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Financial Services and Markets Act 2000

2000 CHAPTER 8

[^{F1}PART 9A

RULES AND GUIDANCE

CHAPTER 1

RULE-MAKING POWERS

[^{F1}General rule-making powers of the FCA and the PRA

Textual Amendments

F1 Pt. 9A substituted for ss. 138-164 (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), ss. **24(1)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)

137A The FCA's general rules

- (1) The FCA may make such rules applying to authorised persons—
 - (a) with respect to the carrying on by them of regulated activities, or
 - (b) with respect to the carrying on by them of activities which are not regulated activities,as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives.
- (2) Rules made under this section are referred to in this Act as the FCA's general rules.
- (3) The FCA's general rules may make provision applying to authorised persons even though there is no relationship between the authorised persons to whom the rules will apply and the persons whose interests will be protected by the rules.

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- (4) The FCA's general rules may contain requirements which take into account, in the case of an authorised person who is a member of a group, any activity of another member of the group.
- (5) The FCA's general rules may not—
 - (a) make provision prohibiting an EEA firm from carrying on, or holding itself out as carrying on, any activity which it has permission conferred by Part 2 of Schedule 3 to carry on in the United Kingdom;
 - (b) make provision, as respects an EEA firm, about any matter for which responsibility is, under any of the single market directives or the emission allowance auctioning regulation, reserved to the firm's home state regulator.

137B FCA general rules: clients' money, right to rescind etc.

- (1) Rules relating to the handling of money held by an authorised person in specified circumstances (“clients' money”) may—
 - (a) make provision which results in that clients' money being held on trust in accordance with the rules,
 - (b) treat 2 or more accounts as a single account for specified purposes (which may include the distribution of money held in the accounts),
 - (c) authorise the retention by the authorised person of interest accruing on the clients' money, and
 - (d) make provision as to the distribution of such interest which is not to be retained by the authorised person.
- (2) An institution with which an account is kept in pursuance of rules relating to the handling of clients' money does not incur any liability as constructive trustee if the money is wrongfully paid from the account, unless the institution permits the payment—
 - (a) with knowledge that it is wrongful, or
 - (b) having deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.
- (3) Rules may—
 - (a) confer rights on persons to rescind agreements with, or withdraw offers to, authorised persons within a specified period, and
 - (b) make provision, in respect of authorised persons and persons exercising those rights, for the restitution of property and the making or recovery of payments where those rights are exercised.
- (4) “Rules” means general rules of the FCA.
- (5) “Specified” means specified in the rules.

137C FCA general rules: cost of credit and duration of credit agreements

- (1) The power of the FCA to make general rules includes power to make rules prohibiting authorised persons from—
 - (a) entering into a regulated credit agreement that provides for—
 - (i) the payment by the borrower of charges of a specified description, or

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- (ii) the payment by the borrower over the duration of the agreement of charges that, taken with the charges paid under one or more other agreements which are treated by the rules as being connected with it, exceed, or are capable of exceeding, a specified amount;
 - (b) imposing charges of a specified description or exceeding a specified amount on a person who is the borrower under a regulated credit agreement;
 - (c) entering into a regulated credit agreement that—
 - (i) is capable of remaining in force after the end of a specified period,
 - (ii) when taken with one or more other regulated credit agreements which are treated by the rules as being connected with it, would be capable of remaining in force after the end of a specified period, or
 - (iii) is treated by the rules as being connected with a number of previous regulated credit agreements that exceeds a specified maximum;
 - (d) exercising the rights of the lender under a regulated credit agreement (as a person for the time being entitled to exercise them) in a way that enables the agreement to remain in force after the end of a specified period or enables the imposition on the borrower of charges within paragraph (a)(i) or (ii).
- (2) “Charges” means charges payable, by way of interest or otherwise, in connection with the provision of credit under the regulated credit agreement, whether or not the agreement itself makes provision for them and whether or not the person to whom they are payable is a party to the regulated credit agreement or an authorised person.
- (3) “The borrower” includes—
 - (a) any person providing a guarantee or indemnity under the regulated credit agreement, and
 - (b) a person to whom the rights and duties of the borrower under the regulated credit agreement or a person falling within paragraph (a) have passed by assignment or operation of law.
- (4) In relation to an agreement entered into or obligation imposed in contravention of the rules, the rules may—
 - (a) provide for the agreement or obligation to be unenforceable against any person or specified person;
 - (b) provide for the recovery of any money or other property paid or transferred under the agreement or other obligation by any person or specified person;
 - (c) provide for the payment of compensation for any loss sustained by any person or specified person as a result of paying or transferring any money or other property under the agreement or obligation.
- (5) The provision that may be made as a result of subsection (4) includes provision corresponding to that made by section 30 (enforceability of agreements resulting from unlawful communications).
- (6) A credit agreement is a contract of the kind mentioned in paragraph 23 of Schedule 2, other than one under which the obligation of the borrower to repay is secured on land: and a credit agreement is a “regulated credit agreement” if any of the following is a regulated activity—
 - (a) entering into or administering the agreement;
 - (b) exercising or being able to exercise the rights of the lender under the agreement.

