



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### [<sup>F1</sup>PART 8A

#### SHORT SELLING

#### *[<sup>F1</sup>Power to require information*

#### Textual Amendments

**F1** Pt. 8A inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 8, 26(2)(b)

#### **131E Power to require information**

- (1) The Authority may, by notice in writing, require a person <sup>F2</sup>...—
  - (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 only to information and documents that the Authority reasonably requires for the purpose of [<sup>F3</sup>the exercise by it of functions under the short selling regulation].
- (3) 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.
- (4) The Authority may require any information provided under this section to be provided in such form as it may reasonably require.
- (5) 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.

*Status: Point in time view as at 01/11/2012.*

*Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Power to require information is up to date with all changes known to be in force on or before 12 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)*

[ The Authority’s powers under this section may be exercised on a request made in the <sup>F4</sup>(5A) exercise of functions under the short selling regulation by—

- (a) the competent authority for the purposes of that regulation of an EEA State other than the United Kingdom, or
- (b) ESMA.

(5B) If a request of the kind mentioned in subsection (5A) has been made to the Authority, the Authority must, in deciding whether or not to exercise its powers under this section in response to the request, consider whether it is necessary to do so to comply with the short selling regulation.]

(6) In this section “ specified ” means specified in the notice.

<sup>F5</sup>(7) . . . . .

**Textual Amendments**

**F2** Word in s. 131E(1) omitted (1.11.2012) by virtue of [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(3)(a)**

**F3** Words in s. 131E(2) substituted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(3)(b)**

**F4** S. 131E(5A)(5B) inserted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(3)(c)**

**F5** S. 131E(7) omitted (1.11.2012) by virtue of [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(3)(d)**

**131F Power to require information: supplementary**

<sup>F6</sup>(1) . . . . .

(2) If a document is produced in response to a requirement imposed under section 131E, the Authority may—

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

(3) In subsection (2)(b) “ 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.

(4) If a person who is required under section 131E to produce a document fails to do so, the Authority may require the person to state, to the best of the person's knowledge and belief, where the document is.

(5) A lawyer may be required under section 131E to provide the name and address of the lawyer's client.

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- (6) A person (“P”) may not be required under section 131E to disclose information or produce a document in respect of which P owes an obligation of confidence by virtue of carrying on the business of banking unless—
- [<sup>F7</sup>(a) the Authority suspects that P or a member of P’s group has contravened any provision of the short selling regulation;]
  - [<sup>F7</sup>(b) the Authority suspects that the person to whom the obligation of confidence is owed or a member of that person’s group has contravened any provision of the short selling regulation; or ]
  - (c) the person to whom the obligation of confidence is owed consents to the disclosure or production.
- (7) If a person claims a lien on a document, its production under section 131E does not affect the lien.]

#### Textual Amendments

- F6** S. 131F(1) omitted (1.11.2012) by virtue of [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(4)(a)**
- F7** S. 131F(6)(a)(b) substituted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(4)(b)**

#### [<sup>F8</sup>131FA] Investigations in support of EEA regulator”

- (1) If so requested by the competent authority of an EEA State other than the United Kingdom (“the EEA regulator”) acting in the exercise of its functions under the short selling regulation, the Authority may appoint one or more competent persons to investigate any matter.
- (2) In deciding whether to comply with a request falling within subsection (1), the Authority must consider whether it is necessary to do so in order to comply with the short selling regulation.
- (3) Sections 170 to 177 (which relate to investigations) apply in relation to an investigator appointed under subsection (1) as they apply in relation to an investigator appointed under section 168(5).
- (4) The Authority may direct an investigator appointed under subsection (1) to permit a representative of the EEA regulator” to attend, and take part in, any interview conducted for the purposes of the investigation.
- (5) The Authority is not to give a direction under subsection (4) unless it is satisfied that any information obtained by the EEA regulator” as a result of the interview will be subject to safeguards equivalent to those contained in Part 23.
- (6) The Authority must prepare a statement of its policy with respect to the conduct of interviews in relation to which a direction under subsection (4) has been given.
- (7) The statement requires the approval of the Treasury.
- (8) If the Treasury approve the statement, the Authority must publish it.
- (9) No direction may be given under subsection (4) before the statement has been published.

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- (10) The Authority may at any time alter or replace a statement issued under subsection (6), and subsections (7) and (8) apply to an altered statement or to a replacement statement.

#### Textual Amendments

**F8** Ss. 131FA-131FC inserted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(5)**

### 131FB. 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 Authority that there are reasonable grounds for believing that the conditions in subsection (2) are satisfied.
- (2) The conditions are—
- (a) that a relevant person on whom a requirement has been imposed under section 131E or 131F has failed (wholly or in part) to comply with it; and
  - (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) 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.
- (4) A warrant under this section may be executed by any constable.
- (5) The warrant may authorise persons to accompany any constable who is executing it.
- (6) The powers in subsection (3) may be exercised by a person authorised by the warrant to accompany a constable; but that person may exercise those powers only in the company of, and under the supervision of, a constable.
- (7) In England and Wales, sections 15(5) to (8) and 16(3) to (12) of the Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this section.
- (8) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this section.
- (9) In the application of this section to Scotland—

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- (a) for the reference to a justice of the peace substitute a reference 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) The Authority may give information under subsection (1) or under section 176(1) at the request of an EEA regulator” where the regulator makes the request in the exercise of its functions under the short selling regulation.
- (11) The Authority must, in deciding whether or not to exercise a power referred to in subsection (10), consider whether the exercise of that power is necessary to comply with an obligation under the short selling regulation.
- (12) In this section—
- “EEA regulator” means the competent authority of an EEA State other than the United Kingdom for the purposes of the short selling regulation;
  - “relevant person” means—
    - (a) an authorised person,
    - (b) a person who has been an authorised person,
    - (c) a person who is for the purposes of section 165 connected with an authorised person or with a person within paragraph (b).

#### Textual Amendments

**F8** Ss. 131FA-131FC inserted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(5)**

### 131FC. Retention of documents taken under section 131FB

- (1) Any document of which possession is taken under section 131FB (“a seized document”) may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.
- (2) A person claiming to be the owner of a seized document may apply to a magistrates’ court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.
- (3) If on an application under subsection (2) the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.
- (4) An order under subsection (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.
- (5) Any right to bring proceedings (as described in subsection (4)) may only be exercised within 6 months of the date of the order made under subsection (2) or (3).]

#### Textual Amendments

**F8** Ss. 131FA-131FC inserted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(5)**

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