



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XI

#### INFORMATION GATHERING AND INVESTIGATIONS

##### Modifications etc. (not altering text)

- C1** Pt. 11 modified (1.12.2001) by [S.I. 2001/2657, arts. 1\(1\), 18\(2\)](#) (which was revoked (8.10.2001) by [S.I. 2001/3083, arts. 1\(2\), 23](#)); [S.I. 2001/3538, art. 2\(1\)](#)  
Pt. 11 modified (1.12.2001) by [S.I. 2001/3083, arts. 1\(2\), 18\(2\)\(4\)](#); [S.I. 2001/3538, art. 2\(1\)](#)  
Pt. 11 extended (with modifications) (1.12.2001) by [S.I. 2001/3646, arts. 1\(1\), 6-9](#)
- C2** Pt. 11 applied (with modifications) (1.5.2009 for certain purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\), regs. 1\(2\), 95, Sch. 5 para. 3](#) (with [reg. 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. 155\(6\)\(c\)](#) (with [Sch. 2 para. 156](#)); and (26.6.2017) by [The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017 \(S.I. 2017/692\), reg. 1\(2\), Sch. 7 para. 24\(9\)](#) (with [regs. 8, 15](#)))
- C3** Pt. 11 applied (with modifications) (11.2.2010) by [The Cross-Border Payments in Euro Regulations 2010 \(S.I. 2010/89\), reg. 19, Sch. para. 2](#)
- C4** Pt. 11 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\), reg. 62, Sch. 3 para. 3](#) (with [reg. 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. 196\(5\)\(c\)](#)); and (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\), arts. 1\(4\), 18\(4\)\(b\)](#); and (10.1.2020) by [The Money Laundering and Terrorist Financing \(Amendment\) Regulations 2019 \(S.I. 2019/1511\), regs. 1\(2\), 19](#) and (31.12.2020) by [S.I. 2018/1201, reg. 1\(3\), Sch. 2 para. 21\(3\)\(a\)-\(c\)](#) (with [reg. 4, Sch. 3 Pt. 1](#)) (with further transitional provisions in [Sch. 3 Pt. 1A](#) as inserted by [S.I. 2019/405, regs. 1, 10](#) and as amended by [S.I. 2019/1010, regs. 1\(3\), 7](#); [S.I. 2019/1212, regs. 1\(2\), 7](#); and [S.I. 2020/56, regs. 1, 8](#)))

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### *Powers to gather information*

#### **165 Authority’s power to require information.**

- (1) The Authority may, by notice in writing given to an authorised person, require him—
  - (a) to provide specified information or information of a specified description; or
  - (b) to produce specified documents or documents of a specified description.
- (2) The information or documents must be provided or produced—
  - (a) before the end of such reasonable period as may be specified; and
  - (b) at such place as may be specified.
- (3) An officer who has written authorisation from the Authority to do so may require an authorised person without delay—
  - (a) to provide the officer with specified information or information of a specified description; or
  - (b) to produce to him specified documents or documents of a specified description.
- (4) This section applies only to information and documents reasonably required in connection with the exercise by the Authority of functions conferred on it by or under this Act.
- (5) The Authority may require any information provided under this section to be provided in such form as it may reasonably require.
- (6) The Authority may require—
  - (a) any information provided, whether in a document or otherwise, to be verified in such manner, or
  - (b) any document produced to be authenticated in such manner,
 as it may reasonably require.
- (7) The powers conferred by subsections (1) and (3) may also be exercised to impose requirements on—
  - (a) a person who is connected with an authorised person;
  - (b) an operator, trustee or depository of a scheme recognised under section 270 or 272 who is not an authorised person;
  - (c) a recognised investment exchange or recognised clearing house.
- (8) “Authorised person” includes a person who was at any time an authorised person but who has ceased to be an authorised person.
- (9) “Officer” means an officer of the Authority and includes a member of the Authority’s staff or an agent of the Authority.
- (10) “Specified” means—
  - (a) in subsections (1) and (2), specified in the notice; and
  - (b) in subsection (3), specified in the authorisation.
- (11) For the purposes of this section, a person is connected with an authorised person (“A”) if he is or has at any relevant time been—
  - (a) a member of A’s group;
  - (b) a controller of A;

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- (c) any other member of a partnership of which A is a member; or
- (d) in relation to A, a person mentioned in Part I of Schedule 15.