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- (7) In this section—
- (a) “specified amount” means an amount specified in or determined in accordance with the rules;
 - (b) “specified period” means a period of a duration specified in or determined in accordance with the rules;
 - (c) “specified person” means a person of a description specified in the rules;
 - (d) subject to that, “specified” means specified in the rules.

137D FCA general rules: product intervention

- (1) The power of the FCA to make general rules includes power to make such rules (“product intervention rules”) prohibiting authorised persons from doing anything mentioned in subsection (2) as appear to it to be necessary or expedient for the purpose of advancing—
 - (a) the consumer protection objective or the competition objective, or
 - (b) if the Treasury by order provide for this paragraph to apply, the integrity objective.
- (2) Those prohibited things are—
 - (a) entering into specified agreements with any person or specified person;
 - (b) entering into specified agreements with any person or specified person unless requirements specified in the rules have been satisfied;
 - (c) doing anything that would or might result in the entering into of specified agreements by persons or specified persons, or the holding by them of a beneficial or other kind of economic interest in specified agreements;
 - (d) doing anything within paragraph (c) unless requirements specified in the rules have been satisfied.
- (3) “Specified agreements” means agreements of a description specified in general rules made by the FCA.
- (4) “Specified persons” means persons of a description specified in general rules made by the FCA.
- (5) It is of no relevance—
 - (a) whether the entering into of a specified agreement itself constitutes the carrying on of a regulated activity, or
 - (b) whether, in a case within subsection (2)(c) or (d), the specified agreements are with the authorised persons concerned or anyone else.
- (6) The requirements that may be specified under subsection (2)(b) or (d) include in particular—
 - (a) requirements as to the terms and conditions that are to be, or are not to be, included in specified or other agreements, and
 - (b) requirements limiting invitations or inducements to enter into specified or other agreements to those made to specified persons.
- (7) In relation to contraventions of product intervention rules, the rules may—
 - (a) provide for a relevant agreement or obligation to be unenforceable against any person or specified person;

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- (b) provide for the recovery of any money or other property paid or transferred under a relevant agreement or obligation by any person or specified person;
 - (c) provide for the payment of compensation for any loss sustained by any person or specified person as a result of paying or transferring any money or other property under a relevant agreement or obligation.
- (8) “A relevant agreement or obligation” means—
- (a) a specified agreement;
 - (b) an agreement entered into in contravention of any rule made as a result of subsection (2)(c) or (d);
 - (c) an obligation to which a person is subject as a result of exercising a right conferred by an agreement within paragraph (a) or (b) of this subsection.
- (9) The provision that may be made as a result of subsection (7) includes provision corresponding to that made by section 30 (enforceability of agreements resulting from unlawful communications).
- (10) In this section—
- (a) any reference to entering into an agreement includes inviting or inducing persons to enter into an agreement, and
 - (b) any reference to an agreement includes an arrangement.

137E Orders under s.137D(1)(b)

- (1) No order may be made under section 137D(1)(b) unless—
- (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
 - (b) subsection (3) applies.
- (2) Subsection (3) applies if an order under section 137D(1)(b) contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (3) Where this subsection applies the order—
- (a) must be laid before Parliament after being made, and
 - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).
- (4) The “relevant period” is a period of 28 days beginning with the day on which the order is made.
- (5) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

137F Rules requiring participation in benchmark

- (1) The power of the FCA to make general rules includes power to make rules requiring authorised persons to take specified steps in connection with the setting by a specified person of a specified benchmark.

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- (2) The rules may in particular—
- (a) require authorised persons to whom the rules apply to provide information of a specified kind, or expressions of opinion as to specified matters, to persons determined in accordance with the rules;
 - (b) make provision about the form in which and the time by which any information or expression of opinion is to be provided;
 - (c) make provision by reference to any code or other document published by the person responsible for the setting of the benchmark or by any other person determined in accordance with the rules, as the code or other document has effect from time to time.
- (3) Rules making provision of the kind mentioned in subsection (2)(c) may provide that the code or other document is to be capable of affecting obligations imposed by the rules only if specified requirements are met in relation to it.
- (4) In this section—
- “benchmark” has the meaning given in section 22(6);
 - “specified” means specified in or determined in accordance with the rules.

