



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART X

#### RULES AND GUIDANCE

#### CHAPTER I

##### RULE-MAKING POWERS

#### 138 General rule-making power.

- (1) The Authority may make such rules applying to authorised persons—
  - (a) with respect to the carrying on by them of regulated activities, or
  - (b) with respect to the carrying on by them of activities which are not regulated activities,as appear to it to be necessary or expedient for the purpose of protecting the interests of consumers.
- (2) Rules made under this section are referred to in this Act as the Authority's general rules.
- (3) The Authority's power to make general rules is not limited by any other power which it has to make regulating provisions.
- (4) The Authority's general rules may make provision applying to authorised persons even though there is no relationship between the authorised persons to whom the rules will apply and the persons whose interests will be protected by the rules.
- (5) General rules may contain requirements which take into account, in the case of an authorised person who is a member of a group, any activity of another member of the group.
- (6) General rules may not—

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- (a) make provision prohibiting an EEA firm from carrying on, or holding itself out as carrying on, any activity which it has permission conferred by Part II of Schedule 3 to carry on in the United Kingdom;
  - (b) make provision, as respects an EEA firm, about any matter responsibility for which is, under any of the single market directives, reserved to the firm's home state regulator.
- (7) “Consumers” means persons—
- (a) who use, have used, or are or may be contemplating using, any of the services provided by—
    - (i) authorised persons in carrying on regulated activities; or
    - (ii) persons acting as appointed representatives;
  - (b) who have rights or interests which are derived from, or are otherwise attributable to, the use of any such services by other persons; or
  - (c) who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them.
- (8) If an authorised person is carrying on a regulated activity in his capacity as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or are or may be contemplating using services provided by the authorised person in his carrying on of that activity.
- (9) For the purposes of subsection (7) a person who deals with an authorised person in the course of the authorised person's carrying on of a regulated activity is to be treated as using services provided by the authorised person in carrying on those activities.

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

- C1** S. 138 modified (18.6.2001) by S.I. 2001/1821, arts. 1(1), 3(1)-(3)
- C2** S. 138: power to make rules amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, 3(1)(4)  
S. 138 extended (with modifications) (2.7.2002) by The Financial Services and Markets Act 2002 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (S.I. 2002/1501), art. 4
- C3** S. 138 extended (31.10.2004 for certain purposes, otherwise 14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), 10
- C4** S. 138(4)(5) amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, 3(2)
- C5** S. 138(4)(5) amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, 3(2)
- C6** S. 138(7)-(9) amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, 3(2)
- C7** S. 138(7)(9) modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, 3(3)
- C8** S. 138(7)-(9) amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, 3(2)
- C9** S. 138(7)-(9) amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, 3(2)

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**C10** S. 138(7)(9) modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, **3(3)**

### 139 Miscellaneous ancillary matters.

- (1) Rules relating to the handling of money held by an authorised person in specified circumstances (“clients’ money”) may—
  - (a) make provision which results in that clients’ money being held on trust in accordance with the rules;
  - (b) treat two or more accounts as a single account for specified purposes (which may include the distribution of money held in the accounts);
  - (c) authorise the retention by the authorised person of interest accruing on the clients’ money; and
  - (d) make provision as to the distribution of such interest which is not to be retained by him.
- (2) An institution with which an account is kept in pursuance of rules relating to the handling of clients’ money does not incur any liability as constructive trustee if money is wrongfully paid from the account, unless the institution permits the payment—
  - (a) with knowledge that it is wrongful; or
  - (b) having deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.
- (3) In the application of subsection (1) to Scotland, the reference to money being held on trust is to be read as a reference to its being held as agent for the person who is entitled to call for it to be paid over to him or to be paid on his direction or to have it otherwise credited to him.
- (4) Rules may—
  - (a) confer rights on persons to rescind agreements with, or withdraw offers to, authorised persons within a specified period; and
  - (b) make provision, in respect of authorised persons and persons exercising those rights, for the restitution of property and the making or recovery of payments where those rights are exercised.
- (5) “Rules” means general rules.
- (6) “Specified” means specified in the rules.

VALID FROM 08/06/2010

#### <sup>F1</sup><sub>F1</sub> 139A **General rules about remuneration**

- (1) The Authority must exercise its power to make general rules so as to make rules requiring each authorised person (or each authorised person of a specified description) to have, and act in accordance with, a remuneration policy.
- (2) A “remuneration policy” is a policy about the remuneration by the authorised person of—
  - (a) officers,
  - (b) employees, and

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- (c) other persons,  
of a specified description.
- (3) The rules must secure that any remuneration policy that an authorised person is required by the rules to have is consistent with—
  - (a) the effective management of risks; and
  - (b) the Implementation Standards.
- (4) When making rules about remuneration policies, the Authority must have regard to any other international standards about the remuneration of individuals working in the financial sector (or certain such individuals).
- (5) The Treasury may direct the Authority to consider whether the remuneration policies of authorised persons specified in the direction (or of authorised persons of a description so specified) comply with requirements imposed by the rules as to the contents of the policies.
- (6) Before giving a direction under subsection (5), the Treasury must consult the Authority.
- (7) If the Authority considers that a remuneration policy fails to make provision which complies with the requirements mentioned in subsection (5), the Authority must take such steps as it considers appropriate to deal with the failure.
- (8) The steps that the Authority may take include requiring the remuneration policy to be revised.
- (9) General rules may—
  - (a) prohibit persons (or persons of a specified description) from being remunerated in a specified way;
  - (b) provide that any provision of an agreement that contravenes such a prohibition is void; and
  - (c) provide for the recovery of any payment made, or other property transferred, in pursuance of a provision that is void by virtue of paragraph (b).
- (10) A prohibition may be imposed under subsection (9)(a) only for the purpose of ensuring that the provision of remuneration is consistent with—
  - (a) the effective management of risks; or
  - (b) the Implementation Standards.
- (11) A provision that, at the time the rules are made, is contained in an agreement made before that time may not be rendered void under subsection (9)(b) unless it is subsequently amended so as to contravene a prohibition under subsection (9)(a).
- (12) In this section—
  - “the Implementation Standards” means the Implementation Standards for Principles for Sound Compensation Practices, issued by the Financial Stability Board on 25 September 2009; and
  - “specified” (except in subsection (5)) means specified by the rules.
- (13) References to the Implementation Standards or to international standards of a kind mentioned in subsection (4) are to standards that are for the time being in force.]]

