



Financial Services and Markets Act 2000

2000 CHAPTER 8

[^{F1}PART 9A

RULES AND GUIDANCE

[^{F1}CHAPTER 2

RULES: MODIFICATION, WAIVER, CONTRAVENTION AND PROCEDURAL PROVISIONS

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.](#)

Modifications etc. (not altering text)

- C1** Pt. 9A Ch. 2 applied (with modifications) by S.I. 2011/99, **Sch. 3 para. 2A(2)(3)** (as inserted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(31)(a)** (with reg. 3) and as amended (18.9.2023) by [The Electronic Money, Payment Card Interchange Fee and Payment Services \(Amendment\) Regulations 2023 \(S.I. 2023/790\)](#), regs. 1(2)(a), **2(3)(a)(iii)-(v))**
- C2** Pt. 9A Ch. 2 applied (with modifications) (13.8.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(b)(ii)(6), **Sch. 6 para. 3(2)** (with reg. 3) (as amended (18.9.2023) by [The Electronic Money, Payment Card Interchange Fee and Payment Services \(Amendment\) Regulations 2023 \(S.I. 2023/790\)](#), regs. 1(2)(a), **4(5)(a)(iii)**)
- C3** Pt. 9A Ch. 2 applied (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **209(6)** (with reg. 209(7)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- C4** Pt. 9A Ch. 2 applied (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **208(7)** (with reg. 208(8)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

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- C5** Pt. 9A applied (with modifications) (31.12.2020) by [The Transparency of Securities Financing Transactions and of Reuse \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/542\)](#), regs. 1, **35** (as amended by [S.I. 2020/1385](#), regs. 1(4), **56(7)**) (with savings in [S.I. 2019/680](#), **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- C6** Pt. 9A applied (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), 4, **Sch. 3** (as amended by [S.I. 2020/1301](#), regs. 1, 3, **Sch. para. 27(a)** and [S.I. 2020/1385](#), regs. 1(2), 54(2))
- C7** Pt. 9A applied (with modifications) (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **74** (as amended by [S.I. 2020/1385](#), regs. 1(4), **52(7)**) (with savings in [S.I. 2019/680](#), **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- C8** Pt. 9A Ch. 2 applied in part (1.7.2021) by Regulation (EU) No. 600/2014, Art. 50D (as inserted by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), **Sch. 10 para. 12** (with [Sch. 10 para. 13](#)); [S.I. 2021/739](#), reg. 3(o))
- C9** Pt. 9A applied (1.7.2021) by Regulation (EU) No. 600/2014, Art. 49A(12) (as inserted by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), **Sch. 10 para. 9**; [S.I. 2021/739](#), reg. 3(o))

Modification or waiver of rules

138A Modification or waiver of rules

- (1) Either regulator may, on the application or with the consent of a person who is subject to rules made by that regulator, direct that all or any of those rules—
- are not to apply to that person, or
 - are to apply to that person with such modifications as may be specified in the direction.
- (2) Subsection (1) does not apply to—
- ^{F2}(za) rules made by either regulator under section 64A (rules of conduct);
 - rules made by either regulator under section 137O (threshold condition code);
 - rules made by the FCA under section 247 (trust scheme rules) [^{F3}, section 248 (scheme particulars rules), section 261I (contractual scheme rules) or section 261J (contractual scheme particulars rules)];
 - ^{F4}(c) rules made by the FCA under section **309Z1** (rules of conduct).]
- (3) An application must be made in such manner as the regulator may direct.
- (4) A regulator may not give a direction unless it is satisfied that—
- compliance by the person with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made, and
 - the direction would not adversely affect the advancement of any of the regulator's objectives.
- (5) In subsection (4)(b) “objectives”, in relation to the FCA, means operational objectives.
- (6) A direction may be given subject to conditions.
- (7) The regulator may—
- revoke a direction, or

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(b) vary it on the application, or with the consent, of the person to whom it relates.

(8) “Direction” means a direction under this section.

Textual Amendments

- F2** S. 138A(2)(za) inserted (25.7.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 3 para. 8](#); S.I. 2014/1819, art. 2(4)(b)
- F3** Words in s. 138A(2)(b) substituted (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\)](#), regs. 1, [3\(4\)](#) (with reg. 24)
- F4** S. 138A(2)(c) inserted (29.6.2023 for specified purposes) by [Financial Services and Markets Act 2023 \(c. 29\)](#), s. 86(1)(e), [Sch. 10 para. 7](#)

Modifications etc. (not altering text)

- C10** S. 138A applied by S.I. 2008/2674, art. 29(2) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 149\(b\)\(aa\)\(ii\)](#)
- C11** S. 138A modified by S.I. 2002/1775, reg. 3(2)(a) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 77\(4\)\(b\)](#)
- C12** S. 138A applied by S.I. 2009/3226, art. 20(2) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 182\(a\)\(aa\)\(ii\)](#)
- C13** S. 138A applied (with modifications) by S.I. 2008/432, art. 15(2) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 136\(d\)\(aa\)\(ii\)](#)
- C14** S. 138A applied by S.I. 2008/2644, art. 27(2) (as substituted) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 147\(b\)\(aa\)\(ii\)](#)
- C15** S. 138A applied by S.I. 2008/2666, art. 18(2) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 148\(b\)\(aa\)\(ii\)](#)
- C16** S. 138A applied by S.I. 2008/2546, art. 37(2) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 146\(c\)\(aa\)\(ii\)](#)
- C17** S. 138A applied (with modifications) by 2013 c. 13, [Sch. 4 para. 9A\(5\)\(6\)](#) (as inserted) (26.10.2018) by [The Financial Regulators Powers \(Technical Standards etc.\) \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1115\)](#), [regs. 1\(2\)](#), 10(5)(c))
- C18** S. 138A applied (31.12.2020) by [The Credit Rating Agencies \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/266\)](#), [regs. 1\(3\)](#), [4\(2\)\(a\)](#) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- C19** S. 138A modified (13.3.2023 at 8.00 a.m.) by [The Amendments of the Law \(Resolution of Silicon Valley Bank UK Limited\) Order 2023 \(S.I. 2023/319\)](#), arts. 1(2), [3\(2\)](#) (as amended (23.6.2023) by S.I. 2023/694, arts. 1(2), [3\(4\)](#))
- C20** S. 138A applied (with modifications) (8.6.2023 for specified purposes) by [The Financial Services and Markets Act 2000 \(Financial Promotion\) \(Amendment\) Order 2023 \(S.I. 2023/612\)](#), art. 1(2), [Sch. para. 10](#) (with art. 11)
- C21** S. 138A applied in part (with modifications) (29.8.2023) by [Regulation \(EU\) No. 648/2012, Art. 84c](#) (as inserted by [Financial Services and Markets Act 2023 \(c. 29\)](#), s. 86(3), [Sch. 2 para. 30](#) (with s. 2(3)); S.I. 2023/779, [reg. 4\(zz\)\(ii\)](#))
- C22** S. 138A(1) modified by S.I. 2009/814, art. 9(2) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 167\(b\)\(ii\)](#)

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- C23** S. 138A(1)(6)(7) excluded by S.I. 2006/3221, reg. 8(2) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 118(h)(iii)** (with Sch. 2 para. 119)
- C24** Ss. 138A(3)-(7) modified by S.I. 2001/1228, reg. 7(3)(4) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 41(4)**
- C25** Ss. 138A(3)-(7) applied (with modifications) by S.R. 2004/335, reg. 7(3)(4) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 87(4)**
- C26** S. 138A(4) restricted by S.I. 2009/3226, art. 20(3) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 182(a)(aa)(iii)**
- C27** S. 138A(4) restricted by S.I. 2008/432, art. 15(3) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 136(d)(aa)(iii)**
- C28** S. 138A(4) restricted by S.I. 2008/2666, art. 18(3) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 148(b)(aa)(iii)**
- C29** S. 138A(4) restricted by S.I. 2008/2546, art. 37(3) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 146(c)(aa)(iii)**
- C30** S. 138A(4) excluded by S.I. 2006/3221, reg. 8(2) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 118(h)(iii)** (with Sch. 2 para. 119)
- C31** S. 138A(4) restricted by S.I. 2008/2644, art. 27(3) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 147(b)(aa)(ii)**
- C32** S. 138A(4) modified by S.I. 2009/814, art. 9(3)-(5) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 167(b)(iii)(iv)**
- C33** S. 138A(4) restricted by S.I. 2008/2674, art. 29(3) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 149(b)(aa)(iii)**

138B Publication of directions under section 138A

- (1) Subject to subsection (2), a direction must be published by the regulator concerned in the way appearing to the regulator to be best calculated for bringing it to the attention of—
- (a) persons likely to be affected by it, and
 - (b) persons who are, in the opinion of the regulator, likely to make an application for a similar direction.
- (2) Subsection (1) does not apply if the regulator is satisfied that it is inappropriate or unnecessary to publish the direction.
- (3) In deciding whether it is satisfied as mentioned in subsection (2), the regulator must—
- (a) consider whether the publication of the direction would be detrimental to the stability of the UK financial system,
 - (b) take into account whether the direction relates to a rule contravention of which is actionable in accordance with section 138D,

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- (c) consider whether publication of the direction would prejudice, to an unreasonable degree, the commercial interests of the person concerned or any other member of the person's immediate group, and
 - (d) consider whether its publication would be contrary to an international obligation of the United Kingdom.
- (4) The FCA must consult the PRA before publishing or deciding not to publish a direction which relates to—
- (a) a PRA-authorised person, or
 - (b) an authorised person who has as a member of its immediate group a PRA-authorised person.
- (5) For the purposes of paragraphs (c) and (d) of subsection (3), the regulator must consider whether it would be possible to publish the direction without either of the consequences mentioned in those paragraphs by publishing it without disclosing the identity of the person concerned.
- (6) “Direction” means a direction under section 138A.

