

# **FINANCIAL SERVICES AND MARKETS ACT 2000**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part IX: Hearings and Appeals**

238. This Part establishes the Financial Services and Markets Tribunal. Various sections in the Act provide a right to refer a matter to the Tribunal once the Authority has notified the person concerned of its decision. This Part sets out the procedural framework for referrals to the Tribunal and for appeals from the Tribunal to the Court of Appeal, or in Scotland to the Court of Session, on a point of law. The Part gives the Lord Chancellor a general power to make rules for the Tribunal's operation. Schedule 13 sets out further details of the Tribunal's constitution and operation.
239. This Part also confers on the Lord Chancellor a power to establish a scheme to provide subsidised legal assistance in proceedings before the Tribunal for individuals on whom the Authority seeks to impose a penalty for market abuse under Part VIII of the Act.

#### ***Section 132: The Financial Services and Markets Tribunal***

240. This section establishes the Tribunal and gives the Lord Chancellor the power to set its procedural rules. The Council on Tribunals is given oversight of the new Tribunal under the Tribunal & Inquiries Act 1992. Schedule 13 sets out requirements for the appointment of the President of the Tribunal, and the "panel of chairmen" panel and lay panel from which members of the Tribunal will be drawn. It includes provision for their qualifications and terms of office. It also permits the appointment of a Deputy President and administrative staff. It further provides power for the Tribunal to summon witnesses and to award costs. *Subsection (3)* contains the power for the Lord Chancellor to make rules for the Tribunal. Paragraph 9 of Schedule 13 sets out examples of the aspects of the Tribunal's procedures which might be covered by the Lord Chancellor's rules (such as when hearings might be held in private). *Subsection (4)* provides that this does not limit the Lord Chancellor's power.

#### ***Section 133: Proceedings: general provision***

241. This section sets the time limit for making a reference to the Tribunal. The time limit is 28 days from the date of the decision notice or supervisory notice, unless a different period is prescribed in the procedural rules made for the Tribunal by the Lord Chancellor under section 132. The Tribunal will also have discretion to allow references to be made after the time limit has expired, subject again to any provision in the Tribunal's procedural rules.
242. The section also makes clear that the Tribunal may hear any evidence it considers relevant in determining the case before it, including evidence that was not available to the Authority when it made its decision. The Tribunal must determine what action the Authority should take and may give directions to the Authority in order to give effect to

its determination. The Tribunal may also make recommendations as to the Authority's rules and procedures.

243. A supervisory notice takes effect on the date it specifies. However, *subsection (9)* provides that the Authority may not take the action referred to in a decision notice until the time for making a reference to the Tribunal has expired or, if the case is referred, until the case has been finally disposed of, including any subsequent appeals to the Court of Appeal, Court of Session or House of Lords (see section 137 below). An order of the Tribunal may be enforced as if it were an order of a county court in England, Wales or Northern Ireland, or the Court of Session in Scotland.

#### ***Section 134: Legal assistance scheme***

244. This section gives the Lord Chancellor the power to make regulations establishing a legal assistance scheme. It sets out the coverage that such a scheme should have, namely that a person should only be eligible for legal assistance if he is an individual who has referred a decision of the Authority to impose on him a penalty for market abuse and provided that he meets the eligibility criteria which are to be established under section 135(1)(d).

#### ***Section 135: Provisions of the legal assistance scheme***

245. This section gives examples of the type of provision the Lord Chancellor may include in the regulations, for example:
- the form legal assistance may take;
  - the persons who may be engaged to provide the assistance;
  - eligibility criteria; and
  - procedural details as to how an application is made, to whom, and as to what happens when assistance is granted.

#### ***Section 136: Funding of the legal assistance scheme***

246. This section sets out the way in which the legal assistance scheme is to be funded. It will be a free-standing scheme rather than an extension of legal aid and will be paid for by levies raised from authorised persons. The Lord Chancellor will determine the potential or actual cost of the legal assistance scheme. The Authority will have responsibility for determining the distribution of levies across the regulated community, collecting them and paying them over to the Lord Chancellor's Department.
247. The money raised will be paid into the Consolidated Fund. Spending on the legal assistance scheme will be voted expenditure. The costs of administering the scheme will come out of the running costs of the Tribunal.
248. If the amount paid to the Lord Chancellor in any one year exceeds the cost of the legal assistance scheme (for example because the costs in that period prove to be lower than anticipated), he must decide either to repay the excess to the Authority or else take into account this amount in the next determination of costs, by reducing the amount which the Authority has to levy during the following year. If the excess amount is repaid to the Authority, the Authority has discretion whether to distribute the money amongst those persons upon whom the levy was imposed (or some of them) to offset it against future invoices, or else partly to distribute the amount and partly offset it. This enables the Authority to avoid costly redistribution of small amounts. If the Authority considers that it is not practicable to deal with an excess in any of these ways, it may obtain the permission of the Lord Chancellor to use it in some other appropriate manner.

***Section 137: Appeal on a point of law***

249. This section establishes the right to appeal to the Court of Appeal or Court of Session on a point of law against a decision of the Tribunal. An appeal may be brought only with the permission of the Tribunal or the appeal court. If the appeal court considers that the decision is wrong in law it may remit the matter back to the Tribunal for a rehearing and decision or make a decision itself. An appeal may be made from the Court of Appeal or Court of Session to the House of Lords with the leave of the Court or the House of Lords. The Lord Chancellor may make procedural rules in relation to the exercise of these appeal rights.