



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XXVI

NOTICES

Modifications etc. (not altering text)

- C1** Pt. XXVI (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, s. 58A(6)(8) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 75 (with art. 13(3), Sch. 5)); S.I. 2001/3538, art. 2(1)
- Pt. XXVI (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, s. 85(4B) (as inserted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 95 (with art. 13(3), Sch. 5)); S.I. 2001/3538, art. 2(1)
- Pt. XXVI (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, s. 36A(5C)(5D) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 142(c) (with art. 13(3), Sch. 5)); S.I. 2001/3538, art. 2(1)
- Pt. XXVI (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, s. 46A(6)(8) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 148 (with art. 13(3), Sch. 5)); S.I. 2001/3538, art. 2(1)
- Pt. XXVI (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, s. 93(6A) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 177(d) (with art. 13(3), Sch. 5)); S.I. 2001/3538, art. 2

Status: Point in time view as at 18/06/2001. This version of this part contains provisions that are not valid for this point in time.

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VALID FROM 03/09/2001

Warning notices

387 Warning notices.

- (1) A warning notice must—
- (a) state the action which the Authority proposes to take;
 - (b) be in writing;
 - (c) give reasons for the proposed action;
 - (d) state whether section 394 applies; and
 - (e) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it.
- (2) The warning notice must specify a reasonable period (which may not be less than 28 days) within which the person to whom it is given may make representations to the Authority.
- (3) The Authority may extend the period specified in the notice.
- (4) The Authority must then decide, within a reasonable period, whether to give the person concerned a decision notice.

Modifications etc. (not altering text)

- C2** S. 387 applied (1.12.2001) by [S.I. 2001/1228, regs. 1\(2\)\(c\), 8\(a\)](#) (with [reg. 1\(2\)\(3\)](#)); [S.I. 2001/3538, art. 2\(1\)](#)
- C3** S. 387 applied (N.I.) (1.11.2004) by [Open-Ended Investment Companies Regulations \(Northern Ireland\) 2004 \(S.R. 2004/335\), regs. 1\(1\)\(b\), 8\(a\)](#) (with [reg. 1\(2\)](#))

VALID FROM 03/09/2001

Decision notices

388 Decision notices.

- (1) A decision notice must—
- (a) be in writing;
 - (b) give the Authority's reasons for the decision to take the action to which the notice relates;
 - (c) state whether section 394 applies;
 - (d) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it; and
 - (e) give an indication of—

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- (i) any right to have the matter referred to the Tribunal which is given by this Act; and
 - (ii) the procedure on such a reference.
- (2) If the decision notice was preceded by a warning notice, the action to which the decision notice relates must be action under the same Part as the action proposed in the warning notice.
 - (3) The Authority may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.
 - (4) The Authority may give a further decision notice as a result of subsection (3) only if the person to whom the original notice was given consents.
 - (5) If the person to whom a decision notice is given under subsection (3) had the right to refer the matter to which the original decision notice related to the Tribunal, he has that right as respects the decision notice under subsection (3).

Modifications etc. (not altering text)

- C4** S. 388 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 8(b)** (with **reg. 1(2)(3)**); S.I. 2001/3538, **art. 2(1)**
- C5** S. 388 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 8(b)** (with **reg. 1(2)**)

VALID FROM 03/09/2001

Conclusion of proceedings

389 Notices of discontinuance.

- (1) If the Authority decides not to take—
 - (a) the action proposed in a warning notice, or
 - (b) the action to which a decision notice relates,
 it must give a notice of discontinuance to the person to whom the warning notice or decision notice was given.
- (2) But subsection (1) does not apply if the discontinuance of the proceedings concerned results in the granting of an application made by the person to whom the warning or decision notice was given.
- (3) A notice of discontinuance must identify the proceedings which are being discontinued.

Modifications etc. (not altering text)

- C6** S. 389 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 8(c)** (with **reg. 1(2)(3)**); S.I. 2001/3538, **art. 2(1)**

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C7 S. 389 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), 8(c) (with reg. 1(2))