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### Textual Amendments

**F1** S. 139A inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 6, 26\(2\)\(b\)](#)

VALID FROM 08/06/2010

### <sup>F2</sup>[ **Rules about recovery plans**

<sup>F2</sup>**139B**

- (1) The Authority must exercise its power to make general rules so as to make rules requiring each authorised person (or each authorised person of a specified description) to prepare, and keep up-to-date, a recovery plan.
- (2) A “recovery plan” is a document containing information within subsection (3) or (4) of a specified description.
- (3) Information is within this subsection if it relates to action to be taken to secure that, in the event of specified circumstances affecting the carrying on of the business (or any part of the business) of the authorised person—
  - (a) the business of the authorised person, or
  - (b) a specified part of the business of the authorised person,is capable of being carried on (whether or not by the authorised person and whether or not in the same way as previously).
- (4) Information is within this subsection if it would facilitate the carrying on of the business (or any part of the business) of the authorised person by any other person.
- (5) The Authority must consider whether each recovery plan makes satisfactory provision in relation to the matters required by the rules to be covered by the plan.
- (6) If the Authority considers that a recovery plan fails to make satisfactory provision in relation to any such matter, the Authority must take such steps as it considers appropriate to deal with the failure.
- (7) The steps that the Authority may take include requiring the recovery plan to be revised.
- (8) The authorised persons subject to general rules about recovery plans must include authorised persons in relation to whom any power under Part 1 of the Banking Act 2009 (special resolution regime) is exercisable.
- (9) Before preparing a draft of general rules about recovery plans having effect in relation to those persons, the Authority must consult—
  - (a) the Treasury; and
  - (b) the Bank of England.]

### Textual Amendments

**F2** Ss. 139B-139F inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 7\(1\), 26\(2\)\(b\)](#)

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### 139C Rules about resolution plans

- (1) The Authority must exercise its power to make general rules so as to make rules requiring each authorised person (or each authorised person of a specified description) to prepare, and keep up-to-date, a resolution plan.
- (2) A “resolution plan” is a document containing information within subsection (3) or (4) of a specified description.
- (3) Information is within this subsection if it relates to action to be taken in the event of—
  - (a) circumstances arising in which it is likely that the business (or any part of the business) of the authorised person will fail; or
  - (b) the failure of the business (or any part of the business) of the authorised person.
- (4) Information is within this subsection if it would facilitate anything falling to be done by any person in consequence of that failure.
- (5) An example of information within subsection (4) is information that, in the event of that failure, would facilitate —
  - (a) planning by the Treasury in relation to the possible exercise of any of their powers under Part 1 of the Banking Act 2009; or
  - (b) planning by the Bank of England in relation to the possible exercise of any of its powers under Part 1, 2 or 3 of that Act.
- (6) The Authority must consider whether each resolution plan makes satisfactory provision in relation to the matters required by the rules to be covered by the plan.
- (7) If the Authority considers that a resolution plan fails to make satisfactory provision in relation to any such matter, the Authority must take such steps as it considers appropriate to deal with the failure.
- (8) The steps that the Authority may take include requiring the resolution plan to be revised.
- (9) The authorised persons subject to general rules about resolution plans must include authorised persons in relation to whom any power under Part 1 of the Banking Act 2009 is exercisable.
- (10) Before preparing a draft of general rules about resolution plans having effect in relation to those persons, the Authority must consult—
  - (a) the Treasury; and
  - (b) the Bank of England.

#### Textual Amendments

**F2** Ss. 139B-139F inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 7(1), 26(2)(b)

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### 139D Sections 139B and 139C: interpretation

- (1) In sections 139B and 139C any reference to the taking of action includes the taking of action by—
  - (a) the authorised person;
  - (b) any other person in the same group as the authorised person; or
  - (c) a partnership of which the authorised person is a member.
- (2) In subsection (1)(b) the definition of “group” in section 421 applies with the omission of subsection (1)(e) and (f) of that section.
- (3) For the purposes of section 139C the cases in which the business (or any part of the business) of the authorised person is to be regarded as having failed include—
  - (a) the insolvency or bankruptcy of the authorised person;
  - (b) the authorised person entering into administration; and
  - (c) a power under Part 1 of the Banking Act 2009 being exercised in relation to the authorised person.
- (4) In sections 139B and 139C references to the business of an authorised person include the business of—
  - (a) any person in the same group as the authorised person; and
  - (b) a partnership of which the authorised person is a member;
 and, accordingly, references in subsection (3)(a) to (c) of this section to the authorised person include any person within paragraph (a) or (b).
- (5) In sections 139B and 139C “specified” means specified in general rules.
- (6) In this section—
  - “administration” includes administration under Part 3 of the Banking Act 2009;
  - “insolvency” includes insolvency under Part 2 of that Act.

#### Textual Amendments

**F2** Ss. 139B-139F inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. **7(1)**, 26(2)(b)

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### 139E Rules about recovery and resolution plans: supplementary provision

- (1) General rules about recovery or resolution plans may, in particular—
  - (a) impose a requirement on authorised persons to collect, and keep up-to-date, information of a description specified in the rules; and
  - (b) make provision as to the inclusion in the plans of information in respect of the steps to be taken to ensure compliance with that requirement.

