



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XI

#### INFORMATION GATHERING AND INVESTIGATIONS

##### *Conduct of investigations*

#### **170 Investigations: general.**

- (1) This section applies if an investigating authority appoints one or more competent persons (“investigators”) under section 167 or 168(3) or (5) to conduct an investigation on its behalf.
- (2) The investigating authority must give written notice of the appointment of an investigator to the person who is the subject of the investigation (“the person under investigation”).
- (3) Subsections (2) and (9) do not apply if—
  - (a) the investigator is appointed as a result of section 168(1) or (4) and the investigating authority believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated; or
  - (b) the investigator is appointed as a result of subsection (2) of section 168.
- (4) A notice under subsection (2) must—
  - (a) specify the provisions under which, and as a result of which, the investigator was appointed; and
  - (b) state the reason for his appointment.
- (5) Nothing prevents the investigating authority from appointing a person who is a member of its staff as an investigator.
- (6) An investigator must make a report of his investigation to the investigating authority.
- (7) The investigating authority may, by a direction to an investigator, control—
  - (a) the scope of the investigation;

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- (b) the period during which the investigation is to be conducted;
  - (c) the conduct of the investigation; and
  - (d) the reporting of the investigation.
- (8) A direction may, in particular—
- (a) confine the investigation to particular matters;
  - (b) extend the investigation to additional matters;
  - (c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction;
  - (d) require the investigator to make such interim reports as are so specified.
- (9) If there is a change in the scope or conduct of the investigation and, in the opinion of the investigating authority, the person subject to investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.
- (10) “Investigating authority”, in relation to an investigator, means—
- (a) the Authority, if the Authority appointed him;
  - (b) the Secretary of State, if the Secretary of State appointed him.

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

C1 S. 170(5)-(9) applied (1.12.2001 for E.W.S. and 1.11.2004 for N.I.) by S.I. 2001/1228, regs. 1(2)(c), 30(4) (with 1(2)(3)); S.I. 2001/3538, art. 2(1); S.R. 2004/335, reg. 1(1)(b), 30(4) (with reg. 1(2))

**171 Powers of persons appointed under section 167.**

- (1) An investigator may require the person who is the subject of the investigation (“the person under investigation”) or any person connected with the person under investigation—
- (a) to attend before the investigator at a specified time and place and answer questions; or
  - (b) otherwise to provide such information as the investigator may require.
- (2) An investigator may also require any person to produce at a specified time and place any specified documents or documents of a specified description.
- (3) A requirement under subsection (1) or (2) may be imposed only so far as the investigator concerned reasonably considers the question, provision of information or production of the document to be relevant to the purposes of the investigation.
- [<sup>F1</sup>(3A) Where the investigation relates to a recognised investment exchange, an investigator has the additional powers conferred by sections 172 and 173 (and for this purpose references in those sections to an investigator are to be read accordingly).]
- (4) For the purposes of this section and section 172, a person is connected with the person under investigation (“A”) if he is or has at any relevant time been—
- (a) a member of A’s group;
  - (b) a controller of A;
  - (c) a partnership of which A is a member; or
  - (d) in relation to A, a person mentioned in Part I or II of Schedule 15.

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(5) “Investigator” means a person conducting an investigation under section 167.

(6) “Specified” means specified in a notice in writing.

[<sup>F2</sup>(7) The reference in subsection (3A) to a recognised investment exchange does not include a reference to an overseas investment exchange (as defined by section 313(1)).]

#### Textual Amendments

**F1** S. 171(3A) 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. 9\(a\)](#)

**F2** S. 171(7) 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. 9\(b\)](#)

### **172 Additional power of persons appointed as a result of section 168(1) or (4).**

- (1) An investigator has the powers conferred by section 171.
- (2) An investigator may also require a person who is neither the subject of the investigation (“the person under investigation”) nor a person connected with the person under investigation—
  - (a) to attend before the investigator at a specified time and place and answer questions; or
  - (b) otherwise to provide such information as the investigator may require for the purposes of the investigation.
- (3) A requirement may only be imposed under subsection (2) if the investigator is satisfied that the requirement is necessary or expedient for the purposes of the investigation.
- (4) “Investigator” means a person appointed as a result of subsection (1) or (4) of section 168.
- (5) “Specified” means specified in a notice in writing.

