



Financial Services and Markets Act 2000

2000 CHAPTER 8

[^{F1}PART 9A

RULES AND GUIDANCE

CHAPTER 1

RULE-MAKING POWERS

[^{F1}Specific rule-making powers

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.](#)

137O Threshold condition code

- (1) Either regulator may make rules supplementing any of the conditions for the time being set out in or specified under Schedule 6 that is expressed to be relevant to the discharge of that regulator's functions.
- (2) Rules made under this section by a regulator are referred to as that regulator's "threshold condition code".
- (3) A threshold condition code may in particular—
 - (a) specify requirements which a person must satisfy in order to be regarded as satisfying a particular condition in relation to any regulated activities;
 - (b) specify matters which are, or may be, or are not, relevant in determining whether a person satisfies a particular condition in relation to any regulated activities.

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- (4) Except where a regulator's threshold condition code so provides, it is not to be regarded as limiting the matters that are, or may be, relevant in determining whether a person satisfies a particular condition in relation to any regulated activities.
- (5) A threshold condition code cannot impose obligations that are enforceable against authorised persons otherwise than through the threshold conditions.

137P Control of information rules

- (1) Either regulator may make rules (“control of information rules”) about the disclosure and use of information held by an authorised person (“A”).
- (2) Control of information rules may—
 - (a) require the withholding of information which A would otherwise be required to disclose to a person (“B”) for or with whom A does business in the course of carrying on any regulated or other activity;
 - (b) specify circumstances in which A may withhold information which A would otherwise be required to disclose to B;
 - (c) require A not to use for the benefit of B information—
 - (i) which is held by A, and
 - (ii) which A would otherwise be required to use for the benefit of B;
 - (d) specify circumstances in which A may decide not to use for the benefit of B information within paragraph (c).

137Q Price stabilising rules

- (1) The FCA may make rules (“price stabilising rules”) as to—
 - (a) the circumstances and manner in which,
 - (b) the conditions subject to which, and
 - (c) the time when or the period during which,
 action may be taken for the purpose of stabilising the price of investments of specified kinds.
- (2) Price stabilising rules—
 - (a) are to be made so as to apply only to authorised persons;
 - [must not apply to transactions, orders, behaviour, actions or omissions to
 - ^{F2}(aa) which the market abuse regulation applies;]
 - (b) may make different provision in relation to different kinds of investment.
- ^{F3}(3) The FCA may make rules which, for the purposes of the relevant exemption provisions, treat a person who acts or engages in conduct in conformity with specified provisions as acting, or engaging in that conduct, in conformity with the relevant provisions of Article 5 (exemption for buy-back programmes and stabilisation) of the market abuse regulation.
- (3A) “Specified provisions” means such provisions—
 - (a) corresponding to the relevant provisions of Article 5 of the market abuse regulation, and
 - (b) made by a body or authority outside the EEA as may be specified in rules made by the FCA,
 as may be specified in rules made by the FCA.]

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- (4) “The relevant exemption provisions” are the following provisions of the Financial Services Act 2012—
- (a) [^{F4}section 90(9)(d)];
 - (b) [^{F5}section 91(4)(c)].

[In this section references to Article 5 of the market abuse regulation include any ^{F6}(5) directly applicable EU regulation made under that Article.]

Textual Amendments

- F2** S. 137Q(2)(aa) inserted (3.7.2016) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2016 \(S.I. 2016/680\)](#), regs. 1, **10(5)(a)**
- F3** S. 137Q(3)(3A) substituted for s. 137Q(3) (3.7.2016) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2016 \(S.I. 2016/680\)](#), regs. 1, **10(5)(b)**
- F4** Words in s. 137Q(4)(a) substituted (3.7.2016) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2016 \(S.I. 2016/680\)](#), regs. 1, **10(5)(c)(i)**
- F5** Words in s. 137Q(4)(b) substituted (3.7.2016) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2016 \(S.I. 2016/680\)](#), regs. 1, **10(5)(c)(ii)**
- F6** S. 137Q(5) inserted (3.7.2016) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2016 \(S.I. 2016/680\)](#), regs. 1, **10(5)(d)**

