



# Financial Services Act 1986

## 1986 CHAPTER 60

### PART I

#### REGULATION OF INVESTMENT BUSINESS

### CHAPTER I

#### PRELIMINARY

#### **1 Investments and investment business**

- (1) In this Act, unless the context otherwise requires, "investment" means any asset, right or interest falling within any paragraph in Part I of Schedule 1 to this Act
- (2) In this Act "investment business" means the business of engaging in one or more of the activities which fall within the paragraphs in Part II of that Schedule and are not excluded by Part III of that Schedule.
- (3) For the purposes of this Act a person carries on investment business in the United Kingdom if he—
  - (a) carries on investment business from a permanent place of business maintained by him in the United Kingdom; or
  - (b) engages in the United Kingdom in one or more of the activities which fall within the paragraphs in Part II of that Schedule and are not excluded by Part III or IV of that Schedule and his doing so constitutes the carrying on by him of a business in the United Kingdom.
- (4) Parts I to IV of that Schedule shall be construed in accordance with Part V.

#### **2 Power to extend or restrict scope of Act**

- (1) The Secretary of State may by order amend Schedule 1 to this Act so as—

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- (a) to extend or restrict the meaning of investment for the purposes of all or any provisions of this Act; or
  - (b) to extend or restrict for the purposes of all or any of those provisions the activities that are to constitute the carrying on of investment business or the carrying on of such business in the United Kingdom.
- (2) The amendments that may be made for the purposes of subsection (1)(b) above include amendments conferring powers on the Secretary of State, whether by extending or modifying any provision of that Schedule which confers such powers or by adding further such provisions.
- (3) An order under this section which extends the meaning of investment or extends the activities that are to constitute the carrying on of investment business or the carrying on of such business in the United Kingdom shall be laid before Parliament after being made and shall cease to have effect at the end of the period of twenty-eight days beginning with the day on which it is made (but without prejudice to anything done under the order or to the making of a new order) unless before the end of that period the order is approved by a resolution of each House of Parliament
- (4) In reckoning the period mentioned in subsection (3) above no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (5) Any order under this section to which subsection (3) above does not apply shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) An order under this section may contain such transitional provisions as the Secretary of State thinks necessary or expedient

## CHAPTER II

### RESTRICTION ON CARRYING ON BUSINESS

#### **3 Persons entitled to carry on investment business**

No person shall Carry on, or purport to carry on. Investment business in the United Kingdom unless he is an authorised person under Chapter III or an exempted person under Chapter IV of this Part of this Act.

#### **4 Offences**

- (1) Any person who carries on, or purports to carry on. investment business in contravention of section 3 above shall be guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (2) In proceedings brought against any person for an offence under this section it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

## **5 Agreements made by or through unauthorised persons**

- (1) Subject to subsection (3) below, any agreement to which this subsection applies—
- (a) which is entered into by a person in the course of carrying on investment business in contravention of section 3 above; or
  - (b) which is entered into—
    - (i) by a person who is an authorised person or an exempted person in respect of the investment business in the course of which he enters into the agreement ; but
    - (ii) in consequence of anything said or done by a person in the course of carrying on investment business in contravention of that section,
- shall be unenforceable against the other party; and that party shall be entitled to recover any money or other property paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result of having parted with it.
- (2) The compensation recoverable under subsection (1) above shall be such as the parties may agree or as the court may, on the application of either party, determine.
- (3) A court may allow an agreement to which subsection (1) above applies to be enforced or money and property paid or transferred under it to be retained if it is satisfied—
- (a) in a case within paragraph (a) of that subsection, that the person mentioned in that paragraph reasonably believed that his entering into the agreement did not constitute a contravention of section 3 above ;
  - (b) in a case within paragraph (b) of that subsection, that the person mentioned in sub-paragraph (i) of that paragraph did not know that the agreement was entered into as mentioned in sub-paragraph (ii) of that paragraph ; and
  - (c) in either case, that it is just and equitable for the agreement to be enforced or, as the case may be, for the money or property paid or transferred under it to be retained.
- (4) Where a person elects not to perform an agreement which by virtue of this section is unenforceable against him or by virtue of this section recovers money paid or other property transferred by him under an agreement he shall repay any money and return any other property received by him under the agreement.
- (5) Where any property transferred under an agreement to which this section applies has passed to a third party the references to that property in subsections (1), (3) and (4) above shall be construed as references to its value at the time of its transfer under the agreement.
- (6) A contravention of section 3 above shall not make an agreement illegal or invalid to any greater extent than is provided in this section.
- (7) Subsection (1) above applies to any agreement the making or performance of which by the person seeking to enforce it or from whom money or other property is recoverable under this section constitutes an activity which falls within any paragraph of Part II of Schedule 1 to this Act and is not excluded by Part III or IV of that Schedule.

## **6 Injunctions and restitution orders**

- (1) If, on the application of the Secretary of State, the court is satisfied—
- (a) that there is a reasonable likelihood that a person will contravene section 3 above; or

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- (b) that any person has contravened that section and that there is a reasonable likelihood that the contravention will continue or be repeated,  
the court may grant an injunction restraining the contravention or, in Scotland, an interdict prohibiting the contravention.
- (2) If, on the application of the Secretary of State, the court is satisfied that a person has entered into any transaction in contravention of section 3 above the court may order that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct for restoring the parties to the position in which they were before the transaction was entered into.
- (3) The court may, on the application of the Secretary of State, make an order under subsection (4) below or, in relation to Scotland, under subsection (5) below if satisfied that a person has been carrying on investment business in contravention of section 3 above and—
- (a) that profits have accrued to that person as a result of carrying on that business; or
  - (b) that one or more investors have suffered loss or been otherwise adversely affected as a result of his contravention of section 47 or 56 below or failure to act substantially in accordance with any of the rules or regulations made under Chapter V of this Part of this Act
- (4) The court may under this subsection order the person concerned to pay into court, or appoint a receiver to recover from him, such sum as appears to the court to be just having regard—
- (a) in a case within paragraph (a) of subsection (3) above 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; or
  - (c) in a case within both paragraphs (a) and (b) of that subsection, to the profits and to the extent of the loss or other adverse effect.
- (5) The court may under this subsection order the person concerned to pay to the applicant such sum as appears to the court to be just having regard to the considerations mentioned in paragraphs (a) to (c) of subsection (4) above.
- (6) Any amount paid into court by or recovered from a person in pursuance of an order under subsection (4) or (5) above shall be paid out to such person or distributed among such persons as the court may direct, being a person or persons appearing to the court to have entered into transactions with that person as a result of which the profits mentioned in paragraph (a) of subsection (3) above have accrued to him or the loss or other adverse effect mentioned in paragraph (b) of that subsection has been suffered.
- (7) On an application under subsection (3) above the court may require the person concerned to furnish it with such accounts or other information as it may require for establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of that subsection and for determining how any amounts are to be paid or distributed under subsection (6) above; and the court may require any such accounts or other information to be verified in such manner as it may direct
- (8) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

- (9) Nothing in this section affects the right of any person other than the Secretary of State to bring proceedings in respect of any of the matters to which this section applies.

## CHAPTER III

### AUTHORISED PERSONS

#### *Members of recognised self-regulating organisations*

#### **7 Authorisation by membership of recognised self-regulating organisations**

- (1) Subject to subsection (2) below, a member of a recognised self-regulating organisation is an authorised person by virtue of his membership of that organisation.
- (2) This section does not apply to a member who is an authorised person by virtue of section 22 or 23 below or an insurance company which is an authorised person by virtue of section 31 below.

#### **8 Self-regulating organisations**

- (1) In this Act a "self-regulating organisation" means a body (whether a body corporate or an unincorporated association) which regulates the carrying on of investment business of any kind by enforcing rules which are binding on persons carrying on business of that kind either because they are members of that body or because they are otherwise subject to its control.
- (2) In this Act references to the members of a self-regulating organisation are references to the persons who, whether or not members of the organisation, are subject to its rules in carrying on the business in question.
- (3) In this Act references to the rules of a self-regulating organisation are references to the rules (whether or not laid down by the organisation itself) which the organisation has power to enforce in relation to the carrying on of the business in question or which relate to the admission and expulsion of members of the organisation or otherwise to its constitution.
- (4) In this Act references to guidance issued by a self-regulating organisation are references to guidance issued or any recommendation made by it to all or any class of its members or persons seeking to become members which would, if it were a rule, fall within subsection (3) above.

#### **9 Applications for recognition**

- (1) A self-regulating organisation may apply to the Secretary of State for an order declaring it to be a recognised self-regulating organisation for the purposes of this Act.
- (2) Any such application—
- (a) shall be made in such manner as the Secretary of State may direct; and
  - (b) shall be accompanied by such information as the Secretary of State may reasonably require for the purpose of determining the application.

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- (3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.
- (4) The directions and requirements given or imposed under subsections (2) and (3) above may differ as between different applications.
- (5) Any information to be furnished to the Secretary of State under this section shall, if he so requires, be in such form or verified in such manner as he may specify.
- (6) Every application shall be accompanied by a copy of the applicant's rules and of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form.

## **10 Grant and refusal of recognition**

- (1) The Secretary of State may, on an application duly made in accordance with section 9 above and after being furnished with all such information as he may require under that section, make or refuse to make an order (" a recognition order ") declaring the applicant to be a recognised self-regulating organisation.
- (2) Subject to subsection (4) below and to Chapter XIV of this Part of this Act, the Secretary of State shall make a recognition order if it appears to him from the information furnished by the organisation making the application and having regard to any other information in his possession that the requirements of subsection (3) below and of Schedule 2 to this Act are satisfied as respects that organisation.
- (3) Where there is a kind of investment business with which the organisation is not concerned, its rules must preclude a member from carrying on investment business of that kind unless he is an authorised person otherwise than by virtue of his membership of the organisation or an exempted person in respect of that business.
- (4) The Secretary of State may refuse to make a recognition order in respect of an organisation if he considers that its recognition is unnecessary having regard to the existence of one or more other organisations which are concerned with investment business of a kind with which the applicant is concerned and which have been or are likely to be recognised under this section.
- (5) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect specifying a requirement which in the opinion of the Secretary of State is not satisfied, stating that the application is refused on the ground mentioned in subsection (4) above or stating that it is refused by virtue of Chapter XIV.
- (6) A recognition order shall state the date on which it takes effect.

## **11 Revocation of recognition**

- (1) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him—
  - (a) that section 10(3) above or any requirement of Schedule 2 to this Act is not satisfied in the case of the organisation to which the recognition order relates (" the recognised organisation ");
  - (b) that the recognised organisation has failed to comply with any obligation to which it is subject by virtue of this Act; or

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- (c) that the continued recognition of the organisation is undesirable having regard to the existence of one or more other organisations which have been or are to be recognised under section 10 above.
- (2) An order revoking a recognition order shall state the date on which it takes effect and that date shall not be earlier than three months after the day on which the revocation order is made.
- (3) Before revoking a recognition order the Secretary of State shall give written notice of his intention to do so to the recognised organisation, take such steps as he considers reasonably practicable for bringing the notice to the attention of members of the organisation and publish it in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.
- (4) A notice under subsection (3) above shall state the reasons for which the Secretary of State proposes to act and give particulars of the rights conferred by subsection (5) below.
- (5) An organisation on which a notice is served under subsection (3) above, any member of the organisation and any other person who appears to the Secretary of State to be affected may within three months after the date of service or publication, or within such longer time as the Secretary of State may allow, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State; and the Secretary of State shall have regard to any representations made in accordance with this subsection in determining whether to revoke the recognition order.
- (6) If in any case the Secretary of State considers it essential to do so in the interests of investors he may revoke a recognition order without regard to the restriction imposed by subsection (2) above and notwithstanding that no notice has been given or published under subsection (3) above or that the time for making representations in pursuance of such a notice has not expired.
- (7) An order revoking a recognition order may contain such transitional provisions as the Secretary of State thinks necessary or expedient.
- (8) A recognition order may be revoked at the request or with the consent of the recognised organisation and any such revocation shall not be subject to the restrictions imposed by subsections (1) and (2) or the requirements of subsections (3) to (5) above.
- (9) On making an order revoking a recognition order the Secretary of State shall give the organisation written notice of the making of the order, take such steps as he considers reasonably practicable for bringing the making of the order to the attention of members of the organisation and publish a notice of the making of the order in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.

## **12 Compliance orders**

- (1) If at any time it appears to the Secretary of State—
  - (a) that subsection (3) of section 10 above or any requirement of Schedule 2 to this Act is not satisfied in the case of a recognised organisation; or
  - (b) that a recognised organisation has failed to comply with any obligation to which it is subject by virtue of this Act,

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he may, instead of revoking the recognition order under section 11 above, make an application to the court under this section.

- (2) If on any such application the court decides that subsection (3) of section 10 or the requirement in question is not satisfied or, as the case may be, that the organisation has failed to comply with the obligation in question it may order the organisation to take such steps as the court directs for securing that that subsection or requirement is satisfied or that that obligation is complied with.
- (3) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

### **13 Alteration of rules for protection of investors**

- (1) If at any time it appears to the Secretary of State that the rules of a recognised organisation do not satisfy the requirements of paragraph 3(1) of Schedule 2 to this Act he may, instead of revoking the recognition order or making an application under section 12 above, direct the organisation to alter, or himself alter, its rules in such manner as he considers necessary for securing that the rules satisfy those requirements.
- (2) If at any time it appears to the Secretary of State that the rules or practices of a recognised organisation which is concerned with two or more kinds of investment business do not satisfy any requirement of Schedule 2 to this Act in respect of investment business of any of those kinds he may, instead of revoking the recognition order or making an application under section 12 above, direct the organisation to alter, or himself alter, its rules so that they preclude a member from carrying on investment business of that kind unless he is an authorised person otherwise than by virtue of membership of the organisation or an exempted person in respect of that business.
- (3) Any direction given under this section shall, on the application of the Secretary of State, be enforceable by mandamus or, in Scotland, by an order for specific performance under section 91 of the Court of Session Act 1868.
- (4) Before giving a direction or making any alteration under subsection (1) above the Secretary of State shall consult the organisation concerned.
- (5) A recognised organisation whose rules have been altered by or pursuant to a direction given by the Secretary of State under subsection (1) above may apply to the court and if the court is satisfied—
  - (a) that the rules without the alteration satisfied the requirements mentioned in that subsection; or
  - (b) that other alterations proposed by the organisation would result in the rules satisfying those requirements,the court may set aside the alteration made by or pursuant to the direction given by the Secretary of State and, in a case within paragraph (b) above, order the organisation to make the alterations proposed by it; but the setting aside of an alteration under this subsection shall not affect its previous operation.
- (6) The jurisdiction conferred by subsection (5) above shall be exercisable by the High Court and the Court of Session.
- (7) Section 11(2) to (7) and (9) above shall, with the necessary modifications, have effect in relation to any direction given or alteration made by the Secretary of State under



subsection (2) above as they have effect in relation to an order revoking a recognition order.

- (8) The fact that the rules of a recognised organisation have been altered by or pursuant to a direction given by the Secretary of State or pursuant to an order made by the court under this section shall not preclude their subsequent alteration or revocation by that organisation.

#### **14 Notification requirements**

- (1) The Secretary of State may make regulations requiring a recognised organisation to give him forthwith notice of the occurrence of such events relating to the organisation or its members as are specified in the regulations and such information in respect of those events as is so specified.
- (2) The Secretary of State may make regulations requiring a recognised organisation to furnish him at such times or in respect of such periods as are specified in the regulations with such information relating to the organisation or its members as is so specified.
- (3) The notices and information required to be given or furnished under the foregoing provisions of this section shall be such as the Secretary of State may reasonably require for the exercise of his functions under this Act
- (4) Regulations under the foregoing provisions of this section may require information to be given in a specified form and to be verified in a specified manner.
- (5) Any notice or information required to be given or furnished under the foregoing provisions of this section shall be given in writing or in such other manner as the Secretary of State may approve.
- (6) Where a recognised organisation amends, revokes or adds to its rules or guidance it shall within seven days give the Secretary of State written notice of the amendment, revocation or addition; but notice need not be given of the revocation of guidance other than such as is mentioned in section 9(6) above or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned.
- (7) Contravention of, or of regulations under, this section shall not be an offence.

#### *Persons authorised by recognised professional bodies*

#### **15 Authorisation by certification by recognised professional body**

- (1) A person holding a certificate issued for the purposes of this Part of this Act by a recognised professional body is an authorised person.
- (2) Such a certificate may be issued by a recognised professional body to an individual, a body corporate, a partnership or an unincorporated association.
- (3) A certificate issued to a partnership—
  - (a) shall be issued in the partnership name; and
  - (b) shall authorise the carrying on of investment business in that name by the partnership to which the certificate is issued, by any partnership which succeeds to that business or by any person who succeeds to that business having previously carried it on in partnership;

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and, in relation to a certificate issued to a partnership constituted under the law of England and Wales or Northern Ireland or the law of any other country or territory under which a partnership is not a legal person, references in this Act to the person who holds the certificate or is certified shall be construed as references to the persons or person for the time being authorised by the certificate to carry on investment business as mentioned in paragraph (b) above.

## **16 Professional bodies**

- (1) In this Act a "professional body" means a body which regulates the practice of a profession and references to the practice of a profession do not include references to carrying on a business consisting wholly or mainly of investment business.
- (2) In this Act references to the members of a professional body are references to individuals who, whether or not members of the body, are entitled to practise the profession in question and, in practising it, are subject to the rules of that body.
- (3) In this Act references to the rules of a professional body are references to the rules (whether or not laid down by the body itself) which the body has power to enforce in relation to the practice of the profession in question and the carrying on of investment business by persons practising that profession or which relate to the grant, suspension or withdrawal of certificates under section 15 above, the admission and expulsion of members or otherwise to the constitution of the body.
- (4) In this Act references to guidance issued by a professional body are references to guidance issued or any recommendation made by it to all or any class of its members or persons seeking to become members, or to persons or any class of persons who are or are seeking to be certified by the body, and which would, if it were a rule, fall within subsection (3) above.

## **17 Applications for recognition**

- (1) A professional body may apply to the Secretary of State for an order declaring it to be a recognised professional body for the purposes of this Act.
- (2) Subsections (2) to (6) of section 9 above shall have effect in relation to an application under subsection (1) above as they have effect in relation to an application under subsection (1) of that section.

## **18 Grant and refusal of recognition**

- (1) The Secretary of State may, on an application duly made in accordance with section 17 above and after being furnished with all such information as he may require under that section, make or refuse to make an order ("a recognition order") declaring the applicant to be a recognised professional body.
- (2) The Secretary of State may make a recognition order if it appears to him from the information furnished by the body making the application and having regard to any other information in his possession that the requirements of subsection (3) below and of Schedule 3 to this Act are satisfied as respects that body.
- (3) The body must have rules which impose acceptable limits on the kinds of investment business which may be carried on by persons certified by it and the circumstances in which they may carry on such business and which preclude a person certified by that

body from carrying on any investment business outside those limits unless he is an authorised person otherwise than by virtue of the certification or an exempted person in respect of that business.

- (4) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect, stating the reasons for the refusal.
- (5) A recognition order shall state the date on which it takes effect.

## **19 Revocation of recognition**

- (1) A recognition order under section 18 above may be revoked by a further order made by the Secretary of State if at any time it appears to him—
  - (a) that section 18(3) above or any requirement of Schedule 3 to this Act is not satisfied in the case of the body to which the recognition order relates; or
  - (b) that the body has failed to comply with any obligation to which it is subject by virtue of this Act.
- (2) Subsections (2) to (9) of section 11 above shall have effect in relation to the revocation of a recognition order under this section as they have effect in relation to the revocation of a recognition order under subsection (1) of that section.

## **20 Compliance orders**

- (1) If at any time it appears to the Secretary of State—
  - (a) that subsection (3) of section 18 above or any requirement of Schedule 3 to this Act is not satisfied in the case of a recognised professional body; or
  - (b) that such a body has failed to comply with any obligation to which it is subject by virtue of this Act,he may, instead of revoking the recognition order under section 19 above, make an application to the court under this section.
- (2) If on any such application the court decides that subsection (3) of section 18 above or the requirement in question is not satisfied or, as the case may be, that the body has failed to comply with the obligation in question it may order the body to take such steps as the court directs for securing that that subsection or requirement is satisfied or that that obligation is complied with.
- (3) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

## **21 Notification requirements**

- (1) The Secretary of State may make regulations requiring a recognised professional body to give him forthwith notice of the occurrence of such events relating to the body, its members or persons certified by it as are specified in the regulations and such information in respect of those events as is so specified.
- (2) The Secretary of State may make regulations requiring a recognised professional body to furnish him at such times or in respect of such periods as are specified in the regulations with such information relating to the body, its members and persons certified by it as is so specified.

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- (3) The notices and information required to be given or furnished under the foregoing provisions of this section shall be such as the Secretary of State may reasonably require for the exercise of his functions under this Act.
- (4) Regulations under the foregoing provisions of this section may require information to be given in a specified form and to be verified in a specified manner.
- (5) Any notice or information required to be given or furnished under the foregoing provisions of this section shall be given in writing or in such other manner as the Secretary of State may approve.
- (6) Where a recognised professional body amends, revokes or adds to its rules or guidance it shall within seven days give the Secretary of State written notice of the amendment, revocation or addition; but—
  - (a) notice need not be given of the revocation of guidance other than such as is mentioned in section 9(6) above or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned; and
  - (b) notice need not be given in respect of any rule or guidance, or rules or guidance of any description, in the case of which the Secretary of State has waived compliance with this subsection by notice in writing to the body concerned; and any such waiver may be varied or revoked by a further notice in writing.
- (7) Contravention of, or of regulations under, this section shall not be an offence.

#### *Insurance companies*

### **22 Authorised insurers**

A body which is authorised under section 3 or 4 of the Insurance Companies Act 1982 to carry on insurance business which is investment business and carries on such insurance business in the United Kingdom is an authorised person as respects—

- (a) any insurance business which is investment business; and
- (b) any other investment business which that body may carry on without contravening section 16 of that Act

#### *Friendly societies*

### **23 Registered friendly societies**

- (1) A society which—
  - (a) is a friendly society within the meaning of section 7(1)(a) of the Friendly Societies Act 1974 ;
  - (b) is registered within the meaning of that Act as a society but not as a branch of a society ;
  - (c) under its rules has its registered office at a place situated in Great Britain ; and
  - (d) carries on investment business in the United Kingdom,
 is an authorised person as respects any investment business which it carries on for or in connection with any of the purposes mentioned in Schedule 1 to that Act.

- (2) A society which—

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- (a) is a friendly society within the meaning of section 1(1)(a) of the Friendly Societies Act (Northern Ireland) 1970;
  - (b) is registered or deemed to be registered as a society but not as a branch of a society under that Act;
  - (c) under its rules has its registered office at a place situated in Northern Ireland ;  
and
  - (d) carries on investment business in the United Kingdom,
- is an authorised person as respects any investment business which it carries on for or in connection with any of the purposes mentioned in Schedule 1 to that Act.

#### *Collective investment schemes*

### **24 Operators and trustees of recognised schemes**

The operator or trustee of a scheme recognised under section 86 below is an authorised person as respects—

- (a) investment business which consists in operating or acting as trustee in relation to that scheme; and
- (b) any investment business which is carried on by him in connection with or for the purposes of that scheme.

#### *Persons authorised by the Secretary of State*

### **25 Authorisation by Secretary of State**

A person holding an authorisation granted by the Secretary of State under the following provisions of this Chapter is an authorised person.

### **26 Applications for authorisation**

- (1) An application for authorisation by the Secretary of State may be made by—
  - (a) an individual;
  - (b) a body corporate;
  - (c) a partnership; or
  - (d) an unincorporated association.
- (2) Any such application—
  - (a) shall be made in such manner as the Secretary of State may direct;
  - (b) shall contain or be accompanied by—
    - (i) information as to the investment business which the applicant proposes to carry on and the services which he will hold himself out as able to provide in the carrying on of that business ; and
    - (ii) such other information as the Secretary of State may reasonably require for the purpose of determining the application; and
  - (c) shall contain the address of a place in the United Kingdom for the service on the applicant of any notice or other document required or authorised to be served on him under this Act.

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- (3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.
- (4) The directions and requirements given or imposed under subsections (2) and (3) above may differ as between different applications.
- (5) Any information to be furnished to the Secretary of State under this section shall, if he so requires, be in such form or verified in such manner as he may specify.

## **27 Grant and refusal of authorisation**

- (1) The Secretary of State may, on an application duly made in accordance with section 26 above and after being furnished with all such information as he may require under that section, grant or refuse the application.
- (2) The Secretary of State shall grant the application if it appears to him from the information furnished by the applicant and having regard to any other information in his possession that the applicant is a fit and proper person to carry on the investment business and provide the services described in the application.
- (3) In determining whether to grant or refuse an application the Secretary of State may take into account any matter relating to any person who is or will be employed by or associated with the applicant for the purposes of the business in question, to any person who is or will be acting as an appointed representative in relation to that business and—
  - (a) if the applicant is a body corporate, to any director or controller of the body, to any other body corporate in the same group or to any director or controller of any such other body corporate ;
  - (b) if the applicant is a partnership, to any of the partners ;
  - (c) if the applicant is an unincorporated association, to any member of the governing body of the association or any officer or controller of the association.
- (4) In determining whether to grant or refuse an application the Secretary of State may also have regard to any business which the applicant proposes to carry on in connection with his investment business.
- (5) In the case of an applicant who is authorised to carry on investment business in a member State other than the United Kingdom the Secretary of State shall have regard to that authorisation.
- (6) An authorisation granted to a partnership—
  - (a) shall be granted in the partnership name ; and
  - (b) shall authorise the carrying on of investment business in that name (or with the Secretary of State's consent in any other name) by the partnership to which the authorisation is granted, by any partnership which succeeds to that business or by any person who succeeds to that business having previously carried it on in partnership;

and, in relation to an authorisation granted to a partnership constituted under the law of England and Wales or Northern Ireland or the law of any other country or territory under which a partnership is not a legal person, references in this Act to the holder of the authorisation or the authorised person shall be construed as references to the persons or person for the time being authorised by the authorisation to carry on investment business as mentioned in paragraph (b) above.

- (7) An authorisation granted to an unincorporated association shall apply to the carrying on of investment business in the name of the association and in such manner as may be specified in the authorisation.
- (8) The Secretary of State shall give an applicant for authorisation written notice of the grant of authorisation specifying the date on which it takes effect

## **28 Withdrawal and suspension of authorisation**

- (1) The Secretary of State may at any time withdraw or suspend any authorisation granted by him if it appears to him—
  - (a) that the holder of the authorisation is not a fit and proper person to carry on the investment business which he is carrying on or proposing to carry on; or
  - (b) without prejudice to paragraph (a) above, that the holder of the authorisation has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act.
- (2) For the purposes of subsection (1)(a) above the Secretary of State may take into account any such matters as are mentioned in section 27 (3) and (4) above.
- (3) Where the holder of the authorisation is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in paragraph (b) of subsection (1) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules; and where he is a person certified by a recognised professional body the rules, prohibitions and requirements referred to in that paragraph include the rules of that body which regulate the carrying on by him of investment business and any prohibition or requirement imposed by virtue of those rules.
- (4) The suspension of an authorisation shall be for a specified period or until the occurrence of a specified event or until specified conditions are complied with; and while an authorisation is suspended the holder shall not be an authorised person.
- (5) Any period, event or conditions specified under subsection (4) above in the case of an authorisation may be varied by the Secretary of State on the application of the holder.

## **29 Notice of proposed refusal, withdrawal or suspension**

- (1) Where the Secretary of State proposes—
  - (a) to refuse an application under section 26 or 28(5) above ; or
  - (b) to withdraw or suspend an authorisation,he shall give the applicant or the authorised person written notice of his intention to do so, stating the reasons for which he proposes to act.
- (2) In the case of a proposed withdrawal or suspension the notice shall state the date on which it is proposed that the withdrawal or suspension should take effect and, in the case of a proposed suspension, its proposed duration.
- (3) Where the reasons stated in a notice under this section relate specifically to matters which—

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- (a) refer to a person identified in the notice other than the applicant or the holder of the authorisation; and
- (b) are in the opinion of the Secretary of State prejudicial to that person in any office or employment,

the Secretary of State shall, unless he considers it impracticable to do so, serve a copy of the notice on that person.

- (4) A notice under this section shall give particulars of the right to require the case to be referred to the Tribunal under Chapter IX of this Part of this Act.
- (5) Where a case is not required to be referred to the Tribunal by a person on whom a notice is served under this section the Secretary of State shall, at the expiration of the period within which such a requirement can be made—
  - (a) give that person written notice of the refusal, withdrawal or suspension; or
  - (b) give that person written notice of the grant of the application or, as the case may be, written notice that the authorisation is not to be withdrawn or suspended;

and the Secretary of State may give public notice of any decision notified by him under paragraph (a) or (b) above and the reasons for the decision except that he shall not do so in the case of a decision notified under paragraph (b) unless the person concerned consents to his doing so.

### **30 Withdrawal of applications and authorisations by consent**

- (1) An application under section 26 above may be withdrawn before it is granted or refused ; and, subject to subsections (2) and (3) below, an authorisation granted under section 27 above may be withdrawn by the Secretary of State at the request or with the consent of the authorised person.
- (2) The Secretary of State may refuse to withdraw any such authorisation if he considers that the public interest requires any matter affecting the authorised person to be investigated as a preliminary to a decision on the question whether the Secretary of State should in respect of that person exercise his powers under section 28 above or under any other provision of this Part of this Act.
- (3) The Secretary of State may also refuse to withdraw an authorisation where in his opinion it is desirable that a prohibition or restriction should be imposed on the authorised person under Chapter VI of this Part of this Act or that a prohibition or restriction imposed on that person under that Chapter should continue in force.
- (4) The Secretary of State may give public notice of any withdrawal of authorisation under subsection (1) above.

*Persons authorised in other member States*

### **31 Authorisation in other member State**

- (1) A person carrying on investment business in the United Kingdom is an authorised person if—
  - (a) he is established in a member State other than the United Kingdom;
  - (b) the law of that State recognises him as a national of that or another member State; and



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- (c) he is for the time being authorised under that law to carry on investment business or investment business of any particular kind.
- (2) For the purposes of this Act a person is established in a member State other than the United Kingdom if his head office is situated in that State and he does not transact investment business from a permanent place of business maintained by him in the United Kingdom.
- (3) This section applies to a person only if the provisions of the law under which he is authorised to carry on the investment business in question—
  - (a) afford to investors in the United Kingdom protection, in relation to his carrying on of that business, which is at least equivalent to that provided for them by the provisions of this Chapter relating to members of recognised self-regulating organisations or to persons authorised by the Secretary of State ; or
  - (b) satisfy the conditions laid down by a Community instrument for the co-ordination or approximation of the laws, regulations or administrative provisions of member States relating to the carrying on of investment business or investment business of the relevant kind.
- (4) A certificate issued by the Secretary of State and for the time being in force to the effect that the provisions of the law of a member State comply with the requirements of subsection (3)(a) above, either as respects all investment business or as respects investment business of a particular kind, shall be conclusive evidence of that matter but the absence or revocation of such a certificate shall not be regarded as indicating that those requirements are not complied with.
- (5) This section shall not apply to a person by virtue of paragraph (b) of subsection (3) above unless the authority by which he is authorised to carry on the investment business in question certifies that he is authorised to do so under a law which complies with the requirements of that paragraph.

## **32 Notice of commencement of business**

- (1) A person who is an authorised person by virtue of section 31 above shall be guilty of an offence unless, not less than seven days before beginning to carry on investment business in the United Kingdom, he has given notice of his intention to do so to the Secretary of State either in writing or in such other manner as the Secretary of State may approve.
- (2) The notice shall contain—
  - (a) information as to the investment business which that person proposes to carry on in the United Kingdom and the services which he will hold himself out as able to provide in the carrying on of that business ;
  - (b) information as to the authorisation of that person in the member State in question ;
  - (c) the address of a place (whether in the United Kingdom or elsewhere) for the service on that person of any notice or other document required or authorised to be served on him under this Act;
  - (d) such other information as may be prescribed ;and the notice shall comply with such requirements as to the form in which any information is to be given and as to its verification as may be prescribed.

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- (3) A notice by a person claiming to be authorised by virtue of subsection 0)(b) of section 31 above shall be accompanied by a copy of the certificate required by subsection (5) of that section.
- (4) A person guilty of an offence under subsection (1) above shall be liable—
  - (a) on conviction on indictment, to a fine ;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (5) In proceedings brought against any person for an offence under subsection (1) above it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

### **33 Termination and suspension of authorisation**

- (1) If it appears to the Secretary of State that a person who is an authorised person by virtue of section 31 above has contravened any provision of this Act or of any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act the Secretary of State may direct—
  - (a) that he shall cease to be an authorised person by virtue of that section; or
  - (b) that he shall not be an authorised person by virtue of that section for a specified period or until the occurrence of a specified event or until specified conditions are complied with.
- (2) In the case of a person who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in subsection (1) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules; and in the case of a person who is certified by a recognised professional body the rules, prohibitions and requirements referred to in that subsection include the rules of that body which regulate the carrying on by him of investment business and any prohibition or requirement imposed by virtue of those rules.
- (3) Any period, event or condition specified in a direction under subsection (1)(b) above may be varied by the Secretary of State on the application of the person to whom the direction relates.
- (4) The Secretary of State shall consult the relevant supervisory authority before giving a direction under this section unless he considers it essential in the interests of investors that the direction should be given forthwith but in that case he shall consult the authority immediately after giving the direction and may then revoke or vary it if he considers it appropriate to do so.
- (5) The Secretary of State shall revoke a direction under this section if he is satisfied, after consulting the relevant supervisory authority, that it will secure that the person concerned will comply with the provisions mentioned in subsection (1) above.
- (6) In this section " the relevant supervisory authority " means the authority of the member State where the person concerned is established which is responsible for supervising the carrying on of investment business of the kind which that person is or was carrying on.

### **34 Notice of proposed termination or suspension**

- (1) Where the Secretary of State proposes—
  - (a) to give a direction under section 33 above ; or
  - (b) to refuse an application under subsection (3) of that section,he shall give the authorised person written notice of his intention to do so, stating the reasons for which he proposes to act.
- (2) In the case of a proposed direction under section 33 above the notice shall state the date on which it is proposed that the direction should take effect and, in the case of a proposed direction under subsection (1)(b) of that section, its proposed duration.
- (3) Where the reasons stated in a notice under this section relate specifically to matters which—
  - (a) refer to a person identified in the notice other than the authorised person; and
  - (b) are in the opinion of the Secretary of State prejudicial to that person in any office or employment,the Secretary of State shall, unless he considers it impracticable to do so, serve a copy of the notice on that other person.
- (4) A notice under this section shall give particulars of the right to require the case to be referred to the Tribunal under Chapter IX of this Part of this Act.
- (5) Where a case is not required to be referred to the Tribunal by a person on whom a notice is served under this section the Secretary of State shall, at the expiration of the period within which such a requirement can be made—
  - (a) give that person written notice of the direction or refusal ; or
  - (b) give that person written notice that the direction is not to be given or, as the case may be, of the grant of the application;and the Secretary of State may give public notice of any decision notified by him under paragraph (a) or (b) above and the reasons for the decision except that he shall not do so in the case of a decision within paragraph (b) unless the person concerned consents to his doing so.

## **CHAPTER IV**

### **EXEMPTED PERSONS**

#### *The Bank of England*

### **35 The Bank of England**

The Bank of England is an exempted person.

#### *Recognised investment exchanges and clearing houses*

### **36 Investment exchanges**

- (1) A recognised investment exchange is an exempted person as respects anything done in its capacity as such which constitutes investment business.

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- (2) In this Act references to the rules of an investment exchange are references to the rules made or conditions imposed by it with respect to the matters dealt with in Schedule 4 to this Act, with respect to the admission of persons to or their exclusion from the use of its facilities or otherwise relating to its constitution.
- (3) In this Act references to guidance issued by an investment exchange are references to guidance issued or any recommendation made by it to all or any class of its members or users or persons seeking to become members of the exchange or to use its facilities and which would, if it were a rule, fall within subsection (2) above.