390 Final notices.

- (1) If the Authority has given a person a decision notice and the matter was not referred to the Tribunal within the period mentioned in section 133(1), the Authority must, on taking the action to which the decision notice relates, give the person concerned and any person to whom the decision notice was copied a final notice.
- (2) If the Authority has given a person a decision notice and the matter was referred to the Tribunal, the Authority must, on taking action in accordance with any directions given by—
 - (a) the Tribunal, or
 - (b) the court under section 137,
 give that person and any person to whom the decision notice was copied a final notice.
- (3) A final notice about a statement must—
 - (a) set out the terms of the statement;
 - (b) give details of the manner in which, and the date on which, the statement will be published.
- (4) A final notice about an order must—
 - (a) set out the terms of the order;
 - (b) state the date from which the order has effect.
- (5) A final notice about a penalty must—
 - (a) state the amount of the penalty;
 - (b) state the manner in which, and the period within which, the penalty is to be paid;
 - (c) give details of the way in which the penalty will be recovered if it is not paid by the date stated in the notice.
- (6) A final notice about a requirement to make a payment or distribution in accordance with section 384(5) must state—
 - (a) the persons to whom,
 - (b) the manner in which, and
 - (c) the period within which,
 it must be made.
- (7) In any other case, the final notice must—
 - (a) give details of the action being taken;
 - (b) state the date on which the action is to be taken.
- (8) The period stated under subsection (5)(b) or (6)(c) may not be less than 14 days beginning with the date on which the final notice is given.
- (9) If all or any of the amount of a penalty payable under a final notice is outstanding at the end of the period stated under subsection (5)(b), the Authority may recover the outstanding amount as a debt due to it.

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- (10) If all or any of a required payment or distribution has not been made at the end of a period stated in a final notice under subsection (6)(c), the obligation to make the payment is enforceable, on the application of the Authority, by injunction or, in Scotland, by an order under section 45 of the ^{M1}Court of Session Act 1988.

Modifications etc. (not altering text)

- C8** S. 390 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 8(d)** (with **reg. 1(2)(3)**); S.I. 2001/3538, **art. 2(1)**
- C9** S. 390 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 8(d)** (with **reg. 1(2)**)
- C10** S. 390(3)(4)(7) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 110(7)** (with **art. 23(2)**)
- C11** S. 390(3)-(5)(8)(9) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 85(5)(b)** (with **art. 23(2)**)
- C12** S. 390(3)-(5)(7)-(9) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 61(7)** (with **art. 23(2)**)
- C13** S. 390(7) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 115(5), 122(4), 129** (with **art. 23(2)**)

Marginal Citations

- M1** 1988 c. 36.

VALID FROM 03/09/2001

Publication

391 Publication.

- (1) Neither the Authority nor a person to whom a warning notice or decision notice is given or copied may publish the notice or any details concerning it.
- (2) A notice of discontinuance must state that, if the person to whom the notice is given consents, the Authority may publish such information as it considers appropriate about the matter to which the discontinued proceedings related.
- (3) A copy of a notice of discontinuance must be accompanied by a statement that, if the person to whom the notice is copied consents, the Authority may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.
- (4) The Authority must publish such information about the matter to which a final notice relates as it considers appropriate.
- (5) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.
- (6) But the Authority may not publish information under this section if publication of it would, in its opinion, be unfair to the person with respect to whom the action was taken or prejudicial to the interests of consumers.
- (7) Information is to be published under this section in such manner as the Authority considers appropriate.

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- (8) For the purposes of determining when a supervisory notice takes effect, a matter to which the notice relates is open to review if—
- (a) the period during which any person may refer the matter to the Tribunal is still running;
 - (b) the matter has been referred to the Tribunal but has not been dealt with;
 - (c) the matter has been referred to the Tribunal and dealt with but the period during which an appeal may be brought against the Tribunal’s decision is still running; or
 - (d) such an appeal has been brought but has not been determined.
- (9) “Notice of discontinuance” means a notice given under section 389.
- (10) “Supervisory notice” has the same meaning as in section 395.
- (11) “Consumers” means persons who are consumers for the purposes of section 138.

Modifications etc. (not altering text)

- C14** S. 391 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 9** (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**
- C15** S. 391 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 9** (with reg. 1(2))
- C16** S. 391(4)(6)(7) applied (1.12.2001) by S.I. 2001/2957, **arts. 1, 13(8)(a)**, S.I. 2001/3538, art. 2(1)
- C17** S. 391(4) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 61(7), 85(5)(b), 110(7), 115(5), 122(4), 129** (with art. 23(2))
- C18** S. 391(8) applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 27(14)** (with reg. 1(2))
- C19** S. 391(8)(a)-(d) applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), **regs. 1(2)(b)(v)(c), {11(13)}** (with reg. 3)
- C20** S. 391(11) modified (18.6.2001) by S.I. 2001/1821, **arts. 1(1), 3(5)**

Third party rights and access to evidence

VALID FROM 03/09/2001

392 Application of sections 393 and 394.

Sections 393 and 394 apply to—

- (a) a warning notice given in accordance with section 54(1), 57(1), 63(3), 67(1), 88(4)(b), 89(2), 92(1), 126(1), 207(1), 255(1), 280(1), 331(1), 345(2) (whether as a result of subsection (1) of that section or section 249(1)) or 385(1);
- (b) a decision notice given in accordance with section 54(2), 57(3), 63(4), 67(4), 88(6)(b), 89(3), 92(4), 127(1), 208(1), 255(2), 280(2), 331(3), 345(3) (whether as a result of subsection (1) of that section or section 249(1)) or 386(1).