### **173 Powers of persons appointed as a result of section 168(2).**

- (1) Subsections (2) to (4) apply if an investigator considers that any person (“A”) is or may be able to give information which is or may be relevant to the investigation.
- (2) The investigator may require A—
  - (a) to attend before him at a specified time and place and answer questions; or
  - (b) otherwise to provide such information as he may require for the purposes of the investigation.
- (3) The investigator may also require A to produce at a specified time and place any specified documents or documents of a specified description which appear to the investigator to relate to any matter relevant to the investigation.
- (4) The investigator may also otherwise require A to give him all assistance in connection with the investigation which A is reasonably able to give.

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- (5) “Investigator” means a person appointed under subsection (3) of section 168 (as a result of subsection (2) of that section).

#### 174 Admissibility of statements made to investigators.

- (1) A statement made to an investigator by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.
- (2) But in criminal proceedings in which that person is charged with an offence to which this subsection applies or in proceedings in relation to action to be taken against that person under section 123—
- (a) no evidence relating to the statement may be adduced, and
  - (b) no question relating to it may be asked,
- by or on behalf of the prosecution or (as the case may be) the Authority, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.
- (3) Subsection (2) applies to any offence other than one—
- (a) under section 177(4) or 398;
  - (b) under section 5 of the <sup>M1</sup>Perjury Act 1911 (false statements made otherwise than on oath);
  - (c) under section 44(2) of the <sup>M2</sup>Criminal Law (Consolidation)(Scotland) Act 1995 (false statements made otherwise than on oath); or
  - (d) under Article 10 of the <sup>M3</sup>Perjury (Northern Ireland) Order 1979.
- (4) “Investigator” means a person appointed under section 167 or 168(3) or (5).
- (5) “Information requirement” means a requirement imposed by an investigator under section 171, 172, 173 or 175.

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

- C2** S. 174 applied (1.12.2001 for E.W.S. and 1.11.2004 for N.I.) by [S.I. 2001/1228](#), regs. 1(2)(c), 30(5) (with [reg. 1\(2\)\(3\)](#)); [S.I. 2001/3538](#), art. 2(1); [S.R. 2004/335](#), regs. 1(1)(b), **30(5)** (with [reg. 1\(2\)](#))  
S. 174 applied (with modifications) (1.12.2001) by [S.I. 2001/3646](#), **arts. 1(1)**, 2(4), 4(5)
- C3** S. 174 applied (with modifications) (7.6.2010) by [The Credit Rating Agencies Regulations 2010](#) (S.I. 2010/906), **reg. 16(4)**

#### Marginal Citations

- M1** 1911 c. 6.  
**M2** 1995 c. 39.  
**M3** [S.I. 1979/1714](#) (N.I. 19).

#### 175 Information and documents: supplemental provisions.

- (1) If the Authority or an investigator has power under this Part to require a person to produce a document but it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.

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- (2) If a document is produced in response to a requirement imposed under this Part, the person to whom it is produced may—
  - (a) take copies or extracts from the document; or
  - (b) require the person producing the document, or any relevant person, to provide an explanation of the document.
- (3) If a person who is required under this Part to produce a document fails to do so, the Authority or an investigator may require him to state, to the best of his knowledge and belief, where the document is.
- (4) A lawyer may be required under this Part to furnish the name and address of his client.
- (5) No person may be required under this Part to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—
  - (a) he is the person under investigation or a member of that person’s group;
  - (b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person’s group;
  - (c) the person to whom the obligation of confidence is owed consents to the disclosure or production; or
  - (d) the imposing on him of a requirement with respect to such information or document has been specifically authorised by the investigating authority.
- (6) If a person claims a lien on a document, its production under this Part does not affect the lien.
- (7) “Relevant person”, in relation to a person who is required to produce a document, means a person who—
  - (a) has been or is or is proposed to be a director or controller of that person;
  - (b) has been or is an auditor of that person;
  - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
  - (d) has been or is an employee of that person.
- (8) “Investigator” means a person appointed under section 167 or 168(3) or (5).

