



# 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—

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*Status: This is the original version (as it was originally enacted).*

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- (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.