



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XI

INFORMATION GATHERING AND INVESTIGATIONS

Powers to gather information

165 Authority's power to require information [^{F1}: authorised persons etc].

- (1) The Authority may, by notice in writing given to an authorised person, require him—
 - (a) to provide specified information or information of a specified description; or
 - (b) to produce specified documents or documents of a specified description.
- (2) The information or documents 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.
- (3) An officer who has written authorisation from the Authority to do so may require an authorised person without delay—
 - (a) to provide the officer with specified information or information of a specified description; or
 - (b) to produce to him specified documents or documents of a specified description.
- (4) This section applies only to information and documents reasonably required in connection with the exercise by the Authority of functions conferred on it by or under this Act.
- (5) The Authority may require any information provided under this section to be provided in such form as it may reasonably require.
- (6) The Authority may require—
 - (a) any information provided, whether in a document or otherwise, to be verified in such manner, or

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- (b) any document produced to be authenticated in such manner, as it may reasonably require.
- (7) The powers conferred by subsections (1) and (3) may also be exercised to impose requirements on—
- (a) a person who is connected with an authorised person;
 - (b) an operator, trustee or depositary of a scheme recognised under section 270 or 272 who is not an authorised person;
 - (c) a recognised investment exchange or recognised clearing house.
- (8) “Authorised person” includes a person who was at any time an authorised person but who has ceased to be an authorised person.
- (9) “Officer” means an officer of the Authority and includes a member of the Authority’s staff or an agent of the Authority.
- (10) “Specified” means—
- (a) in subsections (1) and (2), specified in the notice; and
 - (b) in subsection (3), specified in the authorisation.
- (11) For the purposes of this section, a person is connected with an authorised person (“A”) if he is or has at any relevant time been—
- (a) a member of A’s group;
 - (b) a controller of A;
 - (c) any other member of a partnership of which A is a member; or
 - (d) in relation to A, a person mentioned in Part I of Schedule 15.

Textual Amendments

- F1** S. 165: words in heading inserted (8.6.2010) by Financial Services Act (c. 28), ss. 24(1), 26(2)(d)(e), {Sch. 2 para. 15}

Modifications etc. (not altering text)

- C1** S. 165 amended (1.12.2001) by [S.I. 2001/2657](#), [arts. 1\(1\)](#), 15(1) (which was revoked (8.10.2001) by [S.I. 2001/3083](#), [arts. 1\(2\)](#), 23); [S.I. 2001/3538](#), [art. 2\(1\)](#)
 S. 165 amended (*temp.* from 11.8.2001 to 1.12.2001) by [S.I. 2001/2659](#), [arts. 1\(2\)](#), 2; [S.I. 2001/3538](#), [art. 2\(1\)](#)
 S. 165 amended (1.12.2001) by [S.I. 2001/3083](#), [arts. 1\(2\)](#), 15(1); [S.I. 2001/3538](#), [art. 2\(1\)](#)
- C2** S. 165 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. 8\(1\)\(3\)](#)
- C3** S. 165 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. 165 applied (with modifications) (6.3.2008) by [The Regulated Covered Bonds Regulations 2008](#) ([S.I. 2008/346](#)), [reg. 46](#), [Sch. para. 3](#)
- C5** S. 165 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](#)
- C6** S. 165(1)(2) extended (1.12.2001) by [S.I. 2001/3646](#), [arts. 1\(1\)](#), 2(1)(3)(a)
- C7** S. 165(2) 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](#)),

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- art. 9G(6) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), 4)
- C8** S. 165(5)(6) extended (1.12.2001) by S.I. 2001/3646, arts. 1(1), 2(3)(b)(c)
- C9** S. 165(5) 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(6) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), 4)
- C10** S. 165(6) 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(6) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), 4)

^{F2}[
^{F2}165A] **Authority's power to require information: financial stability**

