



Financial Services and Markets Act 2000

2000 CHAPTER 8

[^{F1}PART 9A

RULES AND GUIDANCE

CHAPTER 2

RULES: MODIFICATION, WAIVER, CONTRAVENTION AND PROCEDURAL PROVISIONS

Procedural provisions

[^{F1}138I Consultation by the FCA

- (1) Before making any rules, the FCA must—
 - (a) consult the PRA, and
 - (b) after doing so, publish a draft of the proposed rules in the way appearing to the FCA to be best calculated to bring them to the attention of the public.
- (2) The draft must be accompanied by—
 - (a) a cost benefit analysis,
 - (b) an explanation of the purpose of the proposed rules,
 - (c) any statement prepared under section 138K(2),
 - (d) an explanation of the FCA's reasons for believing that making the proposed rules is compatible with its duties under section 1B(1) and (5)(a), and
 - (e) notice that representations about the proposals may be made to the FCA within a specified time.
- (3) Before making the proposed rules, the FCA must have regard to any representations made to it in accordance with subsection (2)(e).
- (4) If the FCA makes the proposed rules, it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (2)(e), and

Status: Point in time view as at 16/12/2016. This version of this provision has been superseded.

Changes to legislation: Financial Services and Markets Act 2000, Section 138I is up to date with all changes known to be in force on or before 27 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)

- (b) its response to them.
- (5) If the rules differ from the draft published under subsection (1)(b) in a way which is, in the opinion of the FCA, significant the FCA must publish—
 - (a) details of the difference (in addition to complying with subsection (4)) together with a cost benefit analysis, and
 - (b) any statement prepared under section 138K(4).
- (6) The requirements to carry out a cost benefit analysis under this section do not apply in relation to rules made under—
 - (a) section 136(2);
 - ^{F2}(aa) [section 137FB;]
 - ^{F3}(ab) [section 137FBA;]
 - (b) subsection (1) of section 213 as a result of subsection (4) of that section;
 - (c) section 234;
 - ^{F4}(ca) [section 333Q;
 - (cb) section 333R;]
 - ^{F5}(cc) [section 333T;]
 - (d) paragraph 23 of Schedule 1ZA;
 - (e) paragraph 12 of Schedule 1A.
- (7) “Cost benefit analysis” means—
 - (a) an analysis of the costs together with an analysis of the benefits that will arise—
 - (i) if the proposed rules are made, or
 - (ii) if subsection (5) applies, from the rules that have been made, and
 - (b) subject to subsection (8), an estimate of those costs and of those benefits.
- (8) If, in the opinion of the FCA—
 - (a) the costs or benefits referred to in subsection (7) cannot reasonably be estimated, or
 - (b) it is not reasonably practicable to produce an estimate,
 the cost benefit analysis need not estimate them, but must include a statement of the FCA's opinion and an explanation of it.
- (9) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).
- (10) Subsection (1)(a) does not apply to ^{F6}—
 - (a) rules made by the FCA under section 137FB, [^{F7}137FBA,] 333Q [^{F8}, 333R or 333T], or
 - (b) rules made by the FCA in relation to recognised investment exchanges under Part 18.
- (11) This section is subject to section 138L.]

Status: Point in time view as at 16/12/2016. This version of this provision has been superseded.

Changes to legislation: Financial Services and Markets Act 2000, Section 138I is up to date with all changes known to be in force on or before 27 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)

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.](#)
- F2** S. 138I(6)(aa) inserted (3.3.2015) by [Pension Schemes Act 2015 \(c. 8\)](#), s. 89(1)(a), [Sch. 3 para. 8\(a\)](#) (with s. 87, [Sch. 3 para. 18\(1\)](#))
- F3** S. 138I(6)(ab) inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), [ss. 33\(4\)\(a\)](#), 41(3); S.I. 2016/627, reg. 2(1)(x)
- F4** S. 138I(6)(ca)(cb) inserted (3.3.2015) by [Pension Schemes Act 2015 \(c. 8\)](#), s. 89(1)(a), [Sch. 3 para. 8\(b\)](#) (with s. 87)
- F5** S. 138I(6)(cc) inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), [ss. 29\(4\)\(a\)](#), 41(3); S.I. 2016/627, reg. 2(1)(w)
- F6** S. 138I(10)(a) and word inserted (3.3.2015) by [Pension Schemes Act 2015 \(c. 8\)](#), s. 89(1)(a), [Sch. 3 para. 8\(c\)](#) (with s. 87)
- F7** Word in s. 138I(10)(a) inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), [ss. 33\(4\)\(b\)](#), 41(3); S.I. 2016/627, reg. 2(1)(x)
- F8** Words in s. 138I(10)(a) substituted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), [ss. 29\(4\)\(b\)](#), 41(3); S.I. 2016/627, reg. 2(1)(w)

Modifications etc. (not altering text)

- C1** S. 138I excluded (20.2.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Rules and Miscellaneous Provisions\) Order 2013 \(S.I. 2013/161\)](#), arts. 1(1), [8\(2\)](#)
- C2** S. 138I excluded by S.I. 2004/454, art. 12(1) (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. 89\(b\)](#)
- C3** S. 138I excluded by S.I. 2006/3259, reg. 4 (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. 120\(b\)\(ii\)](#)
- C4** S. 138I excluded (2.4.2013) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2013 \(S.I. 2013/655\)](#), arts. 1, [9\(2\)](#)
- C5** Ss. 138I-138L applied (with modifications) (22.7.2013) by [The Alternative Investment Fund Managers \(Amendment\) Regulations 2013 \(S.I. 2013/1797\)](#), regs. 1(2), [6\(3\)-\(7\)](#) (with reg. 6(2)) (as amended (31.12.2020) by S.I. 2019/328, regs. 1(3), [19\(1\)](#) (which is itself amended by S.I. 2019/325, [reg. 58](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#))
- C6** S. 138I applied (with modifications) (26.7.2013) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(4), [61\(5\)](#) (with art. 61(6)(7))
- C7** S. 138I excluded (1.4.2015) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2015 \(S.I. 2015/369\)](#), arts. 1, [6\(2\)\(b\)](#)
- C8** S. 138I excluded (6.4.2015) by [The Bank of England Act 1998 \(Macro-prudential Measures\) Order 2015 \(S.I. 2015/909\)](#), arts. 1, [4\(2\)\(a\)](#) (with art. 4(1))
- C9** S. 138I excluded (16.12.2016) by [The Bank of England Act 1998 \(Macro-prudential Measures\) Order 2016 \(S.I. 2016/1240\)](#), arts. 1, [4\(2\)\(a\)](#)
- C10** S. 138I(1)(b)(2)(e)(3) applied by S.I. 2008/346, reg. 42(4)(4A) (as substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 134\(d\)](#))
- C11** S. 138I(2)(a) excluded (26.7.2013) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(4), [61\(3\)](#) (with art. 61(6))
- C12** S. 138I(2)(d) excluded (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 1 para. 6\(2\)](#), [\(3\)\(a\)](#) (with [Sch. 12](#))

Status:

Point in time view as at 16/12/2016. This version of this provision has been superseded.

Changes to legislation:

Financial Services and Markets Act 2000, Section 138I is up to date with all changes known to be in force on or before 27 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.