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- (2) If the Authority considers that an authorised person has contravened that requirement, the Authority may require the authorised person to appoint a skilled person to collect or update the information in question.
- (3) References in this section to a skilled person are to a person—
  - (a) nominated or approved by the Authority; and
  - (b) appearing to the Authority to have the skills necessary to collect or update the information in question.
- (4) The skilled person may require any person to provide all such assistance as the skilled person may reasonably require to collect or update the information in question.
- (5) A requirement imposed by subsection (4) is enforceable, on the application of the Authority, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (6) A contractual or other requirement imposed on a person (“P”) to keep any information in confidence does not apply if—
  - (a) the information is or may be relevant to anything required to be done as a result of section 139B or 139C or this section;
  - (b) an authorised person or a skilled person requests or requires P to provide the information for the purpose of securing that those things are done; and
  - (c) the Authority has approved the making of the request or the imposition of the requirement before it is made or imposed.
- (7) An authorised person may provide information (whether received under subsection (6) or otherwise) that would otherwise be subject to a contractual or other requirement to keep in confidence if it is provided for the purposes of anything required to be done as a result of section 139B or 139C or this section.
- (8) General rules about recovery or resolution plans may, in particular, make provision about the form of the plans.
- (9) When making general rules about recovery or resolution plans, the Authority must have regard to any international standards about documents whose purpose corresponds to the purpose of recovery or resolution plans.

#### Textual Amendments

**F2** Ss. 139B-139F inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 7(1), 26(2)(b)

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#### 139F Special provision in relation to resolution plans

- (1) In the case of resolution plans required to be prepared by general rules, the Authority must consult—
  - (a) the Treasury, and
  - (b) the Bank of England (“the Bank”),



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about the adequacy of the plans so far as relating to any matter which may be relevant to the exercise by the Treasury or the Bank of any power under Part 1, 2 or 3 of the Banking Act 2009.

- (2) After being consulted under subsection (1)—
  - (a) the Treasury or the Bank may notify the Authority that, in the opinion of the Treasury or the Bank, a resolution plan fails to make satisfactory provision in relation to any such matter; and
  - (b) if the Treasury or the Bank give a notification under paragraph (a), the Treasury or the Bank must give reasons for being of that opinion to the Authority.
- (3) The Authority must have regard to any notification given under paragraph (a) of subsection (2) before considering whether any resolution plan makes satisfactory provision in relation to any such matter.
- (4) If—
  - (a) a notification is given under that paragraph, but
  - (b) the Authority is nonetheless of the opinion that the resolution plan makes satisfactory provision in relation to any such matter,the Authority must give reasons for being of that opinion to the person who gave the notification.]

#### Textual Amendments

**F2** Ss. 139B-139F inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 7(1), 26(2)(b)

### 140 Restriction on managers of authorised unit trust schemes.

- (1) The Authority may make rules prohibiting an authorised person who has permission to act as the manager of an authorised unit trust scheme from carrying on a specified activity.
- (2) Such rules may specify an activity which is not a regulated activity.

### 141 Insurance business rules.

- (1) The Authority may make rules prohibiting an authorised person who has permission to effect or carry out contracts of insurance from carrying on a specified activity.
- (2) Such rules may specify an activity which is not a regulated activity.
- (3) The Authority may make rules in relation to contracts entered into by an authorised person in the course of carrying on business which consists of the effecting or carrying out of contracts of long-term insurance.
- (4) Such rules may, in particular—
  - (a) restrict the descriptions of property or indices of the value of property by reference to which the benefits under such contracts may be determined;
  - (b) make provision, in the interests of the protection of policyholders, for the substitution of one description of property, or index of value, by reference

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to which the benefits under a contract are to be determined for another such description of property or index.

(5) Rules made under this section are referred to in this Act as insurance business rules.

## **142 Insurance business: regulations supplementing Authority’s rules.**

- (1) The Treasury may make regulations for the purpose of preventing a person who is not an authorised person but who—
  - (a) is a parent undertaking of an authorised person who has permission to effect or carry out contracts of insurance, and
  - (b) falls within a prescribed class,
 from doing anything to lessen the effectiveness of asset identification rules.
- (2) “Asset identification rules” means rules made by the Authority which require an authorised person who has permission to effect or carry out contracts of insurance to identify assets which belong to him and which are maintained in respect of a particular aspect of his business.
- (3) The regulations may, in particular, include provision—
  - (a) prohibiting the payment of dividends;
  - (b) prohibiting the creation of charges;
  - (c) making charges created in contravention of the regulations void.
- (4) The Treasury may by regulations provide that, in prescribed circumstances, charges created in contravention of asset identification rules are void.
- (5) A person who contravenes regulations under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) “Charges” includes mortgages (or in Scotland securities over property).

### **Commencement Information**

- II** S. 142 wholly in force at 1.12.2001; s. 142 not in force at Royal Assent see s. 431(2); s. 142(1)-(4)(6) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 142 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

## **143 Endorsement of codes etc.**

- (1) The Authority may make rules (“endorsing rules”)—
  - (a) endorsing the City Code on Takeovers and Mergers issued by the Panel on Takeovers and Mergers;
  - (b) endorsing the Rules Governing Substantial Acquisitions of Shares issued by the Panel.
- (2) Endorsement may be—
  - (a) as respects all authorised persons; or
  - (b) only as respects a specified kind of authorised person.
- (3) At any time when endorsing rules are in force, and if asked to do so by the Panel, the Authority may exercise its powers under Part IV or section 66 as if failure to comply

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with an endorsed provision was a ground entitling the Authority to exercise those powers.

- (4) At any time when endorsing rules are in force and if asked to do so by the Panel, the Authority may exercise its powers under Part XIII, XIV or XXV as if the endorsed provisions were rules applying to the persons in respect of whom they are endorsed.
- (5) For the purposes of subsections (3) and (4), a failure to comply with a requirement imposed, or ruling given, under an endorsed provision is to be treated as a failure to comply with the endorsed provision under which that requirement was imposed or ruling was given.
- (6) If endorsed provisions are altered, subsections (3) and (4) apply to them as altered, but only if before the alteration the Authority has notified the Panel (and has not withdrawn its notification) that it is satisfied with the Panel’s consultation procedures.
- (7) “Consultation procedures” means procedures designed to provide an opportunity for persons likely to be affected by alterations to those provisions to make representations about proposed alterations to any of those provisions.
- (8) Subsections (1), (2)(d), (4), (5), (6)(a) and (12) of section 155 apply (with the necessary modifications) to a proposal to give notification of the kind mentioned in subsection (6) as they apply to a proposal to make endorsing rules.
- (9) This section applies in relation to particular provisions of the code or rules mentioned in subsection (1) as it applies to the code or the rules.