137G The PRA's general rules

- (1) The PRA may make such rules applying to PRA-authorised persons—
- (a) with respect to the carrying on by them of regulated activities, or
 - (b) with respect to the carrying on by them of activities which are not regulated activities,
- as appear to the PRA to be necessary or expedient for the purpose of advancing any of its objectives.
- (2) Rules made under this section are referred to in this Act as the PRA's general rules.
- (3) The PRA's general rules may make provision applying to PRA-authorised persons even though there is no relationship between the PRA-authorised persons to whom the rules will apply and the persons whose interests will be protected by the rules.
- (4) The PRA's general rules may contain requirements which take into account, in the case of a PRA-authorised person who is a member of a group, any activity of another member of the group.
- (5) The PRA's general rules may not—
- (a) make provision prohibiting an EEA firm from carrying on, or holding itself out as carrying on, any activity which it has permission conferred by Part 2 of Schedule 3 to carry on in the United Kingdom;
 - (b) make provision, as respects an EEA firm, about any matter for which responsibility is, under any of the single market directives or the emission allowance auctioning regulation, reserved to the firm's home state regulator.

137H General rules about remuneration

- (1) This section applies where either regulator exercises its power to make general rules so as to make rules prohibiting persons, or persons of a specified description, from being remunerated in a specified way.

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- (2) The rules may—
 - (a) provide that any provision of an agreement that contravenes such a prohibition is void, and
 - (b) provide for the recovery of any payment made, or other property transferred, in pursuance of a provision that is void by virtue of paragraph (a).
- (3) A provision that, at the time the rules are made, is contained in an agreement made before that time may not be rendered void under subsection (2)(a) unless it is subsequently amended so as to contravene a prohibition referred to in that subsection.

137I Remuneration policies: Treasury direction to consider compliance

- (1) This section applies where either regulator exercises its power to make general rules so as to make rules requiring authorised persons, or authorised persons of a description specified in the rules, to act in accordance with a remuneration policy.
- (2) A “remuneration policy” is a policy about the remuneration by an authorised person of—
 - (a) officers,
 - (b) employees, or
 - (c) other persons,of a description specified in the rules.
- (3) The Treasury may direct the regulator to consider whether the remuneration policies of authorised persons specified in the direction (or of authorised persons of a description so specified) comply with requirements imposed by rules made by that regulator as to the contents of the policies.
- (4) Before giving a direction under subsection (3), the Treasury must consult the regulator concerned.
- (5) If the regulator considers that a remuneration policy of an authorised person fails to make provision which complies with the requirements mentioned in subsection (3), the regulator must take such steps as it considers appropriate to deal with the failure.
- (6) The steps that the regulator may take include requiring the remuneration policy to be revised.
- (7) “Authorised person”, in relation to the PRA, means PRA-authorised person.

137J Rules about recovery plans: duty to consult

- (1) Before either regulator prepares a draft of any general rules that require each relevant person (or each relevant person of a specified description) to prepare a recovery plan, the regulator must consult—
 - (a) the Treasury, and
 - (b) the Bank of England.
- (2) A “relevant person” is an authorised person in relation to whom any power under Part 1 of the Banking Act 2009 (special resolution regime) is exercisable.
- (3) A “recovery plan” is a document containing information within subsection (4) or (5).

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- (4) Information is within this subsection if it relates to action to be taken to secure that, in the event of specified circumstances affecting the carrying on of the business (or any part of the business) of an authorised person—
- (a) the business of the authorised person, or
 - (b) a specified part of that business,
- is capable of being carried on (whether or not by the authorised person and whether or not in the same way as previously).
- (5) Information is within this subsection if it would facilitate the carrying on of the business (or any part of the business) of an authorised person by any other person.
- (6) In this section—
- “authorised person”, in relation to the PRA, means PRA-authorised person;
- “specified” means specified in the rules.

