



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART V

#### PERFORMANCE OF REGULATED ACTIVITIES

##### *Conduct*

#### **64 Conduct: statements and codes**

- (1) The Authority may issue statements of principle with respect to the conduct expected of approved persons.
- (2) If the Authority issues a statement of principle under subsection (1), it must also issue a code of practice for the purpose of helping to determine whether or not a person's conduct complies with the statement of principle.
- (3) A code issued under subsection (2) may specify—
  - (a) descriptions of conduct which, in the opinion of the Authority, comply with a statement of principle;
  - (b) descriptions of conduct which, in the opinion of the Authority, do not comply with a statement of principle;
  - (c) factors which, in the opinion of the Authority, are to be taken into account in determining whether or not a person's conduct complies with a statement of principle.
- (4) The Authority may at any time alter or replace a statement or code issued under this section.
- (5) If a statement or code is altered or replaced, the altered or replacement statement or code must be issued by the Authority.
- (6) A statement or code issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

---

*Status: This is the original version (as it was originally enacted).*

---

- (7) A code published under this section and in force at the time when any particular conduct takes place may be relied on so far as it tends to establish whether or not that conduct complies with a statement of principle.
- (8) Failure to comply with a statement of principle under this section does not of itself give rise to any right of action by persons affected or affect the validity of any transaction.
- (9) A person is not to be taken to have failed to comply with a statement of principle if he shows that, at the time of the alleged failure, it or its associated code of practice had not been published.
- (10) The Authority must, without delay, give the Treasury a copy of any statement or code which it publishes under this section.
- (11) The power under this section to issue statements of principle and codes of practice—
  - (a) includes power to make different provision in relation to persons, cases or circumstances of different descriptions; and
  - (b) is to be treated for the purposes of section 2(4)(a) as part of the Authority’s rule-making functions.
- (12) The Authority may charge a reasonable fee for providing a person with a copy of a statement or code published under this section.
- (13) “Approved person” means a person in relation to whom the Authority has given its approval under section 59.

## **65 Statements and codes: procedure**

- (1) Before issuing a statement or code under section 64, the Authority must publish a draft of it in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by —
  - (a) a cost benefit analysis; and
  - (b) notice that representations about the proposal may be made to the Authority within a specified time.
- (3) Before issuing the proposed statement or code, the Authority must have regard to any representations made to it in accordance with subsection (2)(b).
- (4) If the Authority issues the proposed statement or code it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2)(b); and
  - (b) its response to them.
- (5) If the statement or code differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant—
  - (a) the Authority must (in addition to complying with subsection (4)) publish details of the difference; and
  - (b) those details must be accompanied by a cost benefit analysis.
- (6) Neither subsection (2)(a) nor subsection (5)(b) applies if the Authority considers—
  - (a) that, making the appropriate comparison, there will be no increase in costs; or

---

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

---

- (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.
- (7) Subsections (1) to (6) do not apply if the Authority considers that the delay involved in complying with them would prejudice the interests of consumers.
- (8) A statement or code must state that it is issued under section 64.
- (9) The Authority may charge a reasonable fee for providing a copy of a draft published under subsection (1).
- (10) This section also applies to a proposal to alter or replace a statement or code.
- (11) “Cost benefit analysis” means an estimate of the costs together with an analysis of the benefits that will arise—
  - (a) if the proposed statement or code is issued; or
  - (b) if subsection (5)(b) applies, from the statement or code that has been issued.
- (12) “The appropriate comparison” means—
  - (a) in relation to subsection (2)(a), a comparison between the overall position if the statement or code is issued and the overall position if it is not issued;
  - (b) in relation to subsection (5)(b), a comparison between the overall position after the issuing of the statement or code and the overall position before it was issued.

## **66 Disciplinary powers**

- (1) The Authority may take action against a person under this section if—
  - (a) it appears to the Authority that he is guilty of misconduct; and
  - (b) the Authority is satisfied that it is appropriate in all the circumstances to take action against him.
- (2) A person is guilty of misconduct if, while an approved person—
  - (a) he has failed to comply with a statement of principle issued under section 64; or
  - (b) he has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under this Act.
- (3) If the Authority is entitled to take action under this section against a person, it may—
  - (a) impose a penalty on him of such amount as it considers appropriate; or
  - (b) publish a statement of his misconduct.
- (4) The Authority may not take action under this section after the end of the period of two years beginning with the first day on which the Authority knew of the misconduct, unless proceedings in respect of it against the person concerned were begun before the end of that period.
- (5) For the purposes of subsection (4)—
  - (a) the Authority is to be treated as knowing of misconduct if it has information from which the misconduct can reasonably be inferred; and
  - (b) proceedings against a person in respect of misconduct are to be treated as begun when a warning notice is given to him under section 67(1).

---

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

---

- (6) “Approved person” has the same meaning as in section 64.
- (7) “Relevant authorised person”, in relation to an approved person, means the person on whose application approval under section 59 was given.

#### **67 Disciplinary measures: procedure and right to refer to Tribunal**

- (1) If the Authority proposes to take action against a person under section 66, it must give him a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (4) If the Authority decides to take action against a person under section 66, it must give him a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the Authority decides to take action against a person under section 66, he may refer the matter to the Tribunal.

#### **68 Publication**

After a statement under section 66 is published, the Authority must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given.

#### **69 Statement of policy**

- (1) The Authority must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties under section 66; and
  - (b) the amount of penalties under that section.
- (2) The Authority’s policy in determining what the amount of a penalty should be must include having regard to—
  - (a) the seriousness of the misconduct in question in relation to the nature of the principle or requirement concerned;
  - (b) the extent to which that misconduct was deliberate or reckless; and
  - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) The Authority may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replacement statement.
- (5) The Authority must, without delay, give the Treasury a copy of any statement which it publishes under this section.

- (6) A statement issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (7) The Authority may charge a reasonable fee for providing a person with a copy of the statement.
- (8) In exercising, or deciding whether to exercise, its power under section 66 in the case of any particular misconduct, the Authority must have regard to any statement of policy published under this section and in force at the time when the misconduct in question occurred.

## **70 Statements of policy: procedure**

- (1) Before issuing a statement under section 69, the Authority must publish a draft of the proposed statement in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the Authority within a specified time.
- (3) Before issuing the proposed statement, the Authority must have regard to any representations made to it in accordance with subsection (2).
- (4) If the Authority issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2); and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant, the Authority must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.