



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—

Changes to legislation: There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013, Section 36. (See end of Document for details)

- (a) on summary conviction—
- (i) in England and Wales, to imprisonment for a term not exceeding [^{F1}the general limit in a magistrates' court] (or 6 months, if the offence was committed before [^{F2}2 May 2022]) 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.

Textual Amendments

- F1** Words in s. 36(4)(a)(i) substituted (7.2.2023 at 12.00 p.m.) by [The Judicial Review and Courts Act 2022 \(Magistrates' Court Sentencing Powers\) Regulations 2023 \(S.I. 2023/149\)](#), regs. 1(2), 2(1), **Sch. Pt. 1** table
- F2** Words in s. 36(4)(a)(i) substituted (28.4.2022) by [The Criminal Justice Act 2003 \(Commencement No. 33\) and Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(S.I. 2022/500\)](#), regs. 1(2), 5(1), **Sch. Pt. 1**

Commencement Information

- I1** S. 36 in force at 7.3.2016 by [S.I. 2015/490](#), **art. 2(1)(c)** (with savings and transitional provisions in [S.I. 2015/492](#) (as amended by [S.I. 2015/1660](#)))

Changes to legislation:

There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013, Section 36.