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Modifications etc. (not altering text)

C21 S. 392(a) excluded (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), [46\(2\)](#), [47\(2\)](#), [48\(2\)](#), [52\(4\)](#), [55\(2\)](#) (with [art. 23\(2\)](#))

VALID FROM 03/09/2001

393 Third party rights.

- (1) If any of the reasons contained in a warning notice to which this section applies relates to a matter which—
 - (a) identifies a person (“the third party”) other than the person to whom the notice is given, and
 - (b) in the opinion of the Authority, is prejudicial to the third party, a copy of the notice must be given to the third party.
- (2) Subsection (1) does not require a copy to be given to the third party if the Authority—
 - (a) has given him a separate warning notice in relation to the same matter; or
 - (b) gives him such a notice at the same time as it gives the warning notice which identifies him.
- (3) The notice copied to a third party under subsection (1) must specify a reasonable period (which may not be less than 28 days) within which he may make representations to the Authority.
- (4) If any of the reasons contained in a decision notice to which this section applies relates to a matter which—
 - (a) identifies a person (“the third party”) other than the person to whom the decision notice is given, and
 - (b) in the opinion of the Authority, is prejudicial to the third party, a copy of the notice must be given to the third party.
- (5) If the decision notice was preceded by a warning notice, a copy of the decision notice must (unless it has been given under subsection (4)) be given to each person to whom the warning notice was copied.
- (6) Subsection (4) does not require a copy to be given to the third party if the Authority—
 - (a) has given him a separate decision notice in relation to the same matter; or
 - (b) gives him such a notice at the same time as it gives the decision notice which identifies him.
- (7) Neither subsection (1) nor subsection (4) requires a copy of a notice to be given to a third party if the Authority considers it impracticable to do so.
- (8) Subsections (9) to (11) apply if the person to whom a decision notice is given has a right to refer the matter to the Tribunal.
- (9) A person to whom a copy of the notice is given under this section may refer to the Tribunal—
 - (a) the decision in question, so far as it is based on a reason of the kind mentioned in subsection (4); or

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- (b) any opinion expressed by the Authority in relation to him.
- (10) The copy must be accompanied by an indication of the third party’s right to make a reference under subsection (9) and of the procedure on such a reference.
- (11) A person who alleges that a copy of the notice should have been given to him, but was not, may refer to the Tribunal the alleged failure and—
- (a) the decision in question, so far as it is based on a reason of the kind mentioned in subsection (4); or
 - (b) any opinion expressed by the Authority in relation to him.
- (12) Section 394 applies to a third party as it applies to the person to whom the notice to which this section applies was given, in so far as the material which the Authority must disclose under that section relates to the matter which identifies the third party.
- (13) A copy of a notice given to a third party under this section must be accompanied by a description of the effect of section 394 as it applies to him.
- (14) Any person to whom a warning notice or decision notice was copied under this section must be given a copy of a notice of discontinuance applicable to the proceedings to which the warning notice or decision notice related.

Modifications etc. (not altering text)

- C22** S. 393 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 24(3)** (with **reg. 1(2)(3)**); S.I. 2001/3538, **art. 2(1)**
S. 393 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 38(2), 46(2), 47(2), 48(2), 52(4), 55(2)** (with **art. 23(2)**)
- C23** S. 393 applied by Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), **art. 95(10)** (as inserted (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), **arts. 1(3), 13**)
- C24** S. 393 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 24(3)** (with **reg. 1(2)**)
- C25** S. 393(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 36(4)** (with **art. 23(2)**)

VALID FROM 03/09/2001

394 Access to Authority material.

- (1) If the Authority gives a person (“A”) a notice to which this section applies, it must—
- (a) allow him access to the material on which it relied in taking the decision which gave rise to the obligation to give the notice;
 - (b) allow him access to any secondary material which, in the opinion of the Authority, might undermine that decision.
- (2) But the Authority does not have to allow A access to material under subsection (1) if the material is excluded material or it—
- (a) relates to a case involving a person other than A; and
 - (b) was taken into account by the Authority in A’s case only for purposes of comparison with other cases.

