



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART IX

#### HEARINGS AND APPEALS

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

- (1) For the purposes of this Act, there is to be a tribunal known as the Financial Services and Markets Tribunal (but referred to in this Act as “the Tribunal”).
- (2) The Tribunal is to have the functions conferred on it by or under this Act.
- (3) The Lord Chancellor may by rules make such provision as appears to him to be necessary or expedient in respect of the conduct of proceedings before the Tribunal.
- (4) Schedule 13 is to have effect as respects the Tribunal and its proceedings (but does not limit the Lord Chancellor’s powers under this section).

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

- (1) A reference to the Tribunal under this Act must be made before the end of—
  - (a) the period of 28 days beginning with the date on which the decision notice or supervisory notice in question is given; or
  - (b) such other period as may be specified in rules made under section 132.
- (2) Subject to rules made under section 132, the Tribunal may allow a reference to be made after the end of that period.
- (3) On a reference the Tribunal may consider any evidence relating to the subject-matter of the reference, whether or not it was available to the Authority at the material time.
- (4) On a reference the Tribunal must determine what (if any) is the appropriate action for the Authority to take in relation to the matter referred to it.

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*Status: This is the original version (as it was originally enacted).*

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- (5) On determining a reference, the Tribunal must remit the matter to the Authority with such directions (if any) as the Tribunal considers appropriate for giving effect to its determination.
- (6) In determining a reference made as a result of a decision notice, the Tribunal may not direct the Authority to take action which the Authority would not, as a result of section 388(2), have had power to take when giving the decision notice.
- (7) In determining a reference made as a result of a supervisory notice, the Tribunal may not direct the Authority to take action which would have otherwise required the giving of a decision notice.
- (8) The Tribunal may, on determining a reference, make recommendations as to the Authority’s regulating provisions or its procedures.
- (9) The Authority must not take the action specified in a decision notice—
  - (a) during the period within which the matter to which the decision notice relates may be referred to the Tribunal; and
  - (b) if the matter is so referred, until the reference, and any appeal against the Tribunal’s determination, has been finally disposed of.
- (10) The Authority must act in accordance with the determination of, and any direction given by, the Tribunal.
- (11) An order of the Tribunal may be enforced—
  - (a) as if it were an order of a county court; or
  - (b) in Scotland, as if it were an order of the Court of Session.
- (12) “Supervisory notice” has the same meaning as in section 395.

*Legal assistance before the Tribunal*

**134 Legal assistance scheme**

- (1) The Lord Chancellor may by regulations establish a scheme governing the provision of legal assistance in connection with proceedings before the Tribunal.
- (2) If the Lord Chancellor establishes a scheme under subsection (1), it must provide that a person is eligible for assistance only if—
  - (a) he falls within subsection (3); and
  - (b) he fulfils such other criteria (if any) as may be prescribed as a result of section 135(1)(d).
- (3) A person falls within this subsection if he is an individual who has referred a matter to the Tribunal under section 127(4).
- (4) In this Part of this Act “the legal assistance scheme” means any scheme in force under subsection (1).

**135 Provisions of the legal assistance scheme**

- (1) The legal assistance scheme may, in particular, make provision as to—
  - (a) the kinds of legal assistance that may be provided;

- (b) the persons by whom legal assistance may be provided;
  - (c) the manner in which applications for legal assistance are to be made;
  - (d) the criteria on which eligibility for legal assistance is to be determined;
  - (e) the persons or bodies by whom applications are to be determined;
  - (f) appeals against refusals of applications;
  - (g) the revocation or variation of decisions;
  - (h) its administration and the enforcement of its provisions.
- (2) Legal assistance under the legal assistance scheme may be provided subject to conditions or restrictions, including conditions as to the making of contributions by the person to whom it is provided.

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

- (1) The Authority must pay to the Lord Chancellor such sums at such times as he may, from time to time, determine in respect of the anticipated or actual cost of legal assistance provided in connection with proceedings before the Tribunal under the legal assistance scheme.
- (2) In order to enable it to pay any sum which it is obliged to pay under subsection (1), the Authority must make rules requiring the payment to it by authorised persons or any class of authorised person of specified amounts or amounts calculated in a specified way.
- (3) Sums received by the Lord Chancellor under subsection (1) must be paid into the Consolidated Fund.
- (4) The Lord Chancellor must, out of money provided by Parliament fund the cost of legal assistance provided in connection with proceedings before the Tribunal under the legal assistance scheme.
- (5) Subsection (6) applies if, as respects a period determined by the Lord Chancellor, the amount paid to him under subsection (1) as respects that period exceeds the amount he has expended in that period under subsection (4).
- (6) The Lord Chancellor must—
- (a) repay, out of money provided by Parliament, the excess to the Authority; or
  - (b) take the excess into account on the next occasion on which he makes a determination under subsection (1).
- (7) The Authority must make provision for any sum repaid to it under subsection (6)(a)—
- (a) to be distributed among—
    - (i) the authorised persons on whom a levy was imposed in the period in question as a result of rules made under subsection (2); or
    - (ii) such of those persons as it may determine;
  - (b) to be applied in order to reduce any amounts which those persons, or such of them as it may determine, are or will be liable to pay to the Authority, whether under rules made under subsection (2) or otherwise; or
  - (c) to be partly so distributed and partly so applied.
- (8) If the Authority considers that it is not practicable to deal with any part of a sum repaid to it under subsection (6)(a) in accordance with provision made by it as a result of

subsection (7), it may, with the consent the Lord Chancellor, apply or dispose of that part of that sum in such manner as it considers appropriate.

- (9) “Specified” means specified in the rules.

### *Appeals*

#### **137 Appeal on a point of law**

- (1) A party to a reference to the Tribunal may with permission appeal—
  - (a) to the Court of Appeal, or
  - (b) in Scotland, to the Court of Session,on a point of law arising from a decision of the Tribunal disposing of the reference.
- (2) “Permission” means permission given by the Tribunal or by the Court of Appeal or (in Scotland) the Court of Session.
- (3) If, on an appeal under subsection (1), the court considers that the decision of the Tribunal was wrong in law, it may—
  - (a) remit the matter to the Tribunal for rehearing and determination by it; or
  - (b) itself make a determination.
- (4) An appeal may not be brought from a decision of the Court of Appeal under subsection (3) except with the leave of—
  - (a) the Court of Appeal; or
  - (b) the House of Lords.
- (5) An appeal lies, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given on such terms as to costs, expenses or otherwise as the Court of Session or the House of Lords may determine.
- (6) Rules made under section 132 may make provision for regulating or prescribing any matters incidental to or consequential on an appeal under this section.