**Modifications etc. (not altering text)**

- C5** S. 165 amended (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 15(1)** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**  
S. 165 amended (*temp.* from 11.8.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2), 2**; S.I. 2001/3538, **art. 2(1)**  
S. 165 amended (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 15(1)**; S.I. 2001/3538, **art. 2(1)**
- C6** S. 165 modified (*temp.*) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 8(1)(3)**
- C7** S. 165 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(3)**
- C8** S. 165 applied (with modifications) (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 3**
- C9** S. 165(1)(2) extended (1.12.2001) by S.I. 2001/3646, **arts. 1(1), 2(1)(3)(a)**
- C10** S. 165(2) applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(6) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), 4)
- C11** S. 165(5)(6) extended (1.12.2001) by S.I. 2001/3646, **arts. 1(1), 2(3)(b)(c)**
- C12** S. 165(5) applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(6) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), 4)
- C13** S. 165(6) applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(6) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), 4)

VALID FROM 08/06/2010

**[<sup>F1</sup>]** **Authority's power to require information: financial stability**

**[<sup>F1</sup>]**  
**F1 165A**

- (1) The Authority may, by notice in writing given to a person to whom this section applies, require the person—
  - (a) to provide specified information or information of a specified description; or
  - (b) to produce specified documents or documents of a specified description.
- (2) This section applies to—
  - (a) a person who has a legal or beneficial interest in any of the assets of a relevant investment fund;
  - (b) a person who is responsible for the management of a relevant investment fund;
  - (c) a person (a “service provider”) who provides any service to an authorised person;
  - (d) a person prescribed by an order made by the Treasury or any person of a description prescribed by such an order (and see also section 165C);

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- (e) a person who is connected with a person to whom this section applies as a result of any of the above paragraphs.
- (3) This section applies only to information and documents that the Authority considers are, or might be, relevant to the stability of one or more aspects of the UK financial system.
- (4) A notice may be given to a service provider, or to a person who is connected with a service provider, only if the Authority considers that—
- (a) the service or the way in which it (or any part of it) is provided, or
  - (b) any failure to provide the service (or any part of it),
- poses, or would be likely to pose, a serious threat to the stability of the UK financial system.
- (5) Information or documents required under this section must be provided or produced—
- (a) before the end of such reasonable period as may be specified; and
  - (b) at such place as may be specified.
- (6) The Authority may require any information provided under this section to be provided in such form as it may reasonably require.
- (7) The Authority may require—
- (a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require; or
  - (b) any document produced to be authenticated in such manner as it may reasonably require.
- (8) In this section—
- “management” includes any of the activities listed in Annex II to the UCITS directive;
- “relevant investment fund” means an investment fund whose assets consist of or include financial instruments which—
- (a) are traded in the United Kingdom; or
  - (b) were issued by a body incorporated in the United Kingdom;
- “service” includes facility;
- “specified” means specified in the notice.
- (9) For the purposes of the definition of “relevant investment fund”—
- (a) arrangements may constitute an investment fund even if there is only one person participating in the arrangements; and
  - (b) the reference to financial instruments has the meaning given by Article 4.1(17) of the markets in financial instruments directive.
- (10) For the purposes of this section a person is connected with another person (“A”) if the person is or has at any relevant time been—
- (a) a member of A's group;
  - (b) a controller of A;
  - (c) any other member of a partnership of which A is a member; or
  - (d) in relation to A, a person mentioned in Part 1 of Schedule 15 (reading references in that Part to the authorised person as references to A).]

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### Textual Amendments

**F1** S. 165A-165C inserted (8.6.2010) by Financial Services Act (c. 28), {ss. 18(2)}, 26(2)

VALID FROM 08/06/2010

### 165B Safeguards etc in relation to exercise of power under section 165A

- (1) If the Authority proposes to impose a requirement on a person under section 165A, it must give the person a notice in writing warning the person that the Authority is proposing to impose the requirement.
- (2) The notice under subsection (1) must—
  - (a) give the Authority's reasons for proposing to impose the requirement; and
  - (b) specify a reasonable period within which the person may make representations to the Authority.
- (3) The Authority must then decide, within a reasonable period, whether to impose the requirement.
- (4) Subsections (1) to (3) do not apply in any case where the Authority is satisfied that it is necessary for the information or documents to be provided or produced without delay.
- (5) If the Authority imposes a requirement on a person under section 165A, the notice under that section must give the Authority's reasons for imposing the requirement.
- (6) The Authority must prepare a statement of its policy with respect to the exercise of the power conferred by section 165A.
- (7) The statement requires the approval of the Treasury.
- (8) If the Treasury approve the statement, the Authority must publish it.
- (9) The power conferred by section 165A may not be exercised before the statement has been published.