Modifications etc. (not altering text)

- C34** S. 138B modified (20.2.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Rules and Miscellaneous Provisions\) Order 2013 \(S.I. 2013/161\)](#), arts. 1(1), **9(3)(4)**
- C35** S. 138B applied (with modifications) by S.R. 2004/335, reg. 7(3)(4) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 87(4)**)
- C36** S. 138B applied (with modifications) by 2013 c. 13, Sch. 4 para. 9A(5)(6) (as inserted (26.10.2018) by [The Financial Regulators Powers \(Technical Standards etc.\) \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1115\)](#), regs. 1(2), **10(5)(e)**)
- C37** S. 138B applied (31.12.2020) by [The Credit Rating Agencies \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/266\)](#), regs. 1(3), **4(2)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- C38** S. 138B applied (with modifications) (8.6.2023 for specified purposes) by [The Financial Services and Markets Act 2000 \(Financial Promotion\) \(Amendment\) Order 2023 \(S.I. 2023/612\)](#), art. 1(2), **Sch. para. 11** (with art. 11)
- C39** S. 138B applied in part (with modifications) (29.8.2023) by Regulation (EU) No. 648/2012, Art. 84c (as inserted by [Financial Services and Markets Act 2023 \(c. 29\)](#), s. 86(3), **Sch. 2 para. 30** (with s. 2(3)); S.I. 2023/779, reg. 4(zz)(ii))

[^{F5}138BA] Disapplication or modification of rules in individual cases

- (1) This section applies to rules made by a regulator if, or to the extent that, regulations made by the Treasury provide for it to apply.
- (2) The regulator may, on the application or with the consent of a person who is subject to the rules, give the person a permission that enables the person—
 - (a) not to apply the rules, or
 - (b) to apply the rules with the modifications specified in the permission.
- (3) Subsections (1) and (2) do not apply to—
 - (a) rules made by either regulator under section 64A (rules of conduct);
 - (b) rules made by either regulator under section 137O (threshold condition code);

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- (c) rules made by the FCA under section 247 (trust scheme rules), section 248 (scheme particular rules), section 261I (contractual scheme rules) or section 261J (contractual scheme particulars rules);
 - (d) rules made by the FCA under section 309Z(1) (rules of conduct).
- (4) The regulator may—
- (a) give permission under this section subject to conditions, and
 - (b) revoke or vary permission given under this section.
- (5) Regulations under subsection (1) may make provision about procedural matters in relation to the giving of permission under this section.
- (6) Provision under subsection (5) may (among other things) include provision about—
- (a) the making of applications;
 - (b) the determination of applications (including matters to be taken into account in doing so);
 - (c) the giving and withdrawal of consent;
 - (d) requirements as to notification or publication of decisions of a regulator under this section;
 - (e) appeals in respect of decisions of a regulator under this section.
- (7) Before making regulations under this section in relation to rules made by a regulator the Treasury must consult the regulator.]

Textual Amendments

- F5** S. 138BA inserted (29.8.2023) by [Financial Services and Markets Act 2023 \(c. 29\)](#), **ss. 34(2), 86(3)**; S.I. 2023/779, reg. 4(x)

Contravention of rules

138C Evidential provisions

- (1) If a particular rule made by either regulator so provides, contravention of the rule does not give rise to any of the consequences provided for by other provisions of this Act.
- (2) A rule made by a regulator which so provides must also provide—
- (a) that contravention may be relied on as tending to establish contravention of such other rule made by that regulator as may be specified, or
 - (b) that compliance may be relied on as tending to establish compliance with such other rule made by that regulator as may be specified.
- (3) A rule may include the provision mentioned in subsection (1) only if the regulator making the rule considers that it is appropriate for it also to include the provision required by subsection (2).
- (4) In this section “rule” does not include a rule made under—
- (a) section 137O (threshold condition code);
 - (b) section 192J (provision of information by parent undertakings).

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Modifications etc. (not altering text)

- C40** S. 138C applied (1.7.2021) by Regulation (EU) No. 648/2012, Art. 84b(1)(2) (as inserted by [Financial Services Act 2021 \(c. 22\), ss. 40\(4\), 49\(5\)](#); S.I. 2021/739, reg. 3(v))
- C41** S. 138C applied (8.6.2023 for specified purposes) by [The Financial Services and Markets Act 2000 \(Financial Promotion\) \(Amendment\) Order 2023 \(S.I. 2023/612\)](#), art. 1(2), **Sch. para. 1(e)** (with art. 11)
- C42** S. 138C applied (with modifications) (29.8.2023) by Regulation (EU) No. 648/2012, Art. 84c (as inserted by [Financial Services and Markets Act 2023 \(c. 29\)](#), s. 86(3), **Sch. 2 para. 30** (with s. 2(3)); S.I. 2023/779, reg. 4(zz)(ii))

138D Actions for damages

- (1) A rule made by the PRA may provide that contravention of the rule is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (2) A contravention by an authorised person of a rule made by the FCA is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (3) If rules made by the FCA so provide, subsection (2) does not apply to a contravention of a specified provision of the rules.
- (4) In prescribed cases, a contravention of a rule which by virtue of subsection (1) or (2) would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (5) In subsections (1), (2) and (3) “rule” does not include—
 - ^{F6}(za) [rules under section 64A (rules of conduct);]
 - ^{F7}(zaa) [rules under Part 5A;]
 - (a) Part 6 rules;
 - (b) rules under section 137O (threshold condition code);
 - (c) rules under section 192J (provision of information by parent undertakings);
 - (d) a rule requiring an authorised person to have or maintain financial resources.
- (6) “Private person” has such meaning as may be prescribed.

Textual Amendments

- F6** S. 138D(5)(za) inserted (25.7.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 3 para. 9**; S.I. 2014/1819, art. 2(4)(b)
- F7** S. 138D(5)(zaa) inserted (29.8.2023) by [Financial Services and Markets Act 2023 \(c. 29\)](#), ss. 8(6), 86(3); S.I. 2023/779, reg. 4(e)

Modifications etc. (not altering text)

- C43** S. 138D applied by S.R. 2004/335, reg. 25(6) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 87(6)**

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- C44** S. 138D modified by S.I. 2002/1775, reg. 3(2)(a) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 77(4)(b)**
- C45** S. 138D applied (with modifications) (13.8.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(b)(ii)(6), **Sch. 6 para. 3(3)** (with reg. 3)
- C46** S. 138D applied (with modifications) (8.6.2023 for specified purposes) by [The Financial Services and Markets Act 2000 \(Financial Promotion\) \(Amendment\) Order 2023 \(S.I. 2023/612\)](#), art. 1(2), **Sch. para. 12** (with art. 11)

138E Limits on effect of contravening rules

- (1) A person is not guilty of an offence by reason of a contravention of a rule made by either regulator.
- (2) No such contravention makes any transaction void or unenforceable.
- (3) Subsection (2) does not apply in relation to—
- rules made by the FCA under section 137C, ^{F8} ...
 - product intervention rules made by the FCA under section 137D [^{F9}[^{F10} or
 - rules made by the FCA under section 137FBB][^{F11} or
 - rules made by the FCA under section 137FD].

Textual Amendments

- F8** Word in s. 138E(3)(a) omitted (6.7.2016) by virtue of [Bank of England and Financial Services Act 2016 \(c. 14\)](#), **ss. 35(3)(a)**, 41(3); S.I. 2016/627, reg. 2(1)(z)
- F9** S. 138E(3)(c) and word inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), **ss. 35(3)(b)**, 41(3); S.I. 2016/627, reg. 2(1)(z)
- F10** Word in s. 138E(3)(b) omitted (E.W.S.) (29.3.2019) by virtue of [Financial Guidance and Claims Act 2018 \(c. 10\)](#), **ss. 28(3)(a)**, 37(5); S.I. 2019/743, reg. 2(a)
- F11** S. 138E(3)(d) and word inserted (E.W.S.) (29.3.2019) by [Financial Guidance and Claims Act 2018 \(c. 10\)](#), **ss. 28(3)(b)**, 37(5); S.I. 2019/743, reg. 2(a)

Modifications etc. (not altering text)

- C47** S. 138E applied (with modifications) by 2013 c. 13, **s. 97D(2)(3)** (as inserted (26.10.2018) by [The Financial Regulators Powers \(Technical Standards etc.\) \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1115\)](#), **regs. 1(2)**, 10(4))
- C48** S. 138E applied (with modifications) by 2013 c. 13, Sch. 4 para. 9A(5)(6) (as inserted (26.10.2018) by [The Financial Regulators Powers \(Technical Standards etc.\) \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1115\)](#), **regs. 1(2)**, **10(5)(c)**)
- C49** S. 138E applied (1.7.2021) by Regulation (EU) No. 648/2012, Art. 84b(1)(2) (as inserted by [Financial Services Act 2021 \(c. 22\)](#), **ss. 40(4)**, 49(5); S.I. 2021/739, reg. 3(v))
- C50** Ss. 138E-138H applied (8.6.2023 for specified purposes) by [The Financial Services and Markets Act 2000 \(Financial Promotion\) \(Amendment\) Order 2023 \(S.I. 2023/612\)](#), art. 1(2), **Sch. para. 1(f)** (with art. 11)
- C51** S. 138E applied (with modifications) (29.8.2023) by Regulation (EU) No. 648/2012, Art. 84c (as inserted by [Financial Services and Markets Act 2023 \(c. 29\)](#), s. 86(3), **Sch. 2 para. 30** (with s. 2(3)); S.I. 2023/779, reg. 4(z)(ii))

Status: Point in time view as at 29/08/2023.