### **37 Grant and revocation of recognition**

- (1) Any body corporate or unincorporated association may apply to the Secretary of State for an order declaring it to be a recognised investment exchange for the purposes of this Act.
- (2) Subsections (2) to (5) of section 9 above shall have effect in relation to an application under subsection (1) above as they have effect in relation to an application under subsection (1) of that section; and every application under subsection (1) above shall be accompanied by—
  - (a) a copy of the applicant's rules;
  - (b) a copy of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form ; and
  - (c) particulars of any arrangements which the applicant has made or proposes to make for the provision of clearing services.
- (3) The Secretary of State may, on an application duly made in accordance with subsection (1) above and after being furnished with all such information as he may require in connection with the application, make or refuse to make an order (" a recognition order ") declaring the applicant to be a recognised investment exchange for the purposes of this Act.
- (4) Subject to Chapter XIV of this Part of this Act, the Secretary of State may make a recognition order if it appears to him from the information furnished by the exchange making the application and having regard to any other information in his possession that the requirements of Schedule 4 to this Act are satisfied as respects that exchange.
- (5) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect stating the reasons for the refusal.
- (6) A recognition order shall state the date on which it takes effect
- (7) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him—
  - (a) that any requirement of Schedule 4 to this Act is not satisfied in the case of the exchange to which the recognition order relates ; or
  - (b) that the exchange has failed to comply with any obligation to which it is subject by virtue of this Act;

and subsections (2) to (9) of section 11 above shall have effect in relation to the revocation of a recognition order under this subsection as they have effect in relation to the revocation of such an order under subsection (1) of that section.

- (8) Section 12 above shall have effect in relation to a recognised investment exchange and the requirements and obligations referred to in subsection (7) above as it has effect in relation to the requirements and obligations there mentioned.

### **38 Clearing houses**

- (1) A recognised clearing house is an exempted person as respects anything done by it in its capacity as a person providing clearing services for the transaction of investment business.
- (2) In this Act references to the rules of a clearing house are references to the rules made or conditions imposed by it with respect to the provision by it or its members of clearing services under clearing arrangements, that is to say, arrangements with a recognised investment exchange for the provision of clearing services in respect of transactions effected on the exchange.
- (3) In this Act references to guidance issued by a clearing house are references to guidance issued or any recommendation made by it to all or any class of its members or persons using or seeking to use its services and which would, if it were a rule, fall within subsection (2) above.

### **39 Grant and revocation of recognition**

- (1) Any body corporate or unincorporated association may apply to the Secretary of State for an order declaring it to be a recognised clearing house for the purposes of this Act.
- (2) Subsections (2) to (5) of section 9 above shall have effect in relation to an application under subsection (1) above as they have effect in relation to an application under subsection (1) of that section ; and any application under subsection (1) above shall be accompanied by—
- (a) a copy of the applicant's rules;
  - (b) a copy of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form; and
  - (c) particulars of any recognised investment exchange with which the applicant proposes to make clearing arrangements and of any other person (whether or not such an exchange) for whom the applicant provides clearing services.
- (3) The Secretary of State may, on an application duly made in accordance with subsection (1) above and after being furnished with all such information as he may require in connection with the application, make or refuse to make an order (" a recognition order ") declaring the applicant to be a recognised clearing house for the purposes of this Act.
- (4) Subject to Chapter XIV of this Part of this Act, the Secretary of State may make a recognition order if it appears to him from the information furnished by the clearing house making the application and having regard to any other information in his possession that the clearing house—
- (a) has financial resources sufficient for the proper performance of its functions;
  - (b) has adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules or, as respects monitoring, arrangements providing for that function to be performed on behalf of the clearing house (and without affecting its responsibility) by another body or person who is able and willing to perform it;

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- (c) provides or is able to provide clearing services which would enable a recognised investment exchange to make arrangements with it that satisfy the requirements of Schedule 4 to this Act; and
  - (d) is able and willing to comply with duties corresponding to those imposed in the case of a recognised investment exchange by paragraph 5 of that Schedule.
- (5) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect stating the reasons for the refusal.
- (6) A recognition order shall state the date on which it takes effect
- (7) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him—
- (a) that any requirement of subsection (4) above is not satisfied in the case of the clearing house ; or
  - (b) that the clearing house has failed to comply with any obligation to which it is subject by virtue of this Act;
- and subsections (2) to (9) of section 11 above shall have effect in relation to the revocation of a recognition order under this subsection as they have effect in relation to the revocation of such an order under subsection (1) of that section.
- (8) Section 12 above shall have effect in relation to a recognised clearing house and the requirements and obligations referred to in subsection (7) above as it has effect in relation to the requirements and obligations there mentioned.

#### **40 Overseas investment exchanges and clearing houses**

- (1) Any application under section 37(1) or 39(1) above by a body or association whose head office is situated in a country outside the United Kingdom shall contain the address of a place in the United Kingdom for the service on that body or association of notices or other documents required or authorised to be served on it under this Act.
- (2) In relation to any such body or association sections 37(4) and 39(4) above shall have effect with the substitution for the requirements there mentioned of the following requirements, that is to say—
- (a) that the body or association is, in the country in which its head office is situated, subject to supervision which, together with the rules and practices of that body or association, is such that investors in the United Kingdom are afforded protection in relation to that body or association at least equivalent to that provided by the provisions of this Act in relation to investment exchanges and clearing houses in respect of which recognition orders are made otherwise than by virtue of this subsection ; and
  - (b) that the body or association is able and willing to cooperate, by the sharing of information and otherwise, with the authorities, bodies and persons responsible in the United Kingdom for the supervision and regulation of investment business or other financial services; and
  - (c) that adequate arrangements exist for such co-operation between those responsible for the supervision of the body or association in the country mentioned in paragraph (a) above and the authorities, bodies and persons mentioned in paragraph (b) above.
- (3) In determining whether to make a recognition order by virtue of subsection (2) above the Secretary of State may have regard to the extent to which persons in the United

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Kingdom and persons in the country mentioned in that subsection have access to the financial markets in each others' countries.

- (4) In relation to a body or association declared to be a recognised investment exchange or recognised clearing house by a recognition order made by virtue of subsection (2) above—
- (a) the reference in section 36(2) above to the matters dealt with in Schedule 4 to this Act shall be construed as a reference to corresponding matters ;
  - (b) sections 37(7) and (8) and 39(7) and (8) above shall have effect as if the requirements mentioned in section 37(7)(fl) and in section 39(7)(a) were those of subsection (2)(a) and (b) above ; and
  - (c) the grounds on which the order may be revoked under section 37(7) or 39(7) above shall include the ground that it appears to the Secretary of State that revocation is desirable in the interests of investors and potential investors in the United Kingdom.
- (5) In this section " country " includes any territory or any part of a country or territory.
- (6) A body or association declared to be a recognised investment exchange or recognised clearing house by a recognition order made by virtue of subsection (2) above is in this Act referred to as an " overseas investment exchange " or an " overseas clearing house ".

#### **41 Notification requirements**

- (1) The Secretary of State may make regulations requiring a recognised investment exchange or recognised clearing house to give him forthwith notice of the occurrence of such events relating to the exchange or clearing house as are specified in the regulations and such information in respect of those events as is so specified.
- (2) The Secretary of State may make regulations requiring a recognised investment exchange or recognised clearing house to furnish him at such times or in respect of such periods as are specified in the regulations with such information relating to the exchange or clearing house as is so specified.
- (3) The notices and information required to be given or furnished under the foregoing provisions of this section shall be such as the Secretary of State may reasonably require for the exercise of his functions under this Act.
- (4) Regulations under the foregoing provisions of this section may require information to be given in a specified form and to be verified in a specified manner.
- (5) Where a recognised investment exchange—
- (a) amends, revokes or adds to its rules or guidance; or
  - (b) makes, terminates or varies any clearing arrangements,
- it shall within seven days give written notice to the Secretary of State of the amendment, revocation or addition or, as the case may be, of the matters mentioned in paragraph (b) above.
- (6) Where a recognised clearing house—
- (a) amends, revokes or adds to its rules or guidance ; or
  - (b) makes a change in the persons for whom it provides clearing services,
- it shall within seven days give written notice to the Secretary of State of the amendment, revocation or addition or, as the case may be, of the change.

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- (7) Notice need not be given under subsection (5) or (6) above of the revocation of guidance other than such as is mentioned in section 37(2)(b) or 39(2)(b) above or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned.

#### *Other exemptions*

#### **42 Lloyd's**

The Society of Lloyd's and persons permitted by the Council of Lloyd's to act as underwriting agents at Lloyd's are exempted persons as respects investment business carried on in connection with or for the purpose of insurance business at Lloyd's.

#### **43 Listed money market institutions**

- (1) A person for the time being included in a list maintained by the Bank of England for the purposes of this section (" a listed institution ") is an exempted person in respect of, and of anything done for the purposes of, any transaction to which Part I or Part II of Schedule 5 to this Act applies and in respect of any arrangements made by him with a view to other persons entering into a transaction to which Part III of that Schedule applies.
- (2) The conditions imposed by the Bank of England for admission to the list referred to in this section and the arrangements made by it for a person's admission to and removal from the list shall require the approval of the Treasury; and this section shall cease to have effect if that approval is withdrawn but without prejudice to its again having effect if approval is given for fresh conditions or arrangements.
- (3) The Bank of England shall publish the list as for the time being in force and provide a certified copy of it at the request of any person wishing to refer to it in legal proceedings.
- (4) Such a certified copy shall be evidence or, in Scotland, sufficient evidence of the contents of the list; and a copy purporting to be certified by or on behalf of the Bank shall be deemed to have been duly certified unless the contrary is shown.

#### **44 Appointed representatives**

- (1) An appointed representative is an exempted person as respects investment business carried on by him as such a representative.
- (2) For the purposes of this Act an appointed representative is a person—
- (a) who is employed by an authorised person (his " principal ") under a contract for services which—
    - (i) requires or permits him to carry on investment business to which this section applies; and
    - (ii) complies with subsections (4) and (5) below; and
  - (b) for whose activities in carrying on the whole or part of that investment business his principal has accepted responsibility in writing; and the investment business carried on by an appointed representative as such is the investment business for which his principal has accepted responsibility.



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- (3) This section applies to investment business carried on by an appointed representative which consists of—
- (a) procuring or endeavouring to procure the persons with whom he deals to enter into investment agreements With his principal or (if not prohibited by his contract) with other persons;
  - (b) giving advice to the persons with whom he deals about entering into investment agreements with his principal or (if not prohibited by his contract) with other persons; or
  - (c) giving advice as to the sale of investments issued by his principal or as to the exercise of rights conferred by an investment whether or not issued as aforesaid.
- (4) If the contract between an appointed representative and his principal does not prohibit the representative from procuring or endeavouring to procure persons to enter into investment agreements with persons other than his principal it must make provision for enabling the principal either to impose such a prohibition or to restrict the kinds of investment to which those agreements may relate or the other persons with whom they may be entered into.
- (5) If the contract between an appointed representative and his principal does not prohibit the representative from giving advice about entering into investment agreements with persons other than his principal it must make provision for enabling the principal either to impose such a prohibition or to restrict the kinds of advice which the representative may give by reference to the kinds of investment in relation to which or the persons with whom the representative may advise that investment agreements should be made.
- (6) The principal of an appointed representative shall be responsible, to the same extent as if he had expressly authorised it, for anything said or done or omitted by the representative in carrying on the investment business for which he has accepted responsibility.
- (7) In determining whether an authorised person has complied with—
- (a) any provision contained in or made under this Act; or
  - (b) any rules of a recognised self-regulating organisation or recognised professional body,
- anything which a person who at the material time is or was an appointed representative of the authorised person has said, done or omitted as respects investment business for which the authorised person has accepted responsibility shall be treated as having been said, done or omitted by the authorised person.
- (8) Nothing in subsection (7) above shall cause the knowledge or intentions of an appointed representative to be attributed to his principal for the purpose of determining whether the principal has committed a criminal offence unless in all the circumstances it is reasonable for them to be attributed to him.
- (9) In this Act " investment agreement" means any agreement the making or performance of which by either party constitutes an activity which falls within any paragraph of Part II of Schedule 1 to this Act or would do so apart from Parts III and IV of that Schedule.

#### **45 Miscellaneous exemptions**

- (1) Each of the following persons is an exempted person to the extent specified in relation to that person—

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- (a) the President of the Family Division of the High Court when acting in the exercise of his functions under section 9 of the Administration of Estates Act 1925 ;
  - (b) the Probate Judge of the High Court of Northern Ireland when acting in the exercise of his functions under section 3 of the Administration of Estates Act (Northern Ireland) 1955;
  - (c) the Accountant General of the Supreme Court when acting in the exercise of his functions under Part VI of the Administration of Justice Act 1982 ;
  - (d) the Accountant of Court when acting in the exercise of his functions in connection with the consignment or deposit of sums of money;
  - (e) the Public Trustee when acting in the exercise of his functions under the Public Trustee Act 1906;
  - (f) the Master of the Court of Protection when acting in the exercise of his functions under Part VII of the Mental Health Act 1983 ;
  - (g) the Official Solicitor to the Supreme Court when acting as judicial trustee under the Judicial Trustees Act 1896;
  - (h) a registrar of a county court when managing funds paid into court;
  - (i) a sheriff clerk when acting in the exercise of his functions in connection with the consignment or deposit of sums of money;
  - (j) a person acting in his capacity as manager of a fund established under section 22 of the Charities Act 1960, section 25 of the Charities Act (Northern Ireland) 1964, section 11 of the Trustee Investments Act 1961 or section 42 of the Administration of Justice Act 1982;
  - (k) the Central Board of Finance of the Church of England or a Diocesan Authority within the meaning of the Church Funds Investment Measure 1958 when acting in the exercise of its functions under that Measure;
  - (l) a person acting in his capacity as an official receiver within the meaning of section 399 of the Insolvency Act 1986 or in that capacity within the meaning of any corresponding provision in force in Northern Ireland.
- (2) Where a bankruptcy order is made in respect of an authorised person or of a person whose authorisation is suspended under section 28 above or who is the subject of a direction under section 33(1)(b) above or a winding-up order is made in respect of a partnership which is such a person, the trustee in bankruptcy or liquidator acting in his capacity as such is an exempted person but—
- (c) sections 48 to 71 below and, so far as relevant to any of those provisions, Chapter IX of this Part of this Act; and
  - (b) sections 104, 105 and 106 below,
- shall apply to him to the same extent as they applied to the bankrupt or partnership and, if the bankrupt or partnership was subject to the rules of a recognised self-regulating organisation or recognised professional body, he shall himself also be subject to those rules.
- (3) In the application of subsection (2) above to Scotland—
- (a) for the reference to a bankruptcy order being made in respect of a person there shall be substituted a reference to the estate of that person being sequestrated ;
  - (b) the reference to a winding-up order in respect of a partnership is a reference to such an order made under section 72 below;

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- (c) for the reference to the trustee in bankruptcy there shall be substituted a reference to the interim trustee or permanent trustee within the meaning of the Bankruptcy (Scotland) Act 1985 ; and
  - (d) for the references to the bankrupt there shall be substituted references to the debtor.
- (4) In the application of subsection (2) above to Northern Ireland for the reference to a bankruptcy order there shall be substituted a reference to an order of adjudication of bankruptcy and the reference to a trustee in bankruptcy shall include a reference to an assignee in bankruptcy.

### *Supplemental*

#### **46 Power to extend or restrict exemptions**

- (1) The Secretary of State may by order provide—
- (a) for exemptions additional to those specified in the foregoing provisions of this Chapter; or
  - (b) for removing or restricting any exemption conferred by section 42, 43 or 45 above;
- and any such order may contain such transitional provisions as the Secretary of State thinks necessary or expedient.
- (2) An order making such provision as is mentioned in paragraph (a) of subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament; and no order making such provision as is mentioned in paragraph (b) of that subsection shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

## **CHAPTER V**

### **CONDUCT OF INVESTMENT BUSINESS**

#### **47 Misleading statements and practices**

- (1) Any person who—
- (a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive or dishonestly conceals any material facts; or
  - (b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,
- is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) to enter or offer to enter into, or to refrain from entering or offering to enter into, an investment agreement or to exercise, or refrain from exercising, any rights conferred by an investment.
- (2) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any investments is guilty of an offence if he does so for the purpose of creating that impression and

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of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.

- (3) In proceedings brought against any person for an offence under subsection (2) above it shall be a defence for him to prove that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the matters mentioned in that subsection.
- (4) Subsection (1) above does not apply unless—
- (a) the statement, promise or forecast is made in or from or the facts are concealed in or from, the United Kingdom;
  - (b) the person on whom the inducement is intended to or may have effect is in the United Kingdom; or
  - (c) the agreement is or would be entered into or the rights are or would be exercised in the United Kingdom.
- (5) Subsection (2) above does not apply unless—
- (a) the act is done or the course of conduct is engaged in in the United Kingdom; or
  - (b) the false or misleading impression is created there.
- (6) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

#### **48 Conduct of business rules**

- (1) The Secretary of State may make rules regulating the conduct of investment business by authorised persons but those rules shall not apply to members of a recognised self-regulating organisation or persons certified by a recognised professional body in respect of investment business in the carrying on of which they are subject to the rules of the organisation or body.
- (2) Rules under this section may in particular make provision—
- (a) prohibiting a person from carrying on, or holding himself out as carrying on—
    - (i) investment business of any kind specified in the rules; or
    - (ii) investment business of a kind or on a scale other than that notified by him to the Secretary of State in connection with an application for authorisation under Chapter III of this Part of this Act. in a notice under section 32 above or in accordance with any provision of the rules or regulations in that behalf;
  - (b) prohibiting a person from carrying on investment business in relation to persons other than those of a specified class or description;
  - (c) regulating the manner in which a person may hold himself out as carrying on investment business;
  - (d) regulating the manner in which a person makes a market in any investments;
  - (e) as to the form and content of advertisements in respect of investment business;
  - (f) requiring the principals of appointed representatives to impose restrictions on the investment business carried on by them;

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- (g) requiring the disclosure of the amount or value, or of arrangements for the payment or provision, of commissions or other inducements in connection with investment business and restricting the matters by reference to which or the manner in which their amount or value may be determined ;
  - (h) enabling or requiring information obtained by an authorised person in the course of carrying on one part of his business to be withheld by him from persons with whom he deals in the course of carrying on another part and for that purpose enabling or requiring persons employed in one part of that business to withhold information from those employed in another part;
  - (i) as to the circumstances and manner in which and the time when or the period during which action may be taken for the purpose of stabilising the price of investments of any specified description ;
  - (j) for arrangements for the settlement of disputes;
  - (k) requiring the keeping of accounts and other records, as to their form and content and for their inspection;
  - (l) requiring a person to whom the rules apply to make provision for the protection of investors in the event of the cessation of his investment business in consequence of his death, incapacity or otherwise.
- (3) Subsection (2) above is without prejudice to the generality of subsection (1) above and accordingly rules under this section may make provision for matters other than those mentioned in subsection (2) or further provision as to any of the matters there mentioned except that they shall not impose limits on the amount or value of commissions or other inducements paid or provided in connection with investment business.
- (4) Rules under this section may also regulate or prohibit the carrying on in connection with investment business of any other business or the carrying on of any other business which is held out as being for the purposes of investment.
- (5) In paragraph (e) of subsection (2) above " advertisement" does not include any advertisement which is subject to section 154 below or which is required or permitted to be published by listing rules under Part IV of this Act and relates to securities which have been admitted to listing under that Part; and rules under that paragraph shall have effect subject to the provisions of Part V of this Act.
- (6) Nothing done in conformity with rules made under paragraph (h) of subsection (2) above shall be regarded as a contravention of section 47 above.
- (7) Section 47(2) above shall not be regarded as contravened by anything done for the purpose of stabilising the price of investments if it is done in conformity with rules made under this section and—
- (a) in respect of investments which fall within any of paragraphs 1 to 5 of Schedule 1 to this Act and are specified by the rules; and
  - (b) during such period before or after the issue of those investments as is specified by the rules.
- (8) The Secretary of State may by order amend subsection (7) above—
- (a) by restricting or extending the kinds of investment to which it applies;
  - (b) by restricting it so as to apply only in relation to the issue of investments in specified circumstances or by extending it, in respect of investments of any kind specified in the order, so as to apply to things done during a specified period before or after events other than the issue of those investments.

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- (9) No order shall be made under subsection (8) above unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (10) Rules under this section may contain such incidental and transitional provisions as the Secretary of State thinks necessary or expedient.

#### **49 Financial resources rules**

- (1) The Secretary of State may make rules requiring persons authorised to carry on investment business by virtue of section 25 or 31 above to have and maintain in respect of that business such financial resources as are required by the rules.
- (2) Without prejudice to the generality of subsection (1) above, rules under this section may—
  - (a) impose requirements which are absolute or which are to vary from time to time by reference to such factors as are specified in or determined in accordance with the rules;
  - (b) impose requirements which take account of any business (whether or not investment business) carried on by the person concerned in conjunction with or in addition to the business mentioned in subsection (1) above;
  - (c) make provision as to the assets, liabilities and other matters to be taken into account in determining a person's financial resources for the purposes of the rules and the extent to which and the manner in which they are to be taken into account for that purpose.

#### **50 Modification of conduct of business and financial resources rules for particular cases**

- (1) The Secretary of State may, on the application of any person to whom any rules made under section 48 or 49 above apply, alter the requirements of the rules so as to adapt them to the circumstances of that person or to any particular kind of business carried on or to be carried on by him.
- (2) The Secretary of State shall not exercise the powers conferred by subsection (1) above in any case unless it appears to him that—
  - (a) compliance with the requirements in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors ; and
  - (b) the exercise of those powers will not result in any undue risk to investors.
- (3) The powers conferred by subsection (1) above may be exercised unconditionally or subject to conditions.

#### **51 Cancellation rules**

- (1) The Secretary of State may make rules for enabling a person who has entered or offered to enter into an investment agreement with an authorised person to rescind the agreement or withdraw the offer within such period and in such manner as may be prescribed.
- (2) Without prejudice to the generality of subsection (1) above, rules under this section may make provision—

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- (a) for requiring the service of notices with respect to the rights exercisable under the rules ;
- (b) for the restitution of property and the making or recovery of payments where those rights are exercised; and
- (c) for such other incidental matters as the Secretary of State thinks necessary or expedient.

## **52 Notification regulations**

- (1) The Secretary of State may make regulations requiring authorised persons to give him forthwith notice of the occurrence of such events as are specified in the regulations and such information in respect of those events as is so specified.
- (2) The Secretary of State may make regulations requiring authorised persons to furnish him at such times or in respect of such periods as are specified in the regulations with such information as is so specified.
- (3) Regulations under this section shall not apply to a member of a recognised self-regulating organisation or a person certified by a recognised professional body unless he carries on investment business in the carrying on of which he is subject to any of the rules made under section 48 above.
- (4) Without prejudice to the generality of subsections (1) and (2) above, regulations under this section may relate to—
  - (a) the nature of the investment business being carried on;
  - (b) the nature of any other business carried on with or for the purposes of the investment business;
  - (c) any proposal of an authorised person to alter the nature or extent of any business carried on by him ;
  - (d) any person becoming or ceasing to be a person of the kind to whom regard could be had by the Secretary of State under subsection (3) of section 27 above in deciding an application for authorisation under that section;
  - (e) the financial position of an authorised person as respects his investment business or any other business carried on by him;
  - (f) any property managed, and any property or money held, by an authorised person on behalf of other persons.
- (5) Regulations under this section may require information to be given in a specified form and to be verified in a specified manner.
- (6) Any notice or information required to be given or furnished under this section shall be given in writing or in such other manner as the Secretary of State may approve.

## **53 Indemnity rules**

- (1) The Secretary of State may make rules concerning indemnity against any claim in respect of any description of civil liability incurred by an authorised person in connection with his investment business.
- (2) Rules under this section shall not apply to a member of a recognised self-regulating organisation or a person certified by a recognised professional body in respect of investment business in the carrying on of which he is subject to the rules of the organisation or body unless that organisation or body has requested that rules under

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this section should apply to him; and any such request shall not be capable of being withdrawn after rules giving effect to it have been made but without prejudice to the power of the Secretary of State to revoke the rules if he thinks fit.

- (3) For the purpose of providing indemnity the rules—
- (a) may authorise the Secretary of State to establish and maintain a fund or funds ;
  - (b) may authorise the Secretary of State to take out and maintain insurance with insurers authorised to carry on insurance business under the law of the United Kingdom or any other member State ;
  - (c) may require any person to whom the rules apply to take out and maintain insurance with any such insurer.
- (4) Without prejudice to the generality of the foregoing provisions, the rules may—
- (a) specify the terms and conditions on which, and the extent to which, indemnity is to be available and any circumstances in which the right to it is to be excluded or modified;
  - (b) provide for the management, administration and protection of any fund maintained by virtue of subsection (3) (a) above and require persons to whom the rules apply to make payments to any such fund ;
  - (c) require persons to whom the rules apply to make payments by way of premium on any insurance policy maintained by the Secretary of State by virtue of subsection (3)(b) above;
  - (d) prescribe the conditions which an insurance policy must satisfy for the purposes of subsection (3)(c) above ;
  - (e) authorise the Secretary of State to determine the amount which the rules require to be paid to him or an insurer, subject to such limits or in accordance with such provisions as may be prescribed by the rules;
  - (f) specify circumstances in which, where sums are paid by the Secretary of State or an insurer in satisfaction of claims against a person subject to the rules, proceedings may be taken against that person by the Secretary of State or the insurer ;
  - (g) specify circumstances in which persons are exempt from the rules;
  - (h) empower the Secretary of State to take such steps as he considers necessary or expedient to ascertain whether or not the rules are being complied with ; and
  - (i) contain incidental or supplementary provisions.

## **54 Compensation fund**

- (1) The Secretary of State may by rules establish a scheme for compensating investors in cases where persons who are or have been authorised persons are unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with their investment businesses.
- (2) Without prejudice to the generality of subsection (1) above, rules under this section may—
- (a) provide for the administration of the scheme and, subject to the rules, the determination and regulation of any matter relating to its operation by a body appearing to the Secretary of State to be representative of, or of any class of, authorised persons ;
  - (b) establish a fund out of which compensation is to be paid;



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- (c) provide for the levying of contributions from, or from any class of, authorised persons and otherwise for financing the scheme and for the payment of contributions and other money into the fund;
  - (d) specify the terms and conditions on which, and the extent to which, compensation is to be payable and any circumstances in which the right to compensation is to be excluded or modified ;
  - (e) provide for treating compensation payable under the scheme in respect of a claim against any person as extinguishing or reducing the liability of that person in respect of the claim and for conferring on the body administering the scheme a right of recovery against that person, being, in the event of his insolvency, a right not exceeding such right, if any, as the claimant would have had in that event; and
  - (f) contain incidental and supplementary provisions.
- (3) A scheme under this section shall not be made so as to apply to persons who are members of a recognised self-regulating organisation except after consultation with that organisation or, except at the request of a recognised professional body, to persons who are certified by it and subject to its rules in carrying on all the investment business carried on by them; and no scheme applying to such persons shall be made unless the Secretary of State is satisfied that the rules establishing it make sufficient provision—
- (a) for this administration of the scheme by a body on which the interests of those persons are adequately represented ; and
  - (b) for securing that the amounts which they are liable to contribute reflect, so far as practicable, the amount of the claims made or likely to be made in respect of those persons.
- (4) Where a scheme applies to such persons as are mentioned in subsection (3) above the rules under this section may—
- (a) constitute the recognised self-regulating organisation or recognised professional body in question as the body administering the scheme in relation to those persons ;
  - (b) provide for the levying of contributions from that organisation or body instead of from those persons; and
  - (c) establish a separate fund for the contributions and compensation payable in respect of those persons, with or without provision for payments and repayments in specified circumstances between that and any other fund established by the scheme.
- (5) A request by a recognised professional body under subsection (3) above shall not be capable of being withdrawn after rules giving effect to it have been made but without prejudice to the power of the Secretary of State to revoke the rules if he thinks fit.
- (6) Rules may be made—
- (a) for England and Wales, under sections 411 and 412 of the Insolvency Act 1986 ;
  - (b) for Scotland—
    - (i) under the said section 411; and
    - (ii) in relation to the application of this section where the persons who are or have been authorised persons are persons whose estates may be sequestrated under the Bankruptcy (Scotland) Act 1985, by the Secretary of State under this section; and

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(c) for Northern Ireland, under Article 613 of the Companies (Northern Ireland) Order 1986 and section 65 of the Judicature (Northern Ireland) Act 1978, for the purpose of integrating any procedure for which provision is made by virtue of subsection (2)(e) above into the general procedure on a winding-up, bankruptcy or sequestration.

## **55 Clients' money**

- (1) The Secretary of State may make regulations with respect to money (in this section referred to as "clients' money") which authorised persons, or authorised persons of any description, hold in such circumstances as are specified in the regulations.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may—
  - (a) provide that clients' money held by an authorised person is held on trust;
  - (b) require clients' money to be paid into an account the title of which contains the word "client" and which is with an institution of a kind specified in the regulations or, in the case of a member of a recognised self-regulating organisation or a person certified by a recognised professional body, by the rules of that organisation or body;
  - (c) make provision with respect to the opening and keeping of clients' accounts, including provision as to the circumstances in which money other than clients' money may be paid into such accounts and the circumstances in which and the persons to whom money held in such accounts may be paid out;
  - (d) require the keeping of accounts and records in respect of clients' money;
  - (e) require any such accounts to be examined by an accountant having such qualifications as are specified in the regulations and require the accountant to report to the Secretary of State, or in the case of a member of a recognised self-regulating organisation or a person certified by a recognised professional body, to that organisation or body, whether in his opinion the provisions of the regulations have been complied with and on such other matters as may be specified in the regulations ;
  - (f) authorise the retention, to such extent and in such cases as may be specified in regulations, of so much of clients' money as represents interest.
- (3) Where an authorised person is required to have an auditor, whether by virtue of any provision contained in or made under any enactment (including this Act) or of the rules of any such organisation or body as is mentioned in paragraph (b) of subsection (2) above, the regulations may require the examination and report referred to in paragraph (e) of that subsection to be carried out and made by that auditor.
- (4) An institution with which an account is kept in pursuance of regulations made under this section does not incur any liability as constructive trustee where money is wrongfully paid from the account unless the institution permits the payment with knowledge that it is wrongful or having deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.
- (5) In the application of this section to Scotland for the reference to money being held on trust there shall be substituted a reference to its being held as agent for the person who is entitled to call for it to be paid over to him or to be paid on his direction or to have it otherwise credited to him.

## 56 Unsolicited calls

- (1) Except so far as permitted by regulations made by the Secretary of State, no person shall in the course of or in consequence of an unsolicited call—
  - (a) made on a person in the United Kingdom ; or
  - (b) made from the United Kingdom on a person elsewhere,by way of business enter into an investment agreement with the person on whom the call is made or procure or endeavour to procure that person to enter into such an agreement.
- (2) A person shall not be guilty of an offence by reason only of contravening subsection (1) above, but subject to subsection (4) below—
  - (a) any investment agreement which is entered into in the course of or in consequence of the unsolicited call shall not be enforceable against the person on whom the call was made: and
  - (b) that person shall be entitled to recover any money or other property paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result of having parted with it.
- (3) The compensation recoverable under subsection (2) above shall be such as the parties may agree or as a court may, on the application of either party, determine.
- (4) A court may allow an agreement to which subsection (2) above applies to be enforced or money and property paid or transferred under it to be retained if it is satisfied—
  - (a) that the person on whom the call was made was not influenced, or not influenced to any material extent, by anything said or done in the course of or in consequence of the call;
  - (b) without prejudice to paragraph (a) above, that the person on whom the call was made entered into the agreement—
    - (i) following discussions between the parties of such a nature and over such a period that his entering into the agreement can fairly be regarded as a consequence of those discussions rather than the call; and
    - (ii) was aware of the nature of the agreement and any risks involved in entering into it; or
  - (c) that the call was not made by—
    - (i) the person seeking to enforce the agreement or to retain the money or property or a person acting on his behalf or an appointed representative whose principal he was ; or
    - (ii) a person who has received or is to receive, or in the case of an appointed representative whose principal has received or is to receive, any commission or other inducement in respect of the agreement from a person mentioned in sub-paragraph (i) above.
- (5) Where a person elects not to perform an agreement which by virtue of this section is unenforceable against him or by virtue of this section recovers money paid or other property transferred by him under an agreement he shall repay any money and return any other property received by him under the agreement.
- (6) Where any property transferred under an agreement to which this section applies has passed to a third party the references to that property in this section shall be construed as references to its value at the time of its transfer under the agreement

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- (7) In the application of this section to anything done by a member of a recognised self-regulating organisation or a person certified by a recognised professional body in carrying on investment business in the carrying on of which he is subject to the rules of the organisation or body the reference in subsection (1) above to regulations made by the Secretary of State shall be construed as references to the rules of the organisation or body.
- (8) In this section "unsolicited call" means a personal visit or oral communication made without express invitation.

## **57 Restrictions on advertising**

- (1) Subject to section 58 below, no person other than an authorised person shall issue or cause to be issued an investment advertisement in the United Kingdom unless its contents have been approved by an authorised person.
- (2) In this Act "an investment advertisement" means any advertisement inviting persons to enter or offer to enter into an investment agreement or to exercise any rights conferred by an investment to acquire, dispose of, underwrite or convert an investment or containing information calculated to lead directly or indirectly to persons doing so.
- (3) Subject to subsection (4) below, any person who contravenes this section shall be guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both ;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (4) A person who in the ordinary course of a business other than investment business issues an advertisement to the order of another person shall not be guilty of an offence under this section if he proves that he believed on reasonable grounds that the person to whose order the advertisement was issued was an authorised person, that the contents of the advertisement were approved by an authorised person or that the advertisement was permitted by or under section 58 below.
- (5) If in contravention of this section a person issues or causes to be issued an advertisement inviting persons to enter or offer to enter into an investment agreement or containing information calculated to lead directly or indirectly to persons doing so, then, subject to subsection (8) below—
- (a) he shall not be entitled to enforce any agreement to which the advertisement related and which was entered into after the issue of the advertisement; and
  - (b) the other party shall be entitled to recover any money or other property paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result of having parted with it
- (6) If in contravention of this section a person issues or causes to be issued an advertisement inviting persons to exercise any rights conferred by an investment or containing information calculated to lead directly or indirectly to persons doing so, then, subject to subsection (8) below—
- (a) he shall not be entitled to enforce any obligation to which a person is subject as a result of any exercise by him after the issue of the advertisement of any rights to which the advertisement related; and

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- (b) that person shall be entitled to recover any money or other property paid or transferred by him under any such obligation, together with compensation for any loss sustained by him as a result of having parted with it.
- (7) The compensation recoverable under subsection (5) or (6) above shall be such as the parties may agree or as a court may, on the application of either party, determine.
- (8) A court may allow any such agreement or obligation as is mentioned in subsection (5) or (6) above to be enforced or money or property paid or transferred under it to be retained if it is satisfied—
  - (a) that the person against whom enforcement is sought or who is seeking to recover the money or property was not influenced, or not influenced to any material extent, by the advertisement in making his decision to enter into the agreement or as to the exercise of the rights in question; or
  - (b) that the advertisement was not misleading as to the nature of the investment, the terms of the agreement or, as the case may be, the consequences of exercising the rights in question and fairly stated any risks involved in those matters.
- (9) Where a person elects not to perform an agreement or an obligation which by virtue of subsection (5) or (6) above is unenforceable against him or by virtue of either of those subsections recovers money paid or other property transferred by him under an agreement or obligation he shall repay any money and return any other property received by him under the agreement or, as the case may be, as a result of exercising the rights in question.
- (10) Where any property transferred under an agreement or obligation to which subsection (5) or (6) above applies has passed to a third party the references to that property in this section shall be construed as references to its value at the time of its transfer under the agreement or obligation.

## **58 Exceptions from restrictions on advertising**

- (1) Section 57 above does not apply to—
  - (a) any advertisement issued or caused to be issued by, and relating only to investments issued by—
    - (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) the Bank of England or the central bank of any country or territory outside the United Kingdom ; or
    - (iv) any international organisation the members of which include the United Kingdom or another member State;
  - (b) any advertisement issued or caused to be issued by a person who is exempt under section 36, 38, 42, 43, 44 or 45 above, or by virtue of an order under section 46 above, if the advertisement relates to a matter in respect of which he is exempt.
  - (c) any advertisement which is issued or caused to be issued by a national of a member State other than the United Kingdom in the course of investment business lawfully carried on by him in such a State and which conforms with any rules made under section 48(2)(e) above ;
  - (d) any advertisement which—

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- (i) is subject to section 154 below; or
  - (ii) consists of or any part of listing particulars, supplementary listing particulars or any other document required or permitted to be published by listing rules under Part IV of this Act or by an approved exchange under Part V of this Act.
- (2) Section 57 above does not apply to an advertisement inviting persons to subscribe in cash for any investments to which Part V of this Act applies if the advertisement is issued or caused to be issued by the person by whom the investments are to be issued and either the advertisement consists of a prospectus registered in accordance with that Part or the following matters (and no others that would make it an investment advertisement) are contained in the advertisement—
- (a) the name of that person and his address or particulars of other means of communicating with him ;
  - (b) the nature of the investments, the number offered for subscription and their nominal value and price;
  - (c) a statement that a prospectus for the purposes of that Part of this Act is or will be available and, if it is not yet available, when it will be; and
  - (d) instructions for obtaining a copy of the prospectus.
- (3) Section 57 above does not apply to an advertisement issued in such circumstances as may be specified in an order made by the Secretary of State for the purpose of exempting from that section—
- (a) advertisements appearing to him to have a private character, whether by reason of a connection between the person issuing them and those to whom they are issued or otherwise;
  - (b) advertisements appearing to him to deal with investment only incidentally;
  - (c) advertisements issued to persons appearing to him to be sufficiently expert to understand any risks involved; or
  - (d) such other classes of advertisement as he thinks fit.
- (4) An order under subsection (3) above may require any person who by virtue of the order is authorised to issue an advertisement to comply with such requirements as are specified in the order.
- (5) An order made by virtue of paragraph (a), (b) or (c) of subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament; and no order shall be made by virtue of paragraph (d) of that subsection unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (6) Subsections (1)(c) and (2) above do not apply to any advertisement relating to an investment falling within paragraph 5 of Schedule 1 to this Act.