137R Financial promotion rules

- (1) The FCA may make rules applying to authorised persons about the communication by them, or their approval of the communication by others, of invitations or inducements—
- (a) to engage in investment activity, [^{F7}or]
 - ^{F8}(aa) [to engage in claims management activity, or]
 - (b) to participate in a collective investment scheme.
- (2) Rules under this section may, in particular, make provision about the form and content of communications.
- (3) Subsection (1) applies only to communications which—
- (a) if made by a person other than an authorised person, without the approval of an authorised person, would contravene section 21(1), and
 - (b) may be made by an authorised person without contravening section 238(1).
- (4) But subsection (3) does not prevent the FCA from making rules under subsection (1) in relation to a communication that would not contravene section 21(1) if made by a person other than an authorised person, without the approval of an authorised person, if the conditions set out in subsection (5) are satisfied.
- (5) Those conditions are—
- (a) that the communication would not contravene subsection (1) of section 21 because it is a communication to which that subsection does not apply as a result of an order under subsection (5) of that section,
 - (b) that the FCA considers that any of the requirements of—

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- (i) ^{F9}Articles 24 (general principles and information to clients) and 25 (assessment of suitability and appropriateness and reporting to clients) of the markets in financial instruments directive,
 - ^{F10}(ii) any delegated act adopted under Article 24.13 or 25.8 of that directive,]
 - (iii) Article 77 of the UCITS directive, ^{F11}^{F12}...
 - (iv) Articles 10 and 11 of the mortgages directive, ^{F13}or
 - (v) Article 17 of the insurance distribution directive,]
- apply to the communication, and
- (c) that the FCA considers that the rules are necessary to secure that the communication satisfies such of the requirements mentioned in paragraph (b) as the FCA considers apply to the communication.
- (6) “Engage in investment activity” ^{F14}has^{F14} and “engage in claims management activity” have] the same meaning as in section 21.
- (7) The Treasury may by order impose limitations on the power to make rules under this section.

Textual Amendments

- F7** Word in s. 137R(1)(a) omitted (E.W.S.) (6.10.2018) by virtue of [Financial Guidance and Claims Act 2018 \(c. 10\)](#), **ss. 27(5)(a)**, 37(5); S.I. 2018/1045, reg. 2(a)
- F8** S. 137R(1)(aa) inserted (E.W.S.) (6.10.2018) by [Financial Guidance and Claims Act 2018 \(c. 10\)](#), **ss. 27(5)(a)**, 37(5); S.I. 2018/1045, reg. 2(a)
- F9** Words in s. 137R(5)(b)(i) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), **Sch. 2 para. 18(a)** (with reg. 7)
- F10** S. 137R(5)(b)(ii) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), **Sch. 2 para. 18(b)** (with reg. 7)
- F11** Word in s. 137R(5)(b)(iii) omitted (23.5.2018 for specified purposes, 1.10.2018 in so far as not already in force) by virtue of [The Insurance Distribution \(Regulated Activities and Miscellaneous Amendments\) Order 2018 \(S.I. 2018/546\)](#), arts. 1(2), **11(a)**
- F12** S. 137R(5)(b)(iv) and word inserted (21.9.2015) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(4)(a), **Sch. 1 para. 1(4)(b)** (with Pt. 4)
- F13** S. 137R(5)(b)(v) and word inserted (23.5.2018 for specified purposes, 1.10.2018 in so far as not already in force) by [The Insurance Distribution \(Regulated Activities and Miscellaneous Amendments\) Order 2018 \(S.I. 2018/546\)](#), arts. 1(2), **11(b)**
- F14** Words in s. 137R(6) substituted (E.W.S.) (6.10.2018) by [Financial Guidance and Claims Act 2018 \(c. 10\)](#), **ss. 27(5)(b)**, 37(5); S.I. 2018/1045, reg. 2(a)

137S Financial promotion rules: directions given by FCA

- (1) The FCA may give a direction under this section if—
- (a) an authorised person has made, or proposes to make, a communication or has approved, or proposes to approve, another person's communication, and
 - (b) the FCA considers that there has been, or is likely to be, a contravention of financial promotion rules in respect of the communication or approval.

