



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XI

#### INFORMATION GATHERING AND INVESTIGATIONS

##### *Appointment of investigators*

#### **167 Appointment of persons to carry out general investigations.**

- (1) If it appears to [<sup>F1</sup>an investigating authority] that there is good reason for doing so, the investigating authority may appoint one or more competent persons to conduct an investigation on its behalf into—
    - (a) the nature, conduct or state of the business of [<sup>F2</sup>a recognised investment exchange or] an authorised person or of an appointed representative;
    - (b) a particular aspect of that business; or
    - (c) the ownership or control of [<sup>F3</sup>a recognised investment exchange or] an authorised person.
  - (2) If a person appointed under subsection (1) thinks it necessary for the purposes of his investigation, he may also investigate the business of a person who is or has at any relevant time been—
    - (a) a member of the group of which the person under investigation (“A”) is part;  
<sup>F4</sup>...
    - (b) a partnership of which A is a member [<sup>F5</sup>; or]
    - [<sup>F6</sup>(c) where A is an insurance undertaking, reinsurance undertaking or third-country insurance undertaking, a person who provides services to A.]
  - (3) If a person appointed under subsection (1) decides to investigate the business of any person under subsection (2) he must give that person written notice of his decision.
- [<sup>F7</sup>(3A) If a person appointed under subsection (1) decides under subsection (2)(c) to investigate a person located in an EEA State other than the United Kingdom the person appointed must inform the supervisory authority of that EEA State prior to conducting an on-site inspection.]

*Status: Point in time view as at 21/03/2016.*

*Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Appointment of investigators is up to date with all changes known to be in force on or before 13 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)*

- (4) The power conferred by this section may be exercised in relation to a former authorised person (or appointed representative) but only in relation to—
- (a) business carried on at any time when he was an authorised person (or appointed representative); or
  - (b) the ownership or control of a former authorised person at any time when he was an authorised person.
- (5) “Business” includes any part of a business even if it does not consist of carrying on regulated activities.
- [<sup>F8</sup>(5A) “Investigating authority” means—
- (a) in relation to a recognised investment exchange, the Secretary of State or the FCA;
  - (b) in relation to an authorised person or former authorised person, the FCA or the PRA;
  - (c) in relation to an appointed representative or former appointed representative, the FCA or the PRA.]
- [<sup>F9</sup>(6) References in subsection (1) to a recognised investment exchange do not include references to an overseas investment exchange (as defined by section 313(1)).]

#### Textual Amendments

- F1** Words in s. 167(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 12 para. 7\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F2** Words in s. 167(1)(a) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\), regs. 1\(2\), 3\(5\), Sch. 5 para. 7\(a\)\(i\)](#)
- F3** Words in s. 167(1)(c) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\), regs. 1\(2\), 3\(5\), Sch. 5 para. 7\(a\)\(ii\)](#)
- F4** Word in s. 167(2)(a) omitted (1.1.2016) by virtue of [The Solvency 2 Regulations 2015 \(S.I. 2015/575\), reg. 1\(2\), Sch. 1 para. 8\(2\)\(a\)](#)
- F5** Word in s. 167(2)(b) inserted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\), reg. 1\(2\), Sch. 1 para. 8\(2\)\(b\)](#)
- F6** S. 167(2)(c) inserted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\), reg. 1\(2\), Sch. 1 para. 8\(2\)\(c\)](#)
- F7** S. 167(3A) inserted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\), reg. 1\(2\), Sch. 1 para. 8\(3\)](#)
- F8** S. 167(5A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 12 para. 7\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F9** S. 167(6) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\), regs. 1\(2\), 3\(5\), Sch. 5 para. 7\(b\)](#)

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

- C1** Pt. 11 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services Act 2012 \(Consumer Credit\) Order 2013 \(S.I. 2013/1882\), arts. 1\(1\), 3\(5\)](#)
- C2** S. 167 modified (1.12.2001) by [S.I. 2001/2657, arts. 1\(1\), 17](#) (which was revoked (8.10.2001) by [S.I. 2001/3083, arts. 1\(2\), 23](#)); [S.I. 2001/3538, art. 2\(1\)](#)  
 S. 167 modified (1.12.2001) by [S.I. 2001/3083, arts. 1\(2\), 17](#); [S.I. 2001/3538, art. 2\(1\)](#)

