



Financial Services and Markets Act 2000

2000 CHAPTER 8

[^{F1}PART 9A

RULES AND GUIDANCE

CHAPTER 2

RULES: MODIFICATION, WAIVER, CONTRAVENTION AND PROCEDURAL PROVISIONS

Modification or waiver of rules

[^{F1}138A Modification or waiver of rules

- (1) Either regulator may, on the application or with the consent of a person who is subject to rules made by that regulator, direct that all or any of those rules—
 - (a) are not to apply to that person, or
 - (b) are to apply to that person with such modifications as may be specified in the direction.
- (2) Subsection (1) does not apply to—
 - ^{F2}(za) [rules made by either regulator under section 64A (rules of conduct);]
 - (a) rules made by either regulator under section 137O (threshold condition code);
 - (b) rules made by the FCA under section 247 (trust scheme rules) [^{F3}, section 248 (scheme particulars rules), section 261I (contractual scheme rules) or section 261J (contractual scheme particulars rules)];
 - ^{F4}(c) [rules made by the FCA under section [309Z1](#) (rules of conduct).]
- (3) An application must be made in such manner as the regulator may direct.
- (4) A regulator may not give a direction unless it is satisfied that—

Changes to legislation: Financial Services and Markets Act 2000, Section 138A is up to date with all changes known to be in force on or before 24 May 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) View outstanding changes

- (a) compliance by the 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 adversely affect the advancement of any of the regulator's objectives.
- (5) In subsection (4)(b) “objectives”, in relation to the FCA, means operational objectives.
- (6) A direction may be given subject to conditions.
- (7) The regulator may—
- (a) revoke a direction, or
 - (b) vary it on the application, or with the consent, of the person to whom it relates.
- (8) “Direction” means a direction under this section.]

Textual Amendments

- F1** Pt. 9A substituted for ss. 138-164 (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. **24(1)**, 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F2** S. 138A(2)(za) inserted (25.7.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 3 para. 8**; S.I. 2014/1819, art. 2(4)(b)
- F3** Words in s. 138A(2)(b) substituted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(4)** (with reg. 24)
- F4** S. 138A(2)(c) inserted (29.6.2023 for specified purposes) by Financial Services and Markets Act 2023 (c. 29), s. 86(1)(e), **Sch. 10 para. 7**

Modifications etc. (not altering text)

- C1** Pt. 9A Ch. 2 applied (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **209(6)** (with reg. 209(7)); 2020 c. 1, Sch. 5 para. 1(1)
- C2** Pt. 9A Ch. 2 applied (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **208(7)** (with reg. 208(8)); 2020 c. 1, Sch. 5 para. 1(1)
- C3** Pt. 9A applied (with modifications) (31.12.2020) by The Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/542), regs. 1, **35** (as amended by S.I. 2020/1385, regs. 1(4), **56(7)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- C4** Pt. 9A applied (31.12.2020) by The Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019 (S.I. 2019/407), regs. 1(2), 4, **Sch. 3** (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 27(a) and S.I. 2020/1385, regs. 1(2), 54(2))
- C5** Pt. 9A applied (with modifications) (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **74** (as amended by S.I. 2020/1385, regs. 1(4), **52(7)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- C6** S. 138A applied by S.I. 2008/2674, art. 29(2) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 149(b)(aa)(ii)**
- C7** S. 138A modified by S.I. 2002/1775, reg. 3(2)(a) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 77(4)(b)**

Changes to legislation: Financial Services and Markets Act 2000, Section 138A is up to date with all changes known to be in force on or before 24 May 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) View outstanding changes

- C8** S. 138A applied by S.I. 2009/3226, art. 20(2) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 182(a)(aa)(ii)**
- C9** S. 138A applied (with modifications) by S.I. 2008/432, art. 15(2) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 136(d)(aa)(ii)**
- C10** S. 138A applied by S.I. 2008/2644, art. 27(2) (as substituted) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 147(b)(aa)(ii)**
- C11** S. 138A applied by S.I. 2008/2666, art. 18(2) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 148(b)(aa)(ii)**
- C12** S. 138A applied by S.I. 2008/2546, art. 37(2) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 146(c)(aa)(ii)**
- C13** S. 138A applied (with modifications) by 2013 c. 13, **Sch. 4 para. 9A(5)(6)** (as inserted (26.10.2018) by The Financial Regulators Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), **regs. 1(2), 10(5)(c)**)
- C14** S. 138A applied (31.12.2020) by The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/266), **regs. 1(3), 4(2)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- C15** S. 138A modified (13.3.2023 at 8.00 a.m.) by The Amendments of the Law (Resolution of Silicon Valley Bank UK Limited) Order 2023 (S.I. 2023/319), **arts. 1(2), 3(2)** (as amended (23.6.2023) by S.I. 2023/694, **arts. 1(2), 3(4)**)
- C16** S. 138A applied (with modifications) (8.6.2023 for specified purposes, 7.10.2023 in so far as not already in force) by The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 (S.I. 2023/612), **art. 1(2), Sch. para. 10** (with art. 11)
- C17** S. 138A applied in part (with modifications) (29.8.2023) by Regulation (EU) No. 648/2012, Art. 84c (as inserted by Financial Services and Markets Act 2023 (c. 29), s. 86(3), **Sch. 2 para. 30** (with s. 2(3)); S.I. 2023/779, **reg. 4(zz)(ii)**)
- C18** S. 138A applied (30.1.2024 for specified purposes) by The Securitisation Regulations 2024 (S.I. 2024/102), **reg. 2(1)(e)(2), Sch. 1 para. 9(2)(b)** (with reg. 52(3), Sch. 3)
- C19** S. 138A(1) modified by S.I. 2009/814, art. 9(2) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 167(b)(ii)**
- C20** S. 138A(1)(6)(7) excluded by S.I. 2006/3221, reg. 8(2) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 118(h)(iii)** (with Sch. 2 para. 119)
- C21** Ss. 138A(3)-(7) modified by S.I. 2001/1228, reg. 7(3)(4) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 41(4)**
- C22** Ss. 138A(3)-(7) applied (with modifications) by S.R. 2004/335, reg. 7(3)(4) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 87(4)**
- C23** S. 138A(4) restricted by S.I. 2009/3226, art. 20(3) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 182(a)(aa)(iii)**
- C24** S. 138A(4) restricted by S.I. 2008/432, art. 15(3) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 136(d)(aa)(iii)**
- C25** S. 138A(4) restricted by S.I. 2008/2666, art. 18(3) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 148(b)(aa)(iii)**