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- (2) A direction under this section may require the authorised person—
 - (a) to withdraw the communication or approval;
 - (b) to refrain from making the communication or giving the approval (whether or not it has previously been made or given);
 - (c) to publish details of the direction;
 - (d) to do anything else specified in the direction in relation to the communication or approval.
- (3) A requirement in a direction under this section to refrain from making or approving a communication includes a requirement to refrain from making or approving another communication where—
 - (a) the other communication is in all material respects the same as, or substantially the same as, the communication to which the direction relates, and
 - (b) in all the circumstances a reasonable person would think that another direction would be given under this section in relation to the other communication.
- (4) The requirements contained in a direction under this section have effect as follows—
 - (a) a requirement to publish details of the direction has effect at such time (if any) as the FCA gives a notice under subsection (8)(a);
 - (b) any other requirement takes effect immediately.
- (5) If the FCA gives a direction under this section to an authorised person—
 - (a) it must give written notice to the authorised person, and
 - (b) if the direction relates to the approval by the authorised person of another person's communication, it must also give written notice to that other person.
- (6) The notice must—
 - (a) give details of the direction,
 - (b) inform the person to whom the notice is given that the direction takes effect immediately,
 - (c) state the FCA's reasons for giving the direction, and
 - (d) inform the person to whom the notice is given that the person may make representations to the FCA within such period as may be specified in the notice (which may be extended by the FCA).
- (7) The FCA may amend the direction if, having considered any representations made by a person to whom notice is given under subsection (5), it considers it appropriate to do so.
- (8) If, having considered any such representations, the FCA decides not to revoke the direction—
 - (a) the FCA must give separate written notice to the persons mentioned in subsection (5)(a) or (b), and
 - (b) any such person may refer the matter to the Tribunal.
- (9) A notice under subsection (8)(a) must—
 - (a) give details of the direction and of any amendment of it,
 - (b) state the FCA's reasons for deciding not to revoke the direction and, if relevant, for amending it,
 - (c) inform the person to whom the notice is given of the person's right to refer the matter to the Tribunal, and

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- (d) give an indication of the procedure on such a reference.
- (10) If, having considered any representations made by a person to whom notice is given under subsection (5), the FCA decides to revoke the direction, it must give separate written notice to those persons.
- (11) After the period for making representations in relation to a direction given under this section has ended, the FCA may publish such information about the direction as it considers appropriate (even if the direction is revoked).
- (12) Nothing in this section requires a notice to be given to a person mentioned in subsection (5)(b) if the FCA considers it impracticable to do so.

Rules to recover expenses relating to the single financial guidance body

F15 137SA

- (1) The Secretary of State may, from time to time, notify the FCA of the amount of—
 - (a) the expenses incurred, or expected to be incurred, by the Secretary of State under section 11 of the Financial Guidance and Claims Act 2018 (financial assistance from Secretary of State to single financial guidance body), and
 - (b) any other expenses incurred, or expected to be incurred, by the Secretary of State in connection with the operation of the single financial guidance body, that the Secretary of State considers should be recovered under this section.
- (2) Where the Secretary of State has notified the FCA of an amount of expenses under subsection (1), the FCA must make rules for imposing levies with a view to recovering—
 - (a) the amount notified, and
 - (b) expenses incurred by the FCA in connection with its functions under this section.
- (3) The rules must require the payment to the FCA of specified sums, or sums calculated in a specified way, by—
 - (a) authorised persons, electronic money issuers or payment service providers, or
 - (b) any specified class of authorised person, electronic money issuer or payment service provider.
- (4) Before the FCA publishes a draft of rules to be made under this section it must consult the Secretary of State.
- (5) The rules may be made only with the consent of the Secretary of State.
- (6) The Secretary of State may notify the FCA of matters that will be taken into account when deciding whether or not to give consent under subsection (5).
- (7) The FCA must have regard to any matters notified under subsection (6) before publishing a draft of rules to be made under this section.
- (8) The FCA must pay the Secretary of State the sums it receives under rules made under this section, apart from those paid to recover the expenses mentioned in subsection (2) (b) (which the FCA may keep).
- (9) Subsection (10) applies where—
 - (a) the Secretary of State has notified the FCA under subsection (1) of an amount which included expenses expected to be incurred,