Changes to legislation: Financial Services and Markets Act 2000, CHAPTER 2 is up to date with all changes known to be in force on or before 27 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Procedural provisions

Matters to consider when making rules

F12 138EA

- (1) This section applies where either regulator proposes to make rules.
- (2) The regulator must have regard to any specified matters that are relevant to the making of the rules in question.
- (3) “Specified” means specified in regulations made by the Treasury for the purposes of this section.
- (4) The specification of a matter for the purposes of this section may apply generally to the making of rules or be limited in whatever way the Treasury consider appropriate, including by reference to—
 - (a) the power under which the rules are made;
 - (b) the persons to whom the rules apply;
 - (c) the activities or subject-matter to which the rules relate.
- (5) The requirement imposed by subsection (2) does not apply in respect of any rules if, or to the extent that, the rules are made for the purposes of—
 - (a) complying with a direction given by the Financial Policy Committee of the Bank of England under section 9H of the Bank of England Act 1998 (directions requiring macro-prudential measures), or
 - (b) acting in accordance with a recommendation made by that Committee under section 9Q of that Act (recommendations about the exercise of the FCA and PRA functions).
- (6) The requirement to have regard to specified matters under this section when making rules is in addition to any other requirements to have regard to matters when making such rules imposed by another provision of this Act or by any other enactment.]

Textual Amendments

F12 S. 138EA inserted (29.8.2023) by [Financial Services and Markets Act 2023 \(c. 29\), ss. 31\(2\), 86\(3\)](#) (with savings in [The Financial Services and Markets Act 2023 \(Commencement No. 2 and Transitional Provisions\) Regulations 2023 \(S.I. 2023/936\), reg. 4](#)); S.I. 2023/779, [reg. 4\(v\)](#)

138F Notification of rules

[If either regulator makes, alters or revokes any rules, that regulator must without delay ^{F13}(1) give written notice ^{F14}to the Treasury].

^{F15}(1A) [The FCA must also give written notice to the Bank of England.]

[Subsection ^{F17}(1A)] does not apply to rules made under or by virtue of section ^{F16}(2) [^{F18}137FAA,] 137FB, [^{F19}137FBA,]^{F20}, 137FC]^{F21}, 137SA]^{F22}, 137SB]^{F23}... [^{F24}or 333T].]

Status: Point in time view as at 29/08/2023.

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Textual Amendments

- F13** S. 138F(1): s. 138F renumbered as s. 138F(1) (3.3.2015) by Pension Schemes Act 2015 (c. 8), s. 89(1)(a), **Sch. 3 para. 7(2)** (with s. 87)
- F14** Words in s. 138F(1) substituted for s. 138F(1)(a)(b) (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), **Sch. 2 para. 35(2)** (with Sch. 3); S.I. 2017/43, reg. 2(g)
- F15** S. 138F(1A) inserted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), **Sch. 2 para. 35(3)** (with Sch. 3); S.I. 2017/43, reg. 2(g)
- F16** S. 138F(2) inserted (3.3.2015) by Pension Schemes Act 2015 (c. 8), s. 89(1)(a), **Sch. 3 para. 7(3)** (with s. 87)
- F17** Word in s. 138F(2) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), **Sch. 2 para. 35(4)** (with Sch. 3); S.I. 2017/43, reg. 2(g)
- F18** Word in s. 138F(2) inserted (11.2.2021 for specified purposes, 14.10.2022 in so far as not already in force) by Pension Schemes Act 2021 (c. 1), **ss. 121(3)**, 131(1)(3)(a); S.I. 2022/1044, reg. 2(c)
- F19** Word in s. 138F(2) inserted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), **ss. 33(3)**, 41(3); S.I. 2016/627, reg. 2(1)(x)
- F20** Word in s. 138F(2) inserted (1.1.2019) by Financial Guidance and Claims Act 2018 (c. 10), s. 37(5), **Sch. 3 para. 13(b)**; S.I. 2018/1330, reg. 2(g)(iii)
- F21** Word in s. 138F(2) inserted (10.5.2018) by Financial Guidance and Claims Act 2018 (c. 10), s. 37(1)(e)(ii), **Sch. 3 para. 13(a)**
- F22** Word in s. 138F(2) inserted (1.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), s. 37(5), **Sch. 3 para. 13(c)**; S.I. 2018/1029, reg. 2(q)
- F23** Words in s. 138F(2) omitted (1.1.2019) by virtue of Financial Guidance and Claims Act 2018 (c. 10), s. 37(5), **Sch. 3 para. 13(d)**; S.I. 2018/1330, reg. 2(g)(iii)
- F24** Words in s. 138F(2) substituted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), **ss. 29(3)**, 41(3); S.I. 2016/627, reg. 2(1)(w)

Modifications etc. (not altering text)

- C50** Ss. 138E-138H applied (8.6.2023 for specified purposes) by The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 (S.I. 2023/612), art. 1(2), **Sch. para. 1(f)** (with art. 11)
- C52** S. 138F applied (with modifications) by 2013 c. 13, **s. 97D(2)(3)** (as inserted (26.10.2018) by The Financial Regulators Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), **regs. 1(2)**, 10(4))
- C53** S. 138F applied (with modifications) by 2013 c. 13, Sch. 4 para. 9A(5)(6) (as inserted (26.10.2018) by The Financial Regulators Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), **regs. 1(2)**, **10(5)(e)**)
- C54** Ss. 138F-138O applied by S.I. 2018/1201, Sch. 3 para. 12K(3) (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), **regs. 1(2)**, **10(2)**)
- C55** Ss. 138F-138O applied by S.I. 2018/1201, reg. 35(3) (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), **regs. 1(2)**, **10(3)**)
- C56** Ss. 138F-138O applied by S.I. 2018/1149, reg. 63(3) (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), **regs. 1(2)**, **3**)
- C57** S. 138F applied (31.12.2020) by The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/266), **regs. 1(3)**, **4(2)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- C58** Ss. 138F-138O applied (31.12.2020) by The Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1361), **regs. 1(2)**, **23(3)** (as amended by S.I. 2019/1390, **regs. 1(2)**, 6); 2020 c. 1, Sch. 5 para. 1(1)

Status: Point in time view as at 29/08/2023.

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- C59** S. 138F applied (1.7.2021) by Regulation (EU) No. 648/2012, Art. 84b(1)(2) (as inserted by [Financial Services Act 2021 \(c. 22\)](#), **ss. 40(4)**, 49(5); S.I. 2021/739, reg. 3(v))
- C60** S. 138F applied (with modifications) (1.7.2021) by Regulation (EU) No. 1286/2014, Art. 4A(2)(3) (as inserted by [Financial Services Act 2021 \(c. 22\)](#), **ss. 38(2)**, 49(5) (with s. 38(3)); S.I. 2021/739, reg. 3(t))
- C61** S. 138F applied (with modifications) (29.8.2023) by Regulation (EU) No. 648/2012, Art. 84c (as inserted by [Financial Services and Markets Act 2023 \(c. 29\)](#), s. 86(3), **Sch. 2 para. 30** (with s. 2(3)); S.I. 2023/779, reg. 4(zz)(ii))

138G Rule-making instruments

- (1) Any power conferred on either regulator to make rules is exercisable in writing.
- (2) An instrument by which rules are made by either regulator (“a rule-making instrument”) must specify the provision under which the rules are made.
- (3) To the extent that a rule-making instrument does not comply with subsection (2), it is void.
- (4) A rule-making instrument must be published by the regulator making the rule in the way appearing to that regulator to be best calculated to bring it to the attention of the public.
- (5) The regulator making the rule may charge a reasonable fee for providing a person with a copy of a rule-making instrument.
- (6) A person is not to be taken to have contravened any rule made by a regulator if the person shows that at the time of the alleged contravention the rule-making instrument concerned had not been made available in accordance with this section.

