



Financial Services (Banking Reform) Act 2013

2013 CHAPTER 33

PART 4

CONDUCT OF PERSONS WORKING IN FINANCIAL SERVICES SECTOR

Offence

36 Offence relating to a decision causing a financial institution to fail

- (1) A person (“S”) commits an offence if—
- (a) at a time when S is a senior manager in relation to a financial institution (“F”), S—
 - (i) takes, or agrees to the taking of, a decision by or on behalf of F as to the way in which the business of a group institution is to be carried on, or
 - (ii) fails to take steps that S could take to prevent such a decision being taken,
 - (b) at the time of the decision, S is aware of a risk that the implementation of the decision may cause the failure of the group institution,
 - (c) in all the circumstances, S’s conduct in relation to the taking of the decision falls far below what could reasonably be expected of a person in S’s position, and
 - (d) the implementation of the decision causes the failure of the group institution.
- (2) A “group institution”, in relation to a financial institution (“F”), means F or any other financial institution that is a member of F’s group for the purpose of FSMA 2000 (see section 421 of that Act).
- (3) Subsections (1) and (2) are to be read with the interpretative provisions in section 37.
- (4) A person guilty of an offence under this section is liable—

Status: This is the original version (as it was originally enacted).

- (a) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003) or a fine, or both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.

37 Section 36: interpretation

- (1) This section has effect for the interpretation of section 36.
- (2) “Financial institution” means a UK institution which—
 - (a) meets condition A or B, and
 - (b) is not an insurer or a credit union.
- (3) Condition A is that it has permission under Part 4A of FSMA 2000 to carry on the regulated activity of accepting deposits.
- (4) Condition B is that—
 - (a) it is for the purposes of FSMA 2000 an investment firm (see section 424A of that Act),
 - (b) it has permission under Part 4A of that Act to carry on the regulated activity of dealing in investments as principal, and
 - (c) when carried on by it, that activity is a PRA-regulated activity.
- (5) In subsection (2)—
 - (a) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom;
 - (b) “insurer” means an institution which is authorised under FSMA 2000 to carry on the regulated activity of effecting or carrying out contracts of insurance as principal;
 - (c) “credit union” means a credit union as defined by section 31 of the Credit Unions Act 1979 or a credit union as defined by Article 2(2) of the Credit Unions (Northern Ireland) Order 1985.
- (6) Subsections (3), (4) and (5)(b) are to be read in accordance with sections 22 and 22A of FSMA 2000, taken with Schedule 2 to that Act and any order under section 22.
- (7) A person is a “senior manager” in relation to a financial institution if, under an arrangement entered into by the institution, or by a contractor of the institution, in relation to the carrying on by the institution of a regulated activity, the person performs a senior management function.
- (8) A “senior management function” is a function designated as such—
 - (a) by the FCA under subsection (6A) of section 59 of FSMA 2000 (approval for particular arrangements), or
 - (b) by the PRA under subsection (6B) of that section.

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

- (9) A financial institution (“F”) is to be regarded as failing where—
- (a) F enters insolvency,
 - (b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to F, or
 - (c) F is taken for the purposes of the Financial Services Compensation Scheme to be unable, or likely to be unable, to satisfy claims against F.
- (10) In subsection (9)(a) “insolvency” includes—
- (a) bankruptcy,
 - (b) liquidation,
 - (c) bank insolvency,
 - (d) administration,
 - (e) bank administration,
 - (f) receivership,
 - (g) a composition between F and F’s creditors, and
 - (h) a scheme of arrangement of F’s affairs.

38 Institution of proceedings

- (1) In this section “an offence” means an offence under section 36.
- (2) Proceedings for an offence may be instituted in England and Wales only—
- (a) by the FCA, the PRA or the Secretary of State, or
 - (b) by or with the consent of the Director of Public Prosecutions.
- (3) Proceedings for an offence may be instituted in Northern Ireland only—
- (a) by the FCA, the PRA or the Secretary of State, or
 - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (4) In exercising its power to institute proceedings for an offence, the FCA or the PRA must comply with any conditions or restrictions imposed in writing by the Treasury.
- (5) Conditions or restrictions may be imposed under subsection (4) in relation to—
- (a) proceedings generally, or
 - (b) such proceedings, or categories of proceedings, as the Treasury may direct.