



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 [^{F1}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 [^{F2}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 [^{F3}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.

[^{F4}(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.]

[^{F5}(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** 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.](#)
- F5** 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](#)
- C4** S. 167 applied (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), regs. 1, [71\(1\)\(c\)](#)

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—

^{F6}(a)

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- (b) a person may be guilty of an offence under section 177, [F7]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) [F8] or under Part 7 of the Financial Services Act 2012] or under Part V of the [M1]Criminal Justice Act 1993 may have been committed;
 - (b) there may have been a breach of the general prohibition;
 - [F9](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 [F10]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;
 - [F11](ba) a person may be guilty of an offence under Schedule 7 to the Counter-Terrorism Act 2008 (terrorist financing or money laundering);]
 - (c) [F12]a person] may have contravened a rule made by the [F13]investigating authority];
 - [F14](ca) a recognised investment exchange may have contravened the recognition requirements (within the meaning of Part 18);]
 - (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) [F15]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 [F16]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; [F17] . . .
 - [F18](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 [F19; F20] ...
 - (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 [F21] ...]
 - [F22](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; or
 - (ii) any provision made by the Alternative Investment Fund Managers Regulations 2013; or]

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[^{F23}(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 [^{F24}investigating authority] may appoint one or more competent persons to conduct an investigation on its behalf.

[^{F25}(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

- F6** 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.](#)
- F7** 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.](#)
- F8** 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.](#)
- F9** 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.](#)
- F10** 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.](#)
- F11** 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](#))
- F12** 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\(2\)](#)
- F13** 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.](#)
- F14** 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.](#)
- F15** 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.](#)
- F16** 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.](#)
- F17** 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\(a\)](#)
- F18** 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\(3\)](#)
- F19** 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\(b\)](#)

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- F20** 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)**
- F21** 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.
- F22** 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**
- F23** 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.
- F24** 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.
- F25** 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.

Modifications etc. (not altering text)

- C5** 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)**
- C6** S. 168 applied (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), regs. 1, **52(4)**, 53(3)
- C7** 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)**
- C8** 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)
- C9** 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)**
- C10** 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.

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