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Financial Services and Markets Act 2000

2000 CHAPTER 8

[^{F1}PART 8A

SHORT SELLING

Textual Amendments

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

Short selling rules

^{F2} 131B Short selling rules

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Textual Amendments

F2 Ss. 131B-131D repealed (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(2)** (with reg. 7)

^{F2} 131C Short selling rules: definitions etc

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Textual Amendments

F2 Ss. 131B-131D repealed (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(2)** (with reg. 7)

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F2 131D Short selling rules: procedure in urgent cases

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Textual Amendments
F2 Ss. 131B-131D repealed (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(2)** (with reg. 7)

Power to require information

131E Power to require information

- (1) The Authority may, by notice in writing, require a person ^{F3}...—
 - (a) to provide specified information or information of a specified description; or
 - (b) to produce specified documents or documents of a specified description.
- (2) This section applies only to information and documents that the Authority reasonably requires for the purpose of [^{F4}the exercise by it of functions under the short selling regulation].
- (3) Information or documents required under this section must be provided or produced—
 - (a) before the end of such reasonable period as may be specified; and
 - (b) at such place as may be specified.
- (4) The Authority may require any information provided under this section to be provided in such form as it may reasonably require.
- (5) The Authority may require—
 - (a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require; or
 - (b) any document produced to be authenticated in such manner as it may reasonably require.

[The Authority’s powers under this section may be exercised on a request made in the ^{F5}(5A) exercise of functions under the short selling regulation by—

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

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

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

^{F6}(7)

Textual Amendments
F3 Word in s. 131E(1) omitted (1.11.2012) by virtue of [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(3)(a)**

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- F4** Words in s. 131E(2) substituted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(3)(b)**
- F5** S. 131E(5A)(5B) inserted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(3)(c)**
- F6** S. 131E(7) omitted (1.11.2012) by virtue of [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(3)(d)**

131F Power to require information: supplementary

- ^{F7}(1)
- (2) If a document is produced in response to a requirement imposed under section 131E, the Authority may—
- (a) take copies of or extracts from the document; or
 - (b) require the person producing the document, or any relevant person, to provide an explanation of the document.
- (3) In subsection (2)(b) “ relevant person ”, in relation to a person who is required to produce a document, means a person who—
- (a) has been or is or is proposed to be a director or controller of that person;
 - (b) has been or is an auditor of that person;
 - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
 - (d) has been or is an employee of that person.
- (4) If a person who is required under section 131E to produce a document fails to do so, the Authority may require the person to state, to the best of the person's knowledge and belief, where the document is.
- (5) A lawyer may be required under section 131E to provide the name and address of the lawyer's client.
- (6) A person (“P”) may not be required under section 131E to disclose information or produce a document in respect of which P owes an obligation of confidence by virtue of carrying on the business of banking unless—
- [^{F8}(a) the Authority suspects that P or a member of P’s group has contravened any provision of the short selling regulation;]
 - [^{F8}(b) the Authority suspects that the person to whom the obligation of confidence is owed or a member of that person’s group has contravened any provision of the short selling regulation; or]
 - (c) the person to whom the obligation of confidence is owed consents to the disclosure or production.
- (7) If a person claims a lien on a document, its production under section 131E does not affect the lien.

Textual Amendments

- F7** S. 131F(1) omitted (1.11.2012) by virtue of [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(4)(a)**
- F8** S. 131F(6)(a)(b) substituted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(4)(b)**

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[^{F9}131FA] Investigations in support of EEA regulator”

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

Textual Amendments

- F9** Ss. 131FA-131FC inserted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(5)**

131FB. Entry of premises under warrant

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Authority that there are reasonable grounds for believing that the conditions in subsection (2) are satisfied.
- (2) The conditions are—
 - (a) that a relevant person on whom a requirement has been imposed under section 131E or 131F has failed (wholly or in part) to comply with it; and
 - (b) that on the premises specified in the warrant—
 - (i) there are documents which have been required; or
 - (ii) there is information which has been required.
- (3) A warrant under this section shall authorise a constable—

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- (a) to enter the premises specified in the warrant;
 - (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this section was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;
 - (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;
 - (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and
 - (e) to use such force as may be reasonably necessary.
- (4) A warrant under this section may be executed by any constable.
- (5) The warrant may authorise persons to accompany any constable who is executing it.
- (6) The powers in subsection (3) may be exercised by a person authorised by the warrant to accompany a constable; but that person may exercise those powers only in the company of, and under the supervision of, a constable.
- (7) In England and Wales, sections 15(5) to (8) and 16(3) to (12) of the Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this section.
- (8) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this section.
- (9) In the application of this section to Scotland—
- (a) for the reference to a justice of the peace substitute a reference to a justice of the peace or a sheriff; and
 - (b) for the references to information on oath substitute references to evidence on oath.
- (10) The Authority may give information under subsection (1) or under section 176(1) at the request of an EEA regulator” where the regulator makes the request in the exercise of its functions under the short selling regulation.
- (11) The Authority must, in deciding whether or not to exercise a power referred to in subsection (10), consider whether the exercise of that power is necessary to comply with an obligation under the short selling regulation.
- (12) In this section—
- “EEA regulator” means the competent authority of an EEA State other than the United Kingdom for the purposes of the short selling regulation;
 - “relevant person” means—
 - (a) an authorised person,
 - (b) a person who has been an authorised person,
 - (c) a person who is for the purposes of section 165 connected with an authorised person or with a person within paragraph (b).

