

FINANCIAL SERVICES ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Recovery and resolution plans (RRPs)

Section 7: Rules made by FSA about recovery and resolution plans

139E Rules about recovery and resolution plans: supplementary provision

101. *Subsection (1)* clarifies that the FSA can specify in its rules on RRP that a resolution or recovery plan should set out the action which the authorised person is to take to collect, and maintain up-to-date, information of a specified description. This is to ensure that rules may require an authorised person quickly to establish and maintain a ‘data room’, which contains adequate data for interested third parties to perform due diligence on all or parts of the business, should circumstances require a sale.
102. *Subsection (2)* ensures that that where the FSA considers that an authorised person has failed to comply with the requirement referred to in subsection (1), the FSA may require the authorised person to appoint a skilled person to collect, and maintain up-to-date, the information that is needed.
103. *Subsection (3)* aligns the definition of a ‘skilled person’ with that of the existing section 166 of FSMA on ‘skilled persons’.
104. *Subsection (4)* enables the ‘skilled person’ to require others to assist in the collection or updating of information. That requirement may be enforced in the manner described in *subsection (5)*.
105. To prepare a recovery or resolution plan an authorised person is likely to need to obtain information from persons connected to it and others. *Subsection (6)* facilitates the flow of information to the authorised person for the purposes of preparing a recovery or resolution plan from other parties, for example other parties in the group, or persons such as service providers. This subsection enables other parties, where the request or requirement to provide information has been approved in advance by the FSA, to disclose information relevant to preparing or maintaining a recovery or resolution plan to the authorised person without being in breach of any duty or obligation of confidence (whether imposed by contract or otherwise).
106. *Subsection (7)* clarifies the extent of the confidentiality obligations of an authorised person that receives confidential information under new section 139E(6) or already holds such information. The provision makes clear that an authorised person may, for example, include such information in its recovery or resolution plan and submit it to the FSA without having to seek the consent of a third party. *Paragraph 26 of Schedule 2* amends section 348(5)(d) of FSMA so that a skilled person appointed under new section 139E is treated in the same way as a person appointed to make a report under section 166 of FSMA.

*These notes refer to the Financial Services Act 2010
(c.28) which received Royal Assent on 8 April 2010*

107. *Subsection (8)* enables the FSA to require RRP's to be kept in electronic or any other format.
108. *Subsection (9)* sets out that, when making rules about RRP's, the FSA must also have regard to any internationally agreed standards on RRP's, including, but not limited to, the standards being developed by the Financial Stability Board ("FSB"). The FSB, through its Working Group on Cross-border Crisis Management, is piloting an internationally agreed template for RRP's on the major firms with cross-border crisis management groups and the template, redeveloped in line with the outcome of the pilot, will form the basis of the internationally agreed standards for RRP's, which are expected by the end of 2010.