*Status: Point in time view as at 21/03/2016.*

*Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Appointment of investigators is up to date with all changes known to be in force on or before 13 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)*

- C3** S. 167 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, **12(3)**
- C4** S. 167 applied (with modifications) (31.12.2011) by [The Financial Services and Markets Act 2000 \(Permissions, Transitional Provisions and Consequential Amendments\) \(Northern Ireland Credit Unions\) Order 2011 \(S.I. 2011/2832\)](#), **art. 9**
- C5** S. 167 applied (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), regs. 1, **71(1)(c)**
- C6** S. 167 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **12(9)**
- C7** S. 167 applied (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), arts. 1(5), **23(2)(c)** (with Pt. 4)
- C8** S. 167(1) applied (with modifications) (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), regs. 1(2), **14**

## **168 Appointment of persons to carry out investigations in particular cases.**

- (1) Subsection (3) applies if it appears to an investigating authority that there are circumstances suggesting that—
  - <sup>F10</sup>(a) .....
  - (b) a person may be guilty of an offence under section 177, <sup>F11</sup>[191F], 346 or 398(1) or under Schedule 4.
- (2) Subsection (3) also applies if it appears to an investigating authority that there are circumstances suggesting that—
  - (a) an offence under section 24(1) <sup>F12</sup>[or 333G] <sup>F13</sup>[or under Part 7 of the Financial Services Act 2012] or under Part V of the <sup>M1</sup>Criminal Justice Act 1993 may have been committed;
  - (b) there may have been a breach of the general prohibition;
  - <sup>F14</sup>(ba) an authorised person may have contravened section 20 in relation to a credit-related regulated activity;
  - (c) there may have been a contravention of section 21 or 238; or
  - (d) market abuse may have taken place.
- (3) The investigating authority may appoint one or more competent persons to conduct an investigation on its behalf.
- (4) Subsection (5) applies if it appears to <sup>F15</sup>[an investigating authority] that there are circumstances suggesting that—
  - (a) a person may have contravened section 20;
  - (b) a person may be guilty of an offence under prescribed regulations relating to money laundering;
  - <sup>F16</sup>(ba) a person may be guilty of an offence under Schedule 7 to the Counter-Terrorism Act 2008 (terrorist financing or money laundering);
  - (c) <sup>F17</sup>[a person] may have contravened a rule made by the <sup>F18</sup>[investigating authority];
  - <sup>F19</sup>(ca) a recognised investment exchange may have contravened the recognition requirements (within the meaning of Part 18);

*Status: Point in time view as at 21/03/2016.*

*Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Appointment of investigators is up to date with all changes known to be in force on or before 13 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)*

- (d) an individual may not be a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised or exempt person;
  - (e) an individual may have performed or agreed to perform a function in breach of a prohibition order;
  - (f) [<sup>F20</sup>a person] may have failed to comply with section 56(6);
  - (g) an authorised person may have failed to comply with section 59(1) or (2);
  - (h) a person in relation to whom [<sup>F21</sup>a regulator] has given its approval under section 59 may not be a fit and proper person to perform the function to which that approval relates; <sup>F22</sup> . . .
  - [<sup>F23</sup>(ha) a person may have performed a controlled function without approval for the purposes of section 63A;]
  - (i) a person may be guilty of misconduct for the purposes of section 66 [<sup>F24</sup>, <sup>F25</sup> ...
  - (j) a person may have contravened any provision made by or under this Act for the purpose of implementing the markets in financial instruments directive <sup>F26</sup> ...]
  - [<sup>F27</sup>(ja) a person may have contravened—
    - (i) any provision made by or under this Act for the purpose of implementing the alternative investment fund managers directive; <sup>F28</sup> ...
    - (ii) any provision made by the Alternative Investment Fund Managers Regulations 2013; <sup>F29</sup> ...
    - [ any provision made by or under this Act for the purpose of
    - <sup>F30</sup>(iii) implementing the UCITS Directive; or
    - (iv) any provision made by the Undertakings for Collective Investment in Transferable Securities Regulations 2011; or.]]
  - [<sup>F31</sup>(k) a person may have contravened a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.]
- (5) The [<sup>F32</sup>investigating authority] may appoint one or more competent persons to conduct an investigation on its behalf.
- [<sup>F33</sup>(6) Investigating authority” means—
- (a) in subsections (1) to (3), the FCA, the PRA or the Secretary of State;
  - (b) in subsections (4) and (5), the FCA or the PRA.]

