



# 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 the Authority or the Secretary of State (“the 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>F1</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>F2</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; or
  - (b) a partnership of which A is a member.
- (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.
- (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

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- (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>F3</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)(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)**
- F2** 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)**
- F3** 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** 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)**
- C2** 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)**
- C3** 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**

### 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—
- a person may have contravened any regulation made under section 142; or
  - a person may be guilty of an offence under section 177, 191, 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—
- an offence under section 24(1) or 397 or under Part V of the <sup>M1</sup>Criminal Justice Act 1993 may have been committed;
  - there may have been a breach of the general prohibition;
  - there may have been a contravention of section 21 or 238; or
  - market abuse may have taken place.
- (3) The investigating authority may appoint one or more competent persons to conduct an investigation on its behalf.

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- (4) Subsection (5) applies if it appears to the 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>F4</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>F5</sup>[a person] may have contravened a rule made by the Authority;
  - (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) an authorised or exempt 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 the Authority 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>F6</sup> . . .
  - <sup>F7</sup>(ha) a person may have performed a <sup>F7</sup>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>F8</sup>; <sup>F9</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 or by any directly applicable Community regulation made under that directive <sup>F10</sup>[<sup>F10</sup>or made by the emission allowance auctioning regulation].]<sup>F11</sup>; or]
  - <sup>F11</sup>(k) a person may have contravened any provision of the short selling regulation.]
- (5) The Authority may appoint one or more competent persons to conduct an investigation on its behalf.
- (6) “Investigating authority” means the Authority or the Secretary of State.

#### Textual Amendments

- F4** 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**)
- F5** 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)**
- F6** 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)**
- F7** 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)**
- F8** 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)**
- F9** 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)**
- F10** Words in s. 168(4)(j) inserted (20.7.2012) by **The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012** (S.I. 2012/1906), arts. 1, **3(7)**

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- F11** S. 168(4)(k) and word inserted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), **2(11)(b)**

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

- C4** 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)**
- C5** 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)**
- C6** 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)
- C7** 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)**

**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**

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- M1** 1993 c. 36.

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