the decision may cause the failure of the group institution,
  - (c) in all the circumstances, S’s conduct in relation to the taking of the decision falls far below what could reasonably be expected of a person in S’s position, and
  - (d) the implementation of the decision causes the failure of the group institution.
- (2) A “group institution”, in relation to a financial institution (“F”), means F or any other financial institution that is a member of F’s group for the purpose of FSMA 2000 (see section 421 of that Act).
- (3) Subsections (1) and (2) are to be read with the interpretative provisions in section 37.
- (4) A person guilty of an offence under this section is liable—

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*Changes to legislation: There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013, Cross Heading: Offence. (See end of Document for details)*

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- (a) on summary conviction—
  - (i) in England and Wales, to imprisonment for a term not exceeding [<sup>F1</sup>the general limit in a magistrates’ court] (or 6 months, if the offence was committed before [<sup>F2</sup>2 May 2022]) or a fine, or both;
  - (ii) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both;
  - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.

#### Textual Amendments

- F1** Words in s. 36(4)(a)(i) substituted (7.2.2023 at 12.00 p.m.) by [The Judicial Review and Courts Act 2022 \(Magistrates’ Court Sentencing Powers\) Regulations 2023 \(S.I. 2023/149\)](#), regs. 1(2), 2(1), **Sch. Pt. 1** table
- F2** Words in s. 36(4)(a)(i) substituted (28.4.2022) by [The Criminal Justice Act 2003 \(Commencement No. 33\) and Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(S.I. 2022/500\)](#), regs. 1(2), 5(1), **Sch. Pt. 1**

#### Commencement Information

- I1** S. 36 in force at 7.3.2016 by [S.I. 2015/490](#), **art. 2(1)(c)** (with savings and transitional provisions in [S.I. 2015/492](#) (as amended by [S.I. 2015/1660](#)))

### 37 Section 36: interpretation **U.K.**

- (1) This section has effect for the interpretation of section 36.
- (2) “Financial institution” means a UK institution which—
  - (a) meets condition A or B, and
  - (b) is not an insurer or a credit union.
- (3) Condition A is that it has permission under Part 4A of FSMA 2000 to carry on the regulated activity of accepting deposits.
- (4) Condition B is that—
  - (a) it is for the purposes of FSMA 2000 an investment firm (see section 424A of that Act),
  - (b) it has permission under Part 4A of that Act to carry on the regulated activity of dealing in investments as principal, and
  - (c) when carried on by it, that activity is a PRA-regulated activity.
- (5) In subsection (2)—
  - (a) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom;
  - (b) “insurer” means an institution which is authorised under FSMA 2000 to carry on the regulated activity of effecting or carrying out contracts of insurance as principal;
  - (c) “credit union” means a credit union as defined by section 31 of the Credit Unions Act 1979 or a credit union as defined by Article 2(2) of the Credit Unions (Northern Ireland) Order 1985.

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(6) Subsections (3), (4) and (5)(b) are to be read in accordance with sections 22 and 22A of FSMA 2000, taken with Schedule 2 to that Act and any order under section 22.

(7) A person is a “senior manager” in relation to a financial institution if, under an arrangement entered into by the institution, or by a contractor of the institution, in relation to the carrying on by the institution of a regulated activity, the person performs a senior management function.

[<sup>F3</sup>(8) “Senior management function” means—

- (a) a function of a description specified in rules made by the FCA under section 59(3)(a) or (b) of FSMA 2000 which is designated as a senior management function by the FCA under section 59(6A) of that Act;
- (b) a function of a description specified in rules made by the PRA under section 59(3)(a) of that Act.]

(9) A financial institution (“F”) is to be regarded as failing where—

- (a) F enters insolvency,
- (b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to F, or
- (c) F is taken for the purposes of the Financial Services Compensation Scheme to be unable, or likely to be unable, to satisfy claims against F.

(10) In subsection (9)(a) “insolvency” includes—

- (a) bankruptcy,
- (b) liquidation,
- (c) bank insolvency,
- [<sup>F4</sup>(ca) building society insolvency,
- (cb) investment bank insolvency,]
- (d) administration,
- (e) bank administration,

[<sup>F5</sup>(ea) building society special administration,]

- (f) receivership,
- (g) a composition between F and F's creditors, and
- (h) a scheme of arrangement of F's affairs.

[<sup>F6</sup>(11) For the purposes of subsection (10)—

“bank administration” has the same meaning as in the Banking Act 2009 (see section 136 of that Act);

“bank insolvency” has the same meaning as in that Act (see section 90 of that Act);

“building society insolvency” and “building society special administration” have the same meaning as in the Building Societies Act 1986 (see section 119 of that Act);

“investment bank insolvency” means any procedure established by regulations under section 233 of the Banking Act 2009.]

#### Textual Amendments

**F3** S. 37(8) substituted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes, 18.7.2019 for specified purposes, 9.8.2019 for specified purposes, 9.12.2019 for specified purposes, 7.12.2020

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in so far as not already in force) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), **Sch. 4 para. 22(6)**; S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6); S.I. 2019/1136, reg. 2(2)(3)(4)(5) (with reg. 3)

- F4** S. 37(10)(ca)(cb) inserted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), **ss. 26(2)(a)**, 41(3); S.I. 2016/627, reg. 2(1)(t)
- F5** S. 37(10)(ea) inserted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), **ss. 26(2)(b)**, 41(3); S.I. 2016/627, reg. 2(1)(t)
- F6** S. 37(11) inserted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), **ss. 26(3)**, 41(3); S.I. 2016/627, reg. 2(1)(t)

#### Commencement Information

- I2** S. 37 in force at 7.3.2016 by S.I. 2015/490, **art. 2(1)(c)** (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

### 38 Institution of proceedings **U.K.**

- (1) In this section “an offence” means an offence under section 36.
- (2) Proceedings for an offence may be instituted in England and Wales only—
  - (a) by the FCA, the PRA or the Secretary of State, or
  - (b) by or with the consent of the Director of Public Prosecutions.
- (3) Proceedings for an offence may be instituted in Northern Ireland only—
  - (a) by the FCA, the PRA or the Secretary of State, or
  - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (4) In exercising its power to institute proceedings for an offence, the FCA or the PRA must comply with any conditions or restrictions imposed in writing by the Treasury.
- (5) Conditions or restrictions may be imposed under subsection (4) in relation to—
  - (a) proceedings generally, or
  - (b) such proceedings, or categories of proceedings, as the Treasury may direct.

#### Commencement Information

- I3** S. 38 in force at 7.3.2016 by S.I. 2015/490, **art. 2(1)(c)** (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

**Changes to legislation:**

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