### Textual Amendments

**F1** S. 165A-165C inserted (8.6.2010) by Financial Services Act (c. 28), {ss. 18(2)}, 26(2)

VALID FROM 08/06/2010

### 165C Orders under section 165A(2)(d)

- (1) The Treasury may make an order under section 165A(2)(d) only if they consider that—
  - (a) the activities carried on by the prescribed person or persons of the prescribed description, or the way in which those activities (or any part of them) are carried on, or

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- (b) any failure to carry on those activities (or any part of them), pose, or would be likely to pose, a serious threat to the stability of the UK financial system.
- (2) Subject as follows, an order under section 165A(2)(d) may not be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (3) Subsection (2) does not apply in any case where the Treasury are satisfied that it is necessary to make an order under section 165A(2)(d) without laying a draft for approval.
- (4) In that case, 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 it is approved by a resolution of each House of Parliament.
- (5) If an order ceases to have effect as a result of subsection (4)(b) that does not affect—
- (a) anything done under it; or
  - (b) the power to make a new one.
- (6) “Relevant period” means a period of 28 days beginning with the day on which the order is made.
- (7) 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 four days.
- (8) If a statutory instrument containing an order under section 165A(2)(d) would, apart from this subsection, be treated as a hybrid instrument for the purposes of the Standing Orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.]

#### Textual Amendments

**F1** S. 165A-165C inserted (8.6.2010) by Financial Services Act (c. 28), {ss. 18(2)}, 26(2)

## 166 Reports by skilled persons.

- (1) The Authority may, by notice in writing given to a person to whom subsection (2) applies, require him to provide the Authority with a report on any matter about which the Authority has required or could require the provision of information or production of documents under section 165.
- (2) This subsection applies to—
- (a) an authorised person (“A”),
  - (b) any other member of A’s group,
  - (c) a partnership of which A is a member, or
  - (d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c),
- who is, or was at the relevant time, carrying on a business.

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- (3) The Authority may require the report to be in such form as may be specified in the notice.
- (4) The person appointed to make a report required by subsection (1) must be a person—
  - (a) nominated or approved by the Authority; and
  - (b) appearing to the Authority to have the skills necessary to make a report on the matter concerned.
- (5) It is the duty of any person who is providing (or who at any time has provided) services to a person to whom subsection (2) applies in relation to a matter on which a report is required under subsection (1) to give a person appointed to provide such a report all such assistance as the appointed person may reasonably require.
- (6) The obligation imposed by subsection (5) is enforceable, on the application of the Authority, by an injunction or, in Scotland, by an order for specific performance under section 45 of the <sup>M1</sup>Court of Session Act 1988.

#### Modifications etc. (not altering text)

- C14** S. 166 modified (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 16** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**  
S. 166 modified (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 16**; S.I. 2001/3538, **art. 2(1)**
- C15** S. 166 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), **regs. 1, 12(3)**
- C16** S. 166 applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), **art. 9G(7)** (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), **arts. 1(2), 4**)
- C17** S. 166 applied (with modifications) (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 46, Sch. para. 4**
- C18** S. 166(1)(3)(4) extended (1.12.2001) by S.I. 2001/3646, **arts. 1(1), 4(1)(3)(4)**

#### Marginal Citations

- M1** 1988 c. 36.

### *Appointment of investigators*

#### **167 Appointment of persons to carry out general investigations.**

- (1) If it appears to the Authority or the Secretary of State (“the investigating authority”) that there is good reason for doing so, the investigating authority may appoint one or more competent persons to conduct an investigation on its behalf into—
  - (a) the nature, conduct or state of the business of [<sup>F2</sup>a recognised investment exchange or] an authorised person or of an appointed representative;
  - (b) a particular aspect of that business; or
  - (c) the ownership or control of [<sup>F3</sup>a recognised investment exchange or] an authorised person.

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- (2) If a person appointed under subsection (1) thinks it necessary for the purposes of his investigation, he may also investigate the business of a person who is or has at any relevant time been—
- (a) a member of the group of which the person under investigation (“A”) is part; or
  - (b) a partnership of which A is a member.
- (3) If a person appointed under subsection (1) decides to investigate the business of any person under subsection (2) he must give that person written notice of his decision.
- (4) The power conferred by this section may be exercised in relation to a former authorised person (or appointed representative) but only in relation to—
- (a) business carried on at any time when he was an authorised person (or appointed representative); or
  - (b) the ownership or control of a former authorised person at any time when he was an authorised person.
- (5) “Business” includes any part of a business even if it does not consist of carrying on regulated activities.
- [<sup>F4</sup>(6) References in subsection (1) to a recognised investment exchange do not include references to an overseas investment exchange (as defined by section 313(1)).]

#### Textual Amendments

- F2** Words in s. 167(1)(a) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), **Sch. 5 para. 7(a)(i)**
- F3** Words in s. 167(1)(c) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), **Sch. 5 para. 7(a)(ii)**
- F4** S. 167(6) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), **Sch. 5 para. 7(b)**

#### Modifications etc. (not altering text)

- C19** S. 167 modified (1.12.2001) by [S.I. 2001/2657](#), **arts. 1(1), 17** (which was revoked (8.10.2001) by [S.I. 2001/3083](#), **arts. 1(2), 23**); [S.I. 2001/3538](#), **art. 2(1)**  
 S. 167 modified (1.12.2001) by [S.I. 2001/3083](#), **arts. 1(2), 17**; [S.I. 2001/3538](#), **art. 2(1)**
- C20** S. 167 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, **12(3)**
- C21** S. 167 applied (with modifications) (31.12.2011) by [The Financial Services and Markets Act 2000 \(Permissions, Transitional Provisions and Consequential Amendments\) \(Northern Ireland Credit Unions\) Order 2011 \(S.I. 2011/2832\)](#), **art. 9**

