



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### [<sup>F1</sup>PART 9A

#### RULES AND GUIDANCE

### CHAPTER 2

#### RULES: MODIFICATION, WAIVER, CONTRAVENTION AND PROCEDURAL PROVISIONS

##### *Procedural provisions*

#### [<sup>F1</sup>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,
  - (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) 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

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- (b) its response to them.
- (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);  
    - F2(aa) I section 137FB;]
  - (b) subsection (1) of section 213 as a result of subsection (4) of that section;
  - (c) section 234;  
    - F3(ca) I section 333Q;
  - (cb) section 333R;]
  - (d) paragraph 23 of Schedule 1ZA;
  - (e) paragraph 12 of Schedule 1A.
- (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—
- (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.
- (9) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).
- (10) Subsection (1)(a) does not apply to<sup>F4</sup>—
- (a) rules made by the FCA under section 137FB, 333Q or 333R, 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

- 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.](#)

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- F2** 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)**)
- F3** S. 138I(6)(ca)(cb) inserted (3.3.2015) by Pension Schemes Act 2015 (c. 8), s. 89(1)(a), **Sch. 3 para. 8(b)** (with s. 87)
- F4** 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)

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

- C1** 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)**
- C2** 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)**
- C3** 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)**
- C4** 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)**
- C5** 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)**)
- C6** 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))
- C7** 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)**
- C8** 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)**)
- C9** 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))
- C10** 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)

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