- (1) The Authority may, by notice in writing given to a person to whom this section applies, require the person—
- (a) to provide specified information or information of a specified description; or
 - (b) to produce specified documents or documents of a specified description.
- (2) This section applies to—
- (a) a person who has a legal or beneficial interest in any of the assets of a relevant investment fund;
 - (b) a person who is responsible for the management of a relevant investment fund;
 - (c) a person (a “service provider”) who provides any service to an authorised person;
 - (d) a person prescribed by an order made by the Treasury or any person of a description prescribed by such an order (and see also section 165C);
 - (e) a person who is connected with a person to whom this section applies as a result of any of the above paragraphs.
- (3) This section applies only to information and documents that the Authority considers are, or might be, relevant to the stability of one or more aspects of the UK financial system.
- (4) A notice may be given to a service provider, or to a person who is connected with a service provider, only if the Authority considers that—
- (a) the service or the way in which it (or any part of it) is provided, or
 - (b) any failure to provide the service (or any part of it),
- poses, or would be likely to pose, a serious threat to the stability of the UK financial system.
- (5) Information or documents required under this section must be provided or produced—
- (a) before the end of such reasonable period as may be specified; and
 - (b) at such place as may be specified.
- (6) The Authority may require any information provided under this section to be provided in such form as it may reasonably require.
- (7) The Authority may require—
- (a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require; or

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- (b) any document produced to be authenticated in such manner as it may reasonably require.
- (8) In this section—
- “management” includes any of the activities listed in Annex II to the UCITS directive;
- “relevant investment fund” means an investment fund whose assets consist of or include financial instruments which—
- (a) are traded in the United Kingdom; or
- (b) were issued by a body incorporated in the United Kingdom;
- “service” includes facility;
- “specified” means specified in the notice.
- (9) For the purposes of the definition of “relevant investment fund”—
- (a) arrangements may constitute an investment fund even if there is only one person participating in the arrangements; and
- (b) the reference to financial instruments has the meaning given by Article 4.1(17) of the markets in financial instruments directive.
- (10) For the purposes of this section a person is connected with another person (“A”) if the person is or has at any relevant time been—
- (a) a member of A's group;
- (b) a controller of A;
- (c) any other member of a partnership of which A is a member; or
- (d) in relation to A, a person mentioned in Part 1 of Schedule 15 (reading references in that Part to the authorised person as references to A).]

Textual Amendments

F2 S. 165A-165C inserted (8.6.2010) by Financial Services Act (c. 28), {ss. 18(2)}, 26(2)

165B Safeguards etc in relation to exercise of power under section 165A

- (1) If the Authority proposes to impose a requirement on a person under section 165A, it must give the person a notice in writing warning the person that the Authority is proposing to impose the requirement.
- (2) The notice under subsection (1) must—
- (a) give the Authority's reasons for proposing to impose the requirement; and
- (b) specify a reasonable period within which the person may make representations to the Authority.
- (3) The Authority must then decide, within a reasonable period, whether to impose the requirement.
- (4) Subsections (1) to (3) do not apply in any case where the Authority is satisfied that it is necessary for the information or documents to be provided or produced without delay.
- (5) If the Authority imposes a requirement on a person under section 165A, the notice under that section must give the Authority's reasons for imposing the requirement.

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- (6) The Authority must prepare a statement of its policy with respect to the exercise of the power conferred by section 165A.
- (7) The statement requires the approval of the Treasury.
- (8) If the Treasury approve the statement, the Authority must publish it.
- (9) The power conferred by section 165A may not be exercised before the statement has been published.

Textual Amendments

F2 S. 165A-165C inserted (8.6.2010) by Financial Services Act (c. 28), {ss. 18(2)}, 26(2)

165C Orders under section 165A(2)(d)

- (1) The Treasury may make an order under section 165A(2)(d) only if they consider that—
 - (a) the activities carried on by the prescribed person or persons of the prescribed description, or the way in which those activities (or any part of them) are carried on, or
 - (b) any failure to carry on those activities (or any part of them),pose, or would be likely to pose, a serious threat to the stability of the UK financial system.
- (2) Subject as follows, an order under section 165A(2)(d) may not be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (3) Subsection (2) does not apply in any case where the Treasury are satisfied that it is necessary to make an order under section 165A(2)(d) without laying a draft for approval.
- (4) In that case, the order—
 - (a) must be laid before Parliament after being made; and
 - (b) ceases to have effect at the end of the relevant period unless before the end of that period it is approved by a resolution of each House of Parliament.
- (5) If an order ceases to have effect as a result of subsection (4)(b) that does not affect—
 - (a) anything done under it; or
 - (b) the power to make a new one.
- (6) “Relevant period” means a period of 28 days beginning with the day on which the order is made.
- (7) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) If a statutory instrument containing an order under section 165A(2)(d) would, apart from this subsection, be treated as a hybrid instrument for the purposes of the Standing Orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.]

