



Financial Services and Markets Act 2000

2000 CHAPTER 8

[^{F1}PART 9A

RULES AND GUIDANCE

CHAPTER 2

RULES: MODIFICATION, WAIVER, CONTRAVENTION AND PROCEDURAL PROVISIONS

[^{F1}Contravention of rules

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.](#)

138C Evidential provisions

- (1) If a particular rule made by either regulator so provides, contravention of the rule does not give rise to any of the consequences provided for by other provisions of this Act.
- (2) A rule made by a regulator which so provides must also provide—
 - (a) that contravention may be relied on as tending to establish contravention of such other rule made by that regulator as may be specified, or
 - (b) that compliance may be relied on as tending to establish compliance with such other rule made by that regulator as may be specified.
- (3) A rule may include the provision mentioned in subsection (1) only if the regulator making the rule considers that it is appropriate for it also to include the provision required by subsection (2).

Status: Point in time view as at 30/01/2024.

Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Contravention of rules is up to date with all changes known to be in force on or before 04 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. (See end of Document for details)

- (4) In this section “rule” does not include a rule made under—
- (a) section 137O (threshold condition code);
 - (b) section 192J (provision of information by parent undertakings).

Modifications etc. (not altering text)

- C1** Pt. 9A Ch. 2 applied (with modifications) by S.I. 2011/99, **Sch. 3 para. 2A(2)(3)** (as inserted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by **The Payment Services Regulations 2017** (S.I. 2017/752), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(31)(a)** (with reg. 3) and as amended (18.9.2023) by **The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023** (S.I. 2023/790), regs. 1(2)(a), **2(3)(a)(iii)-(v)**)
- C2** Pt. 9A Ch. 2 applied (with modifications) (13.8.2017 for specified purposes, 13.1.2018 in so far as not already in force) by **The Payment Services Regulations 2017** (S.I. 2017/752), reg. 1(2)(b)(ii)(6), **Sch. 6 para. 3(2)** (with reg. 3) (as amended (18.9.2023) by **The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023** (S.I. 2023/790), regs. 1(2)(a), **4(5)(a)(iii)**)
- C3** Pt. 9A Ch. 2 applied in part (1.7.2021) by Regulation (EU) No. 600/2014, Art. 50D (as inserted by **Financial Services Act 2021** (c. 22), s. 49(5), **Sch. 10 para. 12** (with Sch. 10 para. 13); S.I. 2021/739, reg. 3(o))
- C4** Pt. 9A applied (1.7.2021) by Regulation (EU) No. 600/2014, Art. 49A(12) (as inserted by **Financial Services Act 2021** (c. 22), s. 49(5), **Sch. 10 para. 9**; S.I. 2021/739, reg. 3(o))
- C5** S. 138C applied (1.7.2021) by Regulation (EU) No. 648/2012, Art. 84b(1)(2) (as inserted by **Financial Services Act 2021** (c. 22), **ss. 40(4)**, 49(5); S.I. 2021/739, reg. 3(v))
- C6** S. 138C applied (8.6.2023 for specified purposes, 7.10.2023 in so far as not already in force) by **The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023** (S.I. 2023/612), art. 1(2), **Sch. para. 1(e)** (with art. 11)
- C7** S. 138C applied (with modifications) (29.8.2023) by Regulation (EU) No. 648/2012, Art. 84c (as inserted by **Financial Services and Markets Act 2023** (c. 29), s. 86(3), **Sch. 2 para. 30** (with s. 2(3)); S.I. 2023/779, reg. 4(zz)(ii))
- C8** S. 138C applied (with modifications) (18.9.2023) by S.I. 2017/752, **Sch. 6 para. 3(2A)** (as inserted by **The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023** (S.I. 2023/790), regs. 1(2)(a), **4(5)(a)(iv)**)
- C9** S. 138C applied (with modifications) (18.9.2023) by S.I. 2011/99, **Sch. 3 para. 2A(2A)** (as inserted by **The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023** (S.I. 2023/790), regs. 1(2)(a), **2(3)(a)(iv)**)
- C10** S. 138C applied (30.1.2024 for specified purposes) by **The Securitisation Regulations 2024** (S.I. 2024/102), reg. 2(1)(e)(2), **Sch. 1 para. 9(2)(c)** (with reg. 52(3), Sch. 3)