## **59 Employment of prohibited persons**

- (1) If it appears to the Secretary of State that any individual is not a fit and proper person to be employed in connection with investment business or investment business of a particular kind he may direct that he shall not, without the written consent of the Secretary of State, be employed in connection with investment business or, as the case may be, investment business of that kind—
- (a) by authorised persons or exempted persons; or

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- (b) by any specified person or persons, or by persons of any specified description, falling within paragraph (a) above.
- (2) A direction under this section (" a disqualification direction ") shall specify the date on which it is to take effect and a copy of it shall be served on the person to whom it relates.
- (3) Any consent by the Secretary of State to the employment of a person who is the subject of a disqualification direction may relate to employment generally or to employment of a particular kind, may be given subject to conditions and restrictions and may be varied by him from time to time.
- (4) Where the Secretary of State proposes—
  - (a) to give a disqualification direction in respect of any person; or
  - (b) to refuse an application for his consent under this section or for the variation of such consent,he shall give that person or the applicant written notice of his intention to do so, stating the reasons for which he proposes to act and giving particulars of the right to require the case to be referred to the Tribunal under Chapter IX of this Part of this Act.
- (5) Any person who accepts or continues in any employment in contravention of a disqualification direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.
- (6) It shall be the duty of an authorised person and an appointed representative to take reasonable care not to employ or continue to employ a person in contravention of a disqualification direction.
- (7) The Secretary of State may revoke a disqualification direction.
- (8) In this section references to employment include references to employment otherwise than under a contract of service.

## **60 Public statement as to person's misconduct**

- (1) If it appears to the Secretary of State that a person who is or was an authorised person by virtue of section 22, 24, 25 or 31 above has contravened—
  - (a) any provision of rules or regulations made under this Chapter or of section 56 or 59 above ; or
  - (b) any condition imposed under section 50 above,he may publish a statement to that effect.
- (2) Before publishing a statement under subsection (1) above the Secretary of State shall give the person concerned written notice of the proposed statement and of the reasons for which he proposes to act
- (3) Where the reasons stated in the notice relate specifically to matters which—
  - (a) refer to a person identified in the notice other than the person who is or was the authorised person ; and
  - (b) are in the opinion of the Secretary of State prejudicial to that person in any office or employment,the Secretary of State shall, unless he considers it impracticable to do so, serve a copy of the notice on that other person.

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- (4) A notice under this section shall give particulars of the right to have the case referred to the Tribunal under Chapter IX of this Part of this Act.
- (5) Where a case is not required to be referred to the Tribunal by a person on whom a notice is served under this section the Secretary of State shall, at the expiration of the period within which such a requirement can be made, give that person written notice that the statement is or is not to be published; and if it is to be published the Secretary of State shall after publication send a copy of it to that person and to any person on whom a copy of the notice under subsection (2) above was served.

## **61 Injunctions and restitution orders**

- (1) If on the application of the Secretary of State the court is satisfied—
  - (a) that there is a reasonable likelihood that any person will contravene any provision of—
    - (i) rules or regulations made under this Chapter;
    - (ii) sections 47, 56, 57, or 59 above ;
    - (iii) any requirements imposed by an order under section 58(3) above ; or
    - (iv) the rules of a recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house to which that person is subject and which regulate the carrying on by him of investment business,
 or any condition imposed under section 50 above ;
  - (b) that any person has contravened any such provision or condition and that there is a reasonable likelihood that the contravention will continue or be repeated ;  
or
  - (c) that any person has contravened any such provision or condition and that there are steps that could be taken for remedying the contravention,
 the court may grant an injunction restraining the contravention or, in Scotland, an interdict prohibiting the contravention or, as the case may be, make an order requiring that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct to remedy it.
- (2) No application shall be made by the Secretary of State under subsection (1) above in respect of any such rules as are mentioned in subsection (1)(a)(iv) above unless it appears to him that the organisation, body, exchange or clearing house is unable or unwilling to take appropriate steps to restrain the contravention or to require the person concerned to take such steps as are mentioned in subsection (1) above.
- (3) The court may, on the application of the Secretary of State, make an order under subsection (4) below or, in relation to Scotland, under subsection (5) below if satisfied—
  - (a) that profits have accrued to any person as a result of his contravention of any provision or condition mentioned in subsection (1)(a) above ; or
  - (b) that one or more investors have suffered loss or been otherwise adversely affected as a result of that contravention.
- (4) The court may under this subsection order the person concerned to pay into court, or appoint a receiver to recover from him, such sum as appears to the court to be just having regard—



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- (a) in a case within paragraph (a) of subsection (3) above, 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; or
  - (c) in a case within both paragraphs (a) and (b) of that subsection, to the profits and to the extent of the loss or other adverse effect.
- (5) The court may under this subsection order the person concerned to pay to the applicant such sum as appears to the court to be just having regard to the considerations mentioned in paragraphs (a) to (c) of subsection (4) above.
- (6) Any amount paid into court by or recovered from a person in pursuance of an order under subsection (4) or (5) above shall be paid out to such person or distributed among such persons as the court may direct, being a person or persons appearing to the court to have entered into transactions with that person as a result of which the profits mentioned in paragraph (a) of subsection (3) above have accrued to him or the loss or adverse effect mentioned in paragraph (b) of that subsection has been suffered.
- (7) On an application under subsection (3) above the court may require the person concerned to furnish it with such accounts or other information as it may require for establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of that subsection and for determining how any amounts are to be paid or distributed under subsection (6) above; and the court may require any such accounts or other information to be verified in such manner as it may direct.
- (8) The jurisdiction conferred by this section shall be exercisable by die High Court and the Court of Session.
- (9) Nothing in this section affects the right of any person other than the Secretary of State to bring proceedings in respect of the matters to which this section applies.

## **62 Actions for damages**

- (1) Without prejudice to section 61 above, a contravention of—
- (a) any rules or regulations made under this Chapter;
  - (b) any conditions imposed under section 50 above ;
  - (c) any requirements imposed by an order under section 58(3) above;
  - (d) the duty imposed by section 59(6) above,
- shall be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty.
- (2) Subsection (1) applies also to a contravention by a member of a recognised self-regulating organisation or a person certified by a recognised professional body of any rules of the organisation or body relating to a matter in respect of which rules or regulations have been or could be made under this Chapter in relation to an authorised person who is not such a member or so certified.
- (3) Subsection (1) above does not apply—
- (a) to a contravention of rules made under section 49 or conditions imposed under section 50 in connection with an alteration of the requirements of those rules;
- or

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- (b) by virtue of subsection (2) above to a contravention of rules relating to a matter in respect of which rules have been or could be made under section 49.
- (4) A person shall not be guilty of an offence by reason of any contravention to which subsection (1) above applies or of a contravention of rules made under section 49 above or such conditions as are mentioned in subsection (3)(a) above and no such contravention shall invalidate any transaction.

### **63 Gaming contracts**

- (1) No contract to which this section applies shall be Void or unenforceable by reason of—
  - (a) section 18 of the Gaming Act 1845, section 1 of the Gaming Act 1892 or any corresponding provisions in force in Northern Ireland ; or
  - (b) any rule of the law of Scotland whereby a contract by way of gaming or wagering is not legally enforceable.
- (2) This section applies to any contract entered into by either or each party by way of business and the making or performance of which by either party constitutes an activity which falls within paragraph 12 of Schedule 1 to this Act or would do so apart from Parts III and IV of that Schedule.

## **CHAPTER VI**

### POWERS OF INTERVENTION

### **64 Scope of powers**

- (1) The powers conferred on the Secretary of State by this Chapter shall be exercisable in relation to any authorised person or, except in the case of the power conferred by section 65 below, any appointed representative of his if it appears to the Secretary of State—
  - (a) that the exercise of the powers is desirable for the protection of investors;
  - (b) that the authorised person is not fit to carry on investment business of a particular kind or to the extent to which he is carrying it on or proposing to carry it on; or
  - (c) that the authorised person has contravened any provision of this Act or of any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act.
- (2) For the purposes of subsection (1)(b) above the Secretary of State may take into account any matters that could be taken into account in deciding whether to withdraw or suspend an authorisation under Chapter III of this Part of this Act.
- (3) The powers conferred by this Chapter may be exercised in relation to a person whose authorisation is suspended under section 28 above or who is the subject of a direction under section 33(1)(6) above and references in this Chapter to an authorised person shall be construed accordingly.
- (4) The powers conferred by this Chapter shall not be exercisable in relation to—

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- (a) an authorised person who is a member of a recognised self-regulating organisation or a person certified by a recognised professional body and is subject to the rules of such an organisation or body in carrying on all the investment business carried on by him ; or
- (b) an appointed representative whose principal or, in the case of such a representative with more than one principal, each of whose principals is a member of such an organisation or body and is subject to the rules of such an organisation or body in carrying on the investment business in respect of which his principal or each of his principals has accepted responsibility for his activities;

except that the powers conferred by virtue of section 67(1)(b) below may on any of the grounds specified in subsection (1) above be exercised in relation to such a person at the request of any such organisation of which he or, in the case of an appointed representative, any of his principals is a member of any such body by which he or, as the case may be, any of his principals is certified.

## **65 Restriction of business**

- (1) The Secretary of State may prohibit an authorised person from—
  - (a) entering into transactions of any specified kind or entering into them except in specified circumstances or to a specified extent;
  - (b) soliciting business from persons of a specified kind or otherwise than from such persons or in a specified country or territory outside the United Kingdom ;
  - (c) carrying on business in a specified manner or otherwise than in a specified manner.
- (2) A prohibition under this section may relate to transactions entered into in connection with or for the purposes of investment business or to other business which is carried on in connection with or for the purposes of investment business.

## **66 Restriction on dealing with assets**

- (1) The Secretary of State may prohibit an authorised person or appointed representative from disposing of or otherwise dealing with any assets, or any specified assets, of that person or, as the case may be, representative in any specified manner or otherwise than in a specified manner.
- (2) A prohibition under this section may relate to assets outside the United Kingdom.

## **67 Vesting of assets in trustee**

- (1) The Secretary of State may impose a requirement that all assets, or all assets of any specified class or description, which at any time while the requirement is in force—
  - (a) belong to an authorised person or appointed representative ; or
  - (b) belong to investors and are held by or to the order of an authorised person or appointed representative,shall be transferred to and held by a trustee approved by the Secretary of State.
- (2) Where a requirement is imposed under this section it shall be the duty of the authorised person or, as the case may be, appointed representative to transfer the assets to the

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trustee and to give him all such other assistance as may be required to enable him to discharge his functions in accordance with the requirement.

- (3) Assets held by a trustee in accordance with a requirement under this section shall not be released or dealt with except in accordance with directions given by the Secretary of State or in such circumstances as may be specified by him.
- (4) A requirement under this section may relate to assets outside the United Kingdom.

## **68 Maintenance of assets in United Kingdom**

- (1) The Secretary of State may require an authorised person or appointed representative to maintain in the United Kingdom assets of such value as appears to the Secretary of State to be desirable with a view to ensuring that the authorised person or, as the case may be, appointed representative will be able to meet his liabilities in respect of investment business carried on by him in the United Kingdom.
- (2) The Secretary of State may direct that for the purposes of any requirement under this section assets of any specified class or description shall or shall not be taken into account.

## **69 Rescission and variation**

The Secretary of State may, either of his own motion or on the application of a person on whom a prohibition or requirement has been imposed under this Chapter, rescind or vary the prohibition or requirement if it appears to the Secretary of State that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

## **70 Notices**

- (1) The power to impose, rescind or vary a prohibition or requirement under this Chapter shall be exercisable by written notice served by the Secretary of State on the person concerned ; and any such notice shall take effect on such date as is specified in the notice.
- (2) If the Secretary of State refuses to rescind or vary a prohibition or requirement on the application of the person to whom it applies he shall serve that person with a written notice of the refusal.
- (3) A notice imposing a prohibition or requirement, or varying a prohibition or requirement otherwise than on the application of the person to whom it applies, and a notice under subsection (2) above shall state the reasons for which the prohibition or requirement was imposed or varied or, as the case may be, why the application was refused.
- (4) Where the reasons stated in a notice to which subsection (3) above applies relate specifically to matters which—
  - (a) refer to a person identified in the notice other than the person to whom the prohibition or requirement applies ; and
  - (b) are in the opinion of the Secretary of State prejudicial to that person in any office or employment,

the Secretary of State shall, unless he considers it impracticable to do so, serve a copy of the notice on that person.

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- (5) A notice to which subsection (3) above applies shall give particulars of the right to have the case referred to the Tribunal under Chapter IX of this Part of this Act.
- (6) The Secretary of State may give public notice of any prohibition or requirement imposed by him under this Chapter and of the rescission and variation of any such prohibition or requirement; and any such notice may, if the Secretary of State thinks fit, include a statement of the reasons for which the prohibition or requirement was imposed, rescinded or varied.

## **71 Breach of prohibition or requirement**

- (1) Sections 60, 61, and 62 above shall have effect in relation to a contravention of a prohibition or requirement imposed under this Chapter as they have effect in relation to any such contravention as is mentioned in those sections.
- (2) In its application by virtue of this section, section 62(2) shall have effect with the substitution—
  - (a) for the reference to the rules of a recognised self regulating organisation of a reference to any prohibition or requirement imposed by it in the exercise of powers for purposes corresponding to those of this Chapter; and
  - (b) for the reference to the rules of a recognised professional body of a reference to any prohibition or requirement imposed in the exercise of powers for such purposes by that body or by any other body or person having functions in respect of the enforcement of the recognised professional body's rules relating to the carrying on of investment business.
- (3) This section is without prejudice to any equitable remedy available in respect of property which by virtue of a requirement under section 67 above is subject to a trust.

## **CHAPTER VII**

### **WINDING UP AND ADMINISTRATION ORDERS**

## **72 Winding up orders**

- (1) On a petition presented by the Secretary of State by virtue of this section, the court having jurisdiction under the Insolvency Act 1986 may wind up an authorised person or appointed representative to whom this subsection applies if—
  - (a) the person is unable to pay his debts within the meaning of section 123 or, as the case may be, section 221 of that Act; or
  - (b) the court is of the opinion that it is just and equitable that the person should be wound up.
- (2) Subsection (1) above applies to any authorised person, any person whose authorisation is suspended under section 28 above or who is the subject of a direction under section 33(1)(b) above or any appointed representative who is—
  - (a) a company within the meaning of section 735 of the Companies Act 1985 ;
  - (b) an unregistered company within the meaning of section 220 of the Insolvency Act 1986 ;
  - (c) an oversea company within the meaning of section 744 of the Companies Act 1985 ; or

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- (d) a partnership.
- (3) For the purposes of a petition under subsection (1) above a person who defaults in an obligation to pay any sum due and payable under any investment agreement shall be deemed to be unable to pay his debts.
- (4) Where a petition is presented under subsection (1) above for the winding up of a partnership on the ground mentioned in paragraph (b) of subsection (1) above or, in Scotland, on a ground mentioned in paragraph (a) or (b) of that subsection, the court shall have jurisdiction and the Insolvency Act 1986 shall have effect as if the partnership were an unregistered company within the meaning of section 220 of that Act.
- (5) The Secretary of State shall not present a petition under subsection (1) above for the winding up of any person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body and is subject to the rules of the organisation or body in the carrying on of all investment business carried on by him, unless that organisation or body has consented to his doing so.

### **73 Winding up orders: Northern Ireland**

- (1) On a petition presented by the Secretary of State by virtue of this section, the High Court in Northern Ireland may wind up an authorised person or appointed representative to whom this subsection applies if—
  - (a) the person is unable to pay his debts within the meaning of Article 480 or, as the case may be, Article 616 of the Companies (Northern Ireland) Order 1986; or
  - (b) the court is of the opinion that it is just and equitable that the person should be wound up.
- (2) Subsection (1) above applies to any authorised person, any person whose authorisation is suspended under section 28 above or who is the subject of a direction under section 33(1)(b) above or any appointed representative who is—
  - (a) a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986 ;
  - (b) an unregistered company within the meaning of Article 615 of that Order ; or
  - (c) a Part XXIII company within the meaning of Article 2 of that Order ; or
  - (d) a partnership.
- (3) For the purposes of a petition under subsection (1) above a person who defaults in an obligation to pay any sum due and payable under any investment agreement shall be deemed to be unable to pay his debts.
- (4) Where a petition is presented under subsection (1) above for the winding up of a partnership on the ground mentioned in paragraph (b) of subsection (1) above, the High Court in Northern Ireland shall have jurisdiction and the Companies (Northern Ireland) Order 1986 shall have effect as if the partnership were an unregistered company within the meaning of Article 615 of that Order
- (5) The Secretary of State shall not present a petition under subsection (1) above for the winding up of any person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body and is subject to the rules of the organisation or body in the carrying on of all

investment business carried on by him, unless that organisation or body has consented to his doing so.

#### **74 Administration orders**

A petition may be presented under section 9 of the Insolvency Act 1986 (applications for administration orders) in relation to a company to which section 8 of that Act applies which is an authorised person, a person whose authorisation is suspended under section 28 above or who is the subject of a direction under section 33(1)(b) above or an appointed representative—

- (a) in the case of an authorised person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body, by that organisation or body ; and
- (b) in the case of an appointed representative or an authorised person who is not authorised as mentioned in paragraph (a) above or is so authorised but is not subject to the rules of the organisation or body in question in the carrying on of all investment business carried on by him, by the Secretary of State.

### **CHAPTER VIII**

#### **COLLECTIVE INVESTMENT SCHEMES**

##### *Preliminary*

#### **75 Interpretation**

- (1) In this Act " a collective investment scheme " means, subject to the provisions of this section, any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (2) The arrangements must be such that the persons who are to participate as mentioned in subsection (1) above (in this Act referred to as " participants ") do not have day to day control over the management of the property in question, whether or not they have the right to be consulted or to give directions; and the arrangements must also have either or both of the characteristics mentioned in subsection (3) below.
- (3) Those characteristics are—
  - (a) that the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
  - (b) that the property in question is managed as a whole by or on behalf of the operator of the scheme.
- (4) Where any arrangements provide for such pooling as is mentioned in paragraph (a) of subsection (3) above in relation to separate parts of the property in question, the arrangements shall not be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

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- (5) Arrangements are not a collective investment scheme if—
- (a) the property to which the arrangements relate (other than cash awaiting investment) consists of investments falling within any of paragraphs 1 to 5, 6 (so far as relating to units in authorised unit trust schemes and recognised schemes) and 10 of Schedule 1 to this Act;
  - (b) each participant is the owner of a part of that property and entitled to withdraw it at any time ; and
  - (c) the arrangements do not have the characteristics mentioned in paragraph (a) of subsection (3) above and have those mentioned in paragraph (b) of that subsection only because the parts of the property belonging to different participants are not bought and sold separately except where a person becomes or ceases to be a participant.
- (6) The following are not collective investment schemes—
- (a) arrangements operated by a person otherwise than by way of business;
  - (b) arrangements where each of the participants carries on a business other than investment business and enters into the arrangements for commercial purposes related to that business;
  - (c) arrangements where each of the participants is a body corporate in the same group as the operator ;
  - (d) arrangements where—
    - (i) each of the participants is a bona fide employee or former employee (or the wife, husband, widow, widower, child or step-child under the age of eighteen of such an employee or former employee) of a body corporate in the same group as the operator; and
    - (ii) the property to which the arrangements relate consists of shares or debentures (as defined in paragraph 20(4) of Schedule 1 to this Act) in or of a member of that group ;
  - (e) arrangements where the receipt of the participants' contributions constitutes the acceptance of deposits in the course of a business which is a deposit-taking business for the purposes of the Banking Act 1979 and does not constitute a transaction prescribed for the purposes of section 2 of that Act by regulations made by the Treasury;
  - (f) franchise arrangements, that is to say, arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the good-will attached to it;
  - (g) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons ;
  - (h) arrangements under which the rights or interests of the participants are investments falling within paragraph 5 of Schedule 1 to this Act;
  - (i) arrangements the purpose of which is the provision of clearing services and which are operated by an authorised person, a recognised clearing house or a recognised investment exchange;
  - (j) contracts of insurance;
  - (k) occupational pension schemes.
- (7) No body incorporated under the law of, or of any part of, the United Kingdom relating to building societies or industrial and provident societies or registered under any such



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law relating to friendly societies, and no other body corporate other than an open-ended investment company, shall be regarded as constituting a collective investment scheme.

(8) In this Act—

" a unit trust scheme " means a collective investment scheme under which the property in question is held on trust for the participants;

" an open-ended investment company " means a collective investment scheme under which—

(a) the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that body; and

(b) the rights of the participants are represented by shares in or securities of that body which—

(i) the participants are entitled to have redeemed or repurchased, or which (otherwise than under Chapter VII of Part V of the Companies Act 1985 or the corresponding Northern Ireland provision) are redeemed or repurchased from them by, or out of funds provided by, that body ; or

(ii) the body ensures can be sold by the participants on an investment exchange at a price related to the value of the property to which they relate ;

" trustee ", in relation to a unit trust scheme, means the person holding the property in question on trust for the participants and, in relation to a collective investment scheme constituted under the law of a country or territory outside the United Kingdom, means any person who (whether or not under a trust) is entrusted with the custody of the property in question ;

" units " means the rights or interests (however described) of the participants in a collective investment scheme :

" the operator ", in relation to a unit trust scheme with a separate trustee, means the manager and, in relation to an open-ended investment company, means that company.

(9) If an order under section 2 above amends the references to a collective investment scheme in Schedule 1 to this Act it may also amend the provisions of this section.

### *Promotion of schemes*

## **76 Restrictions on promotion**

(1) Subject to subsections (2), (3) and (4) below, an authorised person shall not—

(a) issue or cause to be issued in the United Kingdom any advertisement inviting persons to become or offer to become participants in a collective investment scheme or containing information calculated to lead directly or indirectly to persons becoming or offering to become participants in such a scheme ; or

(b) advise or procure any person in the United Kingdom to become or offer to become a participant in such a scheme,

unless the scheme is an authorised unit trust scheme or a recognised scheme under the following provisions of this Chapter.

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- (2) Subsection (1) above shall not apply if the advertisement is issued to or the person mentioned in paragraph (b) of that subsection is—
- (a) an authorised person ; or
  - (b) a person whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, to which the scheme relates.
- (3) Subsection (1) above shall not apply to anything done in accordance with regulations made by the Secretary of State for the purpose of exempting from that subsection the promotion otherwise than to the general public of schemes of such descriptions as are specified in the regulations.
- (4) The Secretary of State may by regulations make provision for exempting single property schemes from subsection (1) above.
- (5) For the purposes of subsection (4) above a single property scheme is a scheme which has the characteristics mentioned in subsection (6) below and satisfies such other requirements as are specified in the regulations conferring the exemption.
- (6) The characteristics referred to above are—
- (a) that the property subject to the scheme (apart from cash or other assets held for management purposes) consists of—
    - (i) a single building (or a single building with ancillary buildings) managed by or on behalf of the operator of the scheme ; or
    - (ii) a group of adjacent or contiguous buildings managed by him or on his behalf as a single enterprise, with or without ancillary land and with or without furniture, fittings or other contents of the building or buildings in question ; and
  - (b) that the units of the participants in the scheme are either dealt in on a recognised investment exchange or offered on terms such that any agreement for their acquisition is conditional on their admission to dealings on such an exchange.
- (7) Regulations under subsection (4) above may contain such supplementary and transitional provisions as the Secretary of State thinks necessary and may also contain provisions imposing obligations or liabilities on the operator and trustee (if any) of an exempted scheme, including, to such extent as he thinks appropriate, provisions for purposes corresponding to those for which provision can be made under section 85 below in relation to authorised unit trust schemes.

*Authorised unit trust schemes*

**77 Applications for authorisation**

- (1) Any application for an order declaring a unit trust scheme to be an authorised unit trust scheme shall be made by the manager and trustee, or proposed manager and trustee, of the scheme and the manager and trustee shall be different persons.
- (2) Any such application—
- (a) shall be made in such manner as the Secretary of State may direct; and
  - (b) shall contain or be accompanied by such information as he may reasonably require for the purpose of determining the application.

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- (3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.
- (4) The directions and requirements given or imposed under subsections (2) and (3) above may differ as between different applications.
- (5) Any information to be furnished to the Secretary of State under this section shall, if he so requires, be in such form or verified in such manner as he may specify.

## **78 Authorisation orders**

- (1) The Secretary of State may, on an application duly made in accordance with section 77 above and after being furnished with all such information as he may require under that section, make an order declaring a unit trust scheme to be an authorised unit trust scheme for the purposes of this Act if—
  - (a) it appears to him that the scheme complies with the requirements of the regulations made under section 81 below and that the following provisions of this section are satisfied; and
  - (b) he has been furnished with a copy of the trust deed and a certificate signed by a solicitor to the effect that it complies with such of those requirements as relate to its contents.
- (2) The manager and the trustee must be persons who are independent of each other.
- (3) The manager and the trustee must each be a body corporate incorporated in the United Kingdom or another member State, the affairs of each must be administered in the country in which it is incorporated, each must have a place of business in the United Kingdom and, if the manager is incorporated in another member State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 86 below.
- (4) The manager and the trustee must each be an authorised person and neither must be prohibited from acting as manager or trustee, as the case may be, by or under rules under section 48 above, by or under the rules of any recognised self-regulating organisation of which the manager or trustee is a member or by a prohibition imposed under section 65 above.
- (5) The name of the scheme must not be undesirable or misleading ; and the purposes of the scheme must be reasonably capable of being successfully carried into effect.
- (6) The participants must be entitled to have their units redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme; but a scheme shall be treated as complying with this subsection if it requires the manager to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in this subsection.
- (7) The Secretary of State shall inform the applicants of his decision on the application not later than six months after the date on which the application was received.
- (8) On making an order under this section the Secretary of State may issue a certificate to the effect that the scheme complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument.

## **79 Revocation of authorisation**

- (1) The Secretary of State may revoke an order declaring a unit trust scheme to be an authorised unit trust scheme if it appears to him—
  - (a) that any of the requirements for the making of the order are no longer satisfied ;
  - (b) that it is undesirable in the interests of the participants or potential participants that the scheme should continue to be authorised ; or
  - (c) without prejudice to paragraph (b) above, that the manager or trustee of the scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act.
- (2) For the purposes of subsection (1)(6) above the Secretary of State may take into account any matter relating to the scheme the manager or trustee, a director or controller of the manager or trustee or any person employed by or associated with the manager or trustee in connection with the scheme.
- (3) In the case of a manager or trustee who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in subsection (1) (c) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules.
- (4) The Secretary of State may revoke an order declaring a unit trust scheme to be an authorised unit trust scheme at the request of the manager or trustee of the scheme; but he may refuse to do so if he considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the order should be revoked or that revocation would not be in the interests of the participants or would be incompatible with a Community obligation.

## **80 Representations against refusal or revocation**

- (1) Where the Secretary of State proposes—
  - (a) to refuse an application for an order under section 78 above; or
  - (b) to revoke such an order otherwise than at the request of the manager or trustee of the scheme,he shall give the applicants or, as the case may be, the manager and trustee of the scheme written notice of his intention to do so, stating the reasons for which he proposes to act and giving particulars of the rights conferred by subsection (2) below.
- (2) A person on whom a notice is served under subsection (1) above may, within twenty-one days of the date of service, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.
- (3) The Secretary of State shall have regard to any representations made in accordance with subsection (2) above in determining whether to refuse the application or revoke the order, as the case may be.

## **81 Constitution and management**

- (1) The Secretary of State may make regulations as to the constitution and management of authorised unit trust schemes, the powers and duties of the manager and trustee of any such scheme and the rights and obligations of the participants in any such scheme.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may make provision—
  - (a) as to the issue and redemption of the units under the scheme;
  - (b) as to the expenses of the scheme and the means of meeting them;
  - (c) for the appointment, removal, powers and duties of an auditor for the scheme ;
  - (d) for restricting or regulating the investment and borrowing powers exercisable in relation to the scheme ;
  - (e) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records ;
  - (f) requiring the preparation of periodical reports with respect to the scheme and the furnishing of those reports to the participants and to the Secretary of State ;  
and
  - (g) with respect to the amendment of the scheme.
- (3) Regulations under this section may make provision as to the contents of the trust deed, including provision requiring any of the matters mentioned in subsection (2) above to be dealt with in the deed; but regulations under this section shall be binding on the manager, trustee and participants independently of the contents of the deed and, in the case of the participants, shall have effect as if contained in it.
- (4) Regulations under this section shall not impose limits on the remuneration payable to the manager of a scheme.
- (5) Regulations under this section may contain such incidental and transitional provisions as the Secretary of State thinks necessary or expedient.

## **82 Alteration of schemes and changes of manager or trustee**

- (1) The manager of an authorised unit trust scheme shall give written notice to the Secretary of State of—
  - (a) any proposed alteration to the scheme ; and
  - (b) any proposal to replace the trustee of the scheme ;and any notice given in respect of a proposed alteration involving a change in the trust deed shall be accompanied by a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the regulations made under section 81 above.
- (2) The trustee of an authorised unit trust scheme shall give written notice to the Secretary of State of any proposal to replace the manager of the scheme.
- (3) Effect shall not be given to any such proposal unless—
  - (a) the Secretary of State has given his approval to the proposal; or
  - (b) one month has elapsed since the date on which the notice was given under subsection (1) or (2) above without the Secretary of State having notified the manager or trustee that the proposal is not approved.

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- (4) Neither the manager nor the trustee of an authorised unit trust scheme shall be replaced except by persons who satisfy the requirements of section 78(2) to (4) above.

### **83 Restrictions on activities of manager**

- (1) The manager of an authorised unit trust scheme shall not engage in any activities other than those mentioned in subsection (2) below.
- (2) Those activities are—
- (a) acting as manager of—
    - (i) a unit trust scheme;
    - (ii) an open-ended investment company or any other body corporate whose business consists of investing its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of its funds by or on behalf of that body ; or
    - (iii) any other collective investment scheme under which the contributions of the participants and the profits or income out of which payments are to be made to them are pooled ;
  - (b) activities for the purposes of or in connection with those mentioned in paragraph (a) above.
- (3) A prohibition under section 65 above may prohibit the manager of an authorised unit trust scheme from inviting persons in any specified country or territory outside the United Kingdom to become participants in the scheme.

### **84 Avoidance of exclusion clauses**

Any provision of the trust deed of an authorised unit trust scheme shall be void in so far as it would have the effect of exempting the manager or trustee from liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the scheme.

### **85 Publication of scheme particulars**

- (1) The Secretary of State may make regulations requiring the manager of an authorised unit trust scheme to submit to him and publish or make available to the public on request a document (" scheme particulars ") containing information about the scheme and complying with such requirements as are specified in the regulations.
- (2) Regulations under this section may require the manager of an authorised unit trust scheme to submit and publish or make available revised or further scheme particulars if—
- (a) there is a significant change affecting any matter contained in such particulars previously published or made available whose inclusion was required by the regulations ; or
  - (b) a significant new matter arises the inclusion of information in respect of which would have been required in previous particulars if it had arisen when those particulars were prepared.
- (3) Regulations under this section may provide for the payment, by the person or persons who in accordance with the regulations are treated as responsible for any scheme particulars, of compensation to any person who has become or agreed to become a

participant in the scheme and suffered loss as a result of any untrue or misleading statement in the particulars or the omission from them of any matter required by the regulations to be included.

- (4) Regulations under this section shall not affect any liability which any person may incur apart from the regulations.

### *Recognition of overseas schemes*

## **86 Schemes constituted in other member States**

- (1) Subject to subsection (2) below, a collective investment scheme constituted in a member State other than the United Kingdom is a recognised scheme if it satisfies such requirements as are prescribed for the purposes of this section.
- (2) Not less than two months before inviting persons in the United Kingdom to become participants in the scheme the operator of the scheme shall give written notice to the Secretary of State of his intention to do so, specifying the manner in which the invitation is to be made; and the scheme shall not be a recognised scheme by virtue of this section if within two months of receiving the notice the Secretary of State notifies—
- (a) the operator of the scheme; and
  - (b) the authorities of the State in question who are responsible for the authorisation of collective investment schemes,
- that the manner in which the invitation is to be made does not comply with the law in force in the United Kingdom.
- (3) The notice to be given to the Secretary of State under subsection (2) above—
- (a) shall be accompanied by a certificate from the authorities mentioned in subsection {2}(b) above to the effect that the scheme complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument;
  - (b) shall contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and
  - (c) shall contain or be accompanied by such other information and documents as may be prescribed.
- (4) A notice given by the Secretary of State under subsection (2) above shall give the reasons for which he considers that the law in force in the United Kingdom will not be complied with and give particulars of the rights conferred by subsection (5) below.
- (5) A person on whom a notice is served by the Secretary of State under subsection (2) above may, within twenty-one days of the date of service, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.
- (6) The Secretary of State may in the light of any representations made in accordance with subsection (5) above withdraw his notice and in that event the scheme shall be a recognised scheme from the date on which the notice is withdrawn.

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- (7) Rules under section 48 above shall not apply to investment business in respect of which the operator or trustee of a scheme recognised under this section is an authorised person by virtue of section 24 above except so far as they make provision as respects—
  - (a) procuring persons to become participants in the scheme and advising persons on the scheme and the exercise of the rights conferred by it;
  - (b) matters incidental to those mentioned in paragraph (a) above.
- (8) For the purposes of this section a collective investment scheme is constituted in a member State if—
  - (a) it is constituted under the law of that State by a contract or under a trust and is managed by a body corporate incorporated under that law ; or
  - (b) it takes the form of an open-ended investment company incorporated under that law.
- (9) If the operator of a scheme recognised under this section gives written notice to the Secretary of State stating that he desires the scheme no longer to be recognised under this section it shall cease to be so recognised when the notice is given.

## **87 Schemes authorised in designated countries or territories**

- (1) Subject to subsection (3) below, a collective investment scheme which is not a recognised scheme by virtue of section 86 above but is managed in and authorised under the law of a country or territory outside the United Kingdom is a recognised scheme if—
  - (a) that country or territory is designated for the purposes of this section by an order made by the Secretary of State; and
  - (b) the scheme is of a class specified by the order.
- (2) The Secretary of State shall not make an order designating any country or territory for the purposes of this section unless he is satisfied that the law under which collective investment schemes of the class to be specified by the order are authorised and supervised in that country or territory affords to investors in the United Kingdom protection at least equivalent to that provided for them by this Chapter in the case of an authorised unit trust scheme.
- (3) A scheme shall not be recognised by virtue of this section unless the operator of the scheme gives written notice to the Secretary of State that he wishes it to be recognised; and the scheme shall not be recognised if within such period from receiving the notice as may be prescribed the Secretary of State notifies the operator that the scheme is not to be recognised.
- (4) The notice given by the operator under subsection (3) above—
  - (a) shall contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and
  - (b) shall contain or be accompanied by such information and documents as may be prescribed.
- (5) Section 85 above shall have effect in relation to a scheme recognised under this section as it has effect in relation to an authorised unit trust scheme, taking references to the manager as references to the operator and, in the case of an operator who is not an authorised person, references to publishing particulars as references to causing them to be published; and regulations made by virtue of this subsection may make provision



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whereby compliance with any requirements imposed by or under the law of a country or territory designated under this section is treated as compliance with any requirement of the regulations.