Modifications etc. (not altering text)

- C50** Ss. 138E-138H applied (8.6.2023 for specified purposes) by [The Financial Services and Markets Act 2000 \(Financial Promotion\) \(Amendment\) Order 2023 \(S.I. 2023/612\)](#), art. 1(2), **Sch. para. 1(f)** (with art. 11)
- C54** Ss. 138F-138O applied by S.I. 2018/1201, Sch. 3 para. 12K(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **10(2)**)
- C55** Ss. 138F-138O applied by S.I. 2018/1201, reg. 35(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **10(3)**)
- C56** Ss. 138F-138O applied by S.I. 2018/1149, reg. 63(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **3**)
- C58** Ss. 138F-138O applied (31.12.2020) by [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **23(3)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1))
- C62** S. 138G applied (with modifications) by 2013 c. 13, Sch. 4 para. 9A(5)(6) (as inserted (26.10.2018) by [The Financial Regulators Powers \(Technical Standards etc.\) \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1115\)](#), regs. 1(2), **10(5)(e)**)
- C63** S. 138G applied (31.12.2020) by [The Credit Rating Agencies \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/266\)](#), regs. 1(3), **4(2)(d)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1))

Status: Point in time view as at 29/08/2023.

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- C64** S. 138G applied (1.7.2021) by Regulation (EU) No. 1286/2014, Art. 4A(2)(3) (as inserted by [Financial Services Act 2021 \(c. 22\), ss. 38\(2\), 49\(5\)](#) (with s. 38(3)); S.I. 2021/739, reg. 3(t))
- C65** S. 138G applied (1.7.2021) by Regulation (EU) No. 648/2012, Art. 84b(1)(2) (as inserted by [Financial Services Act 2021 \(c. 22\), ss. 40\(4\), 49\(5\)](#); S.I. 2021/739, reg. 3(v))
- C66** S. 138G applied (with modifications) (29.8.2023) by Regulation (EU) No. 648/2012, Art. 84c (as inserted by [Financial Services and Markets Act 2023 \(c. 29\), s. 86\(3\), Sch. 2 para. 30](#) (with s. 2(3)); S.I. 2023/779, reg. 4(zz)(ii))

138H Verification of rules

- (1) The production of a printed copy of a rule-making instrument purporting to be made by a regulator—
- on which is endorsed a certificate signed by a member of staff of that regulator who is authorised by the regulator for that purpose, and
 - which contains the required statements,
- is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (2) The required statements are—
- that the instrument was made by the FCA or the PRA (as the case may be),
 - that the copy is a true copy of the instrument, and
 - that on a specified date the instrument was made available to the public in accordance with section 138G(4).
- (3) A certificate purporting to be signed as mentioned in subsection (1) is to be taken to have been properly signed unless the contrary is shown.
- (4) A person who wishes in any legal proceedings to rely on a rule-making instrument may require the regulator that made the rule to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (1).

Modifications etc. (not altering text)

- C50** Ss. 138E-138H applied (8.6.2023 for specified purposes) by [The Financial Services and Markets Act 2000 \(Financial Promotion\) \(Amendment\) Order 2023 \(S.I. 2023/612\)](#), art. 1(2), **Sch. para. 1(f)** (with art. 11)
- C54** Ss. 138F-138O applied by S.I. 2018/1201, Sch. 3 para. 12K(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **10(2)**)
- C55** Ss. 138F-138O applied by S.I. 2018/1201, reg. 35(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **10(3)**)
- C56** Ss. 138F-138O applied by S.I. 2018/1149, reg. 63(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **3**)
- C58** Ss. 138F-138O applied (31.12.2020) by [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **23(3)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1))
- C67** S. 138H modified (20.2.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Rules and Miscellaneous Provisions\) Order 2013 \(S.I. 2013/161\)](#), arts. 1(1), **3(6)**
- C68** S. 138H excluded by S.I. 2002/1501, art. 12(1) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 76(c)(i)**

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- C69** S. 138H modified (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), **64(4)**
- C70** S. 138H applied (with modifications) by 2013 c. 13, s. **97D(2)(3)** (as inserted (26.10.2018) by The Financial Regulators Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), **regs. 1(2), 10(4)**)
- C71** S. 138H applied (with modifications) by 2013 c. 13, Sch. 4 para. 9A(5)(6) (as inserted (26.10.2018) by The Financial Regulators Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), **regs. 1(2), 10(5)(c)**)
- C72** S. 138H modified (E.W.S.) (29.11.2018 for specified purposes, 1.4.2019 in so far as not already in force) by The Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018 (S.I. 2018/1253), arts. 1(2)(3), **85(6)**
- C73** S. 138H applied (31.12.2020) by The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/266), **regs. 1(3), 4(2)(e)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- C74** S. 138H applied (1.7.2021) by Regulation (EU) No. 648/2012, Art. 84b(1)(2) (as inserted by Financial Services Act 2021 (c. 22), **ss. 40(4), 49(5)**; S.I. 2021/739, **reg. 3(v)**)
- C75** S. 138H applied (with modifications) (29.8.2023) by Regulation (EU) No. 648/2012, Art. 84c (as inserted by Financial Services and Markets Act 2023 (c. 29), s. 86(3), **Sch. 2 para. 30** (with s. 2(3)); S.I. 2023/779, **reg. 4(zz)(ii)**)

138I Consultation by the FCA

- (1) Before making any rules, the FCA must—
 - (a) consult the PRA, and
 - (b) after doing so, publish a draft of the proposed rules in the way appearing to the FCA to be best calculated to bring them to the attention of the public.
- (2) The draft must be accompanied by—
 - (a) a cost benefit analysis,
 - (b) an explanation of the purpose of the proposed rules,
 - ^{F25}(ba) [an explanation of the ways in which having regard to specified matters under section 138EA(2) has affected the proposed rules,]
 - (c) any statement prepared under section 138K(2),
 - (d) an explanation of the FCA's reasons for believing that making the proposed rules is compatible with its duties under section 1B(1) [^{F26}, (4A)] and (5)(a), and
 - (e) notice that representations about the proposals may be made to the FCA within a specified time.
- (3) Before making the proposed rules, the FCA must have regard to any representations made to it in accordance with subsection (2)(e).
- (4) If the FCA makes the proposed rules, it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (2)(e), and
 - (b) its response to them.

[The FCA must include, in the account mentioned in subsection (4), a list of the ^{F27}(4A) respondents who made the representations, where those respondents have consented to the publication of their names.

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- (4B) The duty in subsection (4A) is not to be read as authorising or requiring such processing of personal data as would contravene the data protection legislation (but the duty is to be taken into account in determining whether particular processing of data would contravene that legislation).
- (4C) For the purposes of this section, the exemption relating to functions conferred on the FCA mentioned in paragraph 11 of Schedule 2 to the Data Protection Act 2018 (exemption from application of listed GDPR provisions) does not apply.
- (4D) Where representations are made to the FCA by a Committee of the House of Commons or the House of Lords or a Joint Committee of both Houses in accordance with subsection (2)(e), the FCA’s account mentioned in subsection (4) must also describe how the FCA has considered the representations made by that Committee in making the proposed rules.]
- (5) If the rules differ from the draft published under subsection (1)(b) in a way which is, in the opinion of the FCA, significant the FCA must publish—
- (a) details of the difference (in addition to complying with subsection (4)) together with a cost benefit analysis, and
 - (b) any statement prepared under section 138K(4).
- (6) The requirements to carry out a cost benefit analysis under this section do not apply in relation to rules made under—
- (a) section 136(2);
 - F28 (aa) [section 137FB;]
 - F29 (ab) [section 137FBA;]
 - F30 (ac) [section 137FC;]
 - F31 (ad) [section 137SA;]
 - F32 (ae) [section 137SB;]
 - (b) subsection (1) of section 213 as a result of subsection (4) of that section;
 - (c) section 234;
 - F33 (ca)
 - F34 (cb)
 - (d) paragraph 23 of Schedule 1ZA;
 - F36 (e)
- (7) “Cost benefit analysis” means—
- (a) an analysis of the costs together with an analysis of the benefits that will arise—
 - (i) if the proposed rules are made, or
 - (ii) if subsection (5) applies, from the rules that have been made, and
 - (b) subject to subsection (8), an estimate of those costs and of those benefits.
- (8) If, in the opinion of the FCA—

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(a) the costs or benefits referred to in subsection (7) cannot reasonably be estimated, or

(b) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate them, but must include a statement of the FCA's opinion and an explanation of it.

[The requirement to provide the explanation referred to in subsection (2)(ba) does not
^{F37}(8A) apply in relation to any rules if—

(a) the FCA considers that the delay involved in complying with that requirement would be prejudicial to the interests of consumers (as defined in section 425A) or other persons whose interests would be protected by the rules, or

(b) the rules change existing rules and the changes consist of, or include, changes which, in the FCA's opinion, are not material.

(8B) Where an explanation is not provided by virtue of subsection (8A)(b), the draft of the rules must be accompanied by a statement of the FCA's opinion.]

(9) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).

[This section does not apply to rules made by the FCA under section 271E.]
^{F38}(9A)

(10) Subsection (1)(a) does not apply to [^{F39}—

(a) rules made by the FCA under section 137FB, [^{F40}137FBA,]^{F41}, 137FC]^{F42}, 137SA]^{F43}, 137SB]^{F44}... [^{F45}or 333T], or

(b) rules made by the FCA in relation to recognised investment exchanges under Part 18.