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- (b) the FCA has made rules to recover the amount, and paid sums received under the rules to the Secretary of State, but
 - (c) the expenses expected to be incurred were not in fact incurred.
- (10) The Secretary of State need not arrange for the sums received under the rules to be paid back, but must, when next notifying an amount to the FCA under subsection (1), take into account the fact that the sums received included an amount representing expenses that were not in fact incurred.
- (11) In this section—
- “electronic money issuer” means a person who is an electronic money issuer for the purposes of the Electronic Money Regulations 2011 (S.I. 2011/99) as a result of falling within any of paragraphs (a) to (e) and (h) to (j) of the definition in regulation 2(1);
 - “payment service provider” means a person who is a payment service provider for the purposes of the Payment Services Regulations 2017 (S.I. 2017/752) as a result of falling within any of paragraphs (a) to (h) of the definition in regulation 2(1).]

Textual Amendments

F15 S. 137SA inserted (10.5.2018) by [Financial Guidance and Claims Act 2018 \(c. 10\)](#), **ss. 13(1), 37(1)(b)**

Rules to recover debt advice expenses incurred by the devolved authorities

F16 **137SB**

- (1) The Treasury may, from time to time, notify the FCA of the amount of the expenses incurred, or expected to be incurred, by the devolved authorities in connection with the provision of information and advice on debt to members of the public in Scotland, Wales and Northern Ireland.
- (2) Where the Treasury have notified the FCA of an amount of expenses under subsection (1), the FCA must make rules for imposing levies with a view to recovering—
- (a) the amount notified, and
 - (b) expenses incurred by the FCA in connection with its functions under this section.
- (3) The rules must require the payment to the FCA of specified sums, or sums calculated in a specified way, by—
- (a) authorised persons, electronic money issuers or payment service providers, or
 - (b) any specified class of authorised person, electronic money issuer or payment service provider.
- (4) Before the FCA publishes a draft of rules to be made under this section it must consult the Treasury.
- (5) The rules may be made only with the consent of the Treasury.
- (6) The Treasury may notify the FCA of matters that will be taken into account when deciding whether or not to give consent under subsection (5).
- (7) The FCA must have regard to any matters notified under subsection (6) before publishing a draft of rules to be made under this section.

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- (8) The FCA must pay the Treasury the sums it receives under rules made under this section, apart from those paid to recover the expenses mentioned in subsection (2)(b) (which the FCA may keep).
- (9) Subsection (10) applies where—
- (a) the Treasury have notified the FCA under subsection (1) of an amount which included expenses expected to be incurred,
 - (b) the FCA has made rules to recover the amount, and paid sums received under the rules to the Treasury, but
 - (c) the expenses expected to be incurred were not in fact incurred.
- (10) The Treasury need not arrange for the sums received under the rules to be paid back, but must, when next notifying an amount to the FCA under subsection (1), take into account the fact that the sums received included an amount representing expenses that were not in fact incurred.
- (11) In this section—
- the “devolved authorities” means—
 - (a) the Scottish Ministers,
 - (b) the Welsh Ministers, and
 - (c) the Department for Communities in Northern Ireland;
 - “electronic money issuer” and “payment service provider” have the same meanings as in section 137SA.]]

Textual Amendments

- F16** S. 137SB inserted (1.10.2018) by [Financial Guidance and Claims Act 2018 \(c. 10\)](#), **ss. 14(1)**, 37(5); S.I. 2018/1003, reg. 2(a)

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