- (6) An order under subsection (1) above may contain such transitional provisions as the Secretary of State thinks necessary or expedient and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **88 Other overseas schemes**

- (1) The Secretary of State may, on the application of the operator of a scheme which—
- (a) is managed in a country or territory outside the United Kingdom ; but
  - (b) does not satisfy the requirements mentioned in section 86(1) above and in relation to which there is no relevant order under section 87(1) above,
- make an order declaring the scheme to be a recognised scheme if it appears to him that it affords adequate protection to the participants, makes adequate provision for the matters dealt with by regulations under section 81 above and satisfies the following provisions of this section.
- (2) The operator must be a body corporate or the scheme must take the form of an open-ended investment company.
- (3) Subject to subsection (4) below, the operator and the trustee, if any, must be fit and proper persons to act as operator or, as the case may be, as trustee; and for that purpose the Secretary of State may take into account any matter relating to—
- (a) any person who is or will be employed by or associated with the operator or trustee for the purposes of the scheme;
  - (b) any director or controller of the operator or trustee ;
  - (c) any other body corporate in the same group as the operator or trustee and any director or controller of any such other body.
- (4) Subsection (3) above does not apply to an operator or trustee who is an authorised person and not prohibited from acting as operator or trustee, as the case may be, by or under rules under section 48 above, by or under the rules of any recognised self-regulating organisation of which he is a member or by any prohibition imposed under section 65 above.
- (5) If the operator is not an authorised person he must have a representative in the United Kingdom who is an authorised person and has power to act generally for the operator and to accept service of notices and other documents on his behalf.
- (6) The name of the scheme must not be undesirable or misleading ; and the purposes of the scheme must be reasonably capable of being successfully carried into effect.
- (7) The participants must be entitled to have their units redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme; but a scheme shall be treated as complying with this subsection if it requires the operator to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in this subsection.
- (8) Subsections (2) to (5) of section 77 above shall apply also to an application under this section.

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- (9) So much of section 82 above as applies to an alteration of the scheme shall apply also to a scheme recognised under this section, taking references to the manager as references to the operator and with the omission of the requirement relating to the solicitor's certificate; and if the operator or trustee of any such scheme is to be replaced the operator or, as the case may be, the trustee, or in either case the person who is to replace him, shall give at least one month's notice to the Secretary of State.
- (10) Section 85 above shall have effect in relation to a scheme recognised under this section as it has effect in relation to an authorised unit trust scheme, taking references to the manager as references to the operator and, in the case of an operator who is not an authorised person, references to publishing particulars as references to causing them to be published.

## **89 Refusal and revocation of recognition**

- (1) The Secretary of State may at any time direct that a scheme shall cease to be recognised by virtue of section 87 above or revoke an order under section 88 above if it appears to him—
- (a) that it is undesirable in the interests of the participants or potential participants in the United Kingdom that the scheme should continue to be recognised ;
  - (b) without prejudice to paragraph (a) above, that the operator or trustee of the scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act; or
  - (c) in the case of an order under section 88 that any of the requirements for the making of the order are no longer satisfied.
- (2) For the purposes of subsection (1)(a) above the Secretary of State may take into account any matter relating to the scheme the operator or trustee, a director or controller of the operator or trustee or any person employed by or associated with the operator or trustee in connection with the scheme.
- (3) In the case of an operator or trustee who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in subsection (1) (b) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules.
- (4) The Secretary of State may give such a direction or revoke such an order as is mentioned in subsection (1) above at the request of the operator or trustee of the scheme; but he may refuse to do so if he considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the direction should be given or the order revoked or that the direction or revocation would not be in the interests of the participants.
- (5) Where the Secretary of State proposes—
- (a) to notify the operator of a scheme under section 87(3) above; or
  - (b) to give such a direction or to refuse to make or to revoke such an order as is mentioned in subsection (1) above,

he shall give the operator written notice of his intention to do so, stating the reasons for which he proposes to act and giving particulars of the rights conferred by subsection (6) below.

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- (6) A person on whom a notice is served under subsection (5) above may, within twenty-one days of the date of service, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.
- (7) The Secretary of State shall have regard to any representations made in accordance with subsection (6) above in determining whether to notify the operator, give the direction or refuse to make or revoke the order, as the case may be.

## **90 Facilities and information in the United Kingdom**

- (1) The Secretary of State may make regulations requiring operators of recognised schemes to maintain in the United Kingdom, or in such part or parts of it as may be specified in the regulations, such facilities as he thinks desirable in the interests of participants and as are specified in the regulations.
- (2) The Secretary of State may by notice in writing require the operator of any recognised scheme to include such explanatory information as is specified in the notice in any investment advertisement issued or caused to be issued by him in the United Kingdom in which the scheme is named.

### *Powers of intervention*

## **91 Directions**

- (1) If it appears to the Secretary of State—
  - (a) that any of the requirements for the making of an order declaring a scheme to be an authorised unit trust scheme are no longer satisfied ;
  - (b) that the exercise of the power conferred by this subsection is desirable in the interests of participants or potential participants in the scheme ; or
  - (c) without prejudice to paragraph (b) above, that the manager or trustee of such a scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act,he may give a direction under subsection (2) below.
- (2) A direction under this subsection may—
  - (a) require the manager of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme on a date specified in the direction until such further date as is specified in that or another direction;
  - (b) require the manager and trustee of the scheme to wind it up by such date as is specified in the direction or, if no date is specified, as soon as practicable.
- (3) The revocation of the order declaring an authorised unit trust scheme to be such a scheme shall not affect the operation of any direction under subsection (2) above which is then in force; and a direction may be given under that subsection in relation to a scheme in the case of which the order declaring it to be an authorised unit trust scheme has been revoked if a direction under that subsection was already in force at the time of revocation.

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- (4) Sections 60, 61 and 62 above shall have effect in relation to a contravention of a direction under subsection (2) above as they have effect in relation to any such contravention as is mentioned in those sections.
- (5) If it appears to the Secretary of State—
- (a) that the exercise of the power conferred by this subsection is desirable in the interests of participants or potential participants in a scheme recognised under section 87 or 88 above who are in the United Kingdom ;
  - (b) without prejudice to paragraph (a) above, that the operator of such a scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act; or
  - (c) that any of the requirements for the recognition of a scheme under section 88 above are no longer satisfied.
- he may direct that the scheme shall not be a recognised scheme for a specified period or until the occurrence of a specified event or until specified conditions are complied with.
- (6) For the purposes of subsections (1)(b) and (5)(a) above the Secretary of State may take into account any matter relating to the scheme, the manager, operator or trustee, a director or controller of the manager, operator or trustee or any person employed by or associated with the manager, operator or trustee in connection with the scheme.
- (7) In the case of a manager, operator or trustee who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in subsections (1)(c) and (5)(b) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules.
- (8) The Secretary of State may, either of his own motion or on the application of the manager, trustee or operator of the scheme concerned, withdraw or vary a direction given under this section if it appears to the Secretary of State that it is no longer necessary for the direction to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

## **92 Notice of directions**

- (1) The power to give a direction under section 91 above in relation to a scheme shall be exercisable by written notice served by the Secretary of State on the manager and trustee or, as the case may be, on the operator of the scheme and any such notice shall take effect on such date as is specified in the notice.
- (2) If the Secretary of State refuses to withdraw or vary a direction on the application of the manager, trustee or operator of the scheme concerned he shall serve that person with a written notice of refusal.
- (3) A notice giving a direction, or varying it otherwise than on the application of the manager, trustee or operator concerned, or refusing to withdraw or vary a direction on the application of such a person shall state the reasons for which the direction was given or varied or, as the case may be, why the application was refused.
- (4) The Secretary of State may give public notice of a direction given by him under section 91 above and of any withdrawal or variation of such a direction; and any such

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notice may, if the Secretary of State thinks fit, include a statement of the reasons for which the direction was given, withdrawn or varied.

### **93 Applications to the court**

- (1) In any case in which the Secretary of State has power to give a direction under section 91(2) above in relation to an authorised unit trust scheme or, by virtue of subsection (3) of that section, in relation to a scheme which has been such a scheme, he may apply to the court—
  - (a) for an order removing the manager or trustee, or both the manager and trustee, of the scheme and replacing either or both of them with a person or persons nominated by him and appearing to him to satisfy the requirements of section 78 above ; or
  - (b) if it appears to the Secretary of State that no, or no suitable, person satisfying those requirements is available, for an order removing the manager or trustee, or both the manager and trustee, and appointing an authorised person to wind the scheme up.
- (2) On an application under this section the court may make such order as it thinks fit; and the court may, on the application of the Secretary of State, rescind any such order as is mentioned in paragraph (b) of subsection (1) above and substitute such an order as is mentioned in paragraph (a) of that subsection.
- (3) The Secretary of State shall give written notice of the making of an application under this section to the manager and trustee of the scheme concerned and take such steps as he considers appropriate for bringing the making of the application to the attention of the participants.
- (4) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.
- (5) Section 83 above shall not apply to a manager appointed by an order made on an application under subsection (1)(b) above.

### *Supplemental*

### **94 Investigations**

- (1) The Secretary of State may appoint one or more competent inspectors to investigate and report on—
  - (a) the affairs of, or of the manager or trustee of, any authorised unit trust scheme ;
  - (b) the affairs of, or of the operator or trustee of, any recognised scheme so far as relating to activities carried on in the United Kingdom ; or
  - (c) the affairs of, or of the operator or trustee of, any other collective investment scheme,if it appears to the Secretary of State that it is in the interests of the participants to do so or that the matter is of public concern.
- (2) An inspector appointed under subsection (1) above to investigate the affairs of, or of the manager, trustee or operator of, any scheme may also, if he thinks it necessary for the purposes of that investigation, investigate the affairs of, or of the manager, trustee or operator of, any other such scheme as is mentioned in that subsection whose

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manager, trustee or operator is the same person as the manager, trustee or operator of the first<sup>1</sup> mentioned scheme.

- (3) Sections 434 to 436 of the Companies Act 1985 (production of documents and evidence to inspectors), except section 435(1)(o) and (b) and (2), shall apply in relation to an inspector appointed under this section as they apply to an inspector appointed under section 431 of that Act but with the modifications specified in subsection (4) below.
- (4) In the provisions applied by subsection (3) above for any reference to a company or its affairs there shall be substituted a reference to the scheme under investigation by virtue of this section and the affairs mentioned in subsection (1) or (2) above and any reference to an officer or director of the company shall include a reference to any director of the manager, trustee or operator of the scheme.
- (5) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session except that a lawyer may be required to furnish the name and address of his client.
- (6) Where a person claims a lien on a document its production under this section shall be without prejudice to the lien.
- (7) Nothing in this section shall require a person carrying on the business of banking to disclose any information or produce any document relating to the affairs of a customer unless—
  - (a) the customer is a person who the inspector has reason to believe may be able to give information relevant to the investigation; and
  - (b) the Secretary of State is satisfied that the disclosure or production is necessary for the purposes of the investigation.
- (8) An inspector appointed under this section may, and if so directed by the Secretary of State shall, make interim reports to the Secretary of State and on the conclusion of his investigation shall make a final report to him.
- (9) Any such report shall be written or printed as the Secretary of State may direct and the Secretary of State may, if he thinks fit—
  - (a) furnish a copy, on request and on payment of the prescribed fee, to the manager, trustee or operator or any participant in a scheme under investigation or any other person whose conduct is referred to in the report; and
  - (b) cause the report to be published.

## **95 Contraventions**

- (1) A person who contravenes any provision of this Chapter, a manager or trustee of an authorised unit trust scheme who contravenes any regulations made under section 81 above and a person who contravenes any other regulations made under this Chapter shall be treated as having contravened rules made under Chapter V of this Part of this Act or, in the case of a person who is an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.

- (2) Subsection (1) above applies also to any contravention by the operator of a recognised scheme of a requirement imposed under section 90(2) above.

## CHAPTER IX

### THE TRIBUNAL

#### 96 The Financial Services Tribunal

- (1) For the purposes of this Act there shall be a Tribunal known as the Financial Services Tribunal (in this Act referred to as " the Tribunal ").
- (2) There shall be a panel of not less than ten persons to serve as members of the Tribunal when nominated to do so in accordance with subsection (3) below; and that panel shall consist of—
- (a) persons with legal qualifications appointed by the Lord Chancellor after consultation with the Lord Advocate, including at least one person qualified in Scots law; and
  - (b) persons appointed by the Secretary of State who appear to him to be qualified by experience or otherwise to deal with the cases that may be referred to the Tribunal.
- (3) Where a case is withdrawn from the Tribunal under this State shall nominate three persons from the panel to serve as members of the Tribunal in respect of that case and nominate one of them to be chairman.
- (4) The person nominated to be chairman of the Tribunal in respect of any case shall be a person with legal qualifications and, so far as practicable, at least one of the other members shall be a person with recent practical experience in business relevant to the case.
- (5) If while a case is being dealt with by the Tribunal one of the three persons serving as members in respect of that case becomes unable to act the case may, with the consent of the Secretary of State and of the person or persons at whose request the case was referred to the Tribunal, be dealt with by the other two members.
- (6) Schedule 6 to this Act shall have effect as respects the Tribunal and its proceedings.

#### 97 References to the Tribunal

- (1) Any person—
- (a) on whom a notice is served under section 29, 34, 59(4), 60(2) or 70 above ; or
  - (b) on whom a copy of a notice under section 29, 34, 60(2) or 70 above is served or on whom the Secretary of State considers that a copy of such a notice would have been served if it had been practicable to do so,
- may within twenty-eight days of the date of service of the notice require the Secretary of State to refer the matter to which the notice relates to the Tribunal and, subject to the provisions of this section, the Secretary of State shall refer that matter accordingly.
- (2) The Secretary of State need not refer a matter to the Tribunal at the request of the person on whom a notice was served under section 29, 34, 59(4) or 60(2) above if within the period mentioned in subsection (1) above he—

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- (a) decides to grant the application or, as the case may be, decides not to withdraw or suspend the authorisation, give the direction or publish the statement to which the notice relates; and
  - (b) gives written notice of his decision to that person.
- (3) The Secretary of State need not refer a matter to the Tribunal at the request of the person on whom a notice is served under section 70 above if—
- (a) that matter is the refusal of an application for the rescission or variation of a prohibition or requirement and within the period mentioned in subsection (1) above he—
    - (i) decides to grant the application ; and
    - (ii) gives written notice of his decision to that person ; or
  - (b) that matter is the imposition or variation of a prohibition or requirement, being a prohibition, requirement or variation which has not yet taken effect, and within the period mentioned in subsection (1) above and before the prohibition, requirement or variation takes effect he—
    - (i) decides to rescind the prohibition or requirement or decides not to make the variation ; and
    - (ii) gives written notice of his decision to that person.
- (4) Where the notice served on a person under section 29 or 34 above—
- (a) proposed the withdrawal of an authorisation or the giving of a direction under section 33(1)(a) above; or
  - (b) proposed the suspension of an authorisation or the giving of a direction under section 33(1)(b) above,
- and at any time within the period mentioned in subsection (1) above the Secretary of State serves a new notice on that person in substitution for that previously served, then, if the substituted notice complies with subsection (5) below, subsection (1) above shall have effect in relation to the substituted notice instead of the original notice and as if the period there mentioned were twenty-eight days after the date of service of the original notice or fourteen days after the date of service of the substituted notice, whichever ends later.
- (5) A notice served in substitution for a notice within subsection (4)(a) above complies with this subsection if it proposes—
- (a) the suspension of an authorisation or the giving of a direction under section 33(1)(b) above; or
  - (b) the exercise of the power conferred by section 60 above ;
- and a notice served in substitution for a notice within subsection (4)(b) above complies with this subsection if it proposes a less severe suspension or direction under section 33(1) MM or the exercise of the power conferred by section 60 above.
- (6) The reference of the imposition or variation of a prohibition or requirement under Chapter VI of this Part of this Act to the Tribunal shall not affect the date on which it comes into effect.

## **98 Decisions on references by applicant or authorised person etc.**

- (1) Where a case is referred to the Tribunal at the request of a person within section 97(1) (a) above the Tribunal shall—
- (a) investigate the case ; and



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- (b) make a report to the Secretary of State stating what would in its opinion be the appropriate decision in the matter and the reasons for that opinion ;  
and it shall be the duty of the Secretary of State to decide the matter forthwith in accordance with the Tribunal's report.
- (2) Where the matter referred to the Tribunal is the refusal of an application the Tribunal may under this section report that the appropriate decision would be to grant or refuse the application or—
- (a) in the case of an application for the variation of a suspension, direction, consent, prohibition or requirement, to vary it in a specified manner;
- (b) in the case of an application for the rescission of a prohibition or requirement, to vary the prohibition or requirement in a specified manner.
- (3) Where the matter referred to the Tribunal is any action of the Secretary of State other than the refusal of an application the Tribunal may report that the appropriate decision would be—
- (a) to take or not to take the action taken or proposed to be taken by the Secretary of State or to take any other action that he could take under the provision in question ; or
- (b) to take instead or in addition any action that he could take in the case of the person concerned under any one or more of the provisions mentioned in subsection (4) below other than that under which he was acting or proposing to act.
- (4) Those provisions are sections 28, 33 and 60 above and Chapter VI of this Part of this Act; and sections 29, 34, 60(2) and (3) and 70(2) and (4) above shall not apply to any action taken by the Secretary of State in accordance with the Tribunal's report.
- (5) The Tribunal shall send a copy of its report under this section to the person at whose request the case was referred to it; and the Secretary of State shall serve him with a written notice of the decision made by him in accordance with the report.

## **99 Decisions on references by third parties**

Where a case is referred to the Tribunal at the request of a person within section 97(1) (6) above the Tribunal shall report to the Secretary of State whether the reasons stated in the notice in question which relate to that person are substantiated ; and the Tribunal shall send a copy of the report to that person and to the person on whom the notice was served.

## **100 Withdrawal of references**

- (1) A person who has required a case to be referred to the Tribunal may at any time before the conclusion of the proceedings before the Tribunal withdraw the reference.
- (2) The Secretary of State may at any such time withdraw any reference made at the request of a person on whom a notice was served under any of the provisions mentioned in subsection (1)(a) of section 97 above if he—
- (a) decides as mentioned in subsection (2)(a) or (3)(a)(i) or (b)(i) of that section ;  
and
- (b) gives such a notice as is mentioned in subsection (2)(b) or (3)(a)(ii) or (b)(i) of that section ;

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but a reference shall not be withdrawn by virtue of such a decision and notice as are mentioned in paragraph (b) of subsection (3) unless the decision is made and the notice is given before the prohibition, requirement or variation has taken effect.

- (3) Where a case is referred to the Tribunal the Secretary of section the Tribunal shall not further investigate the case or make a report under section 98 or 99 above; but where the reference is withdrawn otherwise than by the Secretary of State he may require the Tribunal to make a report to him on the results of its investigation up to the time when the reference was withdrawn.
- (4) Where two or more persons have required a case to be referred to the Tribunal the withdrawal of the reference by one or more of them shall not affect the functions of the Tribunal as respects the case so far as relating to a person who has not withdrawn the reference.
- (5) Where a person on whom a notice was served under section 29, 34 or 60 above withdraws a case from the Tribunal subsection (5) of each of those sections shall apply to him as if he had not required the case to be referred.

## **101 Reports**

- (1) In preparing its report on any case the Tribunal shall have regard to the need to exclude, so far as practicable, any matter which relates to the affairs of a particular person (not being a person who required or could have required the case to be referred to the Tribunal) where the publication of that matter would or might, in the opinion of the Tribunal, seriously and prejudicially affect the interests of that person.
- (2) The Secretary of State may, in such cases as he thinks fit, publish the report of the Tribunal and offer copies of any such report for sale.
- (3) The Secretary of State may, on request and on payment of the prescribed fee, supply a copy of a report of the Tribunal to any person whose conduct is referred to in the report or whose interests as a client or creditor are affected by the conduct of a person to whom the proceedings before the Tribunal related.
- (4) If the Secretary of State is of opinion that there is good reason for not disclosing any part of a report he may cause that part to be omitted from the report as published under subsection (2) or from the copy of it supplied under subsection (3) above.
- (5) A copy of a report of the Tribunal endorsed with a certificate signed by or on behalf of the Secretary of State stating that it is a true copy shall be admissible as evidence of the opinion of the Tribunal as to any matter referred to in the report; and a certificate purporting to be signed as aforesaid shall be deemed to have been duly signed unless the contrary is shown.

## **CHAPTER X**

### **INFORMATION**

## **102 Register of authorised persons and recognised organisations etc.**

- (1) The Secretary of State shall keep a register containing an entry in respect of—

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- (a) each person who is an authorised person by virtue of an authorisation granted by the Secretary of State;
  - (b) each other person who appears to him to be an authorised person by virtue of any provision of this Part of this Act;
  - (c) each recognised self-regulating organisation, recognised professional body, recognised investment exchange and recognised clearing house;
  - (d) each authorised unit trust scheme and recognised scheme;
  - (e) each person in respect of whom a direction under section 59 above is in force.
- (2) The entry in respect of each authorised person shall consist of—
  - (a) a statement of the provision by virtue of which he is an authorised person ;
  - (b) in the case of a person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body, the name and address of the organisation or body;
  - (c) in the case of a person who is an authorised person by virtue of section 25 or 31 above, information as to the services which that person holds himself out as able to provide;
  - (d) in the case of a person who is an authorised person by virtue of section 31 above, the address notified to the Secretary of State under section 32 above ;
  - (e) in the case of a person who is an authorised person by virtue of any provision other than section 31 above, the date on which he became an authorised person by virtue of that provision ; and (f) such other information as the Secretary of State may determine.
- (3) The entry in respect of each such organisation, body, exchange or clearing house as is mentioned in subsection (1)(c) above shall consist of its name and address and such other information as the Secretary of State may determine.
- (4) The entry in respect of each such scheme as is mentioned in subsection (1)(d) above shall consist of its name and, in the case of an authorised unit trust scheme, the name and address of the manager and trustee and, in the case of a recognised scheme, the name and address of the operator and of any representative of the operator in the United Kingdom and, in either case, such other information as the Secretary of State may determine.
- (5) The entry in respect of each such person as is mentioned in subsection (1)(e) above shall include particulars of any consent for that person's employment given by the Secretary of State.
- (6) Where it appears to the Secretary of State that any person in respect of whom there is an entry in the register by virtue of subsection (1) (a) or (b) above has ceased to be an authorised person (whether by death, by withdrawal or other cessation of his authorisation, as a result of his ceasing to be a member of a recognised self-regulating organisation or otherwise) the Secretary of State shall make a note to that effect in the entry together with the reason why the person in question is no longer an authorised person.
- (7) Where
  - (a) an organisation, body, exchange or clearing house in respect of which there is an entry in the register by virtue of paragraph (c) of subsection (1) above has ceased to be recognised or ceased to exist;

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- (b) an authorised unit trust scheme or recognised scheme in respect of which there is an entry in the register by virtue of paragraph (d) of that subsection has ceased to be authorised or recognised ; or
  - (c) the direction applying to a person in respect of whom there is an entry in the register by virtue of paragraph (e) of that subsection has ceased to have effect, the Secretary of State shall make a note to that effect in the entry.
- (8) An entry in respect of which a note is made under subsection (6) or (7) above may be removed from the register at the end of such period as the Secretary of State thinks appropriate.

### **103 Inspection of register**

- (1) The information contained in the entries included in the register otherwise than by virtue of section 102(1)(e) above shall be open to inspection; and the Secretary of State may publish the information contained in those entries in any form he thinks appropriate and may offer copies of any such information for sale.
- (2) A person shall be entitled to ascertain whether there is an entry in the register by virtue of subsection (1)(e) of section 102 above (not being an entry in respect of which there is a note under subsection (7) of that section) in respect of a particular person specified by him and, if there is such an entry, to inspect it.
- (3) Except as provided by subsection (2) above the information contained in the register by virtue of section 102(1)(e) above shall not be open to inspection by any person unless he satisfies the Secretary of State that he has a good reason for seeking the information.
- (4) A person to whom information is made available by the Secretary of State under subsection (3) above shall not, without the consent of the Secretary of State or of the person to whom the information relates, make use of it except for the purpose for which it was made available.
- (5) Information which by virtue of this section is open to inspection shall be open to inspection free of charge but only at such times and places as the Secretary of State may appoint; and a person entitled to inspect any information may obtain a certified copy of it from the Secretary of State on payment of the prescribed fee.
- (6) The register may be kept by the Secretary of State in such form as he thinks appropriate with a view to facilitating inspection of the information which it contains.

### **104 Power to call for information**

- (1) The Secretary of State may by notice in writing require a person who is authorised to carry on investment business by virtue of section 22, 24, 25 or 31 above to furnish him with such information as he may reasonably require for the exercise of his functions Under this Act.
- (2) The Secretary of State may by notice in writing require a recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house to furnish him with such information as he may reasonably require for the exercise of his functions under this Act.

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- (3) The Secretary of State may require any information which he requires under this section to be furnished within such reasonable time and verified in such manner as he may specify.
- (4) Sections 60, 61 and 62 above shall have effect in relation to a contravention of a requirement imposed under subsection (1) above as they have effect in relation to a contravention of the provisions to which those sections apply.

## **105 Investigation powers**

- (1) The powers of the Secretary of State under this section shall be exercisable in any case in which it appears to him that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any person so far as relevant to any investment business which he is or was carrying on or appears to the Secretary of State to be or to have been carrying on.
- (2) Those powers shall not be exercisable for the purpose of investigating the affairs of any exempted person unless he is an appointed representative or the investigation is in respect of investment business in respect of which he is not an exempted person and shall not be exercisable for the purpose of investigating the affairs of a member of a recognised self-regulating organisation or a person certified by a recognised professional body in respect of investment business in the carrying on of which he is subject to its rules unless—
  - (a) that organisation or body has requested the Secretary of State to investigate those affairs; or
  - (b) it appears to him that the organisation or body is unable or unwilling to investigate them in a satisfactory manner.
- (3) The Secretary of State may require the person whose affairs are to be investigated (" the person under investigation ") or any connected person to attend before the Secretary of State at a specified time and place and answer questions or otherwise furnish information with respect to any matter relevant to the investigation.
- (4) The Secretary of State may require the person under investigation or any other person to produce at a specified time and place any specified documents which appear to the Secretary of State to relate to any matter relevant to the investigation ; and—
  - (a) if any such documents are produced, the Secretary of State may take copies or extracts from them or require the person producing them or any connected person to provide an explanation of any of them ;
  - (b) if any such documents are not produced, the Secretary of State may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (5) A statement by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.
- (6) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session except that a lawyer may be required to furnish the name and address of his client.

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- (7) The Secretary of State shall not require a recognised bank or licensed institution within the meaning of the Banking Act 1979 to disclose any information or produce any document relating to the affairs of a customer unless the Secretary of State considers it necessary to do so for the purpose of investigating any investment business carried on, or appearing to the Secretary of State to be carried on or to have been carried on, by the bank, institution or customer or, if the customer is a related company of the person under investigation, by that person.
- (8) Where a person claims a lien on a document its production under this section shall be without prejudice to the lien.
- (9) In this section—
- " connected person", in relation to any other person means—
- (a) any person who is or was that other person's partner, employee, agent, appointed representative, banker, auditor or solicitor; and
  - (b) where the other person is a body corporate, any person who is or was a director, secretary or controller of that body corporate or of another body corporate of which it is or was a subsidiary ; and
  - (c) where the other person is an unincorporated association, any person who is or was a member of the governing body or an officer or controller of the association; and
  - (d) where the other person is an appointed representative, any person who is or was his principal; and
  - (e) where the other person is the person under investigation (being a body corporate), any related company of that body corporate and any person who is a connected person in relation to that company ;
- " documents " includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;
- " related company ", in relation to a person under investigation (being a body corporate), means any other body corporate which is or at any material time was—
- (a) a holding company or subsidiary of the person under investigation;
  - (b) a subsidiary of a holding company of that person; or
  - (c) a holding company of a subsidiary of that person,
- and whose affairs it is in the Secretary of State's opinion necessary to investigate for the purpose of investigating the affairs of that person.
- (10) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the fifth level on the standard scale or to both.

## **106 Exercise of investigation powers by officer etc.**

- (1) The Secretary of State may authorise any officer of his or any other competent person to exercise on his behalf all or any of the powers conferred by section 105 above but no such authority shall be granted except for the purpose of investigating the affairs, or any aspects of the affairs, of a person specified in the authority.

- (2) No person shall be bound to comply with any requirement imposed by a person exercising powers by virtue of an authority granted under this section unless he has, if required to do so, produced evidence of his authority.
- (3) Where the Secretary of State authorises a person other than one of his officers to exercise any powers by virtue of this section that person shall make a report to the Secretary of State in such manner as he may require on the exercise of those powers and the results of exercising them.

## CHAPTER XI

### AUDITORS

#### **107 Appointment of auditors**

- (1) The Secretary of State may make rules requiring a a person who is authorised to carry on investment business by virtue of section 25 or 31 above and who, apart from the rules, is not required by or under any enactment to appoint an auditor to appoint as an auditor a person satisfying such conditions as to qualifications and otherwise as may be specified in or imposed under the rules.
- (2) Rules under this section may make provision—
  - (a) specifying the manner in which and the time within which an auditor is to be appointed ;
  - (b) requiring the Secretary of State to be notified of any such appointment and enabling the Secretary of State to make an appointment if no appointment is made or notified as required by the rules ;
  - (c) with respect to the remuneration of an auditor appointed under the rules;
  - (d) with respect to the term of office, removal and resignation of any such auditor ;
  - (e) requiring any such auditor who is removed, resigns or is not reappointed to notify the Secretary of State whether there are any circumstances connected with his ceasing to hold office which he considers should be brought to the Secretary of State's attention.
- (3) An auditor appointed under the rules shall in accordance with the rules examine and report on the accounts of the authorised person in question and shall for that purpose have such duties and powers as are specified in the rules.

#### **108 Power to require second audit**

- (1) If in any case it appears to the Secretary of State that there is good reason to do so he may direct any person who is authorised to carry on investment business by virtue of section 25 or 31 above to submit for further examination by a person approved by the Secretary of State—
  - (a) any accounts on which that person's auditor has reported or any information given under section 52 or 104 above which has been verified by that auditor; or
  - (b) such matters contained in any such accounts or information as are specified in the direction;and the person making the further examination shall report his conclusions to the Secretary of State.

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- (2) Any further examination and report required by a direction under this section shall be at the expense of the authorised person concerned and shall be carried out and made within such time as is specified in the direction or within such further time as the Secretary of State may allow.
- (3) The person carrying out an examination under this section shall have all the powers that were available to the auditor; and it shall be the duty of the auditor to afford him all such assistance as he may require.
- (4) Where a report made under this section relates to accounts which under any enactment are required to be sent to or made available for inspection by any person or to be delivered for registration, the report, or any part of it (or a note that such a report has been made) may be similarly sent, made available or delivered by the Secretary of State.

### **109 Communication by auditor with supervisory authorities**

- (1) No duty to which an auditor of an authorised person may be subject shall be regarded as contravened by reason of his communicating in good faith to the Secretary of State, whether or not in response to a request from him, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that person and which is relevant to any functions of the Secretary of State under this Act.
- (2) If it appears to the Secretary of State that any auditor or class of auditor to whom subsection (1) above applies is not subject to satisfactory rules made or guidance issued by a professional body specifying circumstances in which matters are to be communicated to the Secretary of State as mentioned in that subsection the Secretary of State may himself make rules applying to that auditor or that class of auditor and specifying such circumstances; and it shall be the duty of an auditor to whom the rules made by the Secretary of State apply to communicate a matter to the Secretary of State in the circumstances specified by the rules.
- (3) The matters to be communicated to the Secretary of State in accordance with any such rules or guidance may include matters relating to persons other than the authorised person.
- (4) No such rules as are mentioned in subsection (2) above shall be made by the Secretary of State unless a draft of them has been laid before and approved by a resolution of each House of Parliament.
- (5) This section applies to—
  - (a) the communication by an auditor to a recognised self-regulating organisation or recognised professional body of matters relevant to its function of determining whether a person is a fit and proper person to carry on investment business; and
  - (b) the communication to such an organisation or body or any other authority or person of matters relevant to its or his function of determining whether a person is complying with the rules applicable to his conduct of investment business,as it applies to the communication to the Secretary of State of matters relevant to his functions under this Act.



## **110 Overseas business**

- (1) A person incorporated or having his head office outside the United Kingdom who is authorised as mentioned in subsection (1) of section 107 above may, whether or not he is required to appoint an auditor apart from the rules made under that subsection, appoint an auditor in accordance with those rules in respect of the investment business carried on by him in the United Kingdom and in that event that person shall be treated for the purposes of this Chapter as the auditor of that person.
- (2) In the case of a person to be appointed as auditor of a person incorporated or having his head office outside the United Kingdom the conditions as to qualifications imposed by or under the rules made under that section may be regarded as satisfied by qualifications obtained outside the United Kingdom which appear to the Secretary of State to be equivalent.
- (3) A person incorporated or having his head office outside the United Kingdom shall not be regarded for the purposes of section 25 above as a fit and proper person to carry on investment business unless—
  - (a) he has appointed an auditor in accordance with rules made under section 107 above in respect of the investment business carried on by him in the United Kingdom ; or
  - (b) he has an auditor having qualifications, powers and duties appearing to the Secretary of State to be equivalent to those applying to an auditor appointed in accordance with those rules,and, in either case, the auditor is able and willing to communicate with the Secretary of State and other bodies and persons as mentioned in section 109 above.

## **111 Offences and enforcement**

- (1) Any authorised person and any officer, controller or manager of an authorised person, who knowingly or recklessly furnishes an auditor appointed under the rules made under section 107 or a person carrying out an examination under section 108 above with information which the auditor or that person requires or is entitled to require and which is false or misleading in a material particular shall be guilty of an offence and liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (2) The duty of an auditor under section 108(3) above shall be enforceable by mandamus or, in Scotland, by an order for specific performance under section 91 of the Court of Session Act 1868.
- (3) If it appears to the Secretary of State that an auditor has failed to comply with the duty mentioned in section 109(2) above, the Secretary of State may disqualify him from being the auditor of an authorised person or any class of authorised person ; but the Secretary of State may remove any disqualification imposed under this subsection if satisfied that the person in question will in future comply with that duty.
- (4) An authorised person shall not appoint as auditor a person disqualified under subsection (3) above; and a person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a

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recognised professional body who contravenes this subsection shall be treated as having contravened the rules of the organisation or body.

## CHAPTER XII

### FEES

#### 112 Application fees

- (1) An applicant for a recognition order under Chapter III or IV of this Part of this Act shall pay such fees in respect of his application as may be required by a scheme made and published by the Secretary of State; and no application for such an order shall be regarded as duly made unless this subsection is complied with.
- (2) A scheme made for the purposes of subsection (1) above shall specify the time when the fees are to be paid and may—
  - (a) provide for the determination of the fees in accordance with a specified scale or other specified factors;
  - (b) provide for the return or abatement of any fees where an application is refused or withdrawn ; and
  - (c) make different provision for different cases.
- (3) Any scheme made for the purposes of subsection (1) above shall come into operation on such date as is specified in the scheme (not being earlier than the day on which it is first published) and shall apply to applications made on or after the date on which it comes into operation.
- (4) The power to make a scheme for the purposes of subsection (1) above includes power to vary or revoke a previous scheme made under those provisions.
- (5) Every application under section 26, 77 or 88 above shall be accompanied by the prescribed fee and every notice given to the Secretary of State under section 32, 86(2) or 87(3) above shall be accompanied by such fee as may be prescribed ; and no such application or notice shall be regarded as duly made or given unless this subsection is complied with.

#### 113 Periodical fees

- (1) Every recognised self-regulating organisation, recognised professional body, recognised investment exchange and recognised clearing house shall pay such periodical fees to the Secretary of State as may be prescribed.
- (2) So long as a body is authorised under section 22 above to carry on insurance business which is investment business it shall pay to the Secretary of State such periodical fees as may be prescribed.
- (3) So long as a society is authorised under section 23 above to carry on investment business it shall—
  - (a) if it is authorised by virtue of subsection (1) of that section, pay to the Chief Registrar of friendly societies such periodical fees as he may by regulations specify; and

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- (b) if it is authorised by virtue of subsection (2) of that section, pay to the Registrar of Friendly Societies for Northern Ireland such periodical fees as he may by regulations specify.
- (4) A person who is an authorised person by virtue of section 25 or 31 above shall pay such periodical fees to the Secretary of State as may be prescribed.
- (5) If a person fails to pay any fee which is payable by him under subsection (4) above the Secretary of State may serve on him a written notice requiring him to pay the fee within twenty-eight days of service of the notice; and if the fee is not paid within that period that person's authorisation shall cease to have effect unless the Secretary of State otherwise directs.
- (6) A direction under subsection (5) above may be given so as to have retrospective effect; and the Secretary of State may under that subsection direct that the person in question shall continue to be an authorised person only for such period as is specified in the direction.
- (7) Subsection (5) above is without prejudice to the recovery of any fee as a debt due to the Crown.
- (8) The manager of each authorised unit trust scheme and the operator of each recognised scheme shall pay such periodical fees to the Secretary of State as may be prescribed.