(11) This section is subject to section 138L.

Textual Amendments

F25 S. 138I(2)(ba) inserted (29.8.2023) by [Financial Services and Markets Act 2023 \(c. 29\)](#), **ss. 31(3)(a)**, 86(3); S.I. 2023/779, reg. 4(v)

F26 Word in s. 138I(2)(d) inserted (29.8.2023) by [Financial Services and Markets Act 2023 \(c. 29\)](#), **ss. 28(7)**, 86(3); S.I. 2023/779, reg. 4(s)

F27 S. 138I(4A)-(4D) inserted (29.8.2023) by [Financial Services and Markets Act 2023 \(c. 29\)](#), **ss. 53(1)**, 86(3); S.I. 2023/779, reg. 4(mm)

F28 S. 138I(6)(aa) inserted (3.3.2015) by [Pension Schemes Act 2015 \(c. 8\)](#), s. 89(1)(a), **Sch. 3 para. 8(a)** (with s. 87, **Sch. 3 para. 18(1)**)

F29 S. 138I(6)(ab) inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), **ss. 33(4)(a)**, 41(3); S.I. 2016/627, reg. 2(1)(x)

F30 S. 138I(6)(ac) inserted (1.1.2019) by [Financial Guidance and Claims Act 2018 \(c. 10\)](#), s. 37(5), **Sch. 3 para. 14(2)(b)**; S.I. 2018/1330, reg. 2(g)(iv)

F31 S. 138I(6)(ad) inserted (10.5.2018) by [Financial Guidance and Claims Act 2018 \(c. 10\)](#), s. 37(1)(e)(iii), **Sch. 3 para. 14(2)(a)**

F32 S. 138I(6)(ae) inserted (1.10.2018) by [Financial Guidance and Claims Act 2018 \(c. 10\)](#), s. 37(5), **Sch. 3 para. 14(2)(c)**; S.I. 2018/1029, reg. 2(q)

F33 S. 138I(6)(ca) omitted (1.1.2019) by virtue of [Financial Guidance and Claims Act 2018 \(c. 10\)](#), s. 37(5), **Sch. 3 para. 14(2)(d)**; S.I. 2018/1330, reg. 2(g)(iv)

F34 S. 138I(6)(cb) omitted (1.1.2019) by virtue of [Financial Guidance and Claims Act 2018 \(c. 10\)](#), s. 37(5), **Sch. 3 para. 14(2)(d)**; S.I. 2018/1330, reg. 2(g)(iv)

Status: Point in time view as at 29/08/2023.

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- F35** S. 138I(6)(cc) inserted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), **ss. 29(4)(a)**, 41(3); S.I. 2016/627, reg. 2(1)(w)
- F36** S. 138I(6)(e) omitted (1.1.2019) by virtue of Financial Guidance and Claims Act 2018 (c. 10), s. 37(5), **Sch. 3 para. 14(2)(d)**; S.I. 2018/1330, reg. 2(g)(iv)
- F37** S. 138I(8A)(8B) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), **ss. 31(3)(b)**, 86(3); S.I. 2023/779, reg. 4(v)
- F38** S. 138I(9A) inserted (23.2.2022) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 9 para. 3**; S.I. 2022/163, reg. 2(a)
- F39** S. 138I(10)(a) and word inserted (3.3.2015) by Pension Schemes Act 2015 (c. 8), s. 89(1)(a), **Sch. 3 para. 8(c)** (with s. 87)
- F40** Word in s. 138I(10)(a) inserted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), **ss. 33(4)(b)**, 41(3); S.I. 2016/627, reg. 2(1)(x)
- F41** Word in s. 138I(10) inserted (1.1.2019) by Financial Guidance and Claims Act 2018 (c. 10), s. 37(5), **Sch. 3 para. 14(3)(b)**; S.I. 2018/1330, reg. 2(g)(iv)
- F42** Word in s. 138I(10) inserted (10.5.2018) by Financial Guidance and Claims Act 2018 (c. 10), s. 37(1)(e)(iii), **Sch. 3 para. 14(3)(a)**
- F43** Word in s. 138I(10) inserted (1.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), s. 37(5), **Sch. 3 para. 14(3)(c)**; S.I. 2018/1029, reg. 2(q)
- F44** Words in s. 138I(10) omitted (1.1.2019) by virtue of Financial Guidance and Claims Act 2018 (c. 10), s. 37(5), **Sch. 3 para. 14(3)(d)**; S.I. 2018/1330, reg. 2(g)(iv)
- F45** Words in s. 138I(10)(a) substituted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), **ss. 29(4)(b)**, 41(3); S.I. 2016/627, reg. 2(1)(w)

Modifications etc. (not altering text)

- C54** Ss. 138F-138O applied by S.I. 2018/1201, Sch. 3 para. 12K(3) (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), **10(2)**)
- C55** Ss. 138F-138O applied by S.I. 2018/1201, reg. 35(3) (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), **10(3)**)
- C56** Ss. 138F-138O applied by S.I. 2018/1149, reg. 63(3) (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), **3**)
- C58** Ss. 138F-138O applied (31.12.2020) by The Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1361), regs. 1(2), **23(3)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)
- C76** S. 138I excluded (20.2.2013) by The Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 (S.I. 2013/161), arts. 1(1), **8(2)**
- C77** S. 138I excluded by S.I. 2004/454, art. 12(1) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 89(b)**
- C78** S. 138I excluded by S.I. 2006/3259, reg. 4 (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 120(b)(ii)**
- C79** S. 138I excluded (2.4.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (S.I. 2013/655), arts. 1, **9(2)**
- C80** Ss. 138I-138L applied (with modifications) (22.7.2013) by The Alternative Investment Fund Managers (Amendment) Regulations 2013 (S.I. 2013/1797), regs. 1(2), **6(3)-(7)** (with reg. 6(2)) (as amended (31.12.2020) by S.I. 2019/328, regs. 1(3), **19(1)** (which is itself amended by S.I. 2019/325, **reg. 58**); 2020 c. 1, **Sch. 5 para. 1(1)**)
- C81** S. 138I applied (with modifications) (26.7.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(4), **61(5)** (with art. 61(6)(7))

Status: Point in time view as at 29/08/2023.

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- C82** S. 138I excluded (1.4.2015) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2015 (S.I. 2015/369), arts. 1, **6(2)(b)**
- C83** S. 138I excluded (6.4.2015) by The Bank of England Act 1998 (Macro-prudential Measures) Order 2015 (S.I. 2015/909), arts. 1, **4(2)(a)** (with art. 4(1))
- C84** S. 138I excluded (16.12.2016) by The Bank of England Act 1998 (Macro-prudential Measures) Order 2016 (S.I. 2016/1240), arts. 1, **4(2)(a)**
- C85** S. 138I excluded (27.2.2018) by The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135), regs. 1(2), **32(2)(b)**
- C86** S. 138I excluded (10.5.2018) by Financial Guidance and Claims Act 2018 (c. 10), s. 37(1)(f), **Sch. 5 para. 7**
- C87** S. 138I applied (with modifications) (29.11.2018 for specified purposes, 1.4.2019 in so far as not already in force) by The Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018 (S.I. 2018/1253), arts. 1(2)(3), **84(6)-(8)**
- C88** S. 138I applied (with modifications) (31.12.2020) by The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/266), regs. 1(3), **4(2)(f)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- C89** S. 138I applied (with modifications) (1.7.2021) by Regulation (EU) No. 1286/2014, Art. 4A(2)(3) (as inserted by Financial Services Act 2021 (c. 22), **ss. 38(2)**, 49(5) (with s. 38(3)); S.I. 2021/739, reg. 3(t))
- C90** S. 138I applied (1.7.2021) by Regulation (EU) No. 648/2012, Art. 84b(1)(2) (as inserted by Financial Services Act 2021 (c. 22), **ss. 40(4)**, 49(5) (with s. 40(5)); S.I. 2021/739, reg. 3(v))
- C91** S. 138I excluded (20.10.2021) by Compensation (London Capital & Finance plc and Fraud Compensation Fund) Act 2021 (c. 29), **s. 1(3)**
- C92** S. 138I modified (16.5.2022 for specified purposes, 29.7.2022 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2022 (S.I. 2022/466), arts. 1(3), **7**
- C93** S. 138I restricted in part (13.3.2023 at 8.00 a.m.) by The Amendments of the Law (Resolution of Silicon Valley Bank UK Limited) Order 2023 (S.I. 2023/319), arts. 1(2), **4(1)**
- C94** S. 138I(1)(b)(2)(e)(3) applied by S.I. 2008/346, reg. 42(4)(4A) (as substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 134(d)**)
- C95** S. 138I(2)(a) excluded (26.7.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(4), **61(3)** (with art. 61(6))
- C96** S. 138I(2)(d) excluded (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 1 para. 6(2), **(3)(a)** (with Sch. 12)
- C97** S. 138I(2)(d) excluded (6.4.2018 immediately after 2016 c. 16 (N.I.), s. 8(2) comes into force) by The Financial Services Act 2012 (Mutual Societies) Order 2018 (S.I. 2018/323), art. 1, **Sch. 1 para. 5(3)(a)** (with art. 3)

FCA Cost Benefit Analysis Panel

F46 **138IA**

- (1) The FCA must establish and maintain a panel of persons (to be known as the “FCA Cost Benefit Analysis Panel”) to provide advice in relation to cost benefit analyses for the purposes of section 138I.
- (2) Except as provided by subsection (3), the FCA must consult the FCA Cost Benefit Analysis Panel about the following matters—
 - (a) the preparation of a cost benefit analysis under section 138I(2)(a) or (5)(a);
 - (b) the preparation of its statement of policy under section 138IB.
- (3) The requirement to consult under subsection (2)(a) does not apply in such cases as may be set out in the statement of policy maintained under section 138IB.