#### Commencement Information

- I2** S. 143 wholly in force at 1.12.2001; s. 143 not in force at Royal Assent see s. 431(2); s. 143 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 143 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

### *Specific rules*

#### **144 Price stabilising rules.**

- (1) The Authority may make rules (“price stabilising rules”) as to—
  - (a) the circumstances and manner in which,
  - (b) the conditions subject to which, and
  - (c) the time when or the period during which,action may be taken for the purpose of stabilising the price of investments of specified kinds.
- (2) Price stabilising rules—
  - (a) are to be made so as to apply only to authorised persons;
  - (b) may make different provision in relation to different kinds of investment.
- (3) The Authority may make rules which, for the purposes of section 397(5)(b), treat a person who acts or engages in conduct—
  - (a) for the purpose of stabilising the price of investments, and

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- (b) in conformity with such provisions corresponding to price stabilising rules and made by a body or authority outside the United Kingdom as may be specified in the rules under this subsection,
  - as acting, or engaging in that conduct, for that purpose and in conformity with price stabilising rules.
- (4) The Treasury may by order impose limitations on the power to make rules under this section.
- (5) Such an order may, in particular—
  - (a) specify the kinds of investment in relation to which price stabilising rules may make provision;
  - (b) specify the kinds of investment in relation to which rules made under subsection (3) may make provision;
  - (c) provide for price stabilising rules to make provision for action to be taken for the purpose of stabilising the price of investments only in such circumstances as the order may specify;
  - (d) provide for price stabilising rules to make provision for action to be taken for that purpose only at such times or during such periods as the order may specify.
- (6) If provisions specified in rules made under subsection (3) are altered, the rules continue to apply to those provisions as altered, but only if before the alteration the Authority has notified the body or authority concerned (and has not withdrawn its notification) that it is satisfied with its consultation procedures.
- (7) “Consultation procedures” has the same meaning as in section 143.

#### Commencement Information

- I3** S. 144 wholly in force at 18.6.2001; s. 144 not in force at Royal Assent see s. 431(2); s. 144(4)(5) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), Sch. Pt. 1; s. 144 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.

#### 145 Financial promotion rules.

- (1) The Authority may make rules applying to authorised persons about the communication by them, or their approval of the communication by others, of invitations or inducements—
  - (a) to engage in investment activity; or
  - (b) to participate in a collective investment scheme.
- (2) Rules under this section may, in particular, make provision about the form and content of communications.
- (3) Subsection (1) applies only to communications which—
  - (a) if made by a person other than an authorised person, without the approval of an authorised person, would contravene section 21(1);
  - (b) may be made by an authorised person without contravening section 238(1).
- (4) “Engage in investment activity” has the same meaning as in section 21.

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- (5) The Treasury may by order impose limitations on the power to make rules under this section.

#### Commencement Information

- I4** S. 145 wholly in force at 18.6.2001; s. 145 not in force at Royal Assent see s. 431(2); s. 145(5) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), Sch. Pt. 1; s. 145 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.

#### 146 Money laundering rules.

The Authority may make rules in relation to the prevention and detection of money laundering in connection with the carrying on of regulated activities by authorised persons.

#### 147 Control of information rules.

- (1) The Authority may make rules (“control of information rules”) about the disclosure and use of information held by an authorised person (“A”).
- (2) Control of information rules may—
- require the withholding of information which A would otherwise have to disclose to a person (“B”) for or with whom A does business in the course of carrying on any regulated or other activity;
  - specify circumstances in which A may withhold information which he would otherwise have to disclose to B;
  - require A not to use for the benefit of B information A holds which A would otherwise have to use in that way;
  - specify circumstances in which A may decide not to use for the benefit of B information A holds which A would otherwise have to use in that way.

#### *Modification or waiver*

#### 148 Modification or waiver of rules.

- (1) This section applies in relation to the following—
- auditors and actuaries rules;
  - control of information rules;
  - financial promotion rules;
  - general rules;
  - insurance business rules;
  - money laundering rules; and
  - price stabilising rules.
- (2) The Authority may, on the application or with the consent of an authorised person, direct that all or any of the rules to which this section applies—
- are not to apply to the authorised person; or
  - are to apply to him with such modifications as may be specified in the direction.

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- (3) An application must be made in such manner as the Authority may direct.
- (4) The Authority may not give a direction unless it is satisfied that—
  - (a) compliance by the authorised person with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made; and
  - (b) the direction would not result in undue risk to persons whose interests the rules are intended to protect.
- (5) A direction may be given subject to conditions.
- (6) Unless it is satisfied that it is inappropriate or unnecessary to do so, a direction must be published by the Authority in such a way as it thinks most suitable for bringing the direction to the attention of—
  - (a) those likely to be affected by it; and
  - (b) others who may be likely to make an application for a similar direction.
- (7) In deciding whether it is satisfied as mentioned in subsection (6), the Authority must—
  - (a) take into account whether the direction relates to a rule contravention of which is actionable in accordance with section 150;
  - (b) consider whether its publication would prejudice, to an unreasonable degree, the commercial interests of the authorised person concerned or any other member of his immediate group; and
  - (c) consider whether its publication would be contrary to an international obligation of the United Kingdom.
- (8) For the purposes of paragraphs (b) and (c) of subsection (7), the Authority must consider whether it would be possible to publish the direction without either of the consequences mentioned in those paragraphs by publishing it without disclosing the identity of the authorised person concerned.
- (9) The Authority may—
  - (a) revoke a direction; or
  - (b) vary it on the application, or with the consent, of the authorised person to whom it relates.
- (10) “Direction” means a direction under subsection (2).
- (11) “Immediate group”, in relation to an authorised person (“A”), means—
  - (a) A;
  - (b) a parent undertaking of A;
  - (c) a subsidiary undertaking of A;
  - (d) a subsidiary undertaking of a parent undertaking of A;
  - (e) a parent undertaking of a subsidiary undertaking of A.

