

Extract of UK Financial Services and Markets Bill

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PART II (c) behaves, or otherwise holds himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is—

- (i) an authorised person; or
- (ii) an exempt person in relation to the regulated activity.

(2) In proceedings for an offence under this section it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.

(4) But where the conduct constituting the offence involved or included the public display of any material, the maximum fine for the offence is level 5 on the standard scale multiplied by the number of days for which the display continued.

Contravention of section 19. 23.—(1) A person who contravenes section 19(1) is guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(2) In proceedings for an offence under this section it is a defence for the accused to show—

- (a) that he believed on reasonable grounds that the content of the communication was prepared, or approved for the purposes of section 19, by an authorised person; or
- (b) that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Enforceability of agreements

Agreements made by unauthorised persons. 24.—(1) An agreement made by a person (“the provider”) in the course of carrying on a regulated activity in contravention of the general prohibition is unenforceable against the other party (“the purchaser”).

- (2) The purchaser is entitled to recover—
 - (a) any money or other property paid or transferred by him under the agreement; and
 - (b) compensation for any loss sustained by him as a result of having parted with it.
- (3) “Agreement” means an agreement—
 - (a) made after this section comes into force; and
 - (b) the making or performance of which constitutes, or is part of, the regulated activity in question.
- (4) This section does not apply if the regulated activity is deposit-taking.

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25.—(1) An agreement made by an authorised person (“the provider”)—

- (a) in the course of carrying on a regulated activity (not in contravention of the general prohibition), but
- (b) in consequence, of something said or done by another person (“the third party”) in the course of a regulated activity carried on by the third party in contravention of the general prohibition.

is unenforceable against the other party (“the purchaser”).

- (2) The purchaser is entitled to recover—
 - (a) any money or other property paid or transferred by him under the agreement; and
 - (b) compensation for any loss sustained by him as a result of having parted with it.
- (3) “Agreement” means an agreement—
 - (a) made after this section comes into force; and
 - (b) the making or performance of which constitutes, or is part of, the regulated activity in question carried on by the provider.
- (4) This section does not apply if the regulated activity is deposit-taking.

26.—(1) This section applies to an agreement which is unenforceable because of section 24 or 25.

- (2) The amount of compensation recoverable as a result of that section is—
 - (a) the amount agreed by the parties; or
 - (b) on the application of either party, the amount determined by the court.
- (3) If the court is satisfied that the enforcement conditions are met, it may allow—
 - (a) the agreement to be enforced; or
 - (b) money and property paid or transferred under the agreement to be retained.
- (4) The enforcement conditions are that it is just and equitable for the agreement to be enforced or (as the case may be) for the money or property paid or transferred under the agreement to be retained and—
 - (a) in a section 24 case, that the provider reasonably believed that he was not contravening the general prohibition by making the agreement; or
 - (b) in a section 25 case, that the provider did not believe, and had no grounds for suspecting, that the third party was (in carrying on the regulated activity) contravening the general prohibition.
- (5) If the purchaser—
 - (a) elects not to perform the agreement, or
 - (b) as a result of this section, recovers money paid or other property transferred by him under the agreement.

he must repay any money and return any other property received by him under the agreement.

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Agreements
made through
unauthorised
persons.

Agreements
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(6) If property transferred under the agreement has passed to a third party, a reference in section 24 or 25 or this section to that property is to be read as a reference to its value at the time of its transfer under the agreement.

(7) The commission of an authorisation offence does not make the agreement concerned illegal or invalid to any greater extent than is provided by section 24 or 25.

Enforceability of agreements resulting from unlawful communications.

27.—(1) In this section—

"unlawful communication" means a communication in relation to which there has been a contravention of section 19(1); and

"controlled agreement" means an agreement the making or performance of which by either party constitutes a controlled activity for the purposes of that section.

(2) If as a direct or indirect result of an unlawful communication a person enters as a customer into a controlled agreement, it is unenforceable against him and he is entitled to recover—

- (a) any money or other property paid or transferred by him under the agreement; and
- (b) compensation for any loss sustained by him as a result of having parted with it.

(3) If as a direct or indirect result of an unlawful communication a person exercises any rights conferred by an investment, no obligation to which he is subject as a result of exercising them is enforceable against him and he is entitled to recover—

- (a) any money or other property paid or transferred by him under the obligation; and
- (b) compensation for any loss sustained by him as a result of having parted with it.

(4) But the court may allow—

- (a) the agreement or obligation to be enforced, or
- (b) money or property paid or transferred under the agreement or obligation to be retained,

if it is satisfied that subsection (5), (6) or (7) applies.

(5) This subsection applies if the person against whom the agreement or obligation is sought to be enforced was not influenced, or not influenced to any material extent, by the communication concerned.

(6) This subsection applies if the communication concerned 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.

(7) This subsection applies if the communication concerned was not made by—

- (a) the person seeking to enforce the agreement or obligation, a person acting on his behalf or an appointed representative whose principal he was; or
- (b) a person who, or, in the case of an appointed representative, whose principal, has received or is to receive any commission or other

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inducement in respect of the agreement or the exercise of the rights from a person mentioned in paragraph (a).

(8) "Principal", in relation to an appointed representative, is to be read with section 35(1).

(9) The amount of compensation recoverable as a result of subsection (2) or (3) is—

- (a) the amount agreed between the parties; or
- (b) on the application of either party, the amount determined by the court.

(10) If a person elects not to perform an agreement or an obligation which (by virtue of subsection (2) or (3)) is unenforceable against him, he must repay any money and return any other property received by him under the agreement.

(11) If (by virtue of subsection (2) or (3)) a person recovers money paid or property transferred by him under an agreement or obligation, he must repay any money and return any other property received by him as a result of exercising the rights in question.

(12) If any property required to be returned under this section has passed to a third party, references to that property are to be read as references to its value at the time of its receipt by the person required to return it.