Status: Point in time view as at 29/08/2023.

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- (4) Arrangements made by the FCA under subsection (1) for the establishment and maintenance of the FCA Cost Benefit Analysis Panel must include arrangements for the Panel to—
 - (a) keep under review how the FCA is performing generally in carrying out its duties under section 138I(2)(a) and (5)(a), and
 - (b) provide to the FCA whatever recommendations the Panel thinks appropriate as a result of such review.
- (5) The FCA must appoint one of the members of the FCA Cost Benefit Analysis Panel to be the chair of the Panel.
- (6) The Treasury’s approval is required for the appointment or dismissal of the chair.
- (7) The FCA must appoint to the FCA Cost Benefit Analysis Panel such persons with knowledge or experience of the preparation of cost benefit analyses as it considers appropriate.
- (8) The FCA must appoint to the FCA Cost Benefit Analysis Panel at least two individuals who are employed by persons authorised for the purposes of this Act by the FCA, with each one being employed by a different person.
- (9) The FCA may appoint to the FCA Cost Benefit Analysis Panel such other persons as it considers appropriate.
- (10) Subsections (7) to (9) are subject to section 1MA.
- (11) The FCA must consider representations that are made to it by the FCA Cost Benefit Analysis Panel.
- (12) The FCA must from time to time publish in such manner as it thinks fit responses to the representations.]

Textual Amendments

F46 S. 138IA inserted (29.8.2023 for specified purposes) by [Financial Services and Markets Act 2023](#) (c. 29), ss. 43(2), 86(3); S.I. 2023/779, reg. 4(gg)

Statement of policy in relation to cost benefit analyses

F47 **138IB**

- (1) The FCA must prepare and publish a statement of policy in relation to the preparation of cost benefit analyses for the purposes of section 138I.
- (2) The statement must provide information about—
 - (a) the methodology adopted in preparing cost benefit analyses;
 - (b) matters to which the FCA has regard in determining whether section 138I(8) applies;
 - (c) matters to which the FCA has regard in determining whether an exemption under section 138L applies in relation to the preparation of a cost benefit analysis;
 - (d) arrangements to ensure that representations in connection with a cost benefit analysis that are made in accordance with section 138I(2)(e) are considered;
 - (e) cases in which the requirement to consult the FCA Cost Benefit Analysis Panel in relation to the preparation of a cost benefit analysis does not apply;

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- (f) arrangements to ensure that any recommendations in connection with cost benefit analyses that are made following a review carried out under section 138IA(4) are considered.
- (3) The statement may include whatever other information in relation to cost benefit analyses that the FCA considers appropriate.
- (4) The FCA may alter or replace a statement published under this section.
- (5) The FCA must publish a statement as altered or replaced under subsection (4).
- (6) Publication under this section is to be made in such manner as the FCA considers best designed to bring the statement to the attention of the public.]

Textual Amendments

F47 S. 138IB inserted (29.8.2023) by [Financial Services and Markets Act 2023 \(c. 29\)](#), ss. **44(2)**, 86(3); S.I. 2023/779, reg. 4(hh)

138J Consultation by the PRA

- (1) Before making any rules, the PRA must—
 - (a) consult the FCA, and
 - (b) after doing so, publish a draft of the proposed rules in the way appearing to the PRA to be best calculated to bring them to the attention of the public.
- (2) The draft must be accompanied by—
 - (a) a cost benefit analysis,
 - (b) an explanation of the purpose of the proposed rules,
 - ^{F48}(ba) [an explanation of the ways in which having regard to specified matters under section 138EA(2) has affected the proposed rules,]
 - (c) any statement prepared under section 138K(2),
 - (d) an explanation of the PRA's reasons for believing that making the proposed rules is compatible with its duties under—
 - (i) section 2B(1) or, as the case requires, section 2C(1) or 2D(3), and
 - (ii) section 2H, and
 - (e) notice that representations about the proposals may be made to the PRA within a specified time.
- (3) Before making the proposed rules, the PRA must have regard to any representations made to it in accordance with subsection (2)(e).
- (4) If the PRA makes the proposed rules, it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (2)(e), and
 - (b) its response to them.

[The PRA must include, in the account mentioned in subsection (4), a list of the ^{F49}(4A) respondents who made the representations, where those respondents have consented to the publication of their names.

- (4B) The duty in subsection (4A) is not to be read as authorising or requiring such processing of personal data as would contravene the data protection legislation (but

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the duty is to be taken into account in determining whether particular processing of data would contravene that legislation).

(4C) For the purposes of this section, the exemption relating to functions conferred on the PRA mentioned in paragraph 9 of Schedule 2 to the Data Protection Act 2018 (exemption from application of listed GDPR provisions) does not apply.

(4D) Where representations are made to the PRA by a Committee of the House of Commons or the House of Lords or a Joint Committee of both Houses in accordance with subsection (2)(e), the PRA’s account mentioned in subsection (4) must also describe how the PRA has considered the representations made by that Committee in making the proposed rules.]

(5) If the rules differ from the draft published under subsection (1)(b) in a way which is, in the opinion of the PRA, significant the PRA must publish—

(a) details of the difference (in addition to complying with subsection (4)) together with a cost benefit analysis, and

(b) any statement prepared under section 138K(4).

(6) The requirements to carry out a cost benefit analysis under this section do not apply in relation to rules made under—

(a) section 136(2);

(b) subsection (1) of section 213 as a result of subsection (4) of that section;

(c) section 234;

(d) paragraph 31 of Schedule 1ZB;

^{F50}(e)

(7) “Cost benefit analysis” means—

(a) an analysis of the costs together with an analysis of the benefits that will arise—

(i) if the proposed rules are made, or

(ii) if subsection (5) applies, from the rules that have been made, and

(b) subject to subsection (8), an estimate of those costs and of those benefits.

(8) If, in the opinion of the PRA—

(a) the costs or benefits referred to in subsection (7) cannot reasonably be estimated, or

(b) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate them, but must include a statement of the PRA’s opinion and an explanation of it.

[The requirement to provide the explanation referred to in subsection (2)(ba) does not ^{F51}(8A) apply in relation to any rules if—

(a) the PRA considers that the delay involved in complying with that requirement would—

(i) be prejudicial to the safety and soundness of PRA-authorized persons, or

(ii) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policyholders, or

(b) the rules change existing rules and the changes consist of, or include, changes which, in the PRA’s opinion, are not material.

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- (8B) Where an explanation is not provided by virtue of subsection (8A)(b), the draft of the rules must be accompanied by a statement of the PRA’s opinion.]
- (9) The PRA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).
- (10) This section is subject to [^{F52}sections 138L and 144E(3)].

Textual Amendments

- F48** S. 138J(2)(ba) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), **ss. 31(4)(a)**, 86(3) (with savings in The Financial Services and Markets Act 2023 (Commencement No. 2 and Transitional Provisions) Regulations 2023 (S.I. 2023/936), **reg. 4**); S.I. 2023/779, **reg. 4(v)**
- F49** S. 138J(4A)-(4D) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), **ss. 53(2)**, 86(3); S.I. 2023/779, **reg. 4(mm)**
- F50** S. 138J(6)(e) omitted (6.4.2021) by virtue of Financial Guidance and Claims Act 2018 (c. 10), s. 37(5), **Sch. 3 para. 15**; S.I. 2021/433, **reg. 2(b)(iii)**
- F51** S. 138J(8A)(8B) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), **ss. 31(4)(b)**, 86(3) (with savings in The Financial Services and Markets Act 2023 (Commencement No. 2 and Transitional Provisions) Regulations 2023 (S.I. 2023/936), **reg. 4**); S.I. 2023/779, **reg. 4(v)**
- F52** Words in s. 138J(10) substituted (9.6.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 3 para. 12** (with Sch. 3 Pt. 4); S.I. 2021/671, **reg. 2(d)**

Modifications etc. (not altering text)