Changes to legislation: Financial Services and Markets Act 2000, Section 138A is up to date with all changes known to be in force on or before 24 May 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) View outstanding changes

- C26** S. 138A(4) restricted by S.I. 2008/2546, art. 37(3) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 146(c)(aa)(iii)**
- C27** S. 138A(4) excluded by S.I. 2006/3221, reg. 8(2) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 118(h)(iii)** (with Sch. 2 para. 119)
- C28** S. 138A(4) restricted by S.I. 2008/2644, art. 27(3) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 147(b)(aa)(ii)**
- C29** S. 138A(4) modified by S.I. 2009/814, art. 9(3)-(5) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 167(b)(iii)(iv)**
- C30** S. 138A(4) restricted by S.I. 2008/2674, art. 29(3) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 149(b)(aa)(iii)**

Changes to legislation:

Financial Services and Markets Act 2000, Section 138A is up to date with all changes known to be in force on or before 24 May 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.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied (with modifications) by [S.I. 2023/1347 reg. 8](#)
- Act power to apply conferred (temp. until 15.5.2039) by [2014 c. 21 s. 79\(4\)](#)
- Act power to apply conferred (temp. until 15.5.2039) by [2014 c. 21 s. 81\(10\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 17 Ch. 3B inserted by [2023 c. 29 s. 64\(3\)](#)
- Pt. 20C inserted by [2016 c. 14 s. 30\(3\)](#)
- s. 31(1)(aa) inserted by [2021 c. 22 s. 22\(2\)](#)
- s. 32A inserted by [2021 c. 22 s. 22\(3\)](#)
- s. 32A power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- s. 36A and cross-heading inserted by [2021 c. 22 s. 22\(4\)](#)
- s. 71J and cross-heading inserted by [2021 c. 22 Sch. 8 para. 4](#)
- s. 86(9A) inserted by [S.I. 2019/707 reg. 8\(9\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8(6)-(10) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 13(c))
- s. 87A(11) inserted by [S.I. 2019/707 reg. 10\(5\)](#) (This amendment not applied to legislation.gov.uk. Reg. 10(4)(5) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 15(b))
- s. 124(10)(c)(i) word omitted by [S.I. 2019/310 reg. 5\(11\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(11)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(e))
- s. 129(7)(a) word inserted by [S.I. 2019/310 reg. 5\(12\)\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(12)(a)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(f))
- s. 129(7)(c) omitted and word by [S.I. 2019/310 reg. 5\(12\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(12)(a)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(f))
- s. 214(5A) inserted by [2021 c. 22 Sch. 8 para. 8](#)
- s. 261E(A1) inserted by [2023 c. 29 s. 64\(2\)\(a\)](#)
- s. 367A inserted by [2021 c. 22 Sch. 8 para. 10](#)
- s. 395(13)(h)(i) inserted by [2021 c. 22 Sch. 8 para. 12\(2\)\(c\)](#)
- s. 395(13)(bc)-(be) word inserted by [2021 c. 22 Sch. 8 para. 12\(2\)\(b\)](#)
- s. 395(14) inserted by [2021 c. 22 Sch. 8 para. 12\(3\)](#)
- s. 427A(3) words substituted by [2002 c. 40 Sch. 17 para. 59](#) (This amendment not applied to legislation.gov.uk. The Financial Services and Markets Act 2000 does not contain a section 427A.)
- Sch. 1ZA para. 32(c) and word inserted by [2021 c. 22 Sch. 8 para. 18](#)
- Sch. 2A para. 19(2)(b)(iia) inserted by [2023 c. 29 Sch. 10 para. 19\(a\)](#)
- Sch. 2A2B power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 2A power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 2B inserted by [2021 c. 22 Sch. 7](#)
- Sch. 2B power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 11A para. 5(3) inserted by [S.I. 2019/707 reg. 38\(5\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 38(2)-(5)(7)(8) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 20)

- Sch. 17A para. 12 words substituted by [S.I. 2019/662 reg. 13\(1\)](#) (This amendment not applied to [legislation.gov.uk](#). Reg. 13(1) substituted (25.6.2020) by S.I. 2020/646, regs. 1(2)(c), 11(3))