#### Textual Amendments

- F10** S. 168(1)(a) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 12 para. 8\(2\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F11** Word in s. 168(1)(b) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 12 para. 8\(2\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F12** Words in s. 168(2)(a) inserted (3.3.2015) by [Pension Schemes Act 2015 \(c. 8\)](#), s. 89(1)(a), [Sch. 3 para. 11](#) (with s. 87)
- F13** Words in s. 168(2)(a) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 12 para. 8\(3\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

*Status: Point in time view as at 21/03/2016.*

*Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Appointment of investigators is up to date with all changes known to be in force on or before 13 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)*

- F14** S. 168(2)(ba) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 12 para. 8(3)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F15** Words in s. 168(4) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 12 para. 8(4)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F16** S. 168(4)(ba) inserted (27.11.2008) by Counter-Terrorism Act 2008 (c. 28), ss. 62, 100(2), **Sch. 7 para. 33(3)** (with s. 101(2), Sch. 7 para. 43)
- F17** Words in s. 168(4)(c) substituted (8.4.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(1), **Sch. 2 para. 16(2)**
- F18** Words in s. 168(4)(c) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 12 para. 8(4)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F19** S. 168(4)(ca) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 12 para. 8(4)(c)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F20** Words in s. 168(4)(f) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 12 para. 8(4)(d)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F21** Words in s. 168(4)(h) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 12 para. 8(4)(e)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F22** Word in s. 168(4) omitted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by virtue of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(5), **Sch. 5 para. 8(a)**
- F23** S. 168(4)(ha) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), **Sch. 2 para. 16(3)**
- F24** S. 168(4)(j) and preceding word inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(5), **Sch. 5 para. 8(b)**
- F25** Word in s. 168(4)(i) 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(11)(a)**
- F26** Words in s. 168(4)(j) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 12 para. 8(4)(f)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F27** S. 168(4)(ja) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 10**
- F28** Word in s. 168(4)(ja)(i) omitted (18.3.2016) by virtue of The Undertakings for Collective Investment in Transferable Securities Regulations 2016 (S.I. 2016/225), regs. 1, **2(4)(a)**
- F29** Word in s. 168(4)(ja)(ii) omitted (18.3.2016) by virtue of The Undertakings for Collective Investment in Transferable Securities Regulations 2016 (S.I. 2016/225), regs. 1, **2(4)(a)**
- F30** S. 168(4)(ja)(iii)(iv) inserted (18.3.2016) by The Undertakings for Collective Investment in Transferable Securities Regulations 2016 (S.I. 2016/225), regs. 1, **2(4)(b)**
- F31** S. 168(4)(k) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 12 para. 8(4)(g)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F32** Words in s. 168(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 12 para. 8(5)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F33** S. 168(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 12 para. 8(6)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

*Status: Point in time view as at 21/03/2016.*

*Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Appointment of investigators is up to date with all changes known to be in force on or before 13 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)*

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

- C9** S. 168 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, **12(3)**
- C10** S. 168 applied (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), regs. 1, **52(4)**, 53(3)
- C11** S. 168 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **50(2)**
- C12** S. 168 modified (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), arts. 1(5), **23(3)** (with Pt. 4)
- C13** S. 168(3)(5) applied (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 18(1)(3) (which was revoked 8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**  
S. 168(3)(5) applied (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 18(1)(3); S.I. 2001/3538, **art. 2(1)**
- C14** S. 168(4) 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(8) (as inserted by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), arts. 1(2), 4)
- C15** S. 168(4)-(6) applied (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), arts. 1(5), **23(2)(d)** (with Pt. 4)
- C16** S. 168(4)(c) 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, **12(5)**
- C17** S. 168(4)(c) applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Miscellaneous Provisions\) Order 2013 \(S.I. 2013/442\)](#), arts. 1(3), **19(10)**

#### **Commencement Information**

- I1** S. 168 wholly in force at 3.9.2001; s. 168 not in force at Royal Assent see s. 431(2); s. 168(4)(b) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 168 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**

#### **Marginal Citations**

- M1** 1993 c. 36.

**Status:**

Point in time view as at 21/03/2016.

**Changes to legislation:**

Financial Services and Markets Act 2000, Cross Heading: Appointment of investigators is up to date with all changes known to be in force on or before 13 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.