## 168 Appointment of persons to carry out investigations in particular cases.

- (1) Subsection (3) applies if it appears to an investigating authority that there are circumstances suggesting that—
- (a) a person may have contravened any regulation made under section 142; or



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- (b) a person may be guilty of an offence under section 177, 191, 346 or 398(1) or under Schedule 4.
- (2) Subsection (3) also applies if it appears to an investigating authority that there are circumstances suggesting that—
- (a) an offence under section 24(1) or 397 or under Part V of the<sup>M2</sup>Criminal Justice Act 1993 may have been committed;
  - (b) there may have been a breach of the general prohibition;
  - (c) there may have been a contravention of section 21 or 238; or
  - (d) market abuse may have taken place.
- (3) The investigating authority may appoint one or more competent persons to conduct an investigation on its behalf.
- (4) Subsection (5) applies if it appears to the Authority that there are circumstances suggesting that—
- (a) a person may have contravened section 20;
  - (b) a person may be guilty of an offence under prescribed regulations relating to money laundering;
  - [<sup>F5</sup>(ba) a person may be guilty of an offence under Schedule 7 to the Counter-Terrorism Act 2008 (terrorist financing or money laundering);]
  - (c) [<sup>F6</sup>a person] may have contravened a rule made by the Authority;
  - (d) an individual may not be a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised or exempt person;
  - (e) an individual may have performed or agreed to perform a function in breach of a prohibition order;
  - (f) an authorised or exempt person may have failed to comply with section 56(6);
  - (g) an authorised person may have failed to comply with section 59(1) or (2);
  - (h) a person in relation to whom the Authority has given its approval under section 59 may not be a fit and proper person to perform the function to which that approval relates;<sup>F7</sup> . . .
  - (i) a person may be guilty of misconduct for the purposes of section 66 [<sup>F8</sup>; or
  - (j) a person may have contravened any provision made by or under this Act for the purpose of implementing the markets in financial instruments directive or by any directly applicable Community regulation made under that directive.]
- (5) The Authority may appoint one or more competent persons to conduct an investigation on its behalf.
- (6) “Investigating authority” means the Authority or the Secretary of State.

#### Textual Amendments

- F5** S. 168(4)(ba) inserted (27.11.2008) by Counter-Terrorism Act 2008 (c. 28), ss. 62, 100(2), **Sch. 7 para. 33(3)** (with s. 101(2), **Sch. 7 para. 43**)
- F6** Words in s. 168(4)(c) substituted (8.4.2010) by **Financial Services Act 2010 (c. 28)**, ss. 24(1), 26(1), **Sch. 2 para. 16(2)**
- F7** Word in s. 168(4) omitted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by virtue of **The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126)**, regs. 1(2), 3(5), **Sch. 5 para. 8(a)**

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- F8** S. 168(4)(j) and preceding word inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), **Sch. 5 para. 8(b)**

**Modifications etc. (not altering text)**

- C22** S. 168 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, **12(3)**
- C23** S. 168(3)(5) applied (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 18(1)(3)** (which was revoked 8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**; S.I. 2001/3538, **art. 2(1)**  
 S. 168(3)(5) applied (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 18(1)(3)**; S.I. 2001/3538, **art. 2(1)**
- C24** S. 168(4) applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001 \(S.I. 2001/544\)](#), art. 9G(8) (as inserted by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), arts. 1(2), 4)
- C25** S. 168(4)(c) amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, **12(5)**

**Commencement Information**

- I1** S. 168 wholly in force at 3.9.2001; s. 168 not in force at Royal Assent see s. 431(2); s. 168(4)(b) in force for certain purposes at 25.2.2001 by S.I. 2001/516, **art. 2(b), Sch. Pt. 2**; s. 168 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, **art. 2(2), Sch. Pt. 2**

**Marginal Citations**

- M2** 1993 c. 36.