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

- C11** S. 148 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, arts. 1(2), 3(3); S.I. 2001/3538, art. 2(1)
- S. 148 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, arts. 1, 11
- S. 148 restricted (6.8.2001) by S.I. 2001/2512, arts. 1(1), 5(4)

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- C12** S. 148 modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**
- C13** S. 148 applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(2) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), 4)
- C14** S. 148: power to make rules amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **3(2)(a)**
- C15** S. 148 applied (6.8.2001) by S.I. 2001/2512, **arts. 1(1), 7(1)**  
S. 148 applied (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9H(2) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), 4)
- C16** S. 148 modified (temp. from 1.1.2004 to 31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), **arts. 1(2) 26, {29}**
- C17** S. 148 modified (temp. from 1.1.2004 to 14.1.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), **arts. 1(2) 22, {27}**
- C18** S. 148(2) extended (1.12.2001) by S.I. 2001/3647, arts. 1, 4, **Sch. 2 paras. 1-3**
- C19** S. 148(3)-(9)(11) applied (with modifications) (3.9.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/1228, **regs. 1(2)(b)(c), 7(3)(4)** (with reg. 1(2)(3)); S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; S.I. 2001/3538, **art. 2(1)**
- C20** S. 148(3)-(9)(11) applied (with modifications) (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **7(3)(4)** (with reg. 1(2))

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#### Commencement Information

- I5** S. 148 wholly in force at 3.9.2001; s. 148 not in force at Royal Assent see s. 431(2); s. 148 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch. s. 148** in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**

#### Contravention of rules

### 149 Evidential provisions.

- (1) If a particular rule so provides, contravention of the rule does not give rise to any of the consequences provided for by other provisions of this Act.
- (2) A rule which so provides must also provide—
  - (a) that contravention may be relied on as tending to establish contravention of such other rule as may be specified; or
  - (b) that compliance may be relied on as tending to establish compliance with such other rule as may be specified.
- (3) A rule may include the provision mentioned in subsection (1) only if the Authority considers that it is appropriate for it also to include the provision required by subsection (2).

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

- C21** S. 149(1) applied (2.7.2002) by The Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (S.I. 2002/1501), **art. 11(1)** (with art. 13)

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**C22** S. 149(2)(3) applied (with modifications) (2.7.2002) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Transitional Provisions\) \(Credit Unions\) Order 2002 \(S.I. 2002/1501\)](#), [art. 11\(2\)](#) (with [art. 13](#))

## 150 Actions for damages.

- (1) A contravention by an authorised person of a rule is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (2) If rules so provide, subsection (1) does not apply to contravention of a specified provision of those rules.
- (3) In prescribed cases, a contravention of a rule which would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (4) In subsections (1) and (3) “rule” does not include—
  - (a) listing rules; or
  - (b) a rule requiring an authorised person to have or maintain financial resources.
- (5) “Private person” has such meaning as may be prescribed.

### Modifications etc. (not altering text)

- C23** S. 150 applied (1.12.2001) by [S.I. 2001/1228](#), [regs. 1\(2\)\(c\), 25\(6\)](#) (with [reg. 1\(2\)\(3\)](#)); [S.I. 2001/3538](#), [art. 2\(1\)](#)
- C24** S. 150: power to make rules amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), [reg. 1, 3\(2\)\(a\)](#)
- C25** S. 150 applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001 \(S.I. 2001/544\)](#), [art. 9G](#) (as inserted by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), [arts. 1\(2\), 4](#))  
S. 150 applied (2.7.2002) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Transitional Provisions\) \(Credit Unions\) Order 2002 \(S.I. 2002/1501\)](#) {[art. 11\(3\)](#)} (with [art. 13](#))
- C26** S. 150 applied (N.I.) (1.11.2004) by [Open-Ended Investment Companies Regulations \(Northern Ireland\) 2004 \(S.R. 2004/335\)](#), [regs. 1\(1\)\(b\), 25\(6\)](#) (with [reg. 1\(2\)](#))

### Commencement Information

- I6** S. 150 wholly in force at 1.12.2001; s. 150 not in force at Royal Assent see [s. 431\(2\)](#); [s. 150\(3\)–\(5\)](#) in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)](#), [Sch. Pt. 2](#); s. 150 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); s. 150 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)



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VALID FROM 01/12/2001

### **151 Limits on effect of contravening rules.**

- (1) A person is not guilty of an offence by reason of a contravention of a rule made by the Authority.
- (2) No such contravention makes any transaction void or unenforceable.

### *Procedural provisions*

### **152 Notification of rules to the Treasury.**

- (1) If the Authority makes any rules, it must give a copy to the Treasury without delay.
- (2) If the Authority alters or revokes any rules, it must give written notice to the Treasury without delay.
- (3) Notice of an alteration must include details of the alteration.

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

C27 S. 152 applied (6.8.2001) by S.I. 2001/2512, arts. 1(1), 7(2)

### **153 Rule-making instruments.**

- (1) Any power conferred on the Authority to make rules is exercisable in writing.
- (2) An instrument by which rules are made by the Authority (“a rule-making instrument”) must specify the provision under which the rules are made.
- (3) To the extent to which a rule-making instrument does not comply with subsection (2), it is void.
- (4) A rule-making instrument must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (5) The Authority may charge a reasonable fee for providing a person with a copy of a rule-making instrument.
- (6) A person is not to be taken to have contravened any rule made by the Authority if he shows that at the time of the alleged contravention the rule-making instrument concerned had not been made available in accordance with this section.

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

C28 S. 153 applied (6.8.2001) by S.I. 2001/2512, arts. 1(1), 7(2)

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## 154 Verification of rules.

- (1) The production of a printed copy of a rule-making instrument purporting to be made by the Authority—
  - (a) on which is endorsed a certificate signed by a member of the Authority’s staff authorised by it for that purpose, and
  - (b) which contains the required statements,
 is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (2) The required statements are—
  - (a) that the instrument was made by the Authority;
  - (b) that the copy is a true copy of the instrument; and
  - (c) that on a specified date the instrument was made available to the public in accordance with section 153(4).
- (3) A certificate purporting to be signed as mentioned in subsection (1) is to be taken to have been properly signed unless the contrary is shown.
- (4) A person who wishes in any legal proceedings to rely on a rule-making instrument may require the Authority to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (1).