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Textual Amendments

- F9** Ss. 131FA-131FC inserted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(5)**

131FC. Retention of documents taken under section 131FB

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

Textual Amendments

- F9** Ss. 131FA-131FC inserted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(5)**

Breach of short selling [^{F10}regulation]etc

Textual Amendments

- F10** Word in cross-heading preceding s. 131G substituted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(6)**

131G Power to impose penalty or issue censure

- (1) This section applies if the Authority is satisfied that a person has contravened—
 - (a) any provision of [^{F11}the short selling regulation] ; or
 - (b) any requirement imposed on the person under section 131E or 131F.
- (2) The Authority may impose a penalty of such amount as it considers appropriate on—
 - (a) the person who contravened the provision or requirement; or
 - (b) any person who was knowingly concerned in the contravention.
- (3) It may, instead of imposing a penalty on a person, publish a statement censuring the person.

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- (4) The Authority may not take action against a person under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person under section 131H.
- (5) “ The limitation period ” means the period of three years beginning with the first day on which the Authority knew of the contravention.
- (6) For this purpose the Authority is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.

Textual Amendments

- F11** Words in s. 131G(1)(a) substituted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), 2(7)

131H Procedure and right to refer to Tribunal

- (1) If the Authority proposes to take action against a person under section 131G, it must give the person a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (4) If the Authority decides to take action against a person under section 131G, it must give the person a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the Authority decides to take action against a person under section 131G, the person may refer the matter to the Tribunal.

131I Duty on publication of statement

After a statement under section 131G(3) is published, the Authority must send a copy of the statement to—

- (a) the person in respect of whom it is made; and
- (b) any person to whom a copy of the decision notice was given under section 393(4).

131J Imposition of penalties under section 131G: statement of policy

- (1) The Authority must prepare and issue a statement of its policy with respect to—
 - (a) the imposition of penalties under section 131G; and
 - (b) the amount of penalties under that section.

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- (2) The Authority's policy in determining what the amount of a penalty should be must include having regard to—
 - (a) the seriousness of the contravention;
 - (b) the extent to which the contravention was deliberate or reckless; and
 - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) The Authority may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replaced statement.
- (5) The Authority must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (6) A statement issued under this section 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.
- (7) The Authority may charge a reasonable fee for providing a person with a copy of the statement.
- (8) In exercising, or deciding whether to exercise, a power under section 131G in the case of any particular contravention, the Authority must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.

131K Statement of policy: procedure

- (1) Before issuing a statement under section 131J, the Authority must publish a draft of the proposed statement in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the Authority within a specified time.
- (3) Before issuing the proposed statement, the Authority must have regard to any representations made to it in accordance with subsection (2).
- (4) If the Authority issues the proposed statement it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (2); and
 - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant, the Authority must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.]

[^{F12}131L Offences

- (1) If a relevant person (“A”) fails to comply with a requirement imposed on A under section 131E or 131F the Authority may certify that fact in writing to the court.

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- (2) If the court is satisfied that A failed without reasonable excuse to comply with the requirement, it may deal with A (and where A is a body corporate, any director or officer) as if A (or as the case may be the director or officer) were in contempt; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.
- (3) A relevant person (“B”) who, in purported compliance with a requirement imposed on B under section 131E or 131F—
- (a) provides information which B knows to be false or misleading in a material particular, or
 - (b) recklessly provides information which is false or misleading in a material particular,
- is guilty of an offence.
- (4) A person guilty of an offence under subsection (3) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (5) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 131FB is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.
- (6) In relation to any contravention by a person, the Authority may not exercise both—
- (a) its powers under section 131G(2), and
 - (b) its powers under subsection (1).
- (7) In this section—
- “court” means—
 - (a) the High Court;
 - (b) in Scotland, the Court of Session;
 - “relevant person” means—
 - (a) an authorised person,
 - (b) a person who has been an authorised person,
 - (c) a person who is for the purposes of section 165 connected with an authorised person or with a person within paragraph (b).]

Textual Amendments

F12 S. 131L inserted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), 2(8)

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