## CHAPTER XIII

### TRANSFER OF FUNCTIONS TO DESIGNATED AGENCY

#### **114 Power to transfer functions to designated agency**

- (1) If it appears to the Secretary of State—
  - (a) that a body corporate has been established which is able and willing to discharge all or any of the functions to which this section applies ; and
  - (b) that the requirements of Schedule 7 to this Act are satisfied in the case of that body,he may, subject to the provisions of this section and Chapter XIV of this Part of this Act, make an order transferring all or any of those functions to that body.
- (2) The body to which functions are transferred by the first order made under subsection (1) above shall be the body known as The Securities and Investments Board Limited if it appears to the Secretary of State that it is able and willing to discharge them, that the requirements mentioned in paragraph (b) of that subsection are satisfied in the case of that body and that he is not precluded from making the order by the subsequent provisions of this section or Chapter XIV of this Part of this Act.
- (3) An order under subsection (1) above is in this Act referred to as " a delegation order " and a body to which functions are transferred by a delegation order is in this Act referred to as " a designated agency ".
- (4) Subject to subsections (5) and (6) below, this section applies to any functions of the Secretary of State under Chapters II to XII of this Part of this Act and to his functions under paragraphs 23 and 25(2) of Schedule 1 and paragraphs 4, 5 and 15 of Schedule 15 to this Act.

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- (5) This section does not apply to any functions under—
- (a) section 31(4);
  - (b) section 46;
  - (c) section 48(8);
  - (d) section 58(3);
  - (e) section 86(1) or 87(1);
  - (f) section 96;
  - (g) section 109(2) above.
- (6) This section does not apply to the making or revocation of a recognition order in respect of an overseas investment exchange or overseas clearing house or the making of an application to the court under section 12 above in respect of any such exchange or clearing house.
- (7) Any function may be transferred by a delegation order either wholly or in part.
- (8) In the case of a function under section 6 or 72 or a function under section 61 which is exercisable by virtue of subsection (1)(f)(ii) or (iii) of that section, the transfer may be subject to a reservation that it is to be exercisable by the Secretary of State concurrently with the designated agency and any transfer of a function under section 94, 105 or 106 shall be subject to such a reservation.
- (9) The Secretary of State shall not make a delegation order transferring any function of making rules or regulations to a designated agency unless—
- (a) the agency has furnished him with a copy of the rules and regulations which it proposes to make in the exercise of those functions; and
  - (b) he is satisfied that those rules and regulations will afford investors an adequate level of protection and in the case of such rules and regulations as are mentioned in Schedule 8 to this Act, comply with the principles set out in that Schedule.
- (10) The Secretary of State shall also before making a delegation order transferring any functions to a designated agency require it to furnish him with a copy of any guidance intended to have continuing effect which it proposes to issue in writing or other legible form and the Secretary of State may take any such guidance into account in determining whether he is satisfied as mentioned in subsection (9)(b) above.
- (11) No delegation order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (12) In this Act references to guidance issued by a designated agency are references to guidance issued or any recommendation made by it which is issued or made to persons generally or to any class of persons, being, in either case, persons who are or may be subject to rules or regulations made by it, or who are or may be recognised or authorised by it, in the exercise of its functions under a delegation order.

## **115 Resumption of transferred functions**

- (1) The Secretary of State may at the request or with the consent of a designated agency make an order resuming all or any of the functions transferred to the agency by a delegation order.

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- (2) The Secretary of State may, in the circumstances mentioned in subsection (3), (4) or (5) below, make an order resuming—
  - (a) all the functions transferred to a designated agency by a delegation order; or
  - (b) all, all legislative or all administrative functions transferred to a designated agency by a delegation order so far as relating to investments or investment business of any class.
- (3) An order may be made under subsection (2) above if at any time it appears to the Secretary of State that any of the requirements of Schedule 7 to this Act are not satisfied in the case of the agency.
- (4) An order may be made under subsection (2) above as respects functions relating to any class of investment or investment business if at any time it appears to the Secretary of State that the agency is unable or unwilling to discharge all or any of the transferred functions in respect of all or any investments or investment business falling within that class.
- (5) Where the transferred functions consist of or include any functions of making rules or regulations an order may be made under subsection (2) above if at any time it appears to the Secretary of State that the rules or regulations made by the agency do not satisfy the requirements of section 114(9)(2>) above.
- (6) An order under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament; and no other order shall be made under this section unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (7) In subsection (2)(b) above—
  - (a) "legislative functions" means functions of making rules or regulations;
  - (b) "administrative functions" means functions other than legislative functions;but the resumption of legislative functions shall not deprive a designated agency of any function of prescribing fees to be paid or information to be furnished in connection with administrative functions retained by the agency; and the resumption of administrative functions shall extend to the function of prescribing fees to be paid and information to be furnished in connection with those administrative functions.

## **116 Status and exercise of transferred functions**

Schedule 9 to this Act shall have effect as respects the status of a designated agency and the exercise of the functions transferred to it by a delegation order.

## **117 Reports and accounts**

- (1) A designated agency shall at least once in each year for which the delegation order is in force make a report to the Secretary of State on the discharge of the functions transferred to it by the order and on such other matters as the order may require.
- (2) The Secretary of State shall lay before Parliament copies of each report received by him under this section.
- (3) The Secretary of State may give directions to a designated agency with respect to its accounts and the audit of its accounts; and it shall be the duty of the agency to comply with the directions.

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- (4) Subsection (3) above shall not apply to a designated agency which is a company to which section 227 of the Companies Act 1985 applies; but the Secretary of State may require any designated agency (whether or not such a company) to comply with any provisions of that Act which would not otherwise apply to it or direct that any provision of that Act shall apply to the agency with such modifications as are specified in the direction; and it shall be the duty of the agency to comply with any such requirement or direction.
- (5) In subsection (4) above the references to the Companies Act 1985 and section 227 of that Act include references to the corresponding Northern Ireland provisions.

### **118 Transitional and supplementary provisions**

- (1) A delegation order shall not affect anything previously done in the exercise of a function which is transferred by the order; and any order resuming a function shall not affect anything previously done by the designated agency in the exercise of a function which is resumed.
- (2) A delegation order and an order resuming any functions transferred by a delegation order may contain, or the Secretary of State may by a separate order under this section make, such transitional and other supplementary provisions as he thinks necessary or expedient in connection with the delegation order or the order resuming the functions in question.
- (3) The provisions that may be made under subsection (2) above in connection with a delegation order include, in particular, provisions—
- (a) for modifying or excluding any provision of this Act in its application to any function transferred by the order;
  - (b) for applying to a designated agency, in connection with any such function, any provision applying to the Secretary of State which is contained in or made under any other enactment;
  - (c) for the transfer of any property, rights or liabilities from the Secretary of State to a designated agency;
  - (d) for the carrying on and completion by a designated agency of anything in process of being done by the Secretary of State when the order takes effect; and
  - (e) for the substitution of a designated agency for the Secretary of State in any instrument, contract or legal proceedings.
- (4) The provisions that may be made under subsection (2) above in connection with an order resuming any functions include, in particular, provisions—
- (a) for the transfer of any property, rights or liabilities from the agency to the Secretary of State;
  - (b) for the carrying on and completion by the Secretary of State of anything in process of being done by the agency when the order takes effect;
  - (c) for the substitution of the Secretary of State for the agency in any instrument, contract or legal proceedings; and
  - (d) in a case where some functions remain with the agency, for modifying or excluding any provision of this Act in its application to any such functions.
- (5) In a case where any function of a designated agency is resumed and is to be immediately transferred by a delegation order to another designated agency, the

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provisions that may be made under subsection (2) above may include provisions for any of the matters mentioned in paragraphs (a) to (c) of subsection (4) above, taking references to the Secretary of State as references to that other agency.

- (6) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## CHAPTER XIV

### PREVENTION OF RESTRICTIVE PRACTICES

#### *Examination of rules and practices*

#### **119 Recognised self-regulating organisations, investment exchanges and clearing houses**

- (1) The Secretary of State shall not make a recognition order in respect of a self-regulating organisation, investment exchange or clearing house unless he is satisfied that—

- (a) the rules and any guidance of which copies are furnished with the application for the order; and
- (b) in the case of an investment exchange, any arrangements of which particulars are furnished with the application,

do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition or, if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.

- (2) The powers conferred by subsection (3) below shall be exercisable by the Secretary of State if at any time it appears to him that—

- (a) any rules made or guidance issued by a recognised self regulating organisation, investment exchange or clearing house or any clearing arrangements made by a recognised clearing house;
- (b) any practices of any such organisation, exchange or clearing house; or
- (c) any practices of persons who are members of, or otherwise subject to the rules made by, any such organisation, exchange or clearing house,

have, or are intended or likely to have, to a significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is necessary for the protection of investors.

- (3) The powers exercisable under this subsection are—

- (a) to revoke the recognition order of the organisation, exchange or clearing house;
- (b) to direct it to take specified steps for the purpose of securing that the rules, guidance, arrangements or practices in question do not have the effect mentioned in subsection (2) above;
- (c) to make alterations in the rules for that purpose ;

and subsections (2) to (5), (7) and (9) of section 11 above shall have effect in relation to the revocation of a recognition order under this subsection as they have effect in relation to the revocation of such an order under subsection (1) of that section.

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- (4) Subsection (3)(c) above does not apply to an overseas investment exchange or overseas clearing house.
- (5) The practices referred to in paragraph (b) of subsection (2) above are practices of the organisation, exchange or clearing house in its capacity as such, being, in the case of a clearing house, practices in respect of its clearing arrangements; and the practices referred to in paragraph (c) of that subsection are practices in relation to business in respect of which the persons in question are subject to the rules of the organisation, exchange or clearing house and which are required or contemplated by its rules or guidance or otherwise attributable to its conduct in its capacity as such.

## **120 Modification of s. 119 where recognition function is transferred**

- (1) This section applies instead of section 119 above where the function of making or revoking a recognition order in respect of a self-regulating organisation, investment exchange or clearing house is exercisable by a designated agency.
- (2) The designated agency—
  - (a) shall send to the Secretary of State a copy of the rules and of any guidance or arrangements of which copies or particulars are furnished with any application made to the agency for a recognition order together with any other information supplied with or in connection with the application; and
  - (b) shall not make the recognition order without the leave of the Secretary of State ;

and he shall not give leave in any case in which he would (apart from the delegation order) have been precluded by section 119(1) above from making the recognition order.
- (3) A designated agency shall send the Secretary of State a copy of any notice received by it under section 14(6) or 41(5) or (6) above.
- (4) If at any time it appears to the Secretary of State in the case of a recognised self-regulating organisation, recognised investment exchange or recognised clearing house that there are circumstances such that (apart from the delegation order) he would have been able to exercise any of the powers conferred by subsection (3) of section 119 above he may, notwithstanding the delegation order, himself exercise the power conferred by paragraph (a) of that subsection or direct the designated agency to exercise the power conferred by paragraph (b) or (c) of that subsection in such manner as he may specify.

## **121 Designated agencies**

- (1) The Secretary of State shall not make a delegation order transferring any function to a designated agency unless he is satisfied that any rules, regulations and guidance of which copies are furnished to him under section 114(9) or (10) above do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition or, if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.
- (2) The powers conferred by subsection (3) below shall be exercisable by the Secretary of State if at any time it appears to him that—



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- (a) any rules or regulations made by a designated agency in the exercise of functions transferred to it by a delegation order or any guidance issued by a designated agency;
  - (b) any practices of a designated agency; or
  - (c) any practices of persons who are subject to rules or regulations made by it in the exercise of those functions,
- have, or are intended or are likely to have, to any significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is necessary for the protection of investors.
- (3) The powers exercisable under this subsection are—
- (a) to make an order in respect of the agency under section 115(2) above as if the circumstances were such as are there mentioned; or
  - (b) to direct the agency to take specified steps for the purpose of securing that the rules, regulations, guidance or practices in question do not have the effect mentioned in subsection (2) above.
- (4) The practices referred to in paragraph (b) of subsection (2) above are practices of the designated agency in its capacity as such; and the practices referred to in paragraph (c) of that subsection are practices in relation to business in respect of which the persons in question are subject to any such rules or regulations as are mentioned in paragraph (a) of that subsection and which are required or contemplated by those rules or regulations or by any such guidance as is there mentioned or are otherwise attributable to the conduct of the agency in its capacity as such.

#### *Consultation with Director General of Fair Trading*

### **122 Reports by Director General of Fair Trading**

- (1) The Secretary of State shall before deciding—
- (a) whether to refuse to make, or to refuse leave for the making of, a recognition order in pursuance of section 119(1) or 120(2) above; or
  - (b) whether he is precluded by section 121(1) above from making a delegation order,
- send to the Director General of Fair Trading (in this Chapter referred to as " the Director ") a copy of the rules and regulations and of any guidance or arrangements which the Secretary of State is required to consider in making that decision together with such other information as the Secretary of State considers will assist the Director in discharging his functions under subsection (2) below.
- (2) The Director shall report to the Secretary of State whether. In his opinion, the rules, regulations, guidance or arrangements of which copies are sent to him under subsection (1) above have, or are intended or likely to have, to any significant extent the effect of restricting, distorting, or preventing competition and, if so, what that effect is likely to be ; and in making any such decision as is mentioned in that subsection the Secretary of State shall have regard to the Director's report.
- (3) The Secretary of State shall send the Director copies of any notice received by him under section 14(6), 41(5) or (6) or 120(3) above or under paragraph 4 of Schedule 9 to this Act together with such other information as the Secretary of State considers will assist the Director in discharging his functions under subsections (4) and (5) below.

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- (4) The Director shall keep under review—
- (a) the rules, guidance, arrangements and regulations mentioned in section 119(2) and 121(2) above; and
  - (b) the matters specified in the notices of which copies are sent to him under subsection (3) above ;
- and if at any time he is of the opinion that any such rules, guidance, arrangements, regulations or matters, or any such rules, guidance, arrangements or regulations taken together with any such matters, have, or are intended or likely to have, to any significant extent the effect mentioned in subsection (2) above, he shall make a report to the Secretary of State stating his opinion and what that effect is or is likely to be.
- (5) The Director may report to the Secretary of State his opinion that any such matter as is mentioned in subsection (4)(b) above does not in his opinion have, and is not intended or likely to have, to any significant extent the effect mentioned in subsection (2) above.
- (6) The Director may from time to time consider whether any such practices as are mentioned in section 119(2) or 121(2) above have, or are intended or likely to have, to any significant extent the effect mentioned in subsection (2) above and, if so, what that effect is or is likely to be; and if he is of that opinion he shall make a report to the Secretary of State stating his opinion and what the effect is or is likely to be.
- (7) The Secretary of State shall not exercise his powers under section 119(3), 120(4) or 121(3) above except after receiving and considering a report from the Director under subsection (4) or (6) above.
- (8) The Director may, if he thinks fit, publish any report made by him under this section but shall exclude from a published report, so far as practicable, any matter which relates to the affairs of a particular person (other than the self-regulating organisation, investment exchange, clearing house or designated agency concerned) the publication of which would or might in his opinion seriously and prejudicially affect the interests of that person.

### **123 Investigations by Director General of Fair Trading**

- (1) For the purpose of investigating any matter with a view to its consideration under section 122 above the Director may by a notice in writing—
- (a) require any person to produce, at a time and place specified in the notice, to the Director or to any person appointed by him for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the investigation ; or
  - (b) require any person carrying on any business to furnish to the Director such information as may be specified or described in the notice, and specify the time within which, and the manner and form in which, any such information is to be furnished.
- (2) A person shall not under this section be required to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.

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- (3) Subsections (5) to (8) of section 85 of the Fair Trading Act 1973 (enforcement provisions) shall apply in relation to a notice under this section as they apply in relation to a notice under subsection (1) of that section.

*Consequential exemptions from competition law*

**124 The Fair Trading Act 1973**

- (1) For the purpose of determining whether a monopoly situation within the meaning of the Fair Trading Act 1973 exists by reason of the circumstances mentioned in section 7(1)(c) of that Act, no account shall be taken of—
- (a) the rules made or guidance issued by a recognised self-regulating organisation, recognised investment exchange or recognised clearing house or any conduct constituting such a practice as is mentioned in section 119(2) above;
  - (b) any clearing arrangements or any conduct required or contemplated by any such arrangements; or
  - (c) the rules or regulations made or guidance issued by a designated agency in the exercise of functions transferred to it by a delegation order or any conduct constituting such a practice as is mentioned in section 121(2) above.
- (2) Where a recognition order is revoked there shall be disregarded for the purpose mentioned in subsection (1) above any such conduct as is mentioned in that subsection which occurred while the order was in force.
- (3) Where on a monopoly reference under section 50 or 51 of the said Act of 1973 falling within section 49 of that Act the Monopolies and Mergers Commission find that a monopoly situation within the meaning of that Act exists and—
- (a) that the person (or, if more than one, any of the persons) in whose favour it exists is subject to the rules of a recognised self-regulating organisation, recognised investment exchange or recognised clearing house or to the rules or regulations made by a designated agency in the exercise of functions transferred to it by a delegation order; or
  - (b) that any such person's conduct in carrying on any business to which those rules or regulations relate is the subject of guidance issued by such an organisation, exchange, clearing house or agency; or
  - (c) that any such person is a party to any clearing arrangements; or
  - (d) that the person (or, if more than one, any of the persons) in whose favour the monopoly situation exists is such an organisation, exchange or clearing house as is mentioned in paragraph (a) above or a designated agency,
- the Commission, in making their report on that reference, shall exclude from their consideration the question whether the rules, regulations, guidance or clearing arrangements or any acts or omissions of such an organisation, exchange, clearing house or agency as is mentioned in paragraph (d) above in its capacity as such operate, or may be expected to operate, against the public interest; and section 54(3) of that Act shall have effect subject to the provisions of this subsection.

**125 The Restrictive Trade Practices Act 1976**

- (1) The Restrictive Trade Practices Act 1976 shall not apply to any agreement for the constitution of a recognised self-regulating organisation, recognised investment

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exchange or recognised clearing house, including any term deemed to be contained in it by virtue of section 8(2) or 16(3) of that Act.

- (2) The said Act of 1976 shall not apply to any agreement the parties to which consist of or include—
- (a) any such organisation, exchange or clearing house as is mentioned in subsection (1) above ; or
  - (b) a person who is subject to the rules of any such organisation, exchange or clearing house or to the rules or regulations made by a designated agency in the exercise of functions transferred to it by a delegation order,
- by reason of any term the inclusion of which in the agreement is required or contemplated by the rules, regulations or guidance of that organisation, exchange, clearing house or agency.
- (3) The said Act of 1976 shall not apply to any clearing arrangements or to any agreement between a recognised investment exchange and a recognised clearing house by reason of any term the inclusion of which in the agreement is required or contemplated by any clearing arrangements.
- (4) Where the recognition order in respect of a self-regulating organisation, investment exchange or clearing house is revoked the foregoing provisions shall have effect as if the organisation, exchange or clearing house had continued to be recognised until the end of the period of six months beginning with the day on which the revocation takes effect.
- (5) Where an agreement ceases by virtue of this section to be subject to registration—
- (a) the Director shall remove from the register maintained by him under the said Act of 1976 any particulars which are entered or filed in that register in respect of the agreement; and
  - (b) any proceedings in respect of the agreement which are pending before the Restrictive Practices Court shall be discontinued.
- (6) Where an agreement which has been exempt from registration by virtue of this section ceases to be exempt in consequence of the revocation of a recognition order, the time within which particulars of the agreement are to be furnished in accordance with section 24 of and Schedule 2 to the said Act of 1976 shall be the period of one month beginning with the day on which the agreement ceased to be exempt from registration.
- (7) Where in the case of an agreement registered under the said Act of 1976 a term ceases to fall within subsection (2) or (3) above in consequence of the revocation of a recognition order and particulars of that term have not previously been furnished to the Director under section 24 of that Act, those particulars shall be furnished to him within the period of one month beginning with the day on which the term ceased to fall within that subsection.
- (8) The Restrictive Trade Practices (Stock Exchange) Act 1984 shall cease to have effect.

## **126 The Competition Act 1980**

- (1) No course of conduct constituting any such practice as is mentioned in section 119(2) or 121(2) above shall constitute an anti-competitive practice for the purposes of the Competition Act 1980.

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- (2) Where a recognition order or delegation order is revoked, there shall not be treated as an anti-competitive practice for the purposes of that Act any such course of conduct as is mentioned in subsection (1) above which occurred while the order was in force.

*Recognised professional bodies*

**127 Modification of Restrictive Trade Practices Act 1976 in relation to recognised professional bodies**

- (1) This section applies to—
- (a) any agreement for the constitution of a recognised professional body, including any term deemed to be contained in it by virtue of section 16(3) of the Restrictive Trade Practices Act 1976 ; and
  - (b) any other agreement—
    - (i) the parties to which consist of or include such a body, a person certified by such a body or a member of such a body; and
    - (ii) to which that Act applies by virtue of any term the inclusion of which in the agreement is required or contemplated by rules or guidance of that body relating to the carrying on of investment business by persons certified by it.
- (2) If it appears to the Secretary of State that the restrictions in an agreement to which this section applies—
- (a) do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition ; or
  - (b) if all or any of them have, or are intended or likely to have, that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors,
- he may give a direction to the Director requiring him not to make an application to the Restrictive Practices Court under Part I of the said Act of 1976 in respect of the agreement.
- (3) If it appears to the Secretary of State that one or more (but not all) of the restrictions in an agreement to which this section applies—
- (a) do not have, and are not intended or likely to have, to any significant extent the effect mentioned in subsection (2) above; or
  - (b) if they have, or are intended or likely to have, that effect to any significant extent that the effect is not greater than is necessary for the protection of investors,
- he may make a declaration to that effect and give notice of it to the Director and the Restrictive Practices Court.
- (4) The Restrictive Practices Court shall not in any proceedings begun by an application made after notice has been given to it of a declaration under this section make any finding or exercise any power under Part I of the said Act of 1976 in relation to a restriction in respect of which the declaration has effect.
- (5) The Director shall not make any application to the Restrictive Practices Court under Part I of the said Act of 1976 in respect of any agreement to which this section applies unless—
- (a) he has notified the Secretary of State of his intention to do so; and

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- (b) the Secretary of State has either notified him that he does not intend to give a direction or make a declaration under this section or has given him notice of a declaration in respect of it;

and where the Director proposes to make any such application he shall furnish the Secretary of State with particulars of the agreement and the restrictions by virtue of which the said Act of 1976 applies to it and such other information as he considers will assist the Secretary of State in deciding whether to exercise his powers under this section or as the Secretary of State may request.

- (6) The Secretary of State may—
- (a) revoke a direction or declaration under this section;
  - (b) vary any such declaration; or
  - (c) give a direction or make a declaration notwithstanding a previous notification to the Director that he did not intend to give a direction or make a declaration, if he is satisfied that there has been a material change of circumstances such that the grounds for the direction or declaration have ceased to exist, that there are grounds for a different declaration or that there are grounds for giving a direction or making a declaration, as the case may be.
- (7) The Secretary of State shall give notice to the Director of the revocation of a direction and to the Director and the Restrictive Practices Court of the revocation or variation of a declaration ; and no such variation shall have effect so as to restrict the powers of the Court in any proceedings begun by an application already made by the Director.
- (8) A direction or declaration under this section shall cease to have effect if the agreement in question ceases to be one to which this section applies.
- (9) This section applies to information provisions as it applies to restrictions.

### *Supplemental*

## **128 Supplementary provisions**

- (1) Before the Secretary of State exercises a power under section 119(3) (b) or (c) above, his power to refuse leave under section 120(2) above or his power to give a direction under section 120(4) above in respect of a self-regulating organisation, investment exchange or clearing house, or his power under section 121(3)(b) above in respect of a designated agency, he shall—
- (a) give written notice of his intention to do so to the organisation, exchange, clearing house or agency and take such steps (whether by publication or otherwise) as he thinks appropriate for bringing the notice to the attention of any other person who in his opinion is likely to be affected by the exercise of the power ; and
  - (b) have regard to any representation made within such time as he considers reasonable by the organisation, exchange, clearing house or agency or by any such other person.
- (2) A notice under subsection (1) above shall give particulars of the manner in which the Secretary of State proposes to exercise the power in question and state the reasons for which he proposes to act; and the statement of reasons may include matters contained in any report received by him under section 122 above.

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- (3) Any direction given under this Chapter shall, on the application of the person by whom it was given, be enforceable by mandamus or, in Scotland, by an order for specific performance under section 91 of the Court of Session Act 1868.
- (4) The fact that any rules or regulations made by a recognised self-regulating organisation, investment exchange or clearing house or by a designated agency have been altered by or pursuant to a direction given by the Secretary of State under this Chapter shall not preclude their subsequent alteration or revocation by that organisation, exchange, clearing house or agency.
- (5) In determining under this Chapter whether any guidance has, or is likely to have, any particular effect the Secretary of State and the Director may assume that the persons to whom it is addressed will act in conformity with it.

## PART II

### INSURANCE BUSINESS

#### **129 Application of investment business provisions to regulated insurance companies**

Schedule 10 to this Act shall have effect with respect to the application of the foregoing provisions of this Act to regulated insurance companies, that is to say—

- (a) insurance companies to which Part II of the Insurance Companies Act 1982 applies ; and
- (b) insurance companies which are authorised persons by virtue of section 31 above.

#### **130 Restriction on promotion of contracts of insurance**

- (1) Subject to subsections (2) and (3) below, no person shall—
  - (a) issue or cause to be issued in the United Kingdom an advertisement—
    - (i) inviting any person to enter or offer to enter into a contract of insurance rights under which constitute an investment for the purposes of this Act, or
    - (ii) containing information calculated to lead directly or indirectly to any person doing so; or
  - (b) in the course of a business, advise or procure any person in the United Kingdom to enter into such a contract.
- (2) Subsection (1) above does not apply where the contract of insurance referred to in that subsection is to be with—
  - (a) a body authorised under section 3 or 4 of the Insurance Companies Act 1982 to effect and carry out such contracts of insurance;
  - (b) a body registered under the enactments relating to friendly societies;
  - (c) an insurance company the head office of which is in a member State other than the United Kingdom and which is entitled to carry on there insurance business of the relevant class ;
  - (d) an insurance company which has a branch or agency in such a member State and is entitled under the law of that State to carry on there insurance business of the relevant class;

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and in this subsection " the relevant class " means the class of insurance business specified in Schedule 1 or 2 to the Insurance Companies Act 1982 into which the effecting and carrying out of the contract in question falls.

- (3) Subsection (1) above also does not apply where—
- (a) the contract of insurance referred to in that subsection is to be with an insurance company authorised to effect or carry out such contracts of insurance in any country or territory which is for the time being designated for the purposes of this section by an order made by the Secretary of State ; and
  - (b) any conditions imposed by the order designating the country or territory have been satisfied.
- (4) The Secretary of State shall not make an order designating any country or territory for the purposes of this section unless he is satisfied that the law under which insurance companies are authorised and supervised in that country or territory affords adequate protection to policy holders and potential policy holders against the risk that the companies may be unable to meet their liabilities; and, if at any time it appears to him that the law of a country or territory which has been designated under this section does not satisfy that requirement, he may by a further order revoke the order designating that country or territory.
- (5) An order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Subject to subsections (7) and (8) below, any person who contravenes this section shall be guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (7) A person who in the ordinary course of a business other than investment business issues an advertisement to the order of another person shall not be guilty of an offence under this section if he proves that the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any person under his direction or control and that he believed on reasonable grounds after due enquiry that the person to whose order the advertisement was issued was an authorised person.
- (8) A person other than the insurance company with which the contract of insurance is to be made shall not be guilty of an offence under this section if he proves that he believed on reasonable grounds after due enquiry that subsection (2) or (3) above applied in the case of the contravention in question.

### **131 Contracts made after contravention of s. 130**

- (1) Where there has been a contravention of section 130 above, then, subject to subsections (3) and (4) below—
- (a) the insurance company shall not be entitled to enforce any contract of insurance with which the advertisement, advice or procurement was concerned and which was entered into after the contravention occurred ; and
  - (b) the other party shall be entitled to recover any money or other property paid or transferred by him under the contract, together with compensation for any loss sustained by him as a result of having parted with it.



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- (2) The compensation recoverable under subsection (1) above shall be such as the parties may agree or as a court may, on the application of either party, determine.
- (3) In a case where the contravention referred to in subsection (1) above was a contravention by the insurance company with which the contract was made, the court may allow the contract to be enforced or money or property paid or transferred under it to be retained if it is satisfied—
  - (a) that the person against whom enforcement is sought or who is seeking to recover the money or property was not influenced, or not influenced to any material extent, by the advertisement or, as the case may be, the advice in making his decision to enter into the contract; or
  - (b) that the advertisement or, as the case may be, the advice was not misleading as to the nature of the company with which the contract was to be made or the terms of the contract and fairly stated any risks involved in entering into it.
- (4) In a case where the contravention of section 130 above referred to in subsection (1) above was a contravention by a person other than the insurance company with which the contract was made the court may allow the contract to be enforced or money or property paid or transferred under it to be retained if it is satisfied that at the time the contract was made the company had no reason to believe that any contravention of section 130 above had taken place in relation to the contract.
- (5) Where a person elects not to perform a contract which by virtue of subsection (1) above is unenforceable against him or by virtue of that subsection recovers money paid or other property transferred by him under a contract he shall not be entitled to any benefits under the contract and shall repay any money and return any other property received by him under the contract.
- (6) Where any property transferred under a contract to which this section applies has passed to a third party the references to that property in this section shall be construed as references to its value at the time of its transfer under the contract.
- (7) A contravention of section 130 above by an authorised person shall be actionable at the suit of any person who suffers loss as a result of the contravention.
- (8) Section 61 above shall have effect in relation to a contravention or proposed contravention of section 130 above as it has effect in relation to a contravention or proposed contravention of section 57 above.

## **132 Insurance contracts effected in contravention of s. 2 of Insurance Companies Act 1982**

- (1) Subject to subsection (3) below, a contract of insurance (not being an agreement to which section 5(1) above applies) which is entered into by a person in the course of carrying on insurance business in contravention of section 2 of the Insurance Companies Act 1982 shall be unenforceable against the other party; and that party shall be entitled to recover any money or other property paid or transferred by him under the contract, together with compensation for any loss sustained by him as a result of having parted with it.
- (2) The compensation recoverable under subsection (1) above shall be such as the parties may agree or as a court may, on the application of either party, determine.

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- (3) A court may allow a contract to which subsection (1) above applies to be enforced or money or property paid or transferred under it to be retained if it is satisfied—
- (a) that the person carrying on insurance business reasonably believed that his entering into the contract did not constitute a contravention of section 2 of the said Act of 1982; and
  - (b) that it is just and equitable for the contract to be enforced or, as the case may be, for the money or property paid or transferred under it to be retained.
- (4) Where a person elects not to perform a contract which by virtue of this section is unenforceable against him or by virtue of this section recovers money or property paid or transferred under a contract he shall not be entitled to any benefits under the contract and shall repay any money and return any other property received by him under the contract.
- (5) Where any property transferred under a contract to which this section applies has passed to a third party the references to that property in this section shall be construed as references to its value at the time of its transfer under the contract.
- (6) A contravention of section 2 of the said Act of 1982 shall not make a contract of insurance illegal or invalid to any greater extent than is provided in this section; and a contravention of that section in respect of a contract of insurance shall not affect the validity of any re-insurance contract entered into in respect of that contract.

### **133 Misleading statements as to insurance contracts**

- (1) Any person who—
- (a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive or dishonestly conceals any material facts ; or
  - (b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,
- is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) to enter into or offer to enter into, or to refrain from entering or offering to enter into, a contract of insurance with an insurance company (not being an investment agreement) or to exercise, or refrain from exercising, any rights conferred by such a contract.
- (2) Subsection (1) above does not apply unless—
- (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the United Kingdom;
  - (b) the person on whom the inducement is intended to or may have effect is in the United Kingdom ; or
  - (c) the contract is or would be entered into or the rights are or would be exercisable in the United Kingdom.
- (3) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both ;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

### **134    Controllers of insurance companies**

In section 7(4)(c)(ii) of the Insurance Companies Act 1982 (definition of controller by reference to exercise of not less than one-third of voting power) for the words " one-third " there shall be substituted the words " 15 per cent. ".

### **135    Communication by auditor with Secretary of State**

(1) After section 21 of the Insurance Companies Act 1982 there shall be inserted—

#### **“21A Communication by auditor with Secretary of State.**

- (1) No duty to which an auditor of an insurance company to which this Part of this Act applies may be subject shall be regarded as contravened by reason of his communicating in good faith to the Secretary of State, whether or not in response to a request from him, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that company and which is relevant to any functions of the Secretary of State under this Act.
  - (2) If it appears to the Secretary of State that any auditor or class of auditor to whom subsection (1) above applies is not subject to satisfactory rules made or guidance issued by a professional body specifying circumstances in which matters are to be communicated to the Secretary of State as mentioned in that subsection the Secretary of State may make regulations applying to that auditor or class of auditor and specifying such circumstances; and it shall be the duty of an auditor to whom the regulations made by the Secretary of State apply to communicate a matter to the Secretary of State in the circumstances specified by the regulations.
  - (3) The matters to be communicated to the Secretary of State in accordance with any such rules or guidance or regulations may include matters relating to persons other than the company.
  - (4) No regulations shall be made under subsection (2) above unless a draft of them has been laid before and approved by a resolution of each House of Parliament.
  - (5) If it appears to the Secretary of State that an auditor has failed to comply with the duty mentioned in subsection (2) above, the Secretary of State may disqualify him from being the auditor of an insurance company or any class of insurance company to which Part II of this Act applies; but the Secretary of State may remove any disqualification imposed under this subsection if satisfied that the person in question will in future comply with that duty.
  - (6) An insurance company to which this Part of this Act applies shall not appoint as auditor a person disqualified under subsection (5) above.”.
- (2) In section 71(7) of that Act (which lists the provisions of that Act default in complying with which is not an offence) after the words " section 16 " there shall be inserted the word " 21A ", and in section 97(4) of that Act (which provides that regulations under that Act are to be subject to annulment) after the word " Act" there shall be inserted the words " , except regulations under section 21A(3), ".

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### **136 Arrangements to avoid unfairness between separate insurance funds etc.**

(1) After section 31 of the Insurance Companies Act 1982 there shall be inserted—

**“31A Arrangements to avoid unfairness between separate insurance funds etc.**

(1) An insurance company to which this Part of this Act applies which carries on long term business in the United Kingdom shall secure that adequate arrangements are in force for securing that transactions affecting assets of the company (other than transactions outside its control) do not operate unfairly between the section 28 fund or funds and the other assets of the company or, in a case where the company has more than one identified fund, between those funds.

(2) In this section—

" the section 28 fund or funds" means the assets representing the fund or funds maintained by the company under section 28(1) (b) above; and

" identified fund ", in relation to a company, means assets representing the company's receipts from a particular part of its long term business which can be identified as such by virtue of accounting or other records maintained by the company.”

(2) In section 71(7) of that Act (which lists the provisions of that Act default in complying with which is not an offence) before the word " or " there shall be inserted the word " 31A ".

### **137 Regulations in respect of linked long term policies**

In section 78(2) of the Insurance Companies Act 1982 (regulations in respect of linked long term policies) after paragraph (a) there shall be inserted—

“(aa) restricting the proportion of those benefits which may be determined by reference to property of a specified description or a specified index ;”.

### **138 Insurance brokers**

(1) Rules made under section 8 of the Insurance Brokers (Registration) Act 1977 may require an applicant for registration or enrolment to state whether he is an authorised person or exempted person under Part I of this Act and, if so, to give particulars of the authorisation or exemption; and an individual shall be treated as satisfying the requirements of section 3(2)(a) of that Act (applicant for registration to satisfy Council as to his character and suitability) if he is an authorised person or a member of a partnership or unincorporated association which is an authorised person.

(2) In drawing up any statement under section 10 of that Act or making any rules under section 11 or 12 of that Act after the coming into force of this section the Insurance Brokers Registration Council shall take proper account of any provisions applicable to, and powers exercisable in relation to, registered insurance brokers or enrolled bodies corporate under this Act.

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- (3) In section 12(1) and (2) of that Act (which requires the Council to make professional indemnity rules) for the words " The Council shall " there shall be substituted the words " The Council may ".
- (4) In section 15 of that Act (erasure from register and list for unprofessional conduct etc.) after subsection (2) there shall be inserted—
- “(2A) The Disciplinary Committee may, if they think fit, direct that the name of a registered insurance broker or enrolled body corporate shall be erased from the register or list if it appears to the Committee that any responsible person has concluded that the broker (or a related person) or the body corporate has contravened or failed to comply with—
- (a) any provision of the Financial Services Act 1986 or any rule or regulation made under it to which he or it is or was subject at the time of the contravention or failure; or
- (b) any rule of any recognised self-regulating organisation or recognised professional body (within the meaning of that Act), to which he is or was subject at that time.
- (2B) In subsection (2A) above—
- (a) " responsible person " means a person responsible under the Financial Services Act 1986 or under the rules of any recognised self-regulating organisation or recognised professional body (within the meaning of that Act) for determining whether any contravention of any provision of that Act or rules or regulations made under it or any rules of that organisation or body has occurred ; and
- (b) " related person" means a partnership or unincorporated association of which the broker in question is (or was at the time of the failure or contravention in question) a member or a body corporate of which he is (or was at that time) a director.”
- (5) The Insurance Brokers Registration Council shall cooperate, by the sharing of information and otherwise, with the Secretary of State and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.
- (6) For the purposes of the said Act of 1977 " authorised insurers " shall include—
- (a) an insurance company the head office of which is in a member State other than the United Kingdom and which is entitled to carry on there insurance business corresponding to that mentioned in the definition of " authorised insurers " in that Act; and
- (b) an insurance company which has a branch or agency in such a member State and is entitled under the law of that State to carry on there insurance business corresponding to that mentioned in that definition.