### Modifications etc. (not altering text)

- C29** S. 154 applied (6.8.2001) by S.I. 2001/2512, arts. 1(1), 7(2)  
 S. 154 excluded (6.8.2001) by S.I. 2001/2512, arts. 1(1), 7(4)  
 S. 154 excluded (2.7.2002) by The Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (S.I. 2002/1501), art. 12(1) (with art. 13)

## 155 Consultation.

- (1) If the Authority proposes to make any rules, it must publish a draft of the proposed rules in the way appearing to it 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) an explanation of the Authority’s reasons for believing that making the proposed rules is compatible with its general duties under section 2; and
  - (d) notice that representations about the proposals may be made to the Authority within a specified time.
- (3) In the case of a proposal to make rules under a provision mentioned in subsection (9), the draft must also be accompanied by details of the expected expenditure by reference to which the proposal is made.
- (4) Before making the proposed rules, the Authority must have regard to any representations made to it in accordance with subsection (2)(d).
- (5) If the Authority makes the proposed rules, it must publish an account, in general terms, of—

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- (a) the representations made to it in accordance with subsection (2)(d); and
  - (b) its response to them.
- (6) If the rules differ from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant—
- (a) the Authority must (in addition to complying with subsection (5)) publish details of the difference; and
  - (b) those details must be accompanied by a cost benefit analysis.
- (7) Subsections (1) to (6) do not apply if the Authority considers that the delay involved in complying with them would be prejudicial to the interests of consumers.
- (8) Neither subsection (2)(a) nor subsection (6)(b) applies if the Authority considers—
- (a) that, making the appropriate comparison, there will be no increase in costs; or
  - (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.
- (9) Neither subsection (2)(a) nor subsection (6)(b) requires a cost benefit analysis to be carried out in relation to rules made under—
- (a) section 136(2);
  - (b) subsection (1) of section 213 as a result of subsection (4) of that section;
  - (c) section 234;
  - (d) paragraph 17 of Schedule 1.
- (10) “Cost benefit analysis” means an estimate of the costs together with an analysis of the benefits that will arise—
- (a) if the proposed rules are made; or
  - (b) if subsection (6) applies, from the rules that have been made.
- (11) “The appropriate comparison” means—
- (a) in relation to subsection (2)(a), a comparison between the overall position if the rules are made and the overall position if they are not made;
  - (b) in relation to subsection (6)(b), a comparison between the overall position after the making of the rules and the overall position before they were made.
- (12) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

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

- C30** S. 155 excluded (6.8.2001) by S.I. 2001/2512, **arts. 1(1), 7(3)**  
S. 155 excluded (31.10.2001) by S.I. 2001/3374, **arts. 1, 12(2)**
- C31** S. 155 excluded (15.7.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), art. 12(1) (as inserted by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) (Amendment) Order 2004 (S.I. 2004/1609), **art. 6**
- C32** S. 155 excluded (29.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(a), **4(2)**
- C33** S. 155 excluded (7.12.2006) by The Compensation Act 2006 (Contribution for Mesothelioma Claims) Regulations 2006 (S.I. 2006/3259), regs. 1(1), **4**

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- C34** S. 155 excluded (30.6.2008 for certain purposes, 1.1.2009 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **6(2)**
- C35** S. 155(1) applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 42(4)(5)**
- C36** S. 155(2)(c) restricted (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), 8, Sch. 2 paras. 9, 11(b), 13, **14**
- C37** S. 155(2)(d) applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 42(4)(5)**
- C38** S. 155(4) applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 42(4)(5)**
- C39** S. 155(7) modified (22.2.2008) by The Northern Rock plc Transfer Order 2008 (S.I. 2008/432), **art. 16(1)**
- C40** S. 155(7) modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), **art. 38(1)**
- C41** S. 155(7) modified (7.10.2008 at 9.30 a.m.) by The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008, (S.I. 2008/2644) {art. 28(1)}
- C42** S. 155(7) modified (8.10.2008 at 10.10 a.m.) by The Transfer of Rights and Liabilities to ING Order 2008 (S.I. 2008/2666), **art. 19(1)**
- C43** S. 155(7) modified (8.10.2008 at 12.15 p.m.) by The Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2674), **art. 30(1)**
- C44** S. 155(7) modified (30.3.2009 at 8.00 a.m.) by The Amendments to Law (Resolution of Dunfermline Building Society) Order 2009 (S.I. 2009/814), **art. 10(1)**
- C45** S. 155(7) modified by Payment Services Regulations 2009 (S.I. 2009/209), Sch. 7 para. 3(1) (as inserted (1.10.2009 for certain purposes, 1.11.2009 otherwise) by The Payment Services (Amendment) Regulations 2009 (S.I. 2009/2475), regs. 1(2)(3), **13**)
- C46** S. 155(7) modified (1.1.2010) by The Northern Rock plc Transfer Order 2009 (S.I. 2009/3226), arts. 1(2)(b), **21(1)**

## 156 General supplementary powers.

- (1) Rules made by the Authority may make different provision for different cases and may, in particular, make different provision in respect of different descriptions of authorised person, activity or investment.
- (2) Rules made by the Authority may contain such incidental, supplemental, consequential and transitional provision as the Authority considers appropriate.