138D Actions for damages

- (1) A rule made by the PRA may provide that contravention of the rule is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (2) A contravention by an authorised person of a rule made by the FCA is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (3) If rules made by the FCA so provide, subsection (2) does not apply to a contravention of a specified provision of the rules.

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- (4) In prescribed cases, a contravention of a rule which by virtue of subsection (1) or (2) would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (5) In subsections (1), (2) and (3) “rule” does not include—
- ^{F2}(za) [rules under section 64A (rules of conduct);]
 - ^{F3}(zaa) [rules under Part 5A;]
 - (a) Part 6 rules;
 - (b) rules under section 137O (threshold condition code);
 - (c) rules under section 192J (provision of information by parent undertakings);
 - (d) a rule requiring an authorised person to have or maintain financial resources.
- (6) “Private person” has such meaning as may be prescribed.

Textual Amendments

- F2** S. 138D(5)(za) inserted (25.7.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 3 para. 9](#); S.I. 2014/1819, art. 2(4)(b)
- F3** S. 138D(5)(zaa) inserted (29.8.2023) by [Financial Services and Markets Act 2023 \(c. 29\)](#), [ss. 8\(6\)](#), 86(3); S.I. 2023/779, reg. 4(e)

Modifications etc. (not altering text)

- C11** S. 138D applied by S.R. 2004/335, reg. 25(6) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 87\(6\)](#)
- C12** S. 138D modified by S.I. 2002/1775, reg. 3(2)(a) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 77\(4\)\(b\)](#)
- C13** S. 138D applied (with modifications) (13.8.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(b)(ii)(6), [Sch. 6 para. 3\(3\)](#) (with reg. 3)
- C14** S. 138D applied (with modifications) (8.6.2023 for specified purposes, 7.10.2023 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Financial Promotion\) \(Amendment\) Order 2023 \(S.I. 2023/612\)](#), art. 1(2), [Sch. para. 12](#) (with art. 11)
- C15** S. 138D applied (with modifications) (18.9.2023) by S.I. 2011/99, [Sch. 3 para. 2A\(3\)](#) (as substituted by [The Electronic Money, Payment Card Interchange Fee and Payment Services \(Amendment\) Regulations 2023 \(S.I. 2023/790\)](#), regs. 1(2)(a), [2\(3\)\(a\)\(v\)](#))
- C16** S. 138D applied (with modifications) (18.9.2023) by S.I. 2017/752, [Sch. 6 para. 3\(3\)](#) (as substituted by [The Electronic Money, Payment Card Interchange Fee and Payment Services \(Amendment\) Regulations 2023 \(S.I. 2023/790\)](#), regs. 1(2)(a), [4\(5\)\(a\)\(v\)](#))

138E Limits on effect of contravening rules

- (1) A person is not guilty of an offence by reason of a contravention of a rule made by either regulator.
- (2) No such contravention makes any transaction void or unenforceable.

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- (3) Subsection (2) does not apply in relation to—
- (a) rules made by the FCA under section 137C, ^{F4} ...
 - (b) product intervention rules made by the FCA under section 137D [^{F5} [^{F6} or]
 - (c) rules made by the FCA under section 137FBB][^{F7} [^{F8} or]
 - (d) rules made by the FCA under section 137FD][^{F9}; or]
 - ^{F10}(e) [designated activity rules imposing under paragraph (2) of regulation 32 of the Public Offers and Admissions to Trading Regulations 2024 (withdrawal rights in connection with public offers of securities) a duty in relation to which provision made under paragraph (4) of that regulation applies.]]