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- (3) The Authority may refuse access A to particular material which it would otherwise have to allow him access to if, in its opinion, allowing him access to the material—
- (a) would not be in the public interest; or
 - (b) would not be fair, having regard to—
 - (i) the likely significance of the material to A in relation to the matter in respect of which he has been given a notice to which this section applies; and
 - (ii) the potential prejudice to the commercial interests of a person other than A which would be caused by the material’s disclosure.
- (4) If the Authority does not allow A access to material because it is excluded material consisting of a protected item, it must give A written notice of—
- (a) the existence of the protected item; and
 - (b) the Authority’s decision not to allow him access to it.
- (5) If the Authority refuses under subsection (3) to allow A access to material, it must give him written notice of—
- (a) the refusal; and
 - (b) the reasons for it.
- (6) “Secondary material” means material, other than material falling within paragraph (a) of subsection (1) which—
- (a) was considered by the Authority in reaching the decision mentioned in that paragraph; or
 - (b) was obtained by the Authority in connection with the matter to which the notice to which this section applies relates but which was not considered by it in reaching that decision.
- (7) “Excluded material” means material which—
- [^{F1}(a) is material the disclosure of which for the purposes of or in connection with any legal proceedings is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000; or]
 - (c) is a protected item (as defined in section 413).

Textual Amendments

- F1** S. 394(7)(a) substituted (2.10.2000) for s. 394(7)(a)(b) by 2000 c. 23, s. 82, **Sch. 4 para. 11** (with s. 82(3)); S.I. 2000/2543, **art. 3**

Modifications etc. (not altering text)

- C26** S. 394 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 24(3)** (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**
S. 394 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 36(3), 38(2), 46(2), 47(2), 48(2), 52(4), 55(2)** (with art. 23(2))
- C27** S. 394 applied by Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 95(10) (as inserted (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **13**)
- C28** S. 394 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 24(3)** (with reg. 1(2))

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The Authority's procedures

395 The Authority's procedures.

- (1) The Authority must determine the procedure that it proposes to follow in relation to the giving of—
 - (a) supervisory notices; and
 - (b) warning notices and decision notices.
- (2) That procedure must be designed to secure, among other things, that the decision which gives rise to the obligation to give any such notice is taken by a person not directly involved in establishing the evidence on which that decision is based.
- (3) But the procedure may permit a decision which gives rise to an obligation to give a supervisory notice to be taken by a person other than a person mentioned in subsection (2) if—
 - (a) the Authority considers that, in the particular case, it is necessary in order to protect the interests of consumers; and
 - (b) the person taking the decision is of a level of seniority laid down by the procedure.
- (4) A level of seniority laid down by the procedure for the purposes of subsection (3)(b) must be appropriate to the importance of the decision.
- (5) The Authority must issue a statement of the procedure.
- (6) The statement must be published 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) The Authority must, without delay, give the Treasury a copy of any statement which it issues under this section.
- (9) When giving a supervisory notice, or a warning notice or decision notice, the Authority must follow its stated procedure.
- (10) If the Authority changes the procedure in a material way, it must publish a revised statement.
- (11) The Authority's failure in a particular case to follow its procedure as set out in the latest published statement does not affect the validity of a notice given in that case.
- (12) But subsection (11) does not prevent the Tribunal from taking into account any such failure in considering a matter referred to it.
- (13) "Supervisory notice" means a notice given in accordance with section—
 - (a) 53(4), (7) or (8)(b);
 - (b) 78(2) or (5);
 - (c) 197(3), (6) or (7)(b);
 - (d) 259(3), (8) or (9)(b);
 - (e) 268(3), (7)(a) or (9)(a) (as a result of subsection (8)(b));
 - (f) 282(3), (6) or (7)(b);
 - (g) 321(2) or (5).

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- C29** S. 395 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 10** (with **reg. 1(2)(3)**); S.I. 2001/3538, **art. 2(1)**
S. 395 amended (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 27(15)** (with **reg. 1(2)(3)**); S.I. 2001/3538, **art. 2(1)**
- C30** S. 395 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 10** (with **reg. 1(2)**)
- C31** S. 395 modified (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 27(15)** (with **reg. 1(2)**)
- C32** S. 395(1)(9) excluded (1.12.2001) by S.I. 2001/2957, **arts. 1, 12(9)**; S.I. 2001/3538, **art. 2(1)**

396 Statements under section 395: consultation.

- (1) Before issuing a statement of procedure under section 395, 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 of procedure, the Authority must have regard to any representations made to it in accordance with subsection (2).
- (4) If the Authority issues the proposed statement of procedure 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 of procedure 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 revise a statement of policy.

Status:

Point in time view as at 18/06/2001. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

Financial Services and Markets Act 2000, Part XXVI is up to date with all changes known to be in force on or before 12 July 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.