### Modifications etc. (not altering text)

- C47** S. 156 applied (6.8.2001) by S.I. 2001/2512, **arts. 1(1), 7(2)**
- C48** S. 156: power to make rules amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **3(2)(a)**

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## CHAPTER II

### GUIDANCE

#### 157 Guidance.

- (1) The Authority may give guidance consisting of such information and advice as it considers appropriate—
  - (a) with respect to the operation of this Act and of any rules made under it;
  - (b) with respect to any matters relating to functions of the Authority;
  - (c) for the purpose of meeting the regulatory objectives;
  - (d) with respect to any other matters about which it appears to the Authority to be desirable to give information or advice.
- (2) The Authority may give financial or other assistance to persons giving information or advice of a kind which the Authority could give under this section.
- (3) If the Authority proposes to give guidance to regulated persons generally, or to a class of regulated person, in relation to rules to which those persons are subject, subsections (1), (2) and (4) to (10) of section 155 apply to the proposed guidance as they apply to proposed rules.
- (4) The Authority may—
  - (a) publish its guidance;
  - (b) offer copies of its published guidance for sale at a reasonable price; and
  - (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.
- (5) In this Chapter, references to guidance given by the Authority include references to any recommendation made by the Authority to persons generally, to regulated persons generally or to any class of regulated person.
- (6) “Regulated person” means any—
  - (a) authorised person;
  - (b) person who is otherwise subject to rules made by the Authority.

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

- C49** S. 157(3) modified (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), 8, **Sch. 2 para. 12**
- C50** S. 157(3) excluded (15.7.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), **art. 12(1)** (as inserted by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) (Amendment) Order 2004 (S.I. 2004/1609), {art. 6 }
- C51** S. 157(3) excluded (29.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(a), **4(2)**

#### 158 Notification of guidance to the Treasury.

- (1) On giving any general guidance, the Authority must give the Treasury a copy of the guidance without delay.

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- (2) If the Authority alters any of its general guidance, it must give written notice to the Treasury without delay.
- (3) The notice must include details of the alteration.
- (4) If the Authority revokes any of its general guidance, it must give written notice to the Treasury without delay.
- (5) “General guidance” means guidance given by the Authority under section 157 which is—
  - (a) given to persons generally, to regulated persons generally or to a class of regulated person;
  - (b) intended to have continuing effect; and
  - (c) given in writing or other legible form.
- (6) “Regulated person” has the same meaning as in section 157.

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

**C52** S. 158(5) modified (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), 8, **Sch. 2 para. 12**

VALID FROM 06/12/2006

#### <sup>F3</sup> <sup>F3</sup> 158A **Guidance on outsourcing by investment firms and credit institutions**

- (1) Without prejudice to the generality of section 157, the Authority must give guidance in the terms required by Article 15(3) of Commission Directive [2006/73/EC](#) of 10 August 2006 (requirement to publish statement of policy on outsourcing of investment services by investment firms and credit institutions).
- (2) Subsections (1), (2)(b) and (d), (4), (5), (6)(a) and (7) of section 155 apply to guidance which the Authority is required to give under this section as they apply to proposed rules.
- (3) The Authority must publish its guidance under this section.
- (4) The Authority may offer copies of the published guidance for sale at a reasonable price.
- (5) Subsections (1) to (4) of section 158 apply to guidance under this section as they apply to general guidance (as defined by section 158(5)).]]

#### Textual Amendments

**F3** S. 158A inserted (6.12.2006) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(Modification of Powers\) Regulations 2006](#) (S.I. 2006/2975), **reg. 6** (with [reg. 15](#))

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## CHAPTER III

### COMPETITION SCRUTINY

#### 159 Interpretation.

- (1) In this Chapter—
- “Director” means the Director General of Fair Trading;
  - “practices”, in relation to the Authority, means practices adopted by the Authority in the exercise of functions under this Act;
  - “regulating provisions” means any—
    - (a) rules;
    - (b) general guidance (as defined by section 158(5));
    - (c) statement issued by the Authority under section 64;
    - (d) code issued by the Authority under section 64 or 119.
- (2) For the purposes of this Chapter, regulating provisions or practices have a significantly adverse effect on competition if—
- (a) they have, or are intended or likely to have, that effect; or
  - (b) the effect that they have, or are intended or likely to have, is to require or encourage behaviour which has, or is intended or likely to have, a significantly adverse effect on competition.
- (3) If regulating provisions or practices have, or are intended or likely to have, the effect of requiring or encouraging exploitation of the strength of a market position they are to be taken, for the purposes of this Chapter, to have an adverse effect on competition.
- (4) In determining under this Chapter whether any of the regulating provisions have, or are likely to have, a particular effect, it may be assumed that the persons to whom the provisions concerned are addressed will act in accordance with them.

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

**C53** S. 159(1) restricted (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), 8, Sch. 2 paras. 7, 9, 11(c), 13, 14, 15, 17

#### 160 Reports by Director General of Fair Trading.

- (1) The Director must keep the regulating provisions and the Authority’s practices under review.
- (2) If at any time the Director considers that—
- (a) a regulating provision or practice has a significantly adverse effect on competition, or
  - (b) two or more regulating provisions or practices taken together, or a particular combination of regulating provisions and practices, have such an effect,
- he must make a report to that effect.
- (3) If at any time the Director considers that—
- (a) a regulating provision or practice does not have a significantly adverse effect on competition, or

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- (b) two or more regulating provisions or practices taken together, or a particular combination of regulating provisions and practices, do not have any such effect,  
he may make a report to that effect.
- (4) A report under subsection (2) must include details of the adverse effect on competition.
- (5) If the Director makes a report under subsection (2) he must—
  - (a) send a copy of it to the Treasury, the Competition Commission and the Authority; and
  - (b) publish it in the way appearing to him to be best calculated to bring it to the attention of the public.
- (6) If the Director makes a report under subsection (3)—
  - (a) he must send a copy of it to the Treasury, the Competition Commission and the Authority; and
  - (b) he may publish it.
- (7) Before publishing a report under this section the Director must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the Director, would or might seriously and prejudicially affect his interests.
- (8) Before publishing such a report the Director must, so far as practicable, exclude any matter which relates to the affairs of a particular body the publication of which, in the opinion of the Director, would or might seriously and prejudicially affect its interests.
- (9) Subsections (7) and (8) do not apply in relation to copies of a report which the Director is required to send under subsection (5)(a) or (6)(a).
- (10) For the purposes of the law of defamation, absolute privilege attaches to any report of the Director under this section.