### **139 Industrial assurance**

- (1) In section 5 of the Industrial Assurance Act 1923 (prohibition on issue of illegal policies) the references to policies which are illegal or not within the legal powers of a society or company shall not be construed as applying to any policy issued—
- (a) in the course of carrying on investment business in contravention of section 3 above; or

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- (b) in the course of carrying on insurance business in contravention of section 2 of the Insurance Companies Act 1982.
- (2) In section 20(4) of the said Act of 1923 the reference to a person employed by a collecting society or industrial assurance company and in section 34 of that Act the references to a person in the regular employment of such a society or company shall include references to an appointed representative of such a society or company but as respects section 34 only if the contract in question is an investment agreement.
- (3) Where it appears to the Industrial Assurance Commissioner that rules made by virtue of section 48(2)(f) (or corresponding rules made by a recognised self-regulating organisation) make arrangements for the settlement of a dispute referred to him under section 32 of the said Act of 1923 or that such rules relate to some of the matters in dispute he may, if he thinks fit, delegate his functions in respect of the dispute so as to enable it to be settled in accordance with the rules.
- (4) If such rules provide that any dispute may be referred to the Industrial Assurance Commissioner he may deal with any dispute referred to him in pursuance of those rules as if it were a dispute referred under section 77 of the Friendly Societies Act 1974 and may delegate his functions in respect of any such dispute to any other person.
- (5) The foregoing provisions of this section shall apply to Northern Ireland with the substitution for the references to sections 5, 20(4), 32 and 34 of the said Act of 1923 and section 77 of the said Act of 1974 of references to Articles 20, 27(2), 36 and 38 of the Industrial Assurance (Northern Ireland) Order 1979 and section 65 of the Friendly Societies Act (Northern Ireland) 1970 and for the references to the Industrial Assurance Commissioner of references to the Industrial Assurance Commissioner for Northern Ireland.

### PART III

#### FRIENDLY SOCIETIES

#### **140 Friendly societies**

Schedule 11 to this Act shall have effect as respects the regulation of friendly societies.

#### **141 Indemnity schemes**

- (1) Any two or more registered friendly societies may, notwithstanding any provision to the contrary in their rules, enter into arrangements for the purpose of making funds available to meet losses incurred by any society which is a party to the arrangements or by the members of any such society by virtue of their membership of it.
- (2) No such arrangements shall come into force unless they have been approved by the Chief Registrar of friendly societies or, as the case may be, the Registrar of Friendly Societies for Northern Ireland.

## PART IV

### OFFICIAL LISTING OF SECURITIES

#### 142 Official listing

- (1) No investment to which this section applies shall be admitted to the Official List of The Stock Exchange except in accordance with the provisions of this Part of this Act.
- (2) Subject to subsections (3) and (4) below, this section applies to any investment falling within paragraph 1, 2, 4 or 5 of Schedule 1 to this Act
- (3) In the application of those paragraphs for the purposes of subsection (2) above—
  - (a) paragraphs 1, 4 and 5 shall have effect as if paragraph 1 did not contain the exclusion relating to building societies, industrial and provident societies or credit unions;
  - (b) paragraph 2 shall have effect as if it included any instrument falling within paragraph 3 issued otherwise than by the government of a member State or a local authority in a member State ; and
  - (c) paragraphs 4 and 5 shall have effect as if they referred only to investments falling within paragraph 1.
- (4) The Secretary of State may by order direct that this section shall apply also to investments falling within paragraph 6 of Schedule 1 to this Act or to such investments of any class or description.
- (5) An order under subsection (4) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this Part of this Act " the competent authority " means, subject to section 157 below, the Council of The Stock Exchange ; and that authority may make rules (in this Act referred to as " listing rules ") for the purposes of any of the following provisions.
- (7) In this Part of this Act—
  - " issuer ", in relation to any securities, means the person by whom they have been or are to be issued except that in relation to a certificate or other instrument falling within paragraph 5 of Schedule 1 to this Act it means the person who issued or is to issue the securities to which the certificate or instrument relates ;
  - " the Official List " means the Official List of The Stock Exchange;
  - " securities " means investments to which this section applies ;and references to listing are references to inclusion in the Official List in pursuance of this Part of this Act.
- (8) Any functions of the competent authority under this Part of this Act may be exercised by any committee, sub-committee, officer or servant of the authority except that listing rules—
  - (a) shall be made only by the authority itself or by a committee or sub-committee of the authority; and
  - (b) if made by a committee or sub-committee, shall cease to have effect at the end of the period of twenty-eight days beginning with the day on which they are made (but without prejudice to anything done under them) unless before the end of that period they are confirmed by the authority.

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- (9) Nothing in this Part of this Act affects the powers of the Council of The Stock Exchange in respect of investments to which this section does not apply and such investments may be admitted to the Official List otherwise than in accordance with this Part of this Act

### **143 Applications for listing**

- (1) An application for listing shall be made to the competent authority in such manner as the listing rules may require.
- (2) No application for the listing of any securities shall be made except by or with the consent of the issuer of the securities.
- (3) No application for listing shall be made in respect of securities to be issued by a private company or by an old public company within the meaning of section 1 of the Companies Consolidation (Consequential Provisions) Act 1985 or the corresponding Northern Ireland provision.

### **144 Admission to list**

- (1) The competent authority shall not admit any securities to the Official List except on an application duly made in accordance with section 143 above and unless satisfied that—
- (a) the requirements of the listing rules made by the authority for the purposes of this section and in force when the application is made; and
  - (b) any other requirements imposed by the authority in relation to that application, are complied with.
- (2) Without prejudice to the generality of the power of the competent authority to make listing rules for the purposes of this section, such rules may, in particular, require as a condition of the admission of any securities to the Official List—
- (a) the submission to, and approval by, the authority of a document (in this Act referred to as " listing particulars ") in such form and containing such information as may be specified in the rules; and
  - (b) the publication of that document;
- or, in such cases as may be specified by the rules, the publication of a document other than listing particulars.
- (3) The competent authority may refuse an application—
- (a) if it considers that by reason of any matter relating to the issuer the admission of the securities would be detrimental to the interests of investors; or
  - (b) in the case of securities already officially listed in another member State, if the issuer has failed to comply with any obligations to which he is subject by virtue of that listing.
- (4) The competent authority shall notify the applicant of its decision on the application within six months from the date on which the application is received or, if within that period the authority has required the applicant to furnish further information in connection with the application, from the date on which that information is furnished.
- (5) If the competent authority does not notify the applicant of its decision within the time required by subsection (4) above it shall be taken to have refused die application.



- (6) When any securities have been admitted to the Official List their admission shall not be called in question on the ground that any requirement or condition for their admission has not been complied with.

#### **145 Discontinuance and suspension of listing**

- (1) The competent authority may, in accordance with the listing rules, discontinue the listing of any securities if satisfied that there are special circumstances which preclude normal regular dealings in the securities.
- (2) The competent authority may in accordance with the listing rules suspend the listing of any securities.
- (3) Securities the listing of which is suspended under subsection (2) above shall nevertheless be regarded as listed for the purposes of sections 153 and 155 below.
- (4) This section applies to securities included in the Official List at the coming into force of this Part of this Act as it applies to securities included by virtue of this Part.

#### **146 General duty of disclosure in listing particulars**

- (1) In addition to the information specified by listing rules or required by the competent authority as a condition of the admission of any securities to the Official List any listing particulars submitted to the competent authority under section 144 above shall contain all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of—
- (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
  - (b) the rights attaching to those securities.
- (2) The information to be included by virtue of this section shall be such information as is mentioned in subsection (1) above which is within the knowledge of any person responsible for the listing particulars or which it would be reasonable for him to obtain by making enquiries.
- (3) In determining what information is required to be included in listing particulars by virtue of this section regard shall be had—
- (a) to the nature of the securities and of the issuer of the securities;
  - (b) to the nature of the persons likely to consider their acquisition;
  - (c) to the fact that certain matters may reasonably be expected to be within the knowledge of professional advisers of any kind which those persons may reasonably be expected to consult; and
  - (d) to any information available to investors or their professional advisers by virtue of requirements imposed under section 153 below or by or under any other enactment or by virtue of requirements imposed by a recognised investment exchange for the purpose of complying with paragraph 2(2)(b) of Schedule 4 to this Act.

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### **147 Supplementary listing particulars**

- (1) If at any time after the preparation of listing particulars for submission to the competent authority under section 144 above and before the commencement of dealings in the securities following their admission to the Official List—
  - (a) there is a significant change affecting any matter contained in those particulars whose inclusion was required by section 146 above or by listing rules or by the competent authority; or
  - (b) a significant new matter arises the inclusion of information in respect of which would have been so required if it had arisen when the particulars were prepared,

the issuer of the securities shall, in accordance with listing rules made for the purposes of this section, submit to the competent authority for its approval and, if approved, publish supplementary listing particulars of the change or new matter.
- (2) In subsection (1) above "significant" means significant for the purpose of making an informed assessment of the matters mentioned in section 146(1) above.
- (3) Where the issuer of the securities is not aware of the change or new matter in question he shall not be under any duty to comply with subsection (1) above unless he is notified of it by a person responsible for the listing particulars ; but it shall be the duty of any person responsible for those particulars who is aware of such a matter to give notice of it to the issuer.
- (4) Subsection (1) above applies also as respects matters contained in any supplementary listing particulars previously published under this section in respect of the securities in question.

### **148 Exemptions from disclosure**

- (1) The competent authority may authorise the omission from listing particulars or supplementary listing particulars of any information the inclusion of which would otherwise be required by section 146 above—
  - (a) on the ground that its disclosure would be contrary to the public interest;
  - (b) subject to subsection (2) below, on the ground that its disclosure would be seriously detrimental to the issuer of the securities ; or
  - (c) in the case of securities which fall within paragraph 2 of Schedule 1 to this Act as modified by section 142 (3)(b) above and are of any class specified by listing rules, on the ground that its disclosure is unnecessary for persons of the kind who may be expected normally to buy or deal in the securities.
- (2) No authority shall be granted under subsection (1)(b) above in respect of, and no such authority shall be regarded as extending to, information the non-disclosure of which would be likely to mislead a person considering the acquisition of the securities as to any facts the knowledge of which it is essential for him to have in order to make an informed assessment.
- (3) The Secretary of State or the Treasury may issue a certificate to the effect that the disclosure of any information (including information that would otherwise have to be included in particulars for which they are themselves responsible) would be contrary to the public interest and the competent authority shall be entitled to act on any such certificate in exercising its powers under subsection (1)(a) above.

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- (4) This section is without prejudice to any powers of the competent authority under rules made by virtue of section 156(2) below.

#### **149 Registration of listing particulars**

- (1) On or before the date on which listing particulars or supplementary listing particulars are published as required by listing rules a copy of the particulars shall be delivered for registration to the registrar of companies and a statement that a copy has been delivered to him shall be included in the particulars.
- (2) In subsection (1) above " the registrar of companies" means—
- (a) if the securities in question are or are to be issued by a company incorporated in Great Britain, the registrar of companies in England and Wales or the registrar of companies in Scotland according to whether the company's registered office is in England and Wales or in Scotland;
  - (b) if the securities in question are or are to be issued by a company incorporated in Northern Ireland, the registrar of companies for Northern Ireland ;
  - (c) in any other case, any of those registrars.
- (3) If any particulars are published without a copy of them having been delivered as required by this section the issuer of the securities in question and any person who is knowingly a party to the publication shall be guilty of an offence and liable—
- (a) on conviction on indictment, to a fine ;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

#### **150 Compensation for false or misleading particulars**

- (1) Subject to section 151 below, the person or persons responsible for any listing particulars or supplementary listing particulars shall be liable to pay compensation to any person who has acquired any of the securities in question and suffered loss in respect of them as a result of any untrue or misleading statement in the particulars or the omission from them of any matter required to be included by section 146 or 147 above.
- (2) Where listing rules require listing particulars to include information as to any particular matter on the basis that the particulars must include a statement either as to that matter or, if such is the case, that there is no such matter, the omission from the particulars of the information shall be treated for the purposes of subsection (1) above as a statement that there is no such matter.
- (3) Subject to section 151 below, a person who fails to comply with section 147 above shall be liable to pay compensation to any person who has acquired any of the securities in question and suffered loss in respect of them as a result of the failure.
- (4) This section does not affect any liability which any person may incur apart from this section.
- (5) References in this section to the acquisition by any person of securities include references to his contracting to acquire them or an interest in them.
- (6) No person shall by reason of being a promoter of a company or otherwise incur any liability for failing to disclose any information which he would not be required to disclose in listing particulars in respect of a company's securities if he were responsible

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for those particulars or, if he is responsible for them, which he is entitled to omit by virtue of section 148 above.

### **151 Exemption from liability to pay compensation**

- (1) A person shall not incur any liability under section 150(1) above for any loss in respect of securities caused by any such statement or omission as is there mentioned if he satisfies the court that at the time when the particulars were submitted to the competent authority he reasonably believed, having made such enquiries (if any) as were reasonable, that the statement was true and not misleading or that the matter whose omission caused the loss was properly omitted and—
  - (a) that he continued in that belief until the time when the securities were acquired; or
  - (b) that they were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire the securities in question ; or
  - (c) that before the securities were acquired he had taken all such steps as it was reasonable for him to have taken to secure that a correction was brought to the attention of those persons ; or
  - (d) that he continued in that belief until after the commencement of dealings in the securities following their admission to the Official List and that the securities were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused.
- (2) A person shall not incur any liability under section 150(1) above for any loss in respect of securities caused by a statement purporting to be made by or on the authority of another person as an expert which is, and is stated to be, included in the particulars with that other person's consent if he satisfies the court that at the time when the particulars were submitted to the competent authority he believed on reasonable grounds that the other person was competent to make or authorise the statement and had consented to its inclusion in the form and context in which it was included and—
  - (a) that he continued in that belief until the time when the securities were acquired; or
  - (b) that they were acquired before it was reasonably practicable to bring the fact that the expert was not competent or had not consented to the attention of persons likely to acquire the securities in question ; or
  - (c) that before the securities were acquired he had taken all such steps as it was reasonable for him to have taken to secure that that fact was brought to the attention of those persons ; or
  - (d) that he continued in that belief until after the commencement of dealings in the securities following their admission to the Official List and that the securities were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused.
- (3) Without prejudice to subsections (1) and (2) above, a person shall not incur any liability under section 150(1) above for any loss in respect of any securities caused by any such statement or omission as is there mentioned if he satisfies the court—
  - (a) that before the securities were acquired a correction, or where the statement was such as is mentioned in subsection (2), the fact that the expert was not competent or had not consented had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities in question ;  
or

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- (b) that he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the securities were acquired.
- (4) A person shall not incur any liability under section 150(1) above for any loss resulting from a statement made by an official person or contained in a public official document which is included in the particulars if he satisfies the court that the statement is accurately and fairly reproduced.
- (5) A person shall not incur any liability under section 150(1) or (3) above if he satisfies the court that the person suffering the loss acquired the securities in question with knowledge that the statement was false or misleading, of the omitted matter or of the change or new matter, as the case may be.
- (6) A person shall not incur any liability under section 150(3) above if he satisfies the court that he reasonably believed that the change or new matter in question was not such as to call for supplementary listing particulars.
- (7) In this section "expert" includes any engineer, valuer, accountant or other person whose profession, qualifications or experience give authority to a statement made by him; and references to the acquisition of securities include references to contracting to acquire them or an interest in them.

## **152 Persons responsible for particulars**

- (1) For the purposes of this Part of this Act the persons responsible for listing particulars or supplementary listing particulars are—
  - (a) the issuer of the securities to which the particulars relate;
  - (b) where the issuer is a body corporate, each person who is a director of that body at the time when the particulars are submitted to the competent authority;
  - (c) where the issuer is a body corporate, each person who has authorised himself to be named, and is named, in the particulars as a director or as having agreed to become a director of that body either immediately or at a future time ;
  - (d) each person who accepts, and is stated in the particulars as accepting, responsibility for, or for any part of, the particulars;
  - (e) each person not falling within any of the foregoing paragraphs who has authorised the contents of, or any part of, the particulars.
- (2) A person is not responsible for any particulars by virtue of subsection (1)(b) above if they are published without his knowledge or consent and on becoming aware of their publication he forthwith gives reasonable public notice that they were published without his knowledge or consent.
- (3) Where a person has accepted responsibility for, or authorised, only part of the contents of any particulars, he is responsible under subsection (1)(d) or (e) above for only that part and only if it is included in (or substantially in) the form and context to which he has agreed.
- (4) Where the particulars relate to securities which are to be issued in connection with an offer by (or by a wholly-owned subsidiary of), the issuer for, or an agreement for the acquisition by (or by a wholly-owned subsidiary of) the issuer of, securities issued by another person or in connection with any arrangement whereby the whole of the undertaking of another person is to become the undertaking of the issuer (of a

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wholly-owned subsidiary of the issuer or of a body corporate which will become such a subsidiary by virtue of the arrangement) then if—

- (a) that other person ; and
- (b) where that other person is a body corporate, each person who is a director of that body at the time when the particulars are submitted to the competent authority and each other person who has authorised himself to be named, and is named, in the particulars as a director of that body,

is responsible by virtue of paragraph (d) of subsection (1) above for any part of the particulars relating to that other person or to the securities or undertaking to which the offer, agreement or arrangement relates, no person shall be responsible for that part under paragraph (a), (b) or (c) of that subsection but without prejudice to his being responsible under paragraph (d).

- (5) Neither paragraph (b) nor paragraph (c) of subsection (1) above applies in the case of an issuer of international securities of a class specified by listing rules for the purposes of section 148(1)(c) above; and neither of those paragraphs nor paragraph (b) of subsection (4) above applies in the case of any director certified by the competent authority as a person to whom that paragraph should not apply by reason of his having an interest, or of any other circumstances, making it inappropriate for him to be responsible by virtue of that paragraph.
- (6) In subsection (5) above " international securities " means any investment falling within paragraph 2 of Schedule 1 to this Act as modified by section 142(3)(b) above which is of a kind likely to be dealt in by bodies incorporated in or persons resident in a country or territory outside the United Kingdom, is denominated in a currency other than sterling or is otherwise connected with such a country or territory.
- (7) In this section " wholly-owned subsidiary ", in relation to a person other than a body corporate, means any body corporate that would be his wholly-owned subsidiary if he were a body corporate.
- (8) Nothing in this section shall be construed as making a person responsible for any particulars by reason of giving advice as to their contents in a professional capacity.
- (9) Where by virtue of this section the issuer of any shares pays or is liable to pay compensation under section 150 above for loss suffered in respect of shares for which a person has subscribed no account shall be taken of that liability or payment in determining any question as to the amount paid on subscription for those shares or as to the amount paid up or deemed to be paid up on them.

### **153 Obligations of issuers of listed securities**

- (1) Listing rules may specify requirements to be complied with by issuers of listed securities and make provision with respect to the action that may be taken by the competent authority in the event of non-compliance, including provision—
  - (a) authorising the authority to publish the fact that an issuer has contravened any provision of the rules; and
  - (b) if the rules require an issuer to publish any information, authorising the authority to publish it in the event of his failure to do so.
- (2) This section applies to the issuer of securities included in the Official List at the coming into force of this Part of this Act as it applies to the issuer of securities included by virtue of this Part.

## **154 Advertisements etc. in connection with listing applications**

- (1) Where listing particulars are or are to be published in connection with an application for the listing of any securities no advertisement or other information of a kind specified by listing rules shall be issued in the United Kingdom unless the contents of the advertisement or other information have been submitted to the competent authority and that authority has either—
  - (a) approved those contents; or
  - (b) authorised the issue of the advertisement or information without such approval.
- (2) An authorised person who contravenes this section shall be treated as having contravened rules made under Chapter V of Part I of this Act or, in the case of a person who is an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.
- (3) Subject to subsection (4) below, a person other than an authorised person, who contravenes this section shall be guilty of an offence and liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (4) A person who in the ordinary course of a business other than investment business issues an advertisement or other information to the order of another person shall not be guilty of an offence under this section if he proves that he believed on reasonable grounds that the advertisement or information had been approved or its issue authorised by the competent authority.
- (5) Where information has been approved, or its issue has been authorised, under this section neither the person issuing it nor any person responsible for, or for any part of, the listing particulars shall incur any civil liability by reason of any statement in or omission from the information if that information and the listing particulars, taken together, would not be likely to mislead persons of the kind likely to consider the acquisition of the securities in question.

## **155 Fees**

Listing rules may require the payment of fees to the competent authority in respect of applications for listing and the retention of securities in the Official List

## **156 Listing rules: general provisions**

- (1) Listing rules may make different provision for different cases.
- (2) Listing rules may authorise the competent authority to dispense with or modify the application of the rules in particular cases and by reference to any circumstances.
- (3) Listing rules shall be made by an instrument in writing.
- (4) Immediately after an instrument containing listing rules is made it shall be printed and made available to the public with or without payment.

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- (5) A person shall not be taken to have contravened any listing rule if he shows that at the time of the alleged contravention the instrument containing the rule had not been made available as required by subsection (4) above.
- (6) The production of a printed copy of an instrument purporting to be made by the competent authority on which is endorsed a certificate signed by an officer of the authority authorised by it for that purpose and stating—
- (a) that the instrument was made by the authority;
  - (b) that the copy is a true copy of the instrument; and
  - (c) that on a specified date the instrument was made available to the public as required by subsection (4) above,
- shall be prima facie evidence or, in Scotland, sufficient evidence of the facts stated in the certificate.
- (7) Any certificate purporting to be signed as mentioned in subsection (6) above shall be deemed to have been duly signed unless the contrary is shown.
- (8) Any person wishing in any legal proceedings to cite an instrument made by the competent authority may require the authority to cause a copy of it to be endorsed with such a certificate as is mentioned in subsection (6) above.

## **157 Alteration of competent authority**

- (1) The Secretary of State may by order transfer the functions as competent authority of the Council of The Stock Exchange to another body or other bodies either at the request of the Council or if it appears to him—
- (a) that the Council is exercising those functions in a manner which is unnecessary for the protection of investors and fails to take into account the proper interests of issuers and proposed issuers of securities; or
  - (b) that it is necessary to do so for the protection of investors.
- (2) The Secretary of State may by order transfer all or any of the functions as competent authority from any body or bodies to which they have been previously transferred under this section to another body or bodies.
- (3) Any order made under subsection (1) above at the request of the Council shall be subject to annulment in pursuance of a resolution of either House of Parliament; and no other order shall be made under this section unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (4) An order under this section shall not affect anything previously done by any body (" the previous authority ") in the exercise of functions which are transferred by the order to another body (" the new authority ") and may contain such supplementary provisions as the Secretary of State thinks necessary or expedient, including provisions—
- (a) for modifying or excluding any provision of this Part of this Act in its application to any such functions;
  - (b) for the transfer of any property, rights or liabilities relating to any such functions from the previous authority to the new authority;
  - (c) for the carrying on and completion by the new authority of anything in process of being done by the previous authority when the order takes effect; and
  - (d) for the substitution of the new authority for the previous authority in any instrument, contract or legal proceedings.



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- (5) If by virtue of this section the function of admission to or discontinuance or suspension of listing is exercisable otherwise than by the Council of The Stock Exchange, references in this Part of this Act to the competent authority admitting securities to the Official List or to discontinuing or suspending the listing of any securities shall be construed as references to the giving of directions to the Council of The Stock Exchange to admit the securities or to discontinue or suspend their listing; and it shall be the duty of the Council to comply with any such direction.

## PART V

### OFFERS OF UNLISTED SECURITIES

#### 158 Preliminary

- (1) This Part of this Act applies to any investment—
- (a) which is not listed, or the subject of an application for listing, in accordance with Part IV of this Act; and
  - (b) falls within paragraph 1, 2, 4 or 5 of Schedule 1 to this Act
- (2) In the application of those paragraphs for the purposes of subsection (1) above—
- (a) paragraphs 4 and 5 shall have effect with the omission of references to investments falling within paragraph 3; and
  - (b) paragraph 4 shall have effect as if it referred only to instruments issued by the person issuing the investment to be subscribed for.
- (3) In this Part of this Act—
- " issuer ", in relation to any securities, means the person by whom they have been or are to be issued except that in relation to a certificate or other instrument falling within paragraph 5 of Schedule 1 to this Act it means the person who issued or is to issue the securities to which the certificate or instrument relates;
  - " securities" means investments to which this section applies.
- (4) For the purposes of this Part of this Act an advertisement offers securities if—
- (a) it invites a person to enter into an agreement for or with a view to subscribing for or otherwise acquiring or underwriting any securities; or
  - (b) it contains information calculated to lead directly or indirectly to a person entering into such an agreement.
- (5) In this Part of this Act " the registrar of companies ", in relation to any securities, means—
- (a) if the securities are or are to be issued by a company incorporated in Great Britain, the registrar of companies in England and Wales or the registrar of companies in Scotland according to whether the company's registered office is in England and Wales or in Scotland ;
  - (b) if the securities are or are to be issued by a company incorporated in Northern Ireland, the registrar of companies for Northern Ireland ;
  - (c) in any other case, any of those registrars.
- (6) In this Part of this Act " approved exchange ", in relation to dealings in any securities, means a recognised investment exchange approved by the Secretary of State for the

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purposes of this Part of this Act either generally or in relation to such dealings, and the Secretary of State shall give notice in such manner as he thinks appropriate of the exchanges which are for the time being approved.

### **159 Offers of securities on admission to approved exchange**

- (1) Subject to subsection (2) and section 161 below, no person shall issue or cause to be issued in the United Kingdom an advertisement offering any securities on the occasion of their admission to dealings on an approved exchange or on terms that they will be issued if admitted to such dealings unless—
  - (a) a document (in this Part of this Act referred to as a "prospectus") containing information about the securities has been submitted to and approved by the exchange and delivered for registration to the registrar of companies; or
  - (b) the advertisement is such that no agreement can be entered into in pursuance of it until such a prospectus has been submitted, approved and delivered as aforesaid.
- (2) Subsection (1) above does not apply if a prospectus relating to the securities has been delivered for registration under this Part of this Act in the previous twelve months and the approved exchange certifies that it is satisfied that persons likely to consider acquiring the securities will have sufficient information to enable them to decide whether to do so from that prospectus and any information published in connection with the admission of the securities.

### **160 Other offers of securities**

- (1) Subject to subsections (5) and (6) and section 161 below, no person shall issue or cause to be issued in the United Kingdom an advertisement offering any securities which is a primary or secondary offer within the meaning of this section unless—
  - (a) he has delivered for registration to the registrar of companies a prospectus relating to the securities and expressed to be in respect of the offer; or
  - (b) the advertisement is such that no agreement can be entered into in pursuance of it until such a prospectus has been delivered by him as aforesaid.
- (2) For the purposes of this section a primary offer is an advertisement issued otherwise than as mentioned in section 159(1) above inviting persons to enter into an agreement for or with a view to subscribing (whether or not in cash) for or underwriting the securities to which it relates or containing information calculated to lead directly or indirectly to their doing so.
- (3) For the purposes of this section a secondary offer is any other advertisement issued otherwise than as mentioned in section 159(1) above inviting persons to enter into an agreement for or with a view to acquiring the securities to which it relates or containing information calculated to lead directly or indirectly to their doing so, being an advertisement issued or caused to be issued by—
  - (a) a person who has acquired the securities from the issuer with a view to issuing such an advertisement in respect of them;
  - (b) a person who, with a view to issuing such an advertisement in respect of them, has acquired the securities otherwise than from the issuer but without their having been admitted to dealings on an approved exchange or held by a person who acquired them as an investment and without any intention that such an advertisement should be issued in respect of them; or

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- (c) a person who is a controller of the issuer or has been such a controller in the previous twelve months and who is acting with the consent or participation of the issuer in issuing the advertisement.
- (4) For the purposes of subsection (3)(a) above it shall be presumed in the absence of evidence to the contrary that a person has acquired securities with a view to issuing an advertisement offering the securities if he issues it or causes it to be issued—
  - (a) within six months after the issue of the securities ; or
  - (b) before the consideration due from him for their acquisition is received by the person from whom he acquired them.
- (5) Subsection (1) above does not apply to a secondary offer if such a prospectus as is mentioned in that subsection has been delivered in accordance with that subsection in respect of an offer of the same securities made in the previous six months by a person making a primary offer or a previous secondary offer.
- (6) Subsection (1) above does not apply to an advertisement issued in such circumstances as may be specified by an order made by the Secretary of State for the purpose of exempting from that subsection—
  - (a) advertisements appearing to him to have a private character, whether by reason of a connection between the person issuing them and those to whom they are addressed or otherwise;
  - (b) advertisements appearing to him to deal with investments only incidentally;
  - (c) advertisements issued to persons appearing to him to be sufficiently expert to understand any risks involved; or
  - (d) such other classes of advertisement as he thinks fit.
- (7) Without prejudice to subsection (6)(c) above an order made by the Secretary of State may exempt from subsection (1) above an advertisement issued in whatever circumstances if it relates to securities appearing to him to be of a kind that can be expected normally to be bought or dealt in only by persons sufficiently expert to understand any risks involved.
- (8) An order under subsection (6) or (7) above may require any person who by virtue of the order is authorised to issue an advertisement to comply with such requirements as are specified in the order.
- (9) An order made by virtue of subsection (6)(a), (b) or (c) or by virtue of subsection (7) above shall be subject to annulment in pursuance of a resolution of either House of Parliament; and no order shall be made by virtue of subsection (6)(d) above unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

## **161 Exceptions**

- (1) Sections 159 and 160 above do not apply to any advertisement offering securities if the offer is conditional on their admission to listing in accordance with Part IV of this Act and section 159 above does not apply to any advertisement offering securities if they have been listed in accordance with that Part in the previous twelve months and the approved exchange in question certifies that persons likely to consider acquiring them will have sufficient information to enable them to decide whether to do so.
- (2) Neither of those sections applies to any such advertisement as is mentioned in section 58(2) above.

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- (3) Neither of those sections applies if other securities issued by the same person (whether or not securities of the same class as those to which the offer relates) are already dealt in on an approved exchange and the exchange certifies that persons likely to consider acquiring the securities to which the offer relates will have sufficient information to enable them to decide whether to do so having regard to the steps that have been taken to comply in respect of those other securities with the requirements imposed by the exchange for the purpose of complying with paragraph 2(2) (b) of Schedule 4 to this Act, to the nature of the securities to which the offer relates, to the circumstances of their issue and to the information about the issuer which is available to investors by virtue of any enactment.
- (4) If it appears to the Secretary of State that the law of a country or territory outside the United Kingdom provides investors in the United Kingdom with protection at least equivalent to that provided by Part IV of this Act or this Part of this Act in respect of securities dealt in on an exchange or exchanges in that country or territory he may by order specify circumstances in which those sections are not to apply to advertisements offering those securities.
- (5) An order under subsection (4) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **162 Form and content of prospectus**

- (1) A prospectus shall contain such information and comply with such other requirements as may be prescribed by rules made by the Secretary of State for the purposes of this section.
- (2) Rules under this section may make provision whereby compliance with any requirements imposed by or under the law of a country or territory outside the United Kingdom is treated as compliance with any requirements of the rules.
- (3) If it appears to the Secretary of State that an approved exchange has rules in respect of prospectuses relating to securities dealt in on the exchange, and practices in exercising any powers conferred by the rules, which provide investors with protection at least equivalent to that provided by rules under this section he may direct that any such prospectus shall be subject to the rules of the exchange instead of the rules made under this section.

## **163 General duty of disclosure in prospectus**

- (1) In addition to the information required to be included in a prospectus by virtue of rules applying to it by virtue of section 162 above a prospectus shall contain all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of—
  - (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
  - (b) the rights attaching to those securities.
- (2) The information to be included by virtue of this section shall be such information as is mentioned in subsection (1) above which is within the knowledge of any person responsible for the prospectus or which it would be reasonable for him to obtain by making enquiries.

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- (3) In determining what information is required to be included in a prospectus by virtue of this section regard shall be had—
- (a) to the nature of the securities and of the issuer of the securities;
  - (b) to the nature of the persons likely to consider their acquisition;
  - (c) to the fact that certain matters may reasonably be expected to be within the knowledge of professional advisers of any kind which those persons may reasonably be expected to consult; and
  - (d) to any information available to investors or their professional advisers by virtue of any enactment or by virtue of requirements imposed by a recognised investment exchange for the purpose of complying with paragraph 2(2)(b) of Schedule 4 to this Act.

#### **164 Supplementary prospectus**

- (1) Where a prospectus has been registered under this Part of this Act in respect of an offer of securities and at any time while an agreement in respect of those securities can be entered into in pursuance of that offer—
- (a) there is a significant change affecting any matter contained in the prospectus whose inclusion was required by rules applying to it by virtue of section 162 above or by section 163 above ; or
  - (b) a significant new matter arises the inclusion of information in respect of which would have been so required if it had arisen when the prospectus was prepared,
- the person who delivered the prospectus for registration to the registrar of companies shall deliver to him for registration a supplementary prospectus containing particulars of the change or new matter.
- (2) In subsection (1) above " significant " means significant for the purpose of making an informed assessment of the matters mentioned in section 163(1) above.
- (3) Where the person who delivered the prospectus for registration is not aware of the change or new matter in question he shall not be under any duty to comply with subsection (1) above unless he is notified of it by a person responsible for the prospectus ; but any person responsible for the prospectus who is aware of such a matter shall be under a duty to give him notice of it.
- (4) Subsection (1) above applies also as respects matters contained in a supplementary prospectus previously registered under this section in respect of the securities in question.

#### **165 Exemptions from disclosure**

- (1) If in the case of any approved exchange the Secretary of State so directs, the exchange shall have power to authorise the omission from a prospectus or supplementary prospectus of any information the inclusion of which would otherwise be required by section 163 above—
- (a) on the ground that its disclosure would be contrary to the public interest;
  - (b) subject to subsection (2) below, on the ground that its disclosure would be seriously detrimental to the issuer of the securities; or
  - (c) in the case of securities which fall within paragraph 2 of Schedule 1 to this Act and are of any class specified by the rules of the exchange, on the ground

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that its disclosure is unnecessary for persons of the kind who may be expected normally to buy or deal in the securities.

- (2) No authority shall be granted under subsection (1)(6) above in respect of, and no such authority shall be regarded as extending to, information the non-disclosure of which would be likely to mislead a person considering the acquisition of the securities as to any facts the knowledge of which it is essential for him to have in order to make an informed assessment.
- (3) The Secretary of State or the Treasury may issue a certificate to the effect that the disclosure of any information (including information that would otherwise have to be included in a prospectus or supplementary prospectus for which they are themselves responsible) would be contrary to the public interest and the exchange shall be entitled to act on any such certificate in exercising its powers under subsection (1)(a) above.

#### **166 Compensation for false or misleading prospectus**

- (1) Subject to section 167 below, the person or persons responsible for a prospectus or supplementary prospectus shall be liable to pay compensation to any person who has acquired the securities to which the prospectus relates and suffered loss in respect of them as a result of any untrue or misleading statement in the prospectus or the omission from it of any matter required to be included by section 163 or 164 above.
- (2) Where rules applicable to a prospectus by virtue of section 162 above require it to include information as to any particular matter on the basis that the prospectus must include a statement either as to that matter or, if such is the case, that there is no such matter, the omission from the prospectus of the information shall be treated for the purpose of subsection (1) above as a statement that there is no such matter.
- (3) Subject to section 167 below, a person who fails to comply with section 164 above shall be liable to pay compensation to any person who has acquired any of the securities in question and suffered loss in respect of them as a result of the failure.
- (4) This section does not affect any liability which any person may incur apart from this section.
- (5) References in this section to the acquisition by any person of securities include references to his contracting to acquire them or an interest in them.