*Assistance to overseas regulators*

**169 Investigations etc. in support of overseas regulator.**

- (1) At the request of an overseas regulator, the Authority may—
  - (a) exercise the power conferred by section 165; or
  - (b) appoint one or more competent persons to investigate any matter.
- (2) An investigator has the same powers as an investigator appointed under section 168(3) (as a result of subsection (1) of that section).
- (3) If the request has been made by a competent authority in pursuance of any Community obligation the Authority must, in deciding whether or not to exercise its investigative power, consider whether its exercise is necessary to comply with any such obligation.
- (4) In deciding whether or not to exercise its investigative power, the Authority may take into account in particular—
  - (a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;
  - (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
  - (c) the seriousness of the case and its importance to persons in the United Kingdom;

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- (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (5) The Authority may decide that it will not exercise its investigative power unless the overseas regulator undertakes to make such contribution towards the cost of its exercise as the Authority considers appropriate.
- (6) Subsections (4) and (5) do not apply if the Authority considers that the exercise of its investigative power is necessary to comply with a Community obligation.
- (7) If the Authority has appointed an investigator in response to a request from an overseas regulator, it may direct the investigator to permit a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation.
- (8) A direction under subsection (7) is not to be given unless the Authority is satisfied that any information obtained by an overseas regulator as a result of the interview will be subject to safeguards equivalent to those contained in Part XXIII.
- (9) The Authority must prepare a statement of its policy with respect to the conduct of interviews in relation to which a direction under subsection (7) has been given.
- (10) The statement requires the approval of the Treasury.
- (11) If the Treasury approve the statement, the Authority must publish it.
- (12) No direction may be given under subsection (7) before the statement has been published.
- (13) “Overseas regulator” has the same meaning as in section 195.
- (14) “Investigative power” means one of the powers mentioned in subsection (1).
- (15) “Investigator” means a person appointed under subsection (1)(b).

#### Commencement Information

- I2** S. 169 wholly in force at 3.9.2001; s. 169 not in force at Royal Assent see s. 431(2); s. 169 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820, art. 2, Sch.](#); s. 169 in force in so far as not already in force at 3.9.2001 by [S.I. 2001/2632, art. 2\(2\), Sch. Pt. 2](#)

VALID FROM 08/06/2010

#### <sup>F9</sup> <sup>F9</sup>169A **Support of overseas regulator with respect to financial stability**

- (1) At the request of an overseas regulator, the Authority may exercise a corresponding section 165A power.
- (2) An “overseas regulator” means an authority in a country or territory outside the United Kingdom which exercises functions with respect to the stability of the financial system operating in that country or territory.
- (3) A “corresponding section 165A power” means a power corresponding to the one conferred by section 165A, but reading references in that section to the stability of the UK financial system as references to the stability of the financial system operating in the country or territory of the overseas regulator.

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- (4) The following provisions apply in relation to the exercise of the corresponding section 165A power—
- (a) section 165B(1) to (5); and
  - (b) section 169(3), (4)(a) and (d), (5) and (6).
- (5) In this section “the financial system” includes—
- (a) financial markets and exchanges;
  - (b) activities that would be regulated activities if carried on in the United Kingdom; and
  - (c) other activities connected with financial markets and exchanges.]]

#### **Textual Amendments**

**F9** S. 169A inserted (8.6.2010) by Financial Services Act (c. 28), {ss. 18(3)}, 26(2)

### *Conduct of investigations*

#### **170 Investigations: general.**

- (1) This section applies if an investigating authority appoints one or more competent persons (“investigators”) under section 167 or 168(3) or (5) to conduct an investigation on its behalf.
- (2) The investigating authority must give written notice of the appointment of an investigator to the person who is the subject of the investigation (“the person under investigation”).
- (3) Subsections (2) and (9) do not apply if—
  - (a) the investigator is appointed as a result of section 168(1) or (4) and the investigating authority believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated; or
  - (b) the investigator is appointed as a result of subsection (2) of section 168.
- (4) A notice under subsection (2) must—
  - (a) specify the provisions under which, and as a result of which, the investigator was appointed; and
  - (b) state the reason for his appointment.
- (5) Nothing prevents the investigating authority from appointing a person who is a member of its staff as an investigator.
- (6) An investigator must make a report of his investigation to the investigating authority.
- (7) The investigating authority may, by a direction to an investigator, control—
  - (a) the scope of the investigation;
  - (b) the period during which the investigation is to be conducted;
  - (c) the conduct of the investigation; and
  - (d) the reporting of the investigation.
- (8) A direction may, in particular—

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- (a) confine the investigation to particular matters;
  - (b) extend the investigation to additional matters;
  - (c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction;
  - (d) require the investigator to make such interim reports as are so specified.
- (9) If there is a change in the scope or conduct of the investigation and, in the opinion of the investigating authority, the person subject to investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.
- (10) “Investigating authority”, in relation to an investigator, means—
  - (a) the Authority, if the Authority appointed him;
  - (b) the Secretary of State, if the Secretary of State appointed him.