## **161 Power of Director to request information.**

- (1) For the purpose of investigating any matter with a view to its consideration under section 160, the Director may exercise the powers conferred on him by this section.
- (2) The Director may by notice in writing require any person to produce to him or to a person appointed by him for the purpose, at a time and place specified in the notice, any document which—
  - (a) is specified or described in the notice; and
  - (b) is a document in that person’s custody or under his control.
- (3) The Director may by notice in writing—
  - (a) require any person carrying on any business to provide him with such information as may be specified or described in the notice; and
  - (b) specify the time within which, and the manner and form in which, any such information is to be provided.
- (4) A requirement may be imposed under subsection (2) or (3)(a) only in respect of documents or information which relate to any matter relevant to the investigation.



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- (5) If a person (“the defaulter”) refuses, or otherwise fails, to comply with a notice under this section, the Director may certify that fact in writing to the court and the court may enquire into the case.
- (6) If, after hearing any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence, the court is satisfied that the defaulter did not have a reasonable excuse for refusing or otherwise failing to comply with the notice, the court may deal with the defaulter as if he were in contempt.
- (7) “Court” means—
  - (a) the High Court; or
  - (b) in relation to Scotland, the Court of Session.

## **162 Consideration by Competition Commission.**

- (1) If the Director—
  - (a) makes a report under section 160(2), or
  - (b) asks the Commission to consider a report that he has made under section 160(3),the Commission must investigate the matter.
- (2) The Commission must then make its own report on the matter unless it considers that, as a result of a change of circumstances, no useful purpose would be served by a report.
- (3) If the Commission decides in accordance with subsection (2) not to make a report, it must make a statement setting out the change of circumstances which resulted in that decision.
- (4) A report made under this section must state the Commission’s conclusion as to whether—
  - (a) the regulating provision or practice which is the subject of the report has a significantly adverse effect on competition; or
  - (b) the regulating provisions or practices, or combination of regulating provisions and practices, which are the subject of the report have such an effect.
- (5) A report under this section stating the Commission’s conclusion that there is a significantly adverse effect on competition must also—
  - (a) state whether the Commission considers that that effect is justified; and
  - (b) if it states that the Commission considers that it is not justified, state its conclusion as to what action, if any, ought to be taken by the Authority.
- (6) Subsection (7) applies whenever the Commission is considering, for the purposes of this section, whether a particular adverse effect on competition is justified.
- (7) The Commission must ensure, so far as that is reasonably possible, that the conclusion it reaches is compatible with the functions conferred, and obligations imposed, on the Authority by or under this Act.
- (8) A report under this section must contain such an account of the Commission’s reasons for its conclusions as is expedient, in the opinion of the Commission, for facilitating proper understanding of them.
- (9) Schedule 14 supplements this section.

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- (10) If the Commission makes a report under this section it must send a copy to the Treasury, the Authority and the Director.

### **163 Role of the Treasury.**

- (1) This section applies if the Competition Commission makes a report under section 162(2) which states its conclusion that there is a significantly adverse effect on competition.
- (2) If the Commission's conclusion, as stated in the report, is that the adverse effect on competition is not justified, the Treasury must give a direction to the Authority requiring it to take such action as may be specified in the direction.
- (3) But subsection (2) does not apply if the Treasury consider—
- (a) that, as a result of action taken by the Authority in response to the Commission's report, it is unnecessary for them to give a direction; or
  - (b) that the exceptional circumstances of the case make it inappropriate or unnecessary for them to do so.
- (4) In considering the action to be specified in a direction under subsection (2), the Treasury must have regard to any conclusion of the Commission included in the report because of section 162(5)(b).
- (5) Subsection (6) applies if—
- (a) the Commission's conclusion, as stated in its report, is that the adverse effect on competition is justified; but
  - (b) the Treasury consider that the exceptional circumstances of the case require them to act.
- (6) The Treasury may give a direction to the Authority requiring it to take such action—
- (a) as they consider to be necessary in the light of the exceptional circumstances of the case; and
  - (b) as may be specified in the direction.
- (7) The Authority may not be required as a result of this section to take any action—
- (a) that it would not have power to take in the absence of a direction under this section; or
  - (b) that would otherwise be incompatible with any of the functions conferred, or obligations imposed, on it by or under this Act.
- (8) Subsection (9) applies if the Treasury are considering—
- (a) whether subsection (2) applies and, if so, what action is to be specified in a direction under that subsection; or
  - (b) whether to give a direction under subsection (6).
- (9) The Treasury must—
- (a) do what they consider appropriate to allow the Authority, and any other person appearing to the Treasury to be affected, an opportunity to make representations; and
  - (b) have regard to any such representations.
- (10) If, in reliance on subsection (3)(a) or (b), the Treasury decline to act under subsection (2), they must make a statement to that effect, giving their reasons.

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- (11) If the Treasury give a direction under this section they must make a statement giving—
  - (a) details of the direction; and
  - (b) if the direction is given under subsection (6), their reasons for giving it.
- (12) The Treasury must—
  - (a) publish any statement made under this section in the way appearing to them best calculated to bring it to the attention of the public; and
  - (b) lay a copy of it before Parliament.

## 164 The Competition Act 1998.

- (1) The Chapter I prohibition does not apply to an agreement the parties to which consist of or include—
  - (a) an authorised person, or
  - (b) a person who is otherwise subject to the Authority’s regulating provisions, to the extent to which the agreement consists of provisions the inclusion of which in the agreement is encouraged by any of the Authority’s regulating provisions.
- (2) The Chapter I prohibition does not apply to the practices of an authorised person or a person who is otherwise subject to the regulating provisions to the extent to which the practices are encouraged by any of the Authority’s regulating provisions.
- (3) The Chapter II prohibition does not apply to conduct of—
  - (a) an authorised person, or
  - (b) a person who is otherwise subject to the Authority’s regulating provisions, to the extent to which the conduct is encouraged by any of the Authority’s regulating provisions.
- (4) “The Chapter I prohibition” means the prohibition imposed by section 2(1) of the <sup>M1</sup>Competition Act 1998.
- (5) “The Chapter II prohibition” means the prohibition imposed by section 18(1) of that Act.

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### Marginal Citations

**M1** 1998 c. 41.

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