



# Financial Services Act 2010

## 2010 CHAPTER 28

### *Powers to require information*

#### **18 Information relating to financial stability**

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 165 insert—

##### **“165A Authority's power to require information: financial stability**

- (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);
  - (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.

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- (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).

### **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.

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- (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.

#### **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
  - (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—

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- (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.”
- (3) After section 169 insert—

**“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.
- (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.”

**19 Asset protection scheme etc**

- (1) The Treasury may, by notice in writing, require a person who participates (or is proposing to participate) in the asset protection scheme or a qualifying scheme—
  - (a) to provide such information, or
  - (b) to produce such documents,
 as they may reasonably require for the purposes of, or in connection with, the scheme or a relevant scheme agreement.
- (2) “The asset protection scheme” means the scheme known as the Asset Protection Scheme that was the subject of a statement made by the Chancellor of the Exchequer on 26 February 2009.

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- (3) “Qualifying scheme” means a scheme specified in an order made by the Treasury.
- (4) “Relevant scheme agreement” means an agreement entered into (or proposed to be entered into) under the asset protection scheme or a qualifying scheme.
- (5) The information or documents must be provided or produced at such times, and at such place, as the Treasury may specify in the notice.
- (6) The Treasury may require the information to be provided in such form as they may reasonably require.
- (7) A requirement imposed on a person as a result of this section is enforceable by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (8) The Treasury may specify a scheme in an order under subsection (3) only if it appears to them that the purpose of the scheme corresponds to, or is connected with, the purpose of the asset protection scheme.
- (9) An order under subsection (3) is subject to negative resolution procedure.

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