**Modifications etc. (not altering text)**

**C26** S. 170(5)-(9) applied (1.12.2001 for E.W.S. and 1.11.2004 for N.I.) by S.I. 2001/1228, regs. 1(2)(c), 30(4) (with 1(2)(3)); S.I. 2001/3538, art. 2(1); S.R. 2004/335, regs. 1(1)(b), **30(4)** (with reg. 1(2))

**171 Powers of persons appointed under section 167.**

- (1) An investigator may require the person who is the subject of the investigation (“the person under investigation”) or any person connected with the person under investigation—
  - (a) to attend before the investigator at a specified time and place and answer questions; or
  - (b) otherwise to provide such information as the investigator may require.
- (2) An investigator may also require any person to produce at a specified time and place any specified documents or documents of a specified description.
- (3) A requirement under subsection (1) or (2) may be imposed only so far as the investigator concerned reasonably considers the question, provision of information or production of the document to be relevant to the purposes of the investigation.
- [<sup>F10</sup>(3A) Where the investigation relates to a recognised investment exchange, an investigator has the additional powers conferred by sections 172 and 173 (and for this purpose references in those sections to an investigator are to be read accordingly).]
- (4) For the purposes of this section and section 172, a person is connected with the person under investigation (“A”) if he is or has at any relevant time been—
  - (a) a member of A’s group;
  - (b) a controller of A;
  - (c) a partnership of which A is a member; or
  - (d) in relation to A, a person mentioned in Part I or II of Schedule 15.
- (5) “Investigator” means a person conducting an investigation under section 167.
- (6) “Specified” means specified in a notice in writing.
- [<sup>F11</sup>(7) The reference in subsection (3A) to a recognised investment exchange does not include a reference to an overseas investment exchange (as defined by section 313(1)).]

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### **Textual Amendments**

- F10** S. 171(3A) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), [Sch. 5 para. 9\(a\)](#)
- F11** S. 171(7) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), [Sch. 5 para. 9\(b\)](#)

## **172 Additional power of persons appointed as a result of section 168(1) or (4).**

- (1) An investigator has the powers conferred by section 171.
- (2) An investigator may also require a person who is neither the subject of the investigation (“the person under investigation”) nor a person connected with the person under investigation—
  - (a) to attend before the investigator at a specified time and place and answer questions; or
  - (b) otherwise to provide such information as the investigator may require for the purposes of the investigation.
- (3) A requirement may only be imposed under subsection (2) if the investigator is satisfied that the requirement is necessary or expedient for the purposes of the investigation.
- (4) “Investigator” means a person appointed as a result of subsection (1) or (4) of section 168.
- (5) “Specified” means specified in a notice in writing.

## **173 Powers of persons appointed as a result of section 168(2).**

- (1) Subsections (2) to (4) apply if an investigator considers that any person (“A”) is or may be able to give information which is or may be relevant to the investigation.
- (2) The investigator may require A—
  - (a) to attend before him at a specified time and place and answer questions; or
  - (b) otherwise to provide such information as he may require for the purposes of the investigation.
- (3) The investigator may also require A to produce at a specified time and place any specified documents or documents of a specified description which appear to the investigator to relate to any matter relevant to the investigation.
- (4) The investigator may also otherwise require A to give him all assistance in connection with the investigation which A is reasonably able to give.
- (5) “Investigator” means a person appointed under subsection (3) of section 168 (as a result of subsection (2) of that section).

## **174 Admissibility of statements made to investigators.**

- (1) A statement made to an investigator by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies

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with any requirements governing the admissibility of evidence in the circumstances in question.

(2) But in criminal proceedings in which that person is charged with an offence to which this subsection applies or in proceedings in relation to action to be taken against that person under section 123—

- (a) no evidence relating to the statement may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution or (as the case may be) the Authority, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Subsection (2) applies to any offence other than one—

- (a) under section 177(4) or 398;
- (b) under section 5 of the <sup>M3</sup>Perjury Act 1911 (false statements made otherwise than on oath);
- (c) under section 44(2) of the <sup>M4</sup>Criminal Law (Consolidation)(Scotland) Act 1995 (false statements made otherwise than on oath); or
- (d) under Article 10 of the <sup>M5</sup>Perjury (Northern Ireland) Order 1979.

(4) “Investigator” means a person appointed under section 167 or 168(3) or (5).

(5) “Information requirement” means a requirement imposed by an investigator under section 171, 172, 173 or 175.

#### Modifications etc. (not altering text)

**C27** S. 174 applied (1.12.2001 for E.W.S. and 1.11.2004 for N.I.) by S.I. 2001/1228, regs. 1(2)(c), 30(5) (with reg. 1(2)(3)); S.I. 2001/3538, art. 2(1); S.R. 2004/335, regs. 1(1)(b), **30(5)** (with reg. 1(2))

S. 174 applied (with modifications) (1.12.2001) by S.I. 2001/3646, arts. 1(1), 2(4), 4(5)

**C28** S. 174 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), reg. 16(4)

#### Marginal Citations

**M3** 1911 c. 6.

**M4** 1995 c. 39.

**M5** S.I. 1979/1714 (N.I. 19).

## 175 Information and documents: supplemental provisions.

(1) If the Authority or an investigator has power under this Part to require a person to produce a document but it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.