#### **167 Exemption from liability to pay compensation**

- (1) A person shall not incur any liability under section 166(1) above for any loss in respect of securities caused by any such statement or omission as is there mentioned if he satisfies the court that at the time when the prospectus or supplementary prospectus was delivered for registration he reasonably believed, having made such enquiries (if any) as were reasonable, that the statement was true and not misleading or that the matter whose omission caused the loss was properly omitted and—
  - (a) that he continued in that belief until the time when the securities were acquired ; or
  - (b) that they were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire the securities in question ; or

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- (c) that before the securities were acquired he had taken all such steps as it was reasonable for him to have taken to secure that a correction was brought to the attention of those persons ; or
- (d) that the securities were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused;

but paragraph (d) above does not apply where the securities are dealt in on an approved exchange unless he satisfies the court that he continued in that belief until after the commencement of dealings in the securities on that exchange.

- (2) A person shall not incur any liability under section 166(1) above for any loss in respect of securities caused by a statement purporting to be made by or on the authority of another person as an expert which is, and is stated to be, included in the prospectus or supplementary prospectus with that other person's consent if he satisfies the court that at the time when the prospectus or supplementary prospectus was delivered for registration he believed on reasonable grounds that the other person was competent to make or authorise the statement and had consented to its inclusion in the form and context in which it was included and—

- (a) that he continued in that belief until the time when the securities were acquired ; or
- (b) that they were acquired before it was reasonably practicable to bring the fact that the expert was not competent or had not consented to the attention of persons likely to acquire the securities in question ; or
- (c) that before the securities were acquired he had taken all such steps as it was reasonable for him to have taken to secure that that fact was brought to the attention of those persons ; or
- (d) that the securities were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused;

but paragraph (d) above does not apply where the securities are dealt in on an approved exchange unless he satisfies the court that he continued in that belief until after the commencement of dealings in the securities on that exchange.

- (3) Without prejudice to subsections (1) and (2) above, a person shall not incur any liability under section 166(1) above for any loss in respect of any securities caused by any such statement or omission as is there mentioned if he satisfies the court—

- (a) that before the securities were acquired a correction or, where the statement was such as is mentioned in subsection (2) above, the fact that the expert was not competent or had not consented had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities in question; or
- (b) that he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the securities were acquired.

- (4) A person shall not incur any liability under section 166(1) above for any loss resulting from a statement made by an official person or contained in a public official document which is included in the prospectus or supplementary prospectus if he satisfies the court that the statement is accurately and fairly reproduced.

- (5) A person shall not incur any liability under section 166(1) or (3) above if he satisfies the court that the person suffering the loss acquired the securities in question with knowledge that the statement was false or misleading, of the omitted matter or of the change or new matter, as the case may be.

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- (6) A person shall not incur any liability under section 166(3) above if he satisfies the court that he reasonably believed that the change or new matter in question was not such as to call for a supplementary prospectus.
- (7) In this section " expert" includes any engineer, valuer, accountant or other person whose profession, qualifications or experience give authority to a statement made by him; and references to the acquisition of securities include references to contracting to acquire them or an interest in them.

## **168 Persons responsible for prospectus**

- (1) For the purposes of this Part of this Act the persons responsible for a prospectus or supplementary prospectus are—
  - (a) the issuer of the securities to which the prospectus or supplementary prospectus relates;
  - (b) where the issuer is a body corporate, each person who is a director of that body at the time when the prospectus or supplementary prospectus is delivered for registration;
  - (c) where the issuer is a body corporate, each person who has authorised himself to be named, and is named, in the prospectus or supplementary prospectus as a director or as having agreed to become a director of that body either immediately or at a future time ;
  - (d) each person who accepts, and is stated in the prospectus or supplementary prospectus as accepting, responsibility for, or for any part of, the prospectus or supplementary prospectus;
  - (e) each person not falling within any of the foregoing paragraphs who has authorised the contents of, or of any part of, the prospectus or supplementary prospectus.
- (2) A person is not responsible under subsection (1)(a), (b) or (c) above unless the issuer has made or authorised the offer in relation to which the prospectus or supplementary prospectus was delivered for registration; and a person is not responsible for a prospectus or supplementary prospectus by virtue of subsection (1)(b) above if it is delivered for registration without his knowledge or consent and on becoming aware of its delivery he forthwith gives reasonable public notice that it was delivered without his knowledge or consent.
- (3) Where a person has accepted responsibility for, or authorised, only part of the contents of any prospectus or supplementary prospectus he is responsible under subsection (1) (d) or (e) above for only that part and only if it is included in (or substantially in) the form and context to which he has agreed.
- (4) Where a prospectus or supplementary prospectus relates to securities which are to be issued in connection with an offer by (or by a wholly-owned subsidiary of) the issuer for, or an agreement for the acquisition by (or by a wholly-owned subsidiary of) the issuer of, securities issued by another person or in connection with any arrangement whereby the whole of the undertaking of another person is to become the undertaking of the issuer (of a wholly-owned subsidiary of the issuer or of a body corporate which will become such a subsidiary by virtue of the arrangement) then if—
  - (a) that other person; and
  - (b) where that other person is a body corporate, each person who is a director of that body at the time when the prospectus or supplementary prospectus is



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delivered for registration and each other person who has authorised himself to be named, and is named, in the prospectus or supplementary prospectus as a director of that body,

is responsible by virtue of paragraph (d) of subsection (1) above for any part of the prospectus or supplementary prospectus relating to that other person or to the securities or undertaking to which the offer, agreement or arrangement relates, no person shall be responsible for that part under paragraph (a), (b) or (c) of that subsection but without prejudice to his being responsible under paragraph (d).

- (5) Neither paragraph (b) nor paragraph (c) of subsection (1) above nor paragraph (b) of subsection (4) above applies in the case of any director if the prospectus or supplementary prospectus is subject to the rules of an approved exchange by virtue of section 162(3) above and he is certified by the exchange as a person to whom that paragraph should not apply by reason of his having an interest, or of any other circumstances, making it inappropriate for him to be responsible by virtue of that paragraph.
- (6) In this section " wholly-owned subsidiary ", in relation to a person other than a body corporate, means any body corporate that would be his wholly-owned subsidiary if he were a body corporate.
- (7) Nothing in this section shall be construed as making a person responsible for any prospectus or supplementary prospectus by reason only of giving advice as to its contents in a professional capacity.
- (8) Where by virtue of this section the issuer of any shares pays or is liable to pay compensation under section 166 above for loss suffered in respect of shares for which a person has subscribed no account shall be taken of that liability or payment in determining any question as to the amount paid on subscription for those shares or as to the amount paid up or deemed to be paid up on them.

## **169 Terms and implementation of offer**

- (1) The Secretary of State may make rules—
  - (a) regulating the terms on which a person may offer securities by an advertisement to which this Part of this Act applies; and
  - (b) otherwise regulating his conduct with a view to ensuring that the persons to whom the offer is addressed are treated equally and fairly.
- (2) Rules under this section may, in particular, make provision with respect to the giving of priority as between persons to whom an offer is made and with respect to the payment of commissions.
- (3) Section 162(2) above shall apply also to rules made under this section.

## **170 Advertisements by private companies and old public companies**

- (1) No private company and no old public company shall issue or cause to be issued in the United Kingdom any advertisement offering securities to be issued by that company.
- (2) Subsection (1) above shall not apply to an advertisement issued in such circumstances as may be specified by an order made by the Secretary of State for the purpose of exempting from that subsection such advertisements as are mentioned in section 160(6)(a), (b) or (c) above.

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- (3) An order under subsection (2) above may require any person who by virtue of the order is authorised to issue an advertisement to comply with such requirements as are specified in the order.
- (4) An order under subsection (2) above shall be subject to annulment in pursuance of a resolution of either House of Parliament
- (5) In this section " old public company " has the meaning given in section 1 of the Companies Consolidation (Consequential Provisions) Act 1985 or the corresponding Northern Ireland provision.

## **171 Contraventions**

- (1) An authorised person who—
  - (a) contravenes section 159 or 160 above or rules made under section 169 above ;
  - (b) contravenes any requirement imposed by an order under section 160(6) or (7) or 170 above ; or
  - (c) on behalf of a company issues or causes to be issued an advertisement which that company is prohibited from issuing by section 170 above,
 shall be treated as having contravened rules made under Chapter V of Part I of this Act or, in the case of a person who is an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.
- (2) Section 57 above shall apply to a company which issues or causes to be issued an advertisement in contravention of section 170 above as it applies to a person who issues an advertisement in contravention of that section.
- (3) A person, other than an authorised person, who contravenes section 159 or 160, the rules made under section 169 or any requirement imposed by an order under section 160(6) or (7) or 170 above shall be guilty of an offence and liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (4) A person who in the ordinary course of a business other than investment business issues an advertisement to the order of another person shall not be guilty of an offence under subsection (3) above in respect of a contravention of section 159 or 160 above if he proves that he believed on reasonable grounds that neither section 159 nor section 160 above applied to the advertisement or that one of those sections had been complied with in respect of the advertisement.
- (5) Without prejudice to any liability under section 166 above, a person shall not be regarded as having contravened section 159 or 160 above by reason only of a prospectus not having fully complied with the requirements of this Part of this Act as to its form and content.
- (6) Any contravention to which this section applies shall be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty.

## PART VI

### TAKEOVER OFFERS

#### 172 Takeover offers

- (1) The provisions set out in Schedule 12 to this Act shall be substituted for sections 428, 429 and 430 of the Companies Act 1985.
- (2) Subsection (1) above does not affect any case in which the offer in respect of the scheme or contract mentioned in section 428(1) was made before the coming into force of this section.

## PART VII

### INSIDER DEALING

#### 173 Information obtained in official capacity: public bodies

- (1) In section 2 of the Company Securities (Insider Dealing) Act 1985 (abuse of information obtained by Crown servants in official capacity) for the word " Crown " wherever it occurs there shall be substituted the word " public ".
- (2) At the end of that section there shall be added—
  - “(4) ' Public servant \* means—
    - (a) a Crown servant;
    - (b) a member, officer or servant of a designated agency, competent authority or transferee body (within the meaning of the Financial Services Act 1986);
    - (c) an officer or servant of a recognised self-regulating organisation, recognised investment exchange or recognised clearing house (within the meaning of that Act);
    - (d) any person declared by an order for the time being in force under subsection (5) to be a public servant for the purposes of this section.
  - (5) If it appears to the Secretary of State that the members, officers or employees of or persons otherwise connected with any body appearing to him to exercise public functions may have access to unpublished price sensitive information relating to securities, he may by order declare that those persons are to be public servants for the purposes of this section.
  - (6) The power to make an order under subsection (5) shall be exercisable by statutory instrument and an instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

#### 174 Market makers, off-market dealers etc.

- (1) In subsection (1) of section 3 of the Company Securities (Insider Dealing) Act 1985 (actions not prohibited by sections 1 and 2 of that Act) at the end of paragraph (c) there shall be inserted the words “; or

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- (d) doing any particular thing in relation to any particular securities if the information—
  - (i) was obtained by him in the course of a business of a market maker in those securities in which he was engaged or employed, and
  - (ii) was of a description which it would be reasonable to expect him to obtain in the ordinary course of that business,
 and he does that thing in good faith in the course of that business.”.
- (2) At the end of that subsection there shall be inserted—
  - “‘Market maker’ means a person (whether an individual, partnership or company) who—
    - (a) holds himself out at all normal times in compliance with the rules of a recognised stock exchange as willing to buy and sell securities at prices specified by him; and
    - (b) is recognised as doing so by that recognised stock exchange.”.
- (3) The existing provisions of section 4 of that Act (off-market deals in advertised securities) shall become subsection (1) of that section and after that subsection there shall be inserted—
  - “(2) In its application by virtue of this section the definition of “market maker” in section 3(1) shall have effect as if the references to a recognised stock exchange were references to a recognised investment exchange (other than an overseas investment exchange) within the meaning of the Financial Services Act 1986.”.
- (4) In section 13 of that Act
  - (a) in subsection (1) (which defines dealing in securities and provides that references to dealing on a recognised stock exchange include dealing through an investment exchange) the words from “ and references ” onwards shall be omitted ; and
  - (b) for subsection (3) (definition of off-market dealer) there shall be substituted—
    - “(3) ‘Off-market dealer’ means a person who is an authorised person within the meaning of the Financial Services Act 1986.”.

## 175 Price stabilisation

For section 6 of the Company Securities (Insider Dealing) Act 1985 (international bonds) there shall be substituted—

### “6 Price stabilisation.

- (1) No provision of section 1, 2, 4 or 5 prohibits an individual from doing anything for the purpose of stabilising the price of securities if it is done in conformity with rules made under section 48 of the Financial Services Act 1986 and—
  - (a) in respect of securities which fall within any of paragraphs 1 to 5 of Schedule 1 to that Act and are specified by the rules ; and
  - (b) during such period before or after the issue of those securities as is specified by the rules.

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- (2) Any order under subsection (8) of section 48 of that Act shall apply also in relation to subsection (1) of this section.”.

#### **176 Contracts for differences by reference to securities**

After subsection (1) of section 13 of the Company Securities (Insider Dealing) Act 1985 (definition of dealing in securities), there shall be inserted—

“(1A) For the purposes of this Act a person who (whether as principal or agent) buys or sells or agrees to buy or sell investments within paragraph 9 of Schedule 1 to the Financial Services Act 1986 (contracts for differences etc.) where the purpose or pretended purpose mentioned in that paragraph is to secure a profit or avoid a loss wholly or partly by reference to fluctuations in the value or price of securities shall be treated as if he were dealing in those securities.”.

#### **177 Investigations into insider dealing**

- (1) If it appears to the Secretary of State that there are circumstances suggesting that there may have been a contravention of section 1, 2, 4 or 5 of the Company Securities (Insider Dealing) Act 1985, he may appoint one or more competent inspectors to carry out such investigations as are requisite to establish whether or not any such contravention has occurred and to report the results of their investigations to him.
- (2) The appointment under this section of an inspector may limit the period during which he is to continue his investigation or confine it to particular matters.
- (3) If the inspectors consider that any person is or may be able to give information concerning any such contravention they may require that person—
- (a) to produce to them any documents in his possession or under his control relating to the company in relation to whose securities the contravention is suspected to have occurred or to its securities ;
  - (b) to attend before them ; and
  - (c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give ;
- and it shall be the duty of that person to comply with that requirement.
- (4) An inspector may examine on oath any person who he considers is or may be able to give information concerning any such contravention, and may administer an oath accordingly.
- (5) The inspectors shall make such interim reports to the Secretary of State as they think fit or he may direct and on the conclusion of the investigation they shall make a final report to him.
- (6) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.
- (7) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.

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- (8) Nothing in this section shall require a person carrying on the business of banking to disclose any information or produce any document relating to the affairs of a customer unless—
- (a) the customer is a person who the inspectors have reason to believe may be able to give information concerning a suspected contravention ; and
  - (b) the Secretary of State is satisfied that the disclosure or production is necessary for the purposes of the investigation.
- (9) Where a person claims a lien on a document its production under this section shall be without prejudice to his lien.
- (10) In this section "document" includes information recorded in any form; and in relation to information recorded otherwise than in legible form references to its production include references to producing a copy of the information in legible form.

### **178 Penalties for failure to co-operate with s. 177 investigations**

- (1) If any person—
- (a) refuses to comply with any request under subsection (3) of section 177 above ;  
or
  - (b) refuses to answer any question put to him by the inspectors appointed under that section with respect to any matter relevant for establishing whether or not any suspected contravention has occurred,
- the inspectors may certify that fact in writing to the court and the court may inquire into the case.
- (2) If, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement which may be offered in defence, the court is satisfied that he did without reasonable excuse refuse to comply with such a request or answer any such question, the court may—
- (a) punish him in like manner as if he had been guilty of contempt of the court; or
  - (b) direct that the Secretary of State may exercise his powers under this section in respect of him ;
- and the court may give a direction under paragraph (b) above notwithstanding that the offender is not within the jurisdiction of the court if the court is satisfied that he was notified of his right to appear before the court and of the powers available under this section.
- (3) Where the court gives a direction under subsection (2) (b) above in respect of an authorised person the Secretary of State may serve a notice on him—
- (a) cancelling any authorisation of his to carry on investment business after the expiry of a specified period after the service of the notice ;
  - (b) disqualifying him from becoming authorised to carry on investment business after the expiry of a specified period;
  - (c) restricting any authorisation of his in respect of investment business during a specified period to the performance of contracts entered into before the notice comes into force;
  - (d) prohibiting him from entering into transactions of a specified kind or entering into them except in specified circumstances or to a specified extent;
  - (e) prohibiting him from soliciting business from persons of a specified kind or otherwise than from such persons; or

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- (f) prohibiting him from carrying on business in a specified manner or otherwise than in a specified manner.
- (4) The period mentioned in paragraphs (a) and (c) of subsection (3) above shall be such period as appears to the Secretary of State reasonable to enable the person on whom the notice is served to complete the performance of any contracts entered into before the notice comes into force and to terminate such of them as are of a continuing nature.
- (5) Where the court gives a direction under subsection (2)(b) above in the case of an unauthorised person the Secretary of State may direct that any authorised person who knowingly transacts investment business of a specified kind, or in specified circumstances or to a specified extent, with or on behalf of that unauthorised person shall be treated as having contravened rules made under Chapter V of Part I of this Act or, in the case of a person who is an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.
- (6) A person shall not be treated for the purposes of subsection (2) above as having a reasonable excuse for refusing to comply with a request or answer a question in a case where the contravention or suspected contravention being investigated relates to dealing by him on the instructions or for the account of another person, by reason that at the time of the refusal—
  - (a) he did not know the identity of that other person ; or
  - (b) he was subject to the law of a country or territory outside the United Kingdom which prohibited him from disclosing information relating to the dealing without the consent of that other person, if he might have obtained that consent or obtained exemption from that law.
- (7) A notice served on a person under subsection (3) above may be revoked at any time by the Secretary of State by serving a revocation notice on him; and the Secretary of State shall revoke such a notice if it appears to him that he has agreed to comply with the relevant request or answer the relevant question.
- (8) The revocation of such a notice as is mentioned in subsection (3)(a) above shall not have the effect of reviving the authorisation cancelled by the notice except where the person would (apart from the notice) at the time of the revocation be an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body ; but nothing in this subsection shall be construed as preventing any person who has been subject to such a notice from again becoming authorised after the revocation of the notice.
- (9) If it appears to the Secretary of State—
  - (a) that a person on whom he serves a notice under subsection (3) above is an authorised person by virtue of an authorisation granted by a designated agency or by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body; or
  - (b) that a person on whom he serves a revocation notice under subsection (7) above was such an authorised person at the time that the notice which is being revoked was served,he shall serve a copy of the notice on that agency, organisation or body.
- (10) The functions to which section 114 above applies shall include the functions of the Secretary of State under this section but any transfer of those functions shall be subject to a reservation that they are to be exercisable by him concurrently with the

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designated agency and so as to be exercisable by the agency subject to such conditions or restrictions as the Secretary of State may from time to time impose.

## PART VIII

### RESTRICTIONS ON DISCLOSURE OF INFORMATION

#### **179 Restrictions on disclosure of information**

- (1) Subject to section 180 below, information which is restricted information for the purposes of this section and relates to the business or other affairs of any person shall not be disclosed by a person mentioned in subsection (3) below (" the primary recipient") or any person obtaining the information directly or indirectly from him without the consent of the person from whom the primary recipient obtained the information and if different, the person to whom it relates.
- (2) Subject to subsection (4) below, information is restricted information for the purposes of this section if it was obtained by the primary recipient for the purposes of, or in the discharge of his functions under, this Act or any rules or regulations made under this Act (whether or not by virtue of any requirement to supply it made under those provisions).
- (3) The persons mentioned in subsection (1) above are—
  - (a) the Secretary of State;
  - (b) any designated agency, transferee body or body administering a scheme under section 54 above ;
  - (c) the Director General of Fair Trading ;
  - (d) the Chief Registrar of friendly societies;
  - (e) the Registrar of Friendly Societies for Northern Ireland ;
  - (f) the Bank of England ;
  - (g) any member of the Tribunal;
  - (h) any person appointed or authorised to exercise any powers under section 94, 106 or 177 above ; and
  - (i) any officer or servant of any such person.
- (4) Information shall not be treated as restricted information for the purposes of this section if it has been made available to the public by virtue of being disclosed in any circumstances in which or for any purpose for which disclosure is not precluded by this section.
- (5) Subject to section 180 below, information obtained by the competent authority in the exercise of its functions under Part IV of this Act or received by it pursuant to a Community obligation from any authority exercising corresponding functions in another member State shall not be disclosed without the consent of the person from whom the competent authority obtained the information and, if different, the person to whom it relates.
- (6) Any person who contravenes this section shall be guilty of an offence and liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both ;



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- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

## **180 Exceptions from restrictions on disclosure**

- (1) Section 179 above shall not preclude the disclosure of information—
  - (a) with a view to the institution of or otherwise for the purposes of criminal proceedings ;
  - (b) with a view to the institution of or otherwise for the purposes of any civil proceedings arising under or by virtue of this Act or proceedings before the Tribunal;
  - (c) for the purpose of enabling or assisting the Secretary of State to exercise any powers conferred on him by this Act or by the enactments relating to companies insurance companies or insolvency or for the purpose of enabling or assisting any inspector appointed by him under the enactments relating to companies to discharge his functions;
  - (d) for the purpose of enabling or assisting the Department of Economic Development for Northern Ireland to exercise any powers conferred on it by the enactments relating to companies or insolvency or for the purpose of enabling or assisting any inspector appointed by it under the enactments relating to companies to discharge his functions;
  - (e) for the purpose of enabling or assisting a designated agency or transferee body or the competent authority to discharge its functions under this Act or of enabling or assisting the body administering a scheme under section 54 above to discharge its functions under the scheme;
  - (f) for the purpose of enabling or assisting the Bank of England to discharge its functions under the Banking Act 1979 or any other functions ;
  - (g) for the purpose of enabling or assisting the Deposit Protection Board to discharge its functions under that Act;
  - (h) for the purpose of enabling or assisting the Chief Registrar of friendly societies or the Registrar of Friendly Societies for Northern Ireland to discharge his functions under this Act or under the enactments relating to friendly societies or building societies ;
  - (i) for the purpose of enabling or assisting the Industrial Assurance Commissioner or the Industrial Assurance Commissioner for Northern Ireland to discharge his functions under the enactments relating to industrial assurance;
  - (j) for the purpose of enabling or assisting the Insurance Brokers Registration Council to discharge its functions under the Insurance Brokers (Registration) Act 1977;
  - (k) for the purpose of enabling or assisting an official receiver to discharge his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a body which is for the time being a recognised professional body for the purposes of section 391 of the Insolvency Act 1986 to discharge its functions as such;
  - (l) for the purpose of enabling or assisting the Building Societies Commission to discharge its functions under the Building Societies Act 1986 ;
  - (m) for the purpose of enabling or assisting the Director General of Fair Trading to discharge his functions under this Act;

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- (n) for the purpose of enabling or assisting a recognised self-regulating organisation, recognised investment exchange, recognised professional body, or recognised clearing house to discharge its functions as such;
  - (o) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by a solicitor, auditor, accountant, valuer or actuary of his professional duties ;
  - (p) for the purpose of enabling or assisting any person appointed or authorised to exercise any powers under section 94, 106 or 177 above to discharge his functions ;
  - (q) for the purpose of enabling or assisting an auditor of an authorised person or a person approved under section 108 above to discharge his functions ;
  - (r) if the information is or has been available to the public from other sources;
  - (s) in a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained; or
  - (t) in pursuance of any Community obligation.
- (2) Section 179 above shall not preclude the disclosure of information to the Secretary of State or to the Treasury if the disclosure is made in the interests of investors or in the public interest.
- (3) Subject to subsection (4) below, section 179 above shall not preclude the disclosure of information for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this section by an order made by the Secretary of State to discharge any functions which are specified in the order.
- (4) An order under subsection (3) above designating an authority for the purposes of that subsection may—
- (a) impose conditions subject to which the disclosure of information is permitted by that subsection ; and
  - (b) otherwise restrict the circumstances in which that subsection permits disclosure.
- (5) Section 179 above shall not preclude the disclosure—
- (a) of any information contained in an unpublished report of the Tribunal which has been made available to any person under this Act, by the person to whom it was made available or by any person obtaining the information directly or indirectly from him ;
  - (b) of any information contained in any notice or copy of a notice served under this Act, notice of the contents of which has not been given to the public, by the person on whom it was served or any person obtaining the information directly or indirectly from him;
  - (c) of any information contained in the register kept under section 102 above by virtue of subsection (1)(e) of that section, by a person who has inspected the register under section 103(2) or (3) above or any person obtaining the information directly or indirectly from him.
- (6) Section 179 above shall not preclude the disclosure of information for the purpose of enabling or assisting an authority in a country or territory outside the United Kingdom to exercise functions corresponding to those of the Secretary of State under this Act or the Insurance Companies Act 1982 or to those of the Bank of England under the Banking Act 1979 or to those of the competent authority under this Act or any

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other functions in connection with rules of law corresponding to the provisions of the Company Securities (Insider Dealing) Act 1985 or Part VII of this Act.

- (7) Section 179 above shall not preclude the disclosure of information by the Director General of Fair Trading or any officer or servant of his or any person obtaining the information directly or indirectly from the Director or any such officer or servant if the information was obtained by the Director or any such officer or servant for the purposes of or in the discharge of his functions under this Act (whether or not he was the primary recipient of the information within the meaning of section 179 above) and the disclosure is made—
- (a) for the purpose of enabling or assisting the Director, the Secretary of State or any other Minister, the Monopolies and Mergers Commission or any Northern Ireland department to discharge any function conferred on him or them by the Fair Trading Act 1973 (other than Part II or III of that Act), the Restrictive Trade Practices Act 1976 or the Competition Act 1980; or
  - (b) for the purposes of any civil proceedings under any of those provisions;
- and information shall not be treated as restricted information for the purposes of section 179 above if it has been made available to the public by virtue of this subsection.
- (8) The Secretary of State may by order modify the application of any provision of this section so as—
- (a) to prevent the disclosure by virtue of that provision ; or
  - (b) to restrict the extent to which disclosure is permitted by virtue of that provision,
- of information received by a person specified in the order pursuant to a Community obligation from a person exercising functions in relation to a collective investment scheme who is also so specified.
- (9) An order under subsection (3) or (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **181 Directions restricting disclosure of information overseas**

- (1) If it appears to the Secretary of State to be in the public interest to do so, he may give a direction prohibiting the disclosure to any person in a country or territory outside the United Kingdom which is specified in the direction, or to such persons in such a country or territory as may be so specified, of such information to which this section applies as may be so specified.
- (2) A direction under subsection (1) above—
- (a) may prohibit disclosure of the information to which it applies by all persons or only by such persons or classes of person as may be specified in it; and
  - (b) may prohibit such disclosure absolutely or in such cases or subject to such conditions as to consent or otherwise as may be specified in it;
- and a direction prohibiting disclosure by all persons shall be published by the Secretary of State in such manner as appears to him to be appropriate.
- (3) This section applies to any information relating to the business or other affairs of any person which was obtained (whether or not by virtue of any requirement to supply it) directly or indirectly—

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- (a) by a designated agency, a transferee body, the competent authority or any person appointed or authorised to exercise any powers under section 94, 106 or 177 above (or any officer or servant of any such body or person) for the purposes or in the discharge of any functions of that body or person under this Act or any rules or regulations made under this Act or of any monitoring agency functions; or
  - (b) by a recognised self-regulating organisation, a recognised professional body, a recognised investment exchange or a recognised clearing house other than an overseas investment exchange or clearing house (or any officer or servant of such an organisation, body, investment exchange or clearing house) for the purposes or in the discharge of any of its functions as such or of any monitoring agency functions.
- (4) In subsection (3) above " monitoring agency functions" means any functions exercisable on behalf of another body by virtue of arrangements made pursuant to paragraph 4(2) of Schedule 2, paragraph 4(6) of Schedule 3, paragraph 3(2) of Schedule 4 or paragraph 3(2) of Schedule 7 to this Act or of such arrangements as are mentioned in section 39(4)(6) above.
- (5) A direction under this section shall not prohibit the disclosure by any person other than a person mentioned in subsection (3) above of—
- (a) information relating only to the affairs of that person; or
  - (b) information obtained by that person otherwise than directly or indirectly from a person mentioned in subsection (3) above.
- (6) A direction under this section shall not prohibit the disclosure of information in pursuance of any Community obligation.
- (7) A person who knowingly discloses information in contravention of a direction under this section shall be guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both ;
  - (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.
- (8) A person shall not be guilty of an offence under this section by virtue of anything done or omitted to be done by him outside the United Kingdom unless he is a British citizen, a British Dependent Territories citizen, a British Overseas citizen or a body corporate incorporated in the United Kingdom.

**182 Disclosure of information under enactments relating to fair trading, banking, insurance and companies**

The enactments mentioned in Schedule 13 to this Act shall have effect with the amendments there specified (which relate to the circumstances in which information obtained under those enactments may be disclosed).

## PART IX

### RECIPROCITY

#### **183 Reciprocal facilities for financial business**

- (1) If it appears to the Secretary of State or the Treasury that by reason of—
  - (a) the law of any country outside the United Kingdom ; or
  - (b) any action taken by or the practices of the government or any other authority or body in that country,persons connected with the United Kingdom are unable to carry on investment, insurance or banking business in, or in relation to, that country on terms as favourable as those on which persons connected with that country are able to carry on any such business in, or in relation to, the United Kingdom, the Secretary of State or, as the case may be, the Treasury may serve a notice under this subsection on any person connected with that country who is carrying on or appears to them to intend to carry on any such business in, or in relation to, the United Kingdom.
- (2) No notice shall be served under subsection (1) above unless the Secretary of State or, as the case may be, the Treasury consider it in the national interest to serve it; and before doing so the Secretary of State or, as the case may be, the Treasury shall so far as they consider expedient consult such body or bodies as appear to them to represent the interests of persons likely to be affected.
- (3) A notice under subsection (1) above shall state the grounds on which it is given (identifying the country in relation to which those grounds are considered to exist); and any such notice shall come into force on such date as may be specified in it.
- (4) For the purposes of this section a person is connected with a country if it appears to the Secretary of State or, as the case may be, the Treasury—
  - (a) in the case of an individual, that he is a national of or resident in that country or carries on investment, insurance or banking business from a principal place of business there;
  - (b) in the case of a body corporate, that it is incorporated or has a principal place of business in that country or is controlled by a person or persons connected with that country;
  - (c) in the case of a partnership, that it has a principal place of business in that country or that any partner is connected with that country;
  - (d) in the case of an unincorporated association which is not a partnership, that it is formed under the law of that country, has a principal place of business there or is controlled by a person or persons connected with that country.
- (5) In this section " country " includes any territory or part of a country or territory ; and where it appears to the Secretary of State or, as the case may be, the Treasury that there are such grounds as are mentioned in subsection (1) above in the case of any part of a country or territory their powers under that subsection shall also be exercisable in respect of any person who is connected with that country or territory or any other part of it.

#### **184 Investment and insurance business**

- (1) A notice under section 183 above relating to the carrying on of investment business or insurance business shall be served by the Secretary of State and such a notice may

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be a disqualification notice, a restriction notice or a partial restriction notice and may relate to the carrying on of business of both kinds.

(2) A disqualification notice as respects investment business or insurance business shall have the effect of—

- (a) cancelling any authorisation of the person concerned to carry on that business after the expiry of such period after the service of the notice as may be specified in it;
- (b) disqualifying him from becoming authorised to carry on that business after the expiry of that period; and
- (c) restricting any authorisation of the person concerned in respect of that business during that period to the performance of contracts entered into before the notice comes into force;

and the period specified in such a notice shall be such period as appears to the Secretary of State to be reasonable to enable the person on whom it is served to complete the performance of those contracts and to terminate such of them as are of a continuing nature.

(3) A restriction notice as respects investment business or insurance business shall have the effect of restricting any authorisation of the person concerned in respect of that business to the performance of contracts entered into before the notice comes into force.

(4) A partial restriction notice as respects investment business may prohibit the person concerned from—

- (a) entering into transactions of any specified kind or entering into them except in specified circumstances or to a specified extent;
- (b) soliciting business from persons of a specified kind or otherwise than from such persons ;
- (c) carrying on business in a specified manner or otherwise than in a specified manner.

(5) A partial restriction notice as respects insurance business may direct that the person concerned shall cease to be authorised under section 3 or 4 of the Insurance Companies Act 1982 to effect contracts of insurance of any description specified in the notice.

(6) If it appears to the Secretary of State that a person on whom he serves a notice under section 183 above as respects investment business is an authorised person by virtue of an authorisation granted by a designated agency or by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body he shall serve a copy of the notice on that agency, organisation or body.

(7) If it appears to the Secretary of State—

- (a) that any person on whom a partial restriction notice has been served by him has contravened any provision of that notice or, in the case of a notice under subsection (5) above, effected a contract of insurance of a description specified in the notice; and
- (b) that any such grounds as are mentioned in subsection (1) of section 183 above still exist in the case of the country concerned,

he may serve a disqualification notice or a restriction notice on him under that section.

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- (8) Sections 28, 33, 60, 61 and 62 above shall have effect in relation to a contravention of such a notice as is mentioned in subsection (4) above as they have effect in relation to any such contravention as is mentioned in those sections.

### **185 Banking business**

- (1) A notice under section 183 above relating to the carrying on of a deposit-taking business as a recognised bank or licensed institution within the meaning of the Banking Act 1979 shall be served by the Treasury and may be either a disqualification notice or a partial restriction notice.
- (2) A disqualification notice relating to such business shall have the effect of—
- (a) cancelling any recognition or licence granted to the person concerned under the Banking Act 1979 ; and
  - (b) disqualifying him from becoming a recognised bank or licensed institution within the meaning of that Act
- (3) A partial restriction notice relating to such business may—
- (a) prohibit the person concerned from dealing with or disposing of his assets in any manner specified in the direction;
  - (b) impose limitations on the acceptance by him of deposits ;
  - (c) prohibit him from soliciting deposits either generally or from persons who are not already depositors;
  - (d) prohibit him from entering into any other transaction or class of transactions;
  - (e) require him to take certain steps, to pursue or refrain from pursuing a particular course of activities or to restrict the scope of his business in a particular way.
- (4) The Treasury shall serve on the Bank of England a copy of any notice served by them under section 183 above.
- (5) Any person who contravenes any provision of a partial restriction notice served on him by the Treasury under this section shall be guilty of an offence and liable—
- (a) on conviction on indictment, to a fine ;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (6) Any such contravention shall be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty, but no such contravention shall invalidate any transaction.
- (7) At the end of subsection (1) of section 8 of the Banking Act 1979 (power to give directions in connection with termination of deposit-taking authority) there shall be inserted—
- “(d) at any time after a disqualification notice has been served on the institution by the Treasury under section 183 of the Financial Services Act 1986.”.

### **186 Variation and revocation of notices**

- (1) The Secretary of State or the Treasury may vary a partial restriction notice served under section 183 above by a notice in writing served on the person concerned ; and any such notice shall come into force on such date as is specified in the notice.

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- (2) A notice under section 183 above may be revoked at any time by the Secretary of State or, as the case may be, the Treasury by serving a revocation notice on the person concerned; and the Secretary of State or, as the case may be, the Treasury shall revoke a notice if it appears to them that there are no longer any such grounds as are mentioned in subsection (1) of that section in the case of the country concerned.
- (3) The revocation of a disqualification notice as respects investment business or insurance business shall not have the effect of reviving the authorisation which was cancelled by the notice except where the notice relates to investment business and the person concerned would (apart from the disqualification notice) at the time of the revocation be an authorised person as respects the investment business in question by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body.
- (4) The revocation of a disqualification notice as respects banking business shall not have the effect of reviving the recognition or licence which was cancelled by the notice.
- (5) Nothing in subsection (3) or (4) above shall be construed as preventing any person who has been subject to a disqualification notice as respects any business from again becoming authorised or, as the case may be, becoming a recognised bank or licensed institution within the meaning of the Banking Act 1979 after the revocation of the notice.
- (6) If it appears to the Secretary of State that a person on whom he serves a notice under this section as respects investment business was an authorised person by virtue of an authorisation granted by a designated agency or by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body at the time that the notice which is being varied or revoked was served, he shall serve a copy of the notice on that agency, organisation or body.
- (7) The Treasury shall serve on the Bank of England a copy of any notice served by them under this section.