- C54** Ss. 138F-138O applied by S.I. 2018/1201, Sch. 3 para. 12K(3) (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), **regs. 1(2)**, **10(2)**)
- C55** Ss. 138F-138O applied by S.I. 2018/1201, **reg. 35(3)** (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), **regs. 1(2)**, **10(3)**)
- C56** Ss. 138F-138O applied by S.I. 2018/1149, **reg. 63(3)** (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), **regs. 1(2)**, **3**)
- C58** Ss. 138F-138O applied (31.12.2020) by The Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1361), **regs. 1(2)**, **23(3)** (as amended by S.I. 2019/1390, **regs. 1(2)**, **6**); 2020 c. 1, **Sch. 5 para. 1(1)**)
- C80** Ss. 138I-138L applied (with modifications) (22.7.2013) by The Alternative Investment Fund Managers (Amendment) Regulations 2013 (S.I. 2013/1797), **regs. 1(2)**, **6(3)-(7)** (with **reg. 6(2)**) (as amended (31.12.2020) by S.I. 2019/328, **regs. 1(3)**, **19(1)** (which is itself amended by S.I. 2019/325, **reg. 58**); 2020 c. 1, **Sch. 5 para. 1(1)**)
- C98** S. 138J applied (with modifications) (26.7.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), **arts. 1(4)**, **62(4)(5)**
- C99** S. 138J excluded (6.4.2015) by The Bank of England Act 1998 (Macro-prudential Measures) Order 2015 (S.I. 2015/909), **arts. 1**, **4(2)(b)** (with art. 4(1))
- C100** Ss. 138J, 138K excluded (6.4.2015) by The Bank of England Act 1998 (Macro-prudential Measures) (No.2) Order 2015 (S.I. 2015/905), **arts. 1(2)**, **5(2)(a)** (with art. 5(1))
- C101** S. 138J excluded (16.12.2016) by The Bank of England Act 1998 (Macro-prudential Measures) Order 2016 (S.I. 2016/1240), **arts. 1**, **4(2)(b)**
- C102** S. 138J restricted in part (13.3.2023 at 8.00 a.m.) by The Amendments of the Law (Resolution of Silicon Valley Bank UK Limited) Order 2023 (S.I. 2023/319), **arts. 1(2)**, **4(1)**

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- C103** S. 138J applied in part (with modifications) (29.8.2023) by Regulation (EU) No. 648/2012, Art. 84c (as inserted by Financial Services and Markets Act 2023 (c. 29), s. 86(3), **Sch. 2 para. 30** (with s. 2(3)); S.I. 2023/779, reg. 4(zz)(ii))
- C104** S. 138J(2)(a) excluded (1.4.2013) by The Bank of England Act 1998 (Macro-prudential Measures) Order 2013 (S.I. 2013/644), arts. 1(1), **3(2)**
- C105** S. 138J(2)(a) excluded (26.7.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(4), **62(2)**
- C106** S. 138J(5)(a) restricted (25.3.2013) by The Financial Services Act 2012 (Transitional Provisions) (Miscellaneous Provisions) Order 2013 (S.I. 2013/442), arts. 1(2), **70(3)**

PRA Cost Benefit Analysis Panel

f53

138JA

- (1) The PRA must establish and maintain a panel of persons (to be known as the “PRA Cost Benefit Analysis Panel”) to provide advice in relation to cost benefit analyses for the purposes of section 138J.
- (2) Except as provided by subsection (3), the PRA must consult the PRA Cost Benefit Analysis Panel about the following matters—
 - (a) the preparation of a cost benefit analysis under section 138J(2)(a) or (5)(a);
 - (b) the preparation of its statement of policy under section 138JB.
- (3) The requirement to consult under subsection (2)(a) does not apply in such cases as may be set out in the statement of policy maintained under section 138JB.
- (4) Arrangements made by the PRA under subsection (1) for the establishment and maintenance of the PRA Cost Benefit Analysis Panel must include arrangements for the Panel to—
 - (a) keep under review how the PRA is performing generally in carrying out its duties under section 138J(2)(a) and (5)(a), and
 - (b) provide to the PRA whatever recommendations the Panel thinks appropriate as a result of such review.
- (5) The PRA must appoint one of the members of the PRA Cost Benefit Analysis Panel to be the chair of the Panel.
- (6) The Treasury’s approval is required for the appointment or dismissal of the chair.
- (7) The PRA must appoint to the PRA Cost Benefit Analysis Panel such persons with knowledge or experience of the preparation of cost benefit analyses as it considers appropriate.
- (8) The PRA must appoint to the PRA Cost Benefit Analysis Panel at least two individuals who are employed by PRA-authorized persons, with each one being employed by a different person.
- (9) The PRA may appoint to the PRA Cost Benefit Analysis Panel such other persons as it considers appropriate.
- (10) Subsections (7) to (9) are subject to section 2LA.
- (11) The PRA must consider representations that are made to it by the PRA Cost Benefit Analysis Panel.
- (12) The PRA must from time to time publish in such manner as it thinks fit responses to the representations.

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- (13) The reference in subsection (1) to section 138J includes a reference to that section as applied in relation to the Bank of England by paragraphs 10(1) and 10A of Schedule 17A.]

Textual Amendments

F53 S. 138JA inserted (29.8.2023 for specified purposes) by [Financial Services and Markets Act 2023 \(c. 29\)](#), [ss. 43\(3\)](#), [86\(3\)](#) (with savings in [The Financial Services and Markets Act 2023 \(Commencement No. 2 and Transitional Provisions\) Regulations 2023 \(S.I. 2023/936\)](#), [reg. 4](#)); [S.I. 2023/779](#), [reg. 4\(gg\)](#)

Statement of policy in relation to cost benefit analyses

F54 **138JB**

- (1) The PRA must prepare and publish a statement of policy in relation to the preparation of cost benefit analyses for the purposes of section 138J.
- (2) The statement must provide information about—
- the methodology adopted in preparing cost benefit analyses;
 - matters to which the PRA has regard in determining whether section 138J(8) applies;
 - matters to which the PRA has regard in determining whether an exemption under section 138L applies in relation to the preparation of a cost benefit analysis;
 - arrangements to ensure that representations in connection with a cost benefit analysis that are made in accordance with section 138J(2)(e) are considered;
 - cases in which the requirement to consult the PRA Cost Benefit Analysis Panel in relation to the preparation of a cost benefit analysis does not apply;
 - arrangements to ensure that any recommendations in connection with cost benefit analyses that are made following a review carried out under section 138JA(4) are considered.
- (3) The statement may include whatever other information in relation to cost benefit analyses that the PRA considers appropriate.
- (4) The PRA may alter or replace a statement published under this section.
- (5) The PRA must publish a statement as altered or replaced under subsection (4).
- (6) Publication under this section is to be made in such manner as the PRA considers best designed to bring the statement to the attention of the public.]

Textual Amendments

F54 S. 138JB inserted (29.8.2023) by [Financial Services and Markets Act 2023 \(c. 29\)](#), [ss. 44\(3\)](#), [86\(3\)](#); [S.I. 2023/779](#), [reg. 4\(hh\)](#)

138K Consultation: mutual societies

- (1) Subsection (2) applies where a regulator proposes to make a rule (“the proposed rule”) which would apply both to—
- authorised persons which are mutual societies, and

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- (b) other authorised persons.
- (2) The regulator must prepare a statement setting out—
- (a) its opinion whether or not the impact of the proposed rule on persons within subsection (1)(a) will be significantly different from its impact on persons within subsection (1)(b), and
 - (b) if so, details of the difference.
- (3) Subsection (4) applies where a regulator makes a rule which—
- (a) applies both to—
 - (i) authorised persons which are mutual societies, and
 - (ii) other authorised persons, and
 - (b) differs from the draft of the proposed rule published under section 138I(1)(b) or section 138J(1)(b) (as the case may be).
- (4) The regulator must prepare a statement setting out—
- (a) its opinion whether or not the impact of the rule is significantly different from the impact of the proposed rule on—
 - (i) the persons within subsection (3)(a)(i), and
 - (ii) those persons as compared with persons within subsection (3)(a)(ii), and
 - (b) if so, details of the difference.
- (5) A “mutual society” is—
- (a) a building society within the meaning of the Building Societies Act 1986;
 - (b) a friendly society within the meaning of the Friendly Societies Act 1992;
 - (c) a registered society within the meaning of [^{F55}the Co-operative and Community Benefit Societies Act 2014];
 - ^{F56}(d)
- ^{F56}(6)
- [This section is subject to section 144E(3).]
- ^{F57}(7)

Textual Amendments

- F55** Words in s. 138K(5)(c) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\), s. 154, Sch. 4 para. 69](#) (with Sch. 5)
- F56** S. 138K(5)(d)(6) omitted (31.12.2020) by virtue of [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **39**; 2020 c. 1, Sch. 5 para. 1(1)
- F57** S. 138K(7) inserted (9.6.2021) by [Financial Services Act 2021 \(c. 22\), s. 49\(5\), Sch. 3 para. 13](#) (with Sch. 3 Pt. 4); S.I. 2021/671, reg. 2(d)

Modifications etc. (not altering text)

- C54** Ss. 138F-138O applied by S.I. 2018/1201, Sch. 3 para. 12K(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **10(2)**)
- C55** Ss. 138F-138O applied by S.I. 2018/1201, reg. 35(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **10(3)**)