(2) If a document is produced in response to a requirement imposed under this Part, the person to whom it is produced may—

- (a) take copies or extracts from the document; or
- (b) require the person producing the document, or any relevant person, to provide an explanation of the document.

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- (3) If a person who is required under this Part to produce a document fails to do so, the Authority or an investigator may require him to state, to the best of his knowledge and belief, where the document is.
- (4) A lawyer may be required under this Part to furnish the name and address of his client.
- (5) No person may be required under this Part to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—
  - (a) he is the person under investigation or a member of that person’s group;
  - (b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person’s group;
  - (c) the person to whom the obligation of confidence is owed consents to the disclosure or production; or
  - (d) the imposing on him of a requirement with respect to such information or document has been specifically authorised by the investigating authority.
- (6) If a person claims a lien on a document, its production under this Part does not affect the lien.
- (7) “Relevant person”, in relation to a person who is required to produce a document, means a person who—
  - (a) has been or is or is proposed to be a director or controller of that person;
  - (b) has been or is an auditor of that person;
  - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
  - (d) has been or is an employee of that person.
- (8) “Investigator” means a person appointed under section 167 or 168(3) or (5).

#### **Modifications etc. (not altering text)**

- C29** S. 175 applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001 \(S.I. 2001/544\)](#), art. 9G(9) (as inserted by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), arts. 1(2), 4)
- C30** S. 175 applied (with modifications) (7.6.2010) by [The Credit Rating Agencies Regulations 2010 \(S.I. 2010/906\)](#), [reg. 17](#)
- C31** S. 175(2)-(4)(6) amended (1.12.2001 for E.W.S. and 1.11.2004 for N.I) by [S.I. 2001/1228](#), [regs. 1\(2\)\(c\), 30\(6\)](#) (with [reg. 1\(2\)\(3\)](#)); [S.I. 2001/3538](#), art. 2(1); [S.R. 2004/335](#), [regs. 1\(1\)\(b\), 30\(6\)](#) (with [reg. 1\(2\)](#))

## **176 Entry of premises under warrant.**

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, the Authority or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.
- (2) The first set of conditions is—
  - (a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it; and



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- (b) that on the premises specified in the warrant—
  - (i) there are documents which have been required; or
  - (ii) there is information which has been required.
- (3) The second set of conditions is—
  - (a) that the premises specified in the warrant are premises of an authorised person or an appointed representative;
  - (b) that there are on the premises documents or information in relation to which an information requirement could be imposed; and
  - (c) that if such a requirement were to be imposed—
    - (i) it would not be complied with; or
    - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (4) The third set of conditions is—
  - (a) that an offence mentioned in section 168 for which the maximum sentence on conviction on indictment is two years or more has been (or is being) committed by any person;
  - (b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed;
  - (c) that an information requirement could be imposed in relation to those documents or information; and
  - (d) that if such a requirement were to be imposed—
    - (i) it would not be complied with; or
    - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (5) A warrant under this section shall authorise a constable—
  - (a) to enter the premises specified in the warrant;
  - (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this section was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;
  - (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;
  - (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and
  - (e) to use such force as may be reasonably necessary.
- (6) In England and Wales, sections 15(5) to (8) and section 16 of the <sup>M6</sup>Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this section.
- (7) In Northern Ireland, Articles 17(5) to (8) and 18 of the <sup>M7</sup>Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this section.
- (8) Any document of which possession is taken under this section may be retained—
  - (a) for a period of three months; or

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- (b) if within that period proceedings to which the document is relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.
- (9) In the application of this section to Scotland—
- (a) for the references to a justice of the peace substitute references to a justice of the peace or a sheriff; and
  - (b) for the references to information on oath substitute references to evidence on oath.
- (10) “Investigator” means a person appointed under section 167 or 168(3) or (5).
- (11) “Information requirement” means a requirement imposed—
- (a) by the Authority under section [F1287C, 87J,] 165 or 175; or
  - (b) by an investigator under section 171, 172, 173 or 175.

#### Textual Amendments

- F12** Words in s. 176(11)(a) inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 12](#)