## PART X

### MISCELLANEOUS AND SUPPLEMENTARY

#### **187 Exemption from liability for damages**

- (1) Neither a recognised self-regulating organisation nor any of its officers or servants or members of its governing body shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions to which this subsection applies unless the act or omission is shown to have been in bad faith.
- (2) The functions to which subsection (1) above applies are the functions of the organisation so far as relating to, or to matters arising out of—
  - (a) the rules, practices, powers and arrangements of the organisation to which the requirements in paragraphs 1 to 6 of Schedule 2 to this Act apply ;
  - (b) the obligations with which paragraph 7 of that Schedule requires the organisation to comply ;
  - (c) any guidance issued by the organisation ;



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- (d) the powers of the organisation under section 53(2), 64(4), 72(5), 73(5) or 105(2)(a) above ; or
  - (e) the obligations to which the organisation is subject by virtue of this Act.
- (3) No designated agency or transferee body nor any member, officer or servant of a designated agency or transferee body shall be liable in damages for anything done or omitted in the discharge or purported discharge of the functions exercisable by the agency by virtue of a delegation order or, as the case may be, the functions exercisable by the body by virtue of a transfer order unless the act or omission is shown to have been in bad faith.
- (4) Neither the competent authority nor any member, officer, or servant of that authority shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions of the authority under Part IV of this Act unless the act or omission is shown to have been in bad faith.
- (5) The functions to which subsections (1) and (3) above apply also include any functions exercisable by a recognised self-regulating organisation, designated agency or transferee body on behalf of another body by virtue of arrangements made pursuant to paragraph 4(2) of Schedule 2, paragraph 4(6) of Schedule 3, paragraph 3(2) of Schedule 4 or paragraph 3(2) of Schedule 7 to this Act or of such arrangements as are mentioned in section 39(4)(6) above.
- (6) A recognised professional body may make it a condition of any certificate issued by it for the purposes of Part I of this Act that neither the body nor any of its officers or servants or members of its governing body is to be liable in damages for anything done or omitted in the discharge or purported discharge of any functions to which this subsection applies unless the act or omission is shown to have been in bad faith.
- (7) The functions to which subsection (6) above applies are the functions of the body so far as relating to, or to matters arising out of—
- (a) the rules, practices and arrangements of the body to which the requirements in paragraphs 2 to 5 of Schedule 3 to this Act apply ;
  - (b) the obligations with which paragraph 6 of that Schedule requires the body to comply ;
  - (c) any guidance issued by the body in respect of any matters dealt with by such rules as are mentioned in paragraph (a) above;
  - (d) the powers of the body under the provisions mentioned in subsection (1)(d) above or under section 54(3) above ; or
  - (e) the obligations to which the body is subject by virtue of this Act.

## **188 Jurisdiction as respects actions concerning designated agency etc.**

- (1) Proceedings arising out of any act or omission (or proposed act or omission) of a designated agency, transferee body or the competent authority in the discharge or purported discharge of any of its functions under this Act may be brought in the High Court or the Court of Session.
- (2) At the end of Schedule 5 to the Civil Jurisdiction and Judgments Act 1982 (exclusion of certain proceedings from the provisions of Schedule 4 to that Act which determine whether the courts in each part of the United Kingdom have jurisdiction in proceedings) there shall be inserted—

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*“Proceedings concerning financial services agencies*

10           Such proceedings as are mentioned in section 188 of the Financial Services Act 1986.”.

**189    Restriction of Rehabilitation of Offenders Act 1974**

- (1) The Rehabilitation of Offenders Act 1974 shall have effect subject to the provisions of this section in cases where the spent conviction is for—
  - (a) an offence involving fraud or other dishonesty ; or
  - (b) an offence under legislation (whether or not of the United Kingdom) relating to companies (including insider dealing), building societies, industrial and provident societies, credit unions, friendly societies, insurance, banking or other financial services, insolvency, consumer credit or consumer protection.
- (2) Nothing in section 4(1) (restriction on evidence as to spent convictions in proceedings) shall prevent the determination in any proceedings specified in Part I of Schedule 14 to this Act of any issue, or prevent the admission or requirement in any such proceedings of any evidence, relating to a person's previous convictions for any such offence as is mentioned in subsection (1) above or to circumstances ancillary thereto.
- (3) A conviction for any such offence as is mentioned in subsection (1) above shall not be regarded as spent for the purposes of section 4(2) (questions relating to an individual's previous convictions) if—
  - (a) the question is put by or on behalf of a person specified in the first column of Part II of that Schedule and relates to an individual (whether or not the person questioned) specified in relation to the person putting the question in the second column of that Part; and
  - (b) the person questioned is informed when the question is put that by virtue of this section convictions for any such offence are to be disclosed.
- (4) Section 4(3)(b) (spent conviction not to be ground for excluding person from office, occupation etc.) shall not prevent a person specified in the first column of Part III of that Schedule from taking such action as is specified in relation to that person in the second column of that Part by reason, or partly by reason, of a spent conviction for any such offence as is mentioned in subsection (1) above of an individual who is—
  - (a) the person in respect of whom the action is taken ;
  - (b) as respects action within paragraph 1 or 4 of that Part, an associate of that person ; or
  - (c) as respects action within paragraph 1 of that Part consisting of a decision to refuse or revoke an order declaring a collective investment scheme to be an authorised unit trust scheme or a recognised scheme, the operator or trustee of the scheme or an associate of his,

or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.
- (5) Parts I, II and III of that Schedule shall have effect subject to Part IV.
- (6) In this section and that Schedule " associate " means—
  - (a) in relation to a body corporate, a director, manager or controller;
  - (b) in relation to a partnership, a partner or manager;

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- (c) in relation to a registered friendly society, a trustee, manager or member of the committee of the society;
  - (d) in relation to an unincorporated association, a member of its governing body or an officer, manager or controller ; \*
  - (e) in relation to an individual, a manager.
- (7) This section and that Schedule shall apply to Northern Ireland with the substitution for the references to the said Act of 1974 and section 4(1), (2) and (3)(b) of that Act of references to the Rehabilitation of Offenders (Northern Ireland) Order 1978 and Article 5(1), (2) and (3)(b) of that Order.

## **190 Data protection**

An order under section 30 of the Data Protection Act 1984 (exemption from subject access provisions of data held for the purpose of discharging designated functions conferred by or under enactments relating to the regulation of financial services etc.) may designate for the purposes of that section as if they were functions conferred by or under such an enactment as is there mentioned—

- (a) any functions of a recognised self-regulating organisation in connection with the admission or expulsion of members, the suspension of a person's membership or the supervision or regulation of persons carrying on investment business by virtue of membership of the organisation;
- (b) any functions of a recognised professional body in connection with the issue of certificates for the purposes of Part I of this Act, the withdrawal or suspension of such certificates or the supervision or regulation of persons carrying on investment business by virtue of certification by that body;
- (c) any functions of a recognised self-regulating organisation for friendly societies in connection with the supervision or regulation of its member societies.

## **191 Occupational pension schemes**

- (1) Subject to the provisions of this section, a person who apart from this section would not be regarded as carrying on investment business shall be treated as doing so if he engages in the activity of management falling within paragraph 14 of Schedule 1 to this Act in a case where the assets referred to in that paragraph are held for the purposes of an occupational pension scheme.
- (2) Subsection (1) above does not apply where all decisions, or all day to day decisions, in the carrying on of that activity so far as relating to assets which are investments are taken on behalf of the person concerned by—
- (a) an authorised person ;
  - (b) an exempted person who in doing so is acting in the course of the business in respect of which he is exempt ; or
  - (c) a person who does not require authorisation to manage the assets by virtue of Part IV of Schedule 1 to this Act.
- (3) The Secretary of State may by order direct that a person of such description as is specified in the order shall not by virtue of this section be treated as carrying on investment business where the assets are held for the purposes of an occupational pension scheme of such description as is so specified, being a scheme in the case of which it appears to the Secretary of State that management by an authorised or

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exempted person is unnecessary having regard to the size of the scheme and the control exercisable over its affairs by the members.

- (4) An order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) For the purposes of subsection (1) above paragraph 14 of Schedule 1 to this Act shall be construed without reference to paragraph 22 of that Schedule.

## **192 International obligations**

- (1) If it appears to the Secretary of State—
  - (a) that any action proposed to be taken by a recognised self-regulating organisation, designated agency, transferee body or competent authority would be incompatible with Community obligations or any other international obligations of the United Kingdom ; or
  - (b) that any action which that organisation, agency, body or authority has power to take is required for the purpose of implementing any such obligations,
 he may direct the organisation, agency, body or authority not to take or, as the case may be, to take the action in question.
- (2) Subsection (1) above applies also to an approved exchange within the meaning of Part V of this Act in respect of any action which it proposes to take or has power to take in respect of rules applying to a prospectus by virtue of a direction under section 162(3) above.
- (3) A direction under this section may include such supplementary or incidental requirements as the Secretary of State thinks necessary or expedient.
- (4) Where the function of making or revoking a recognition order in respect of a self-regulating organisation is exercisable by a designated agency any direction under subsection (1) above in respect of that organisation shall be a direction requiring the agency to give the organisation such a direction as is specified in the direction given by the Secretary of State.
- (5) Any direction under this section shall, on the application of the person by whom it was given, be enforceable by mandamus or, in Scotland, by an order for specific performance under section 91 of the Court of Session Act 1868.

## **193 Exemption from Banking Act 1979**

- (1) Section 1(1) of the Banking Act 1979 (control of deposit-taking) shall not apply to the acceptance of a deposit by an authorised or exempted person in the course or for the purpose of engaging in any activity falling within paragraph 12 of Schedule 1 to this Act with or on behalf of the person by whom or on whose behalf the deposit is made or any activity falling within paragraph 13, 14 or 16 of that Schedule on behalf of that person.
- (2) Subsection (1) above applies to an exempted person only if the activity is one in respect of which he is exempt; and for the purposes of that subsection the paragraphs of Schedule 1 there mentioned shall be construed without reference to Parts III and IV of that Schedule.
- (3) This section is without prejudice to any exemption from the said Act of 1979 which applies to an authorised or exempted person apart from this section.

## 194 Transfers to or from recognised clearing houses

- (1) In section 5 of the Stock Exchange (Completion of Bargains) Act 1976 (protection of trustees etc. in case of transfer of shares etc. to or from a stock exchange nominee)—
  - (a) for the words " a stock exchange nominee ", in the first place where they occur, there shall be substituted the words " a recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange " ;
  - (b) for those words in the second place where they occur there shall be substituted the words " such a clearing house or nominee " ;
  - (c) at the end there shall be added the words " ; but no person shall be a nominee for the purposes of this section unless he is a person designated for the purposes of this section in the rules of the recognised investment exchange in question " .
- (2) The provisions of that section as amended by subsection (1) above shall become subsection (1) of that section and after that subsection there shall be inserted—

“(2) In this section " a recognised clearing house " means a recognised clearing house within the meaning of the Financial Services Act 1986 acting in relation to a recognised investment exchange within the meaning of that Act and " a recognised investment exchange has the same meaning as in that Act.”
- (3) In Article 7 of the Stock Exchange (Completion of Bargains) (Northern Ireland) Order 1977 (protection of trustees etc. in case of transfer of shares etc. to or from a stock exchange nominee)—
  - (a) for the words " a stock exchange nominee ", in the first place where they occur, there shall be substituted the words " a recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange " ;
  - (b) for those words in the second place where they occur there shall be substituted the words " such a clearing house or nominee " ;
  - (c) at the end there shall be added the words " ; but no person shall be a nominee for the purposes of this Article unless he is a person designated for the purposes of this Article in the rules of the recognised investment exchange in question " .
- (4) The provisions of that Article as amended by subsection (3) above shall become paragraph (1) of that Article and after that paragraph there shall be inserted—

“(2) In this Article " a recognised clearing house " means a recognised clearing house within the meaning of the Financial Services Act 1986 acting in relation to a recognised investment exchange within the meaning of that Act and " a recognised investment exchange " has the same meaning as in that Act.”
- (5) In subsection (4) of section 185 of the Companies Act 1985 (exemption from duty to issue certificates in respect of shares etc. in cases of allotment or transfer to a stock exchange nominee)—
  - (a) for the words " a stock exchange nominee " in the first place where they occur there shall be substituted the words " a recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange " ;
  - (b) for those words in the second place where they occur there shall be substituted the words " such a clearing house or nominee " ;
  - (c) at the end of the first paragraph in that subsection there shall be inserted the words " ; but no person shall be a nominee for the purposes of this section

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unless he is a person designated for the purposes of this section in the rules of the recognised investment exchange in question " ; and

- (d) for the second paragraph in that subsection there shall be substituted—  
 “Recognised clearing house ' means a recognised clearing house within the meaning of the Financial Services Act 1986 acting in relation to a recognised investment exchange and ' recognised investment exchange ' has the same meaning as in that Act.”.

(6) In paragraph (4) of Article 195 of the Companies (Northern Ireland) Order 1986 (duty to issue certificates in respect of shares etc. in cases of allotment or transfer unless it is to a stock exchange nominee)—

- (a) for the words " a stock exchange nominee " in the first place where they occur there shall be substituted the words " a recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange " ;
- (b) for those words in the second place where they occur there shall be substituted the words " such a clearing house or nominee " ;
- (c) at the end of the first sub-paragraph in that paragraph there shall be inserted the words " ; but no person shall be a nominee for the purposes of this Article unless he is a person designated for the purposes of this Article in the rules of the recognised investment exchange in question " ; and
- (d) for the second sub-paragraph in that paragraph there shall be substituted " ' recognised clearing house ' means a recognised clearing house within the meaning of the Financial Services Act 1986 acting in relation to a recognised investment exchange and ' recognised investment exchange' has the same meaning as in that Act. " .

## **195 Offers of short-dated debentures**

As respects debentures which, under the terms of issue, must be repaid within less than one year of the date of issue—

- (a) section 79(2) of the Companies Act 1985 (offer of debentures of oversea company deemed not to be an offer to the public if made to professional investor) shall apply for the purposes of Chapter I of Part III of that Act as well as for those of Chapter II of that Part; and
- (b) Article 89(2) of the Companies (Northern Ireland) Order 1986 (corresponding provisions for Northern Ireland) shall apply for the purposes of Chapter I of Part IV of that Order as well as for those of Chapter II of that Part.

## **196 Financial assistance for employees' share schemes**

(1) Section 153 of the Companies Act 1985 (transactions not prohibited by section 151) shall be amended as follows.

(2) After subsection (4)(b) there shall be inserted—

- “(bb) without prejudice to paragraph (b), the provision of financial assistance by a company or any of its subsidiaries for the purposes of or in connection with anything done by the company (or a company connected with it) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company between, and involving the acquisition of beneficial ownership of those shares by, any of the following persons—

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- (i) the bona fide employees or former employees of that company or of another company in the same group; or
- (ii) the wives, husbands, widows, widowers, children or step-children under the age of eighteen of any such employees or former employees.”.

(3) After subsection (4) there shall be inserted—

“(5) For the purposes of subsection (4)(bb) a company is connected with another company if—

- (a) they are in the same group ; or
- (b) one is entitled, either alone or with any other company in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other company or of its holding company;

and in this section " group ", in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company.”.

(4) Article 163 of the Companies (Northern Ireland) Order 1986 (transactions not prohibited by Article 161) shall be amended as follows.

(5) After paragraph (4)(b) there shall be inserted—

“(bb) without prejudice to sub-paragraph (b), the provision of financial assistance by a company or any of its subsidiaries for the purposes of or in connection with anything done by the company (or a company connected with it) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company between, and involving the acquisition of beneficial ownership of those shares by, any of the following persons—

- (i) the bona fide employees or former employees of that company or of another company in the same group; or
- (ii) the wives, husbands, widows, widowers, children, step-children or adopted children under the age of eighteen of such employees of former employees.”

(6) After paragraph (4) there shall be inserted—

“(5) For the purposes of paragraph (4)(bb) a company is connected with another company if—

- (a) they are in the same group; or
- (b) one is entitled, either alone or with any other company in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other company or of its holding company;

and in this Article " group ", in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company.”.

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### **197 Disclosure of interests in shares: interest held by market maker**

(1) In section 209 of the Companies Act 1985 (interests to be disregarded for purposes of sections 198 to 202)—

- (a) in subsection (1)(f) after the word "jobber" there shall be inserted the words " or market maker " ;
- (b) after subsection (4) there shall be inserted—

“(4A) A person is a market maker for the purposes of subsection (1)(f) if—

- (a) he holds himself out at all normal times in compliance with the rules of a recognised investment exchange other than an overseas investment exchange (within the meaning of the Financial Services Act 1986) as willing to buy and sell securities at prices specified by him ; and
- (b) is recognised as doing so by that investment exchange;

and an interest of such a person in shares is an exempt interest if he carries on business as a market maker in the United Kingdom, is subject to such rules in the carrying on of that business and holds the interest for the purposes of that business.”.

(2) In Article 217 of the Companies (Northern Ireland) Order 1986 (interests to be disregarded for purposes of Articles 206 to 210 (disclosure of interests in shares))—

- (a) in paragraph (1)(d) after the word " jobber" there shall be inserted the words " or market maker " ;
- (b) after paragraph (4) there shall be inserted—

“(4A) A person is a market maker for the purposes of paragraph (1)(d) if—

- (a) he holds himself out at all normal times in compliance with the rules of a recognised investment exchange other than an overseas investment exchange (within the meaning of the Financial Services Act 1986) as willing to buy and sell securities at prices specified by him ; and
- (b) is recognised as doing so by that investment exchange,

and an interest of such a person in shares is an exempt interest if he carries on business as a market maker in the United Kingdom, is subject to such rules in the carrying on of that business and holds the interest for the purposes of that business.”.

### **198 Power to petition for winding up ect. on information obtained under Act**

(1) In section 440 of the Companies Act 1985—

- (a) after the words " section 437 " there shall be inserted the words " above or section 94 of the Financial Services Act 1986 " ; and
- (b) after the words " 448 below " there shall be inserted the words " or section 105 of that Act ".

(2) In section 8 of the Company Directors Disqualification Act 1986—

- (a) after the words " the Companies Act" there shall be inserted the words " or section 94 or 177 of the Financial Services Act 1986 " ; and
- (b) for the words " that Act " there shall be substituted the words " the Companies Act or section 105 of the Financial Services Act 1986 ".



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- (3) In Article 433 of the Companies (Northern Ireland) Order 1986—
- (a) after the words " Article 430 " there shall be inserted the words " or section 94 of the Financial Services Act 1986 " ; and
  - (b) after the word " 441 " there shall be inserted the words " or section 105 of that Act " .

## **199 Powers of entry**

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath laid by or on behalf of the Secretary of State that there are reasonable grounds for believing—
- (a) that an offence has been committed under section 4, 47, 57, 130, 133 or 171(2) or (3) above or section 1, 2, 4 or 5 of the Company Securities (Insider Dealing) Act 1985 and that there are on any premises documents relevant to the question whether that offence has been committed ; or
  - (b) that there are on any premises owned or occupied by a person whose affairs, or any aspect of whose affairs, are being investigated under section 105 above documents whose production has been required under that section and which have not been produced in compliance with that requirement;
- but paragraph (b) above applies only if the person there mentioned is an authorised person, a person whose authorisation has been suspended or who is the subject of a direction under section 33(1)(6) above or an appointed representative of an authorised person.
- (2) A justice of the peace may issue a warrant under this section if satisfied on information on oath laid by an inspector appointed under section 94 above that there are reasonable grounds for believing that there are on any premises owned or occupied by—
- (a) the manager, trustee or operator of any scheme the affairs of which are being investigated under subsection (1) of that section ; or
  - (b) a manager, trustee or operator whose affairs are being investigated under that subsection,
- any documents whose production has been required under that section and which have not been produced in compliance with that requirement.
- (3) A warrant under this section shall authorise a constable, together with any other person named in it and any other constables—
- (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1)(a) or (b) or, as the case may be, in subsection (2) above or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
  - (c) to take copies of any such documents ; and
  - (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.
- (4) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.
- (5) Any documents of which possession is taken under this section may be retained—

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- (a) for a period of three months; or
  - (b) if within that period proceedings to which the documents are relevant are commenced against any person for an offence under this Act or section 1, 2, 4 or 5 of the said Act of 1985, until the conclusion of those proceedings.
- (6) Any person who obstructs the exercise of any rights conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (3)(d) above shall be guilty of an offence and liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) The functions to which section 114 above applies shall include the functions of the Secretary of State under this section ; but if any of those functions are transferred under that section the transfer may be subject to a reservation that they are to be exercisable by the Secretary of State concurrently with the designated agency and, in the case of functions exercisable by virtue of subsection (1)(a) above, so as to be exercisable by the agency subject to such conditions or restrictions as the Secretary of State may from time to time impose.
- (8) In the application of this section to Scotland the references to a justice of the peace shall include references to a sheriff and for references to the laying of information on oath there shall be substituted references to furnishing evidence on oath; and in the application of this section to Northern Ireland for references to the laying of information on oath there shall be substituted references to making a complaint on oath.
- (9) In this section " documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form.

## **200 False and misleading statements**

- (1) A person commits an offence if—
- (a) for the purposes of or in connection with any application under this Act; or
  - (b) in purported compliance with any requirement imposed on him by or under this Act,
- he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.
- (2) A person commits an offence if, not being an authorised person or exempted person, he—
- (a) describes himself as such a person ; or
  - (b) so holds himself out as to indicate or be reasonably understood to indicate that he is such a person
- (3) A person commits an offence if, not having a status to which this subsection applies, he—
- (a) describes himself as having that status, or
  - (b) so holds himself out as to indicate; or be reasonably understood to indicate that he has that status.

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- (4) Subsection (3) above applies to the status of recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house.
- (5) A person guilty of an offence under subsection (1) above shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both ;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (6) A person guilty of an offence under subsection (2) or (3) above shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the fifth level on the standard scale or to both.
- (7) Where a contravention of subsection (2) or (3) above involves a public display of the offending description or other matter the maximum fine that may be imposed under subsection (6) above shall be an amount equal to the fifth level on the standard scale multiplied by the number of days for which the display has continued.
- (8) In proceedings brought against any person for an offence under subsection (2) or (3) above it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

## **201 Prosecutions**

- (1) Proceedings in respect of an offence under any provision of this Act other than section 133 or 185 shall not be instituted—
  - (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions; or
  - (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.
- (2) Proceedings in respect of an offence under section 133 above shall not be instituted—
  - (a) in England and Wales, except by or with the consent of the Secretary of State, the Industrial Assurance Commissioner or the Director of Public Prosecutions; or
  - (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.
- (3) Proceedings in respect of an offence under section 185 above shall not be instituted—
  - (a) in England and Wales, except by or with the consent of the Treasury or the Director of Public Prosecutions; or
  - (b) in Northern Ireland, except by or with the consent of the Treasury or the Director of Public Prosecutions for Northern Ireland.
- (4) The functions to which section 114 above applies shall include the function of the Secretary of State under subsection (1) above to institute proceedings but any transfer of that function shall be subject to a reservation that it is to be exercisable by him concurrently with the designated agency and so as to be exercisable by the agency subject to such conditions or restrictions as the Secretary of State may from time to time impose.

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## **202 Offences by bodies corporate, partnerships and unincorporated associations**

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity ; or
  - (b) a controller of the body corporate,he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by the members subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) Where a partnership is guilty of an offence under this Act every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, shall also be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (4) Where an unincorporated association (other than a partnership) is guilty of an offence under this Act—
  - (a) every officer of the association who is bound to fulfil any duty of which the breach is the offence; or
  - (b) if there is no such officer, every member of the governing body other than a member who is proved to have been ignorant of or to have attempted to prevent the commission of the offence,shall also be guilty of the offence and be liable to be proceeded against and punished accordingly.

## **203 Jurisdiction and procedure in respect of offences**

- (1) Summary proceedings for an offence under this Act may, without prejudice to any jurisdiction exercisable apart from this section, be taken against any body corporate or unincorporated association at any place at which it has a place of business and against an individual at any place where he is for the time being.
- (2) Proceedings for an offence alleged to have been committed under this Act by an unincorporated association shall be brought in the name of the association (and not in that of any of its members) and for the purposes of any such proceedings any rules of court relating to the service of documents shall have effect as if the association were a corporation.
- (3) Section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980 (procedure on charge of offence against a corporation) shall have effect in a case in which an unincorporated association is charged in England and Wales with an offence under this Act in like manner as they have effect in the case of a corporation.
- (4) In relation to any proceedings on indictment in Scotland for an offence alleged to have been committed under this Act by an unincorporated association, section 74 of the Criminal Procedure (Scotland) Act 1975 (proceedings on indictment against bodies corporate) shall have effect as if the association were a body corporate.

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- (5) Section 18 of the Criminal Justice Act (Northern Ireland) 1945 and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (procedure on charge of offence against a corporation) shall have effect in a case in which an unincorporated association is charged in Northern Ireland with an offence under this Act in like manner as they have effect in the case of a corporation.
- (6) A fine imposed on an unincorporated association on its conviction of an offence under this Act shall be paid out of the funds of the association.

## **204 Service of notices**

- (1) This section has effect in relation to any notice, direction or other document required or authorised by or under this Act to be given to or served on any person other than the Secretary of State, the Chief Registrar of friendly societies or the Registrar of Friendly Societies for Northern Ireland.
- (2) Any such document may be given to or served on the person in question—
  - (a) by delivering it to him ;
  - (b) by leaving it at his proper address ; or
  - (c) by sending it by post to him at that address.
- (3) Any such document may—
  - (a) in the case of a body corporate, be given to or served on the secretary or clerk of that body ;
  - (b) in the case of a partnership, be given to or served on any partner;
  - (c) in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of the association ;
  - (d) in the case of an appointed representative, be given to or served on his principal.
- (4) For the purposes of this section and section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person is his last known address (whether of his residence or of a place where he carries on business or is employed) and also any address applicable in his case under the following provisions—
  - (a) in the case of a member of a recognised self-regulating organisation or a person certified by a recognised professional body who does not have a place of business in the United Kingdom, the address of that organisation or body;
  - (b) in the case of a body corporate, its secretary or its clerk, the address of its registered or principal office in the United Kingdom ;
  - (c) in the case of an unincorporated association (other than a partnership) or a member of its governing body, its principal office in the United Kingdom.
- (5) Where a person has notified the Secretary of State of an address or a new address at which documents may be given to or served on him under this Act that address shall also be his proper address for the purposes mentioned in subsection (4) above or, as the case may be, his proper address for those purposes in substitution for that previously notified.

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## **205 Regulations, rules and orders**

- (1) The Secretary of State may make regulations prescribing anything which by this Act is authorised or required to be prescribed.
- (2) Subject to subsection (5) below, any power of the Secretary of State to make regulations, rules or orders under this Act shall be exercisable by statutory instrument.
- (3) Subject to subsection (5) below, any regulations, rules or orders made under this Act by the Secretary of State may make different provision for different cases.
- (4) Except as otherwise provided, a statutory instrument containing regulations or rules under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Subsections (2) and (3) above do not apply to a recognition order, an order declaring a collective investment scheme to be an authorised unit trust scheme or a recognised scheme or to an order revoking any such order.

## **206 Publication of information and advice**

- (1) The Secretary of State may publish information or give advice, or arrange for the publication of information or the giving of advice, in such form and manner as he considers appropriate with respect to—
  - (a) the operation of this Act and the rules and regulations made under it, including in particular the rights of investors, the duties of authorised persons and the steps to be taken for enforcing those rights or complying with those duties;
  - (b) any matters relating to the functions of the Secretary of State under this Act or any such rules or regulations ;
  - (c) any other matters about which it appears to him to be desirable to publish information or give advice for the protection of investors or any class of investors.
- (2) The Secretary of State may offer for sale copies of information published under this section and may, if he thinks fit, make a reasonable charge for advice given under this section at any person's request.
- (3) This section shall not be construed as authorising the disclosure of restricted information within the meaning of section 179 above in any case in which it could not be disclosed apart from the provisions of this section.
- (4) The functions to which section 114 above applies shall include the functions of the Secretary of State under this section.

## **207 Interpretation**

- (1) In this Act, except where the context otherwise requires—
  - " appointed representative " has the meaning given in section 44 above;
  - " authorised person " means a person authorised under Chapter III of Part I of this Act;
  - " authorised unit trust scheme " means a unit trust scheme declared by an order of the Secretary of State for the time being in force to be an authorised unit trust scheme for the purposes of this Act;

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" body corporate " includes a body corporate constituted under the law of a country or territory outside the United Kingdom;

" certified " and " certification " mean certified or certification by a recognised professional body for the purposes of Part I of this Act;

" clearing arrangements " has the meaning given in section 38(2) above;

" competent authority " means the competent authority for the purposes of Part IV of this Act; "collective investment scheme" has the meaning given in section 75 above;

" delegation order " and " designated agency " have the meaning given in section 114(3) above ;

" director", in relation to a body corporate, includes a person occupying in relation to it the position of a director (by whatever name called) and any person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act;

" exempted person " means a person exempted under Chapter IV of Part I of this Act;

" group ", in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company;

" guidance ", in relation to a self-regulating organisation, professional body, investment exchange, clearing house or designated agency, has the meaning given in section 8(4), 16(4), 36(3), 38(3) or 114(12) above ;

" investment advertisement" has the meaning given in section 57(2) above;

" investment agreement" has the meaning given in section 44(9) above;

" listing particulars" has the meaning given in section 144(2) above;

" member ", in relation to a self-regulating organisation or professional body, has the meaning given in section 8(2) or 16(2) above ;

" occupational pension scheme" means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category;

" operator ", in relation to a collective investment scheme, shall be construed in accordance with section 75(8) above;

" open-ended investment company " has the meaning given in section 75(8) above ;

" overseas investment exchange " and " overseas clearing house" mean a recognised investment exchange or recognised clearing house in the case of which the recognition order was made by virtue of section 40 above;

" participant" has the meaning given in section 75(2) above;

" partnership" includes a partnership constituted under the law of a country or territory outside the United Kingdom;

" prescribed " means prescribed by regulations made by the Secretary of State;

" principal", in relation to an appointed representative, has the meaning given in section 44 above ;

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" private company " has the meaning given in section 1(3) of the Companies Act 1985 or the corresponding Northern Ireland provision;

" recognised clearing house " means a body declared by an order of the Secretary of State for the time being in force to be a recognised clearing house for the purposes of this Act;

" recognised investment exchange " means a body declared by an order of the Secretary of State for the time being in force to be a recognised investment exchange for the purposes of this Act;

" recognised professional body " means a body declared by an order of the Secretary of State for the time being in force to be a recognised professional body for the purposes of this Act;

" recognised scheme " means a scheme recognised under section 86, 87 or 88 above ;

" recognised self-regulating organisation" means a body declared by an order of the Secretary of State for the time being in force to be a recognised self-regulating organisation for the purposes of this Act;

" recognised self-regulating organisation for friendly societies " has the meaning given in paragraph 1 of Schedule 11 to this Act;

" recognition order " means an order declaring a body to be a recognised self-regulating organisation, self-regulating organisation for friendly societies, professional body, investment exchange or clearing house ;

" registered friendly society " means—

- (a) a society which is a friendly society within the meaning of section 7(1)(o) of the Friendly Societies Act 1974 and is registered within the meaning of that Act; or
- (b) a society which is a friendly society within the meaning of section 1(1) of the Friendly Societies Act (Northern Ireland) 1970 and is registered or deemed to be registered under that Act;

" rules ", in relation to a self-regulating organisation, professional body, investment exchange or clearing house, has the meaning given in section 8(3), 16(3), 36(2) or 38(2) above;

" transfer order " and " transferee body " have the meaning given in paragraph 28(4) of Schedule 11 to this Act;

" the Tribunal " means the Financial Services Tribunal;

" trustee ", in relation to a collective investment scheme, has the meaning given in section 75(8) above ;

" unit trust scheme " and " units " have the meaning given in section 75(8) above.

- (2) In this Act " advertisement" includes every form of advertising, whether in a publication, by the display of notices, signs, labels or showcards, by means of circulars, catalogues, price lists or other documents, by an exhibition of pictures or photographic or cinematographic films, by way of sound broadcasting or television, by the distribution of recordings, or in any other manner; and references to the issue of an advertisement shall be construed accordingly.
- (3) For the purposes of this Act an advertisement or other information issued outside the United Kingdom shall be treated as issued in the United Kingdom if it is directed to persons in the United Kingdom or is made available to them otherwise than in a newspaper, journal, magazine or other periodical publication published



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and circulating principally outside the United Kingdom or in a sound or television broadcast transmitted principally for reception outside the United Kingdom.

- (4) The Independent Broadcasting Authority shall not be regarded as contravening any provision of this Act by reason of broadcasting an advertisement in accordance with the provisions of the Broadcasting Act 1981.
- (5) In this Act " controller " means—
- (a) in relation to a body corporate, a person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 15 per cent, or more of the voting power at any general meeting of the body corporate or another body corporate of which it is a subsidiary ; and
  - (b) in relation to an unincorporated association—
    - (i) any person in accordance with whose directions or instructions, either alone or with those of any associate or associates, the officers or members of the governing body of the association are accustomed to act (but disregarding advice given in a professional capacity); and
    - (ii) any person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 15 per cent, or more of the voting power at any general meeting of the association ;
- and for the purposes of this subsection " associate ", in relation to any person, means that person's wife, husband or minor child or step-child, any body corporate of which that person is a director, any person who is an employee or partner of that person and, if that person is a body corporate, any subsidiary of that body corporate and any employee of any such subsidiary.
- (6) In this Act, except in relation to a unit trust scheme or a registered friendly society, " manager " means an employee who—
- (a) under the immediate authority of his employer is responsible, either alone or jointly with one or more other persons, for the conduct of his employer's business ; or
  - (b) under the immediate authority of his employer or of a person who is a manager by virtue of paragraph (a) above exercises managerial functions or is responsible for maintaining accounts or other records of his employer ;
- and, where the employer is not an individual, references in this subsection to the authority of the employer are references to the authority, in the case of a body corporate, of the directors, in the case of a partnership, of the partners and, in the case of an unincorporated association, of its officers or the members of its governing body.
- (7) In this Act " insurance business ", insurance company " and " contract of insurance " have the same meanings as in the Insurance Companies Act 1982.
- (8) Section 736 of the Companies Act 1985 (meaning of subsidiary and holding company) shall apply for the purposes of this Act.
- (9) In the application of this Act to Scotland, references to a matter being actionable at the suit of a person shall be construed as references to the matter being actionable at the instance of that person.
- (10) For the purposes of any provision of this Act authorising or requiring a person to do anything within a specified number of days no account shall be taken of any day which is a public holiday in any part of the United Kingdom.

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- (11) Nothing in Part I of this Act shall be construed as applying to investment business carried on by any person when acting as agent or otherwise on behalf of the Crown.

## **208 Gibraltar**

- (1) Subject to the provisions of this section, section 31, 58(1)(c), 86 and 130(2)(c) and (d) above shall apply as if Gibraltar were a member State.
- (2) References in those provisions to a national of a member State shall, in relation to Gibraltar, be construed as references to a British Dependent Territories citizen or a body incorporated in Gibraltar.
- (3) In the case of a collective investment scheme constituted in Gibraltar the reference in subsection (3)(a) of section 86 above to a relevant Community instrument shall be taken as a reference to any Community instrument the object of which is the co-ordination or approximation of the laws, regulations or administrative provisions of member States relating to collective investment schemes of a kind which satisfy the requirements pie-scribed for the purposes of that section.
- (4) The Secretary of State may by regulations make such provision as appears to him to be necessary or expedient to secure—
  - (a) that he may give notice under subsection (2) of section 86 above on grounds relating to the law of Gibraltar ; and
  - (b) that this Act applies as if a scheme which is constituted in a member State other than the United Kingdom and recognised in Gibraltar under provisions which appear to the Secretary of State to give effect to the provisions of a relevant Community instrument were a scheme recognised under that section.

## **209 Northern Ireland**

- (1) This Act extends to Northern Ireland.
- (2) Subject to any Order made after the passing of this Act by virtue of subsection (1)(a) of section 3 of the Northern Ireland Constitution Act 1973 the regulation of investment business, the official listing of securities and offers of unlisted securities shall not be transferred matters for the purposes of that Act but shall for the purposes of subsection (2) of that section be treated as specified in Schedule 3 to that Act.

## **210 Expenses and receipts**

- (1) Any expenses incurred by the Secretary of State under this Act shall be defrayed out of moneys provided by Parliament.
- (2) Any fees or other sums received by the Secretary of State under this Act shall be paid into the Consolidated Fund.
- (3) Subsections (1) and (2) above apply also to expenses incurred and fees received under this Act by the Chief Registrar of friendly societies; and any fees received under this Act by the Registrar of Friendly Societies for Northern Ireland shall be paid into the Consolidated Fund of Northern Ireland.

## **211 Commencement and transitional provisions**

- (1) This Act shall come into force on such day as the Secretary of State may by order appoint and different days may be appointed for different provisions or different purposes.
- (2) Subsection (1) above does not apply to section 195 which shall come into force when this Act is passed.
- (3) Schedule IS to this Act shall have effect with respect to the transitional matters there mentioned.

## **212 Short title, consequential amendments and repeals**

- (1) This Act may be cited as the Financial Services Act 1986.
- (2) The enactments and instruments mentioned in Schedule 16 to this Act shall have effect with the amendments there specified, being amendments consequential on the provisions of this Act.
- (3) The enactments mentioned in Part I of Schedule 17 to this Act and the instruments mentioned in Part II of that Schedule are hereby repealed or revoked to the extent specified in the third column of those Parts.