



# 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,  
[ an explanation of the ways in which having regard to specified matters under  
<sup>F2</sup>(ba) 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) [<sup>F3</sup>, (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).

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- (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 <sup>F4</sup>(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 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);
- <sup>F5</sup>(aa) [ section 137FB;]
- <sup>F6</sup>(ab) [ section 137FBA;]
- <sup>F7</sup>(ac) [ section 137FC;]
- <sup>F8</sup>(ad) [ section 137SA;]
- <sup>F9</sup>(ae) [ section 137SB;]
- (b) subsection (1) of section 213 as a result of subsection (4) of that section;
- (c) section 234;
- <sup>F10</sup>(ca) .....
- <sup>F11</sup>(cb) .....
- <sup>F12</sup>(cc) [ section 333T;]
- (d) paragraph 23 of Schedule 1ZA;
- <sup>F13</sup>(e) .....

(7) “Cost benefit analysis” means—

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- (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.
- [ The requirement to provide the explanation referred to in subsection (2)(ba) does not
- <sup>F14</sup>(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.]
- <sup>F15</sup>(9A)
- (10) Subsection (1)(a) does not apply to <sup>F16</sup>—
- (a) rules made by the FCA under section 137FB, <sup>F17</sup>[137FBA,]<sup>F18</sup>[137FC]<sup>F19</sup>[137SA]<sup>F20</sup>, 137SB<sup>F21</sup>... <sup>F22</sup>[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

- 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.](#)
- F2** 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\(v\)](#)
- F3** 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\(s\)](#)
- F4** 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\(mm\)](#)
- F5** 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\(1\)](#))
- F6** 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\(1\)\(x\)](#)

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- F7** 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)
- F8** 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)**
- F9** 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)
- F10** 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)
- F11** 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)
- F12** 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)
- F13** 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)
- F14** 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)
- F15** 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)
- F16** 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)
- F17** 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)
- F18** 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)
- F19** 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)**
- F20** 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)
- F21** 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)
- F22** 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)

- C1** 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)**)
- C2** 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)**))
- 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)
- 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

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- 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))
- C10** 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)**
- C11** 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)**
- C12** 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)**
- C13** 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)**
- C14** 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)**)
- C15** 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))
- C16** 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)**
- C17** 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))
- C18** 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)**
- C19** 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)**
- C20** S. 138I excluded (10.5.2018) by Financial Guidance and Claims Act 2018 (c. 10), s. 37(1)(f), **Sch. 5 para. 7**
- C21** 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)**
- C22** 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)**)
- C23** 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)**)
- C24** 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**)

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- C25** 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)
- C26** 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)
- C27** 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))
- C28** 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))
- C29** S. 138I excluded (20.10.2021) by [Compensation \(London Capital & Finance plc and Fraud Compensation Fund\) Act 2021 \(c. 29\)](#), **s. 1(3)**
- C30** 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
- C31** 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)**
- C32** 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)**)
- C33** 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))
- C34** 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)
- C35** 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)

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