#### Modifications etc. (not altering text)

- C32** S. 176 extended (17.8.2001 for certain purposes otherwise 1.12.2001) by [1992 c. 40, s. 62A](#) (as inserted (17.8.2001 for certain purposes otherwise 1.12.2001) by [S.I. 2001/2617](#), arts. 2, 8, 13(1), [Sch. 3 Pt. I para. 77](#) (with art. 13(3), [Sch. 5](#))); [S.I. 2001/3538](#), [art. 2\(1\)](#)  
S. 176 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by [1986 c. 53, s. 52B](#) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by [S.I. 2001/2617](#), arts. 2, 8, 13(1), [Sch. 3 Pt. I para. 151](#) (with art. 13(3), [Sch. 5](#))); [S.I. 2001/3538](#), [art. 2\(1\)](#)  
S. 176 modified (1.12.2001) by [S.I. 1995/1537](#), [reg. 23\(4\)](#) (as amended (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 509\(e\)](#))
- C33** S. 176 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, [12\(3\)](#)  
S. 176 applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001 \(S.I. 2001/544\)](#), art. 9G(9) (as inserted by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), arts. 1(2), 4)
- C34** S. 176(1)-(9) applied (1.12.2001) by [S.I. 2001/1228](#), [regs. 1\(2\)\(c\), 30\(7\)](#) (with [reg. 1\(2\)\(3\)](#)); [S.I. 2001/3538](#), [art. 2\(1\)](#)
- C35** S. 176(1)-(8) applied (with modifications) (N.I.) (1.11.2004) by [Open-Ended Investment Companies Regulations \(Northern Ireland\) 2004 \(S.R. 2004/335\)](#), regs. 1(1)(b), [30\(7\)](#) (with [reg. 1\(2\)](#))
- C36** S. 176(2) extended (1.12.2001) by [S.I. 2001/3646](#), [arts. 1\(1\), 13\(2\)](#)
- C37** S. 176(5): powers of seizure extended (1.4.2003) by [2001 c. 16, ss. 50, 52-54, 68, 138\(2\)](#), [Sch. 1 Pt. I para. 69](#); [S.I. 2003/708](#), [art. 2\(a\)\(c\)\(j\)](#)
- C38** S. 176(11) restricted (temp. from 11.8.2001 until 1.12.2001) by [S.I. 2001/2659](#), [arts. 1\(3\), 2\(3\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)
- C39** S. 176(8) applied (with modifications) (1.4.2003) by [2001 c. 16, ss. 57\(1\)\(o\)\(4\), 138\(2\)](#); [S.I. 2003/708](#), [art. 2\(a\)](#)
- C40** S. 176(11) restricted (temp. from 8.4.2002 until 2.7.2002) by [The Financial Services and Markets Act 2000 \(Permission and Applications\) \(Credit Unions etc.\) Order 2002 \(S.I. 2002/704\)](#), [art. 8\(3\)](#)

#### Marginal Citations

- M6** [1984 c. 60](#).

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M7 S.I. 1989/1341 (N.I. 12).

## Offences

### 177 Offences.

- (1) If a person other than the investigator (“the defaulter”) fails to comply with a requirement imposed on him under this Part the person imposing the requirement may certify that fact in writing to the court.
- (2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and in the case of a body corporate, any director or officer) as if he were in contempt [<sup>F13</sup>; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.].
- (3) A person who knows or suspects that an investigation is being or is likely to be conducted under this Part is guilty of an offence if—
  - (a) he falsifies, conceals, destroys or otherwise disposes of a document which he knows or suspects is or would be relevant to such an investigation, or
  - (b) he causes or permits the falsification, concealment, destruction or disposal of such a document,unless he shows that he had no intention of concealing facts disclosed by the documents from the investigator.
- (4) A person who, in purported compliance with a requirement imposed on him under this Part—
  - (a) provides information which he knows to be false or misleading in a material particular, or
  - (b) recklessly provides information which is false or misleading in a material particular,is guilty of an offence.
- (5) A person guilty of an offence under subsection (3) or (4) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (6) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 176 is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.
- (7) “Court” means—
  - (a) the High Court;
  - (b) in Scotland, the Court of Session.

**Status:** Point in time view as at 08/04/2010. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Financial Services and Markets Act 2000, Part XI is up to date with all changes known to be in force on or before 16 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)

### Textual Amendments

- F13** Words in s. 177(2) inserted (6.4.2001 for E.W.S. and 13.9.2004 for N.I.) by S.I. 2001/1090, regs. 1, 9, Sch. 5 para. 21; S.R. 2004/307, reg. 9, Sch. 4 para. 17

### Modifications etc. (not altering text)

- C41** S. 177 applied (1.12.2001 for E.W.S. and 1.11.2004 for N.I.) by S.I. 2001/1228, regs. 1(2)(c), 30(6) (with reg. 1(2)(3)); S.I. 2001/3538, art. 2(1); S.R. 2004/335, regs. 1(1)(b), 30(6) (with reg. 1(2))  
S. 177 excluded (1.12.2001) by S.I. 2001/3646, arts. 1(1), 2(5)  
S. 177 restricted (1.12.2001) by S.I. 2001/3646, arts. 1(1), 2(7)(a), 4(6)(a), 6(4)(a), 7(4)(a), 8(4)(a), 9(4)(a)
- C42** S. 177 applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(9) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), 4)
- C43** S. 177 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), reg. 24

**Status:**

Point in time view as at 08/04/2010. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

Financial Services and Markets Act 2000, Part XI is up to date with all changes known to be in force on or before 16 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.