



Financial Services Act 1986

1986 CHAPTER 60

PART I

REGULATION OF INVESTMENT BUSINESS

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 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

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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;
 - (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 ;

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- (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.
- (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.

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- (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—
- (a) for requiring the service of notices with respect to the rights exercisable under the rules ;

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- (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 this section should apply to him; and any such request shall not be capable of being

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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 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 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.