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

- C4** S. 175 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(9) (as inserted by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), arts. 1(2), 4)
- C5** S. 175 applied (with modifications) (7.6.2010) by [The Credit Rating Agencies Regulations 2010 \(S.I. 2010/906\)](#), [reg. 17](#)
- C6** S. 175(2)-(4)(6) amended (1.12.2001 for E.W.S. and 1.11.2004 for N.I) by [S.I. 2001/1228](#), [regs. 1\(2\)\(c\), 30\(6\)](#) (with [reg. 1\(2\)\(3\)](#)); [S.I. 2001/3538](#), art. 2(1); [S.R. 2004/335](#), [regs. 1\(1\)\(b\), 30\(6\)](#) (with [reg. 1\(2\)](#))

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## **176 Entry of premises under warrant.**

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, the Authority or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.
- (2) The first set of conditions is—
  - (a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it; and
  - (b) that on the premises specified in the warrant—
    - (i) there are documents which have been required; or
    - (ii) there is information which has been required.
- (3) The second set of conditions is—
  - (a) that the premises specified in the warrant are premises of an authorised person or an appointed representative;
  - (b) that there are on the premises documents or information in relation to which an information requirement could be imposed; and
  - (c) that if such a requirement were to be imposed—
    - (i) it would not be complied with; or
    - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (4) The third set of conditions is—
  - (a) that an offence mentioned in section 168 for which the maximum sentence on conviction on indictment is two years or more has been (or is being) committed by any person;
  - (b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed;
  - (c) that an information requirement could be imposed in relation to those documents or information; and
  - (d) that if such a requirement were to be imposed—
    - (i) it would not be complied with; or
    - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (5) A warrant under this section shall authorise a constable—
  - (a) to enter the premises specified in the warrant;
  - (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this section was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;
  - (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;
  - (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and
  - (e) to use such force as may be reasonably necessary.

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- (6) In England and Wales, sections 15(5) to (8) and section 16 of the <sup>M4</sup>Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this section.
- (7) In Northern Ireland, Articles 17(5) to (8) and 18 of the <sup>M5</sup>Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this section.
- (8) Any document of which possession is taken under this section may be retained—
- (a) for a period of three months; or
  - (b) if within that period proceedings to which the document is relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.
- (9) In the application of this section to Scotland—
- (a) for the references to a justice of the peace substitute references to a justice of the peace or a sheriff; and
  - (b) for the references to information on oath substitute references to evidence on oath.
- (10) “Investigator” means a person appointed under section 167 or 168(3) or (5).
- (11) “Information requirement” means a requirement imposed—
- (a) by the Authority under section [<sup>F3</sup>87C, 87J,] 165 or 175; or
  - (b) by an investigator under section 171, 172, 173 or 175.

#### Textual Amendments

- F3** Words in s. 176(11)(a) inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 12](#)

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

- C7** S. 176 extended (17.8.2001 for certain purposes otherwise 1.12.2001) by [1992 c. 40, s. 62A](#) (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. 77](#) (with [art. 13\(3\), Sch. 5](#)); [S.I. 2001/3538, art. 2\(1\)](#))
- S. 176 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by [1986 c. 53, s. 52B](#) (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. I para. 151](#) (with [art. 13\(3\), Sch. 5](#)); [S.I. 2001/3538, art. 2\(1\)](#))
- S. 176 modified (1.12.2001) by [S.I. 1995/1537, reg. 23\(4\)](#) (as amended (1.12.2001) by [S.I. 2001/3649, arts. 1, 509\(e\)](#))
- C8** S. 176 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\(3\)](#)
- S. 176 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(9) (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. 176(1)-(9) applied (1.12.2001) by [S.I. 2001/1228, regs. 1\(2\)\(c\), 30\(7\)](#) (with [reg. 1\(2\)\(3\)](#)); [S.I. 2001/3538, art. 2\(1\)](#)
- C10** S. 176(1)-(8) applied (with modifications) (N.I.) (1.11.2004) by [Open-Ended Investment Companies Regulations \(Northern Ireland\) 2004 \(S.R. 2004/335\)](#), regs. 1(1)(b), [30\(7\)](#) (with [reg. 1\(2\)](#))
- C11** S. 176(2) extended (1.12.2001) by [S.I. 2001/3646, arts. 1\(1\), 13\(2\)](#)

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- C12** S. 176(5): powers of seizure extended (1.4.2003) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), Sch. 1 Pt. I para. 69; S.I. 2003/708, **art. 2(a)(c)(j)**
- C13** S. 176(11) restricted (temp. from 11.8.2001 until 1.12.2001) by S.I. 2001/2659, **arts. 1(3), 2(3)**; S.I. 2001/3538, **art. 2(1)**
- C14** S. 176(8) applied (with modifications) (1.4.2003) by 2001 c. 16, ss. 57(1)(o)(4), 138(2); S.I. 2003/708, **art. 2(a)**
- C15** S. 176(11) restricted (temp. from 8.4.2002 until 2.7.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 8(3)**

#### **Marginal Citations**

- M4** 1984 c. 60.
- M5** S.I. 1989/1341 (N.I. 12).



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