Textual Amendments

- F4** Word in s. 138E(3)(a) omitted (6.7.2016) by virtue of [Bank of England and Financial Services Act 2016 \(c. 14\), ss. 35\(3\)\(a\), 41\(3\); S.I. 2016/627, reg. 2\(1\)\(z\)](#)
- F5** S. 138E(3)(c) and word inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\), ss. 35\(3\)\(b\), 41\(3\); S.I. 2016/627, reg. 2\(1\)\(z\)](#)
- F6** Word in s. 138E(3)(b) omitted (E.W.S.) (29.3.2019) by virtue of [Financial Guidance and Claims Act 2018 \(c. 10\), ss. 28\(3\)\(a\), 37\(5\); S.I. 2019/743, reg. 2\(a\)](#)
- F7** S. 138E(3)(d) and word inserted (E.W.S.) (29.3.2019) by [Financial Guidance and Claims Act 2018 \(c. 10\), ss. 28\(3\)\(b\), 37\(5\); S.I. 2019/743, reg. 2\(a\)](#)
- F8** Word in s. 138E(3)(c) omitted (30.1.2024 for specified purposes) by virtue of [The Public Offers and Admissions to Trading Regulations 2024 \(S.I. 2024/105\), reg. 2\(2\)\(3\), Sch. 3 para. 15\(a\)](#) (with regs. 48-50)
- F9** Word in s. 138E(3)(d) inserted (30.1.2024 for specified purposes) by [The Public Offers and Admissions to Trading Regulations 2024 \(S.I. 2024/105\), reg. 2\(2\)\(3\), Sch. 3 para. 15\(b\)](#) (with regs. 48-50)
- F10** S. 138E(3)(e) inserted (30.1.2024 for specified purposes) by [The Public Offers and Admissions to Trading Regulations 2024 \(S.I. 2024/105\), reg. 2\(2\)\(3\), Sch. 3 para. 15\(c\)](#) (with regs. 48-50)

Modifications etc. (not altering text)

- C17** S. 138E applied (with modifications) by [2013 c. 13, s. 97D\(2\)\(3\)](#) (as inserted (26.10.2018) by [The Financial Regulators Powers \(Technical Standards etc.\) \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1115\), regs. 1\(2\), 10\(4\)](#))
- C18** S. 138E applied (with modifications) by [2013 c. 13, Sch. 4 para. 9A\(5\)\(6\)](#) (as inserted (26.10.2018) by [The Financial Regulators Powers \(Technical Standards etc.\) \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1115\), regs. 1\(2\), 10\(5\)\(c\)](#))
- C19** S. 138E applied (1.7.2021) by [Regulation \(EU\) No. 648/2012, Art. 84b\(1\)\(2\)](#) (as inserted by [Financial Services Act 2021 \(c. 22\), ss. 40\(4\), 49\(5\); S.I. 2021/739, reg. 3\(v\)](#))
- C20** Ss. 138E-138H applied (8.6.2023 for specified purposes, 7.10.2023 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Financial Promotion\) \(Amendment\) Order 2023 \(S.I. 2023/612\), art. 1\(2\), Sch. para. 1\(f\)](#) (with art. 11)
- C21** S. 138E applied (with modifications) (29.8.2023) by [Regulation \(EU\) No. 648/2012, Art. 84c](#) (as inserted by [Financial Services and Markets Act 2023 \(c. 29\), s. 86\(3\), Sch. 2 para. 30](#) (with s. 2(3)); [S.I. 2023/779, reg. 4\(zz\)\(ii\)](#))
- C22** S. 138E applied (30.1.2024 for specified purposes) by [The Securitisation Regulations 2024 \(S.I. 2024/102\), reg. 2\(1\)\(e\)\(2\), Sch. 1 para. 9\(2\)\(d\)](#) (with reg. 52(3), Sch. 3)

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