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Textual Amendments

F2 S. 165A-165C inserted (8.6.2010) by Financial Services Act (c. 28), {ss. 18(2)}, 26(2)

[F³166 Reports by skilled persons.

- (1) This section applies where either regulator has required or could require a person to whom subsection (2) applies (“the person concerned”) to provide information or produce documents with respect to any matter (“the matter concerned”).
- (2) This subsection applies to—
 - (a) an authorised person (“A”),
 - (b) any other member of A's group,
 - (c) a partnership of which A is a member, or
 - (d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c),
 who is, or was at the relevant time, carrying on a business.
- (3) The regulator mentioned in subsection (1) may either—
 - (a) by notice in writing given to the person concerned, require the person concerned to provide the regulator with a report on the matter concerned, or
 - (b) itself appoint a person to provide the regulator with a report on the matter concerned.
- (4) When acting under subsection (3)(a), the regulator may require the report to be in such form as may be specified in the notice.
- (5) The regulator must give notice of an appointment under subsection (3)(b) to the person concerned.
- (6) The person appointed to make a report—
 - (a) must be a person appearing to the regulator to have the skills necessary to make a report on the matter concerned, and
 - (b) where the appointment is to be made by the person concerned, must be a person nominated or approved by the regulator.
- (7) It is the duty of—
 - (a) the person concerned, and
 - (b) any person who is providing (or who has at any time provided) services to the person concerned in relation to the matter concerned,
 to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.
- (8) The obligation imposed by subsection (7) is enforceable, on the application of the regulator in question, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (9) A regulator may make rules providing for expenses incurred by it in relation to an appointment under subsection (3)(b) to be payable as a fee by the person concerned.

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- (10) The powers conferred by this section may also be exercised by the FCA in relation to a person to whom subsection (11) applies, (and references to the person concerned are to be read accordingly).
- (11) This subsection applies to—
- (a) a recognised investment exchange (“A”),
 - (b) any other member of A's group,
 - (c) a partnership of which A is a member, or
 - (d) a person who has at any time been a person falling within paragraph (a), (b) or (c),
- who is, or was at the relevant time, carrying on a business.]

Textual Amendments

- F3** S. 166 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. 5](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)

[^{F4}166A Appointment of skilled person to collect and update information

- (1) This section applies if either regulator considers that an authorised person has contravened a requirement in rules made by that regulator to collect, and keep up to date, information of a description specified in the rules.
- (2) The regulator may either—
- (a) require the authorised person to appoint a skilled person to collect or update the information, or
 - (b) itself appoint a skilled person to do so.
- (3) References in this section to a skilled person are to a person—
- (a) appearing to the regulator to have the skills necessary to collect or update the information in question, and
 - (b) where the appointment is to be made by the authorised person, nominated or approved by the regulator.
- (4) The regulator must give notice of an appointment under subsection (2)(b) to the authorised person.
- (5) 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.
- (6) A requirement imposed under subsection (5) is enforceable, on the application of the regulator in question, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (7) 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 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

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- (c) the regulator in question has approved the making of the request or the imposition of the requirement before it is made or imposed.
- (8) An authorised person may provide information (whether received under subsection (7) or otherwise) that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of anything required to be done as a result of this section.
- (9) A regulator may make rules providing for expenses incurred by it in relation to an appointment under subsection (2)(b) to be payable as a fee by the authorised person.
- (10) In this section “authorised person”, in relation to the PRA, means PRA-authorised person.]

Textual Amendments

- F4** S. 166A 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. 6](#) (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1) (c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)

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