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- C56** Ss. 138F-138O applied by S.I. 2018/1149, reg. 63(3) (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), 3)
- C58** Ss. 138F-138O applied (31.12.2020) by The Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1361), regs. 1(2), **23(3)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)
- C80** Ss. 138I-138L applied (with modifications) (22.7.2013) by The Alternative Investment Fund Managers (Amendment) Regulations 2013 (S.I. 2013/1797), regs. 1(2), **6(3)-(7)** (with reg. 6(2)) (as amended (31.12.2020) by S.I. 2019/328, regs. 1(3), **19(1)** (which is itself amended by S.I. 2019/325, reg. **58**); 2020 c. 1, Sch. 5 para. **1(1)**)
- C100** Ss. 138J, 138K excluded (6.4.2015) by The Bank of England Act 1998 (Macro-prudential Measures) (No.2) Order 2015 (S.I. 2015/905), arts. 1(2), **5(2)(a)** (with art. 5(1))
- C107** S. 138K excluded (20.2.2013) by The Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 (S.I. 2013/161), arts. 1(1), **8(2)**
- C108** S. 138K excluded (6.4.2015) by The Bank of England Act 1998 (Macro-prudential Measures) Order 2015 (S.I. 2015/909), arts. 1, **4(2)** (with art. 4(1))
- C109** S. 138K excluded (16.12.2016) by The Bank of England Act 1998 (Macro-prudential Measures) Order 2016 (S.I. 2016/1240), arts. 1, **4(2)(b)**
- C110** S. 138K restricted (13.3.2023 at 8.00 a.m.) by The Amendments of the Law (Resolution of Silicon Valley Bank UK Limited) Order 2023 (S.I. 2023/319), arts. 1(2), **4(1)**

138L Consultation: general exemptions

- (1) Sections 138I(1)(b) and (2) to (5) and 138K do not apply in relation to rules made by the FCA if the FCA considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A.
- (2) Sections 138J(1)(b) and (2) to (5) and 138K do not apply in relation to rules made by the PRA if the PRA considers that the delay involved in complying with them would—
 - (a) be prejudicial to the safety and soundness of PRA-authorised persons, or
 - (b) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policyholders.
- (3) The provisions listed in subsection (4) do not apply if the regulator concerned considers that, making the appropriate comparison—
 - (a) there will be no increase in costs, or
 - (b) there will be an increase in costs but that increase will be of minimal significance.
- (4) Those provisions are—
 - (a) subsections (2)(a) and (5)(a) of section 138I;
 - (b) subsections (2)(a) and (5)(a) of section 138J.
- (5) The “appropriate comparison” means—
 - (a) in relation to section 138I(2)(a) or 138J(2)(a), a comparison between the overall position if the rules are made and the overall position if the rules are not made;
 - (b) in relation to section 138I(5)(a) or 138J(5)(a), a comparison between the overall position after the making of the rules and the overall position before they were made.

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Modifications etc. (not altering text)

- C54** Ss. 138F-138O applied by S.I. 2018/1201, Sch. 3 para. 12K(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/405), regs. 1(2), **10(2)**)
- C55** Ss. 138F-138O applied by S.I. 2018/1201, reg. 35(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/405), regs. 1(2), **10(3)**)
- C56** Ss. 138F-138O applied by S.I. 2018/1149, reg. 63(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/405), regs. 1(2), **3**)
- C58** Ss. 138F-138O applied (31.12.2020) by [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/1361), regs. 1(2), **23(3)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)
- C80** Ss. 138I-138L applied (with modifications) (22.7.2013) by [The Alternative Investment Fund Managers \(Amendment\) Regulations 2013](#) (S.I. 2013/1797), regs. 1(2), **6(3)-(7)** (with reg. 6(2)) (as amended (31.12.2020) by S.I. 2019/328, regs. 1(3), **19(1)** (which is itself amended by S.I. 2019/325, **reg. 58**); 2020 c. 1, **Sch. 5 para. 1(1)**)
- C111** S. 138L applied (1.7.2021) by Regulation (EU) No. 648/2012, Art. 84b(1)(2) (as inserted by [Financial Services Act 2021](#) (c. 22), **ss. 40(4)**, 49(5); S.I. 2021/739, **reg. 3(v)**)
- C112** S. 138L applied (with modifications) (1.7.2021) by Regulation (EU) No. 1286/2014, Art. 4A(2)(3) (as inserted by [Financial Services Act 2021](#) (c. 22), **ss. 38(2)**, 49(5) (with s. 38(3)); S.I. 2021/739, reg. 3(t))
- C113** S. 138L applied in part (with modifications) (29.8.2023) by Regulation (EU) No. 648/2012, Art. 84c (as inserted by [Financial Services and Markets Act 2023](#) (c. 29), s. 86(3), **Sch. 2 para. 30** (with s. 2(3)); S.I. 2023/779, reg. 4(zz)(ii))
- C114** S. 138L(1)(2) modified by S.I. 2008/2666, art. 19(1) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013](#) (S.I. 2013/472), **Sch. 2 para. 148(c)(i)**
- C115** S. 138L(1)(2) modified by S.I. 2009/3226, art. 21(1) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013](#) (S.I. 2013/472), **Sch. 2 para. 182(b)(i)**
- C116** S. 138L(1)(2) modified by S.I. 2008/2674, art. 30(1) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013](#) (S.I. 2013/472), **Sch. 2 para. 149(c)(i)**
- C117** S. 138L(1)(2) modified by S.I. 2008/2546, art. 38(1) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013](#) (S.I. 2013/472), **Sch. 2 para. 146(d)(i)**
- C118** S. 138L(1)(2) modified by S.I. 2008/2644, art. 28(1) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013](#) (S.I. 2013/472), **Sch. 2 para. 147(c)(i)**
- C119** S. 138L(1)(2) modified by S.I. 2008/432, art. 16(1) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013](#) (S.I. 2013/472), **Sch. 2 para. 136(e)(aa)(i)**
- C120** S. 138L(1)(2) modified by S.I. 2009/814, art. 10(1) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013](#) (S.I. 2013/472), **Sch. 2 para. 167(c)(i)**
- C121** S. 138L(1) modified (13.1.2018) by [The Payment Services Regulations 2017](#) (S.I. 2017/752), reg. 1(6), **Sch. 7 para. 3(1)** (with reg. 3)
- C122** S. 138L(1) modified by S.I. 2011/99, Sch. 5 para. 3(1) (as inserted (13.1.2018) by [The Payment Systems and Services and Electronic Money \(Miscellaneous Amendments\) Regulations 2017](#) (S.I. 2017/1173), regs. 1(4), **5(d)**)

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138M Consultation: exemptions for temporary product intervention rules

- (1) Sections 138I(1)(b) and (2) to (5) and 138K do not apply in relation to product intervention rules made by the FCA if it considers that it is necessary or expedient not to comply with them for the purpose of advancing—
 - (a) the consumer protection objective or the competition objective, or
 - (b) if an order under section 137D(1)(b) is in force, the integrity objective.
- (2) Any rules made as a result of subsection (1) (“temporary product intervention rules”) are to cease to have effect at the end of the period specified in the rules.
- (3) The longest period that may be specified is the period of 12 months beginning with the day on which the rules come into force.
- (4) Nothing in subsection (2) prevents the FCA from revoking temporary product intervention rules before the end of the period mentioned there.
- (5) If the FCA has made temporary product intervention rules (“the initial rules”), it may not make further temporary product intervention rules containing the same, or substantially the same, provision as that contained in the initial rules until the prohibited period has ended.
- (6) “The prohibited period” means the period of 12 months beginning with the day on which the period mentioned in subsection (2) ends (whether or not the initial rules have been revoked before the end of the period mentioned there).

Modifications etc. (not altering text)

- C54** Ss. 138F-138O applied by S.I. 2018/1201, Sch. 3 para. 12K(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **10(2)**)
- C55** Ss. 138F-138O applied by S.I. 2018/1201, reg. 35(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **10(3)**)
- C56** Ss. 138F-138O applied by S.I. 2018/1149, reg. 63(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **3**)
- C58** Ss. 138F-138O applied (31.12.2020) by [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **23(3)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

138N Temporary product intervention rules: statement of policy

- (1) The FCA must prepare and issue a statement of its policy with respect to the making of temporary product intervention rules.
- (2) The FCA may at any time alter or replace a statement issued under this section.
- (3) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replacement statement.
- (4) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

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- (5) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

Modifications etc. (not altering text)

- C54** Ss. 138F-138O applied by S.I. 2018/1201, Sch. 3 para. 12K(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **10(2)**)
- C55** Ss. 138F-138O applied by S.I. 2018/1201, reg. 35(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **10(3)**)
- C56** Ss. 138F-138O applied by S.I. 2018/1149, reg. 63(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **3**)
- C58** Ss. 138F-138O applied (31.12.2020) by [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **23(3)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

138O Statement of policy under section 138N: procedure

- (1) Before issuing a statement under section 138N, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.
- (3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).
- (4) If the FCA issues the proposed statement it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (2), and
 - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.]

Modifications etc. (not altering text)

- C54** Ss. 138F-138O applied by S.I. 2018/1201, Sch. 3 para. 12K(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **10(2)**)

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- C55** Ss. 138F-138O applied by S.I. 2018/1201, reg. 35(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **10(3)**)
- C56** Ss. 138F-138O applied by S.I. 2018/1149, reg. 63(3) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **3**)
- C58** Ss. 138F-138O applied (31.12.2020) by [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **23(3)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

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