

FINANCIAL SERVICES AND MARKETS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part V: Performance of Regulated Activities

Section 59: Approval for particular arrangements

138. This section requires authorised persons to take reasonable care not to allow persons, natural or corporate, to perform certain functions without the approval of the Authority. *Subsection (2)* similarly requires an authorised person to take reasonable steps to ensure that any contractor does not allow a person to perform such functions without the approval of the Authority. A person in respect of whom approval is given is an “approved person”. The nature of the functions requiring approval will be specified by the Authority’s rules, within the limits set out in *subsections (5) to (7)* and subject to the normal consultation requirements under Part X. The limits can be summarised:
- The function may enable a person significantly to influence the conduct of the authorised person (for example a director). By virtue of *subsection (9)* account may be taken of influence which might result from a failure properly to carry out that function (for example a proprietary trader).
 - The function involves dealing with customers (for example a financial adviser) or dealing with their property (such as a stockbroker) in a way that is substantially connected with the carrying on of a regulated activity by the firm.
139. *Subsection (8)* limits the application of this section in the case of EEA or Treaty firms. The Authority will only have powers to act in relation to functions over which it, rather than the home State regulator, has jurisdiction.