137K PRA rules about resolution plans: duty to consult

- (1) Before the PRA prepares a draft of any general rules that require each relevant person (or each relevant person of a specified description) to prepare a resolution plan, the PRA must consult—
- (a) the Treasury, and
 - (b) the Bank of England.
- (2) A “relevant person” is a PRA-authorised person in relation to whom any power under Part 1 of the Banking Act 2009 (special resolution regime) is exercisable.
- (3) A “resolution plan” is a document containing information within subsection (4) or (5).
- (4) Information is within this subsection if it relates to action to be taken in the event of—
- (a) circumstances arising in which it is likely that the business (or any part of the business) of an authorised person will fail, or
 - (b) the failure of the business (or any part of the business) of an authorised person.
- (5) Information is within this subsection if it would facilitate anything falling to be done by any person in consequence of that failure.
- (6) An example of information within subsection (5) is information that, in the event of that failure, would facilitate—
- (a) planning by the Treasury in relation to the possible exercise of any of its powers under Part 1 of the Banking Act 2009, or
 - (b) planning by the Bank of England in relation to the possible exercise of any of its powers under Part 1, 2 or 3 of that Act.

137L Interpretation of sections 137J and 137K

- (1) This section has effect for the interpretation of sections 137J and 137K.
- (2) References to the taking of action include the taking of action by—
- (a) the authorised person,
 - (b) any other person in the same group as the authorised person, or
 - (c) a partnership of which the authorised person is a member.

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- (3) In subsection (2)(b) the definition of “group” in section 421 applies with the omission of subsection (1)(e) and (f) of that section.
- (4) References to the business of an authorised person include the business of—
 - (a) any person in the same group as the authorised person, and
 - (b) a partnership of which the authorised person is a member.
- (5) For the purposes of section 137K the cases in which the business (or any part of the business) of the authorised person (“A”) is to be regarded as having failed include those where—
 - (a) A enters insolvency,
 - (b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to A, or
 - (c) A falls to be taken for the purposes of the compensation scheme to be unable, or likely to be unable, to satisfy claims against A.
- (6) In subsection (5)(a) “insolvency” includes—
 - (a) bankruptcy,
 - (b) liquidation,
 - (c) bank insolvency,
 - (d) administration,
 - (e) bank administration,
 - (f) receivership,
 - (g) a composition between A and A's creditors, and
 - (h) a scheme of arrangement of A's affairs.

137M Special provision relating to adequacy of resolution plans

- (1) This section applies where the PRA has exercised its power to make general rules so as to make rules requiring PRA-authorised persons, or PRA-authorised persons of a specified description, to prepare a resolution plan.
- (2) The PRA must consult the Treasury and the Bank of England (“the Bank”) about the adequacy of resolution plans required to be prepared by those rules, so far as relating to any matter which may be relevant to the exercise by the Treasury or the Bank of any power under Part 1, 2 or 3 of the Banking Act 2009.
- (3) After being consulted under subsection (2)—
 - (a) the Treasury or the Bank may notify the PRA that, in the opinion of the Treasury or the Bank, a resolution plan fails to make satisfactory provision in relation to any such matter, and
 - (b) if the Treasury or the Bank give a notification under paragraph (a), the Treasury or the Bank must give reasons for being of that opinion to the PRA.
- (4) The PRA must have regard to any notification given under subsection (3)(a) before considering whether any resolution plan makes satisfactory provision in relation to any such matter.
- (5) If—
 - (a) a notification is given under subsection (3)(a), but

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(b) the PRA is nonetheless of the opinion that the resolution plan makes satisfactory provision in relation to any such matter, the PRA must give reasons for being of that opinion to the person who gave the notification.

(6) In this section—

“resolution plan” has the same meaning as in section 137K;

“specified” means specified in the rules.

137N Recovery plans and resolution plans: restriction on duty of confidence

(1) A contractual or other requirement imposed on a person (“P”) to keep information in confidence does not apply if—

- (a) the information is or may be relevant to anything required to be done as a result of a requirement imposed by general rules made by either regulator to prepare a recovery plan or a resolution plan,
- (b) an authorised person or a skilled person requests or requires P to provide the information for the purpose of securing that those things are done, and
- (c) the regulator in question has approved the making of the request or the imposition of the requirement before it is made or imposed.

(2) An authorised person may provide information (whether received under subsection (1) or otherwise) that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of anything required to be done as a result of a requirement imposed by general rules to prepare a recovery plan or a resolution plan.

(3) In this section, references to preparing a recovery plan or a resolution plan include—

- (a) keeping that plan up to date, and
- (b) collecting specified information for the purposes of that plan.

(4) In this section, references to a skilled person are to a person appointed in accordance with section 166A.

(5) In this section—

“authorised person”, in relation to rules of the PRA, means a PRA-authorised person;

“specified” means specified in the rules.]

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