



# Financial Services Act 2012

## 2012 CHAPTER 21

VALID FROM 24/01/2013

### PART 5

#### INQUIRIES AND INVESTIGATIONS

VALID FROM 01/04/2013

#### *Inquiries*

#### **68 Cases in which Treasury may arrange independent inquiries**

- (1) This section applies in two cases.
- (2) The first case is where it appears to the Treasury that—
  - (a) events have occurred in relation to—
    - (i) a collective investment scheme,
    - (ii) a person who is, or was at the time of the events, carrying on a regulated activity (whether or not as an authorised person), or
    - (iii) listed securities or an issuer of listed securities,which posed or could have posed a serious threat to the stability of the UK financial system or caused or risked causing significant damage to the interests of consumers, and
  - (b) those events might not have occurred, or the threat or damage might have been reduced, but for a serious failure in—
    - (i) the system established by FSMA 2000, or by any previous statutory provision, for the regulation of such schemes, or of such persons and their activities, or the listing of securities, or
    - (ii) the operation of that system.

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- (3) The second case is where it appears to the Treasury that—
- (a) events have occurred in relation to a recognised clearing house or a recognised inter-bank payment system which—
    - (i) posed or could have posed a serious threat to the stability of or confidence in the UK financial system, or
    - (ii) caused or risked causing significant damage to business or other interests throughout the United Kingdom, and
  - (b) those events might not have occurred, or the threat or damage might have been reduced, but for a serious failure in—
    - (i) the system established by Part 18 of FSMA 2000, or by any previous statutory provision, for the regulation of clearing houses,
    - (ii) the system established by Part 5 of the Banking Act 2009 for the regulation of inter-bank payment systems, or
    - (iii) the operation of either of those systems.
- (4) If the Treasury consider that it is in the public interest that there should be an independent inquiry into the events and the circumstances surrounding them, they may arrange for an inquiry to be held under section 69.
- (5) In this section—
- “event” does not include any event occurring before 1 December 2001 (but no such limitation applies to the reference in subsection (4) to surrounding circumstances);
- “recognised inter-bank payment system” means an inter-bank payment system, as defined by section 182 of the Banking Act 2009, that is a recognised system for the purposes of Part 5 of that Act.

## **69 Power to appoint person to hold an inquiry**

- (1) If the Treasury decide to arrange for an inquiry to be held under this section, they may appoint such person as they consider appropriate to hold the inquiry.
- (2) The Treasury may, by a direction to the appointed person, control—
  - (a) the scope of the inquiry;
  - (b) the period during which the inquiry is to be held;
  - (c) the conduct of the inquiry;
  - (d) the making of reports.
- (3) A direction may, in particular—
  - (a) confine the inquiry to particular matters;
  - (b) extend the inquiry to additional matters;
  - (c) require the appointed person to postpone the start of, or suspend, an inquiry until a specified time or until a further direction;
  - (d) require the appointed person to discontinue the inquiry or to take only such steps as are specified in the direction;
  - (e) require the appointed person to make such interim reports as are so specified.

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## **70 Powers of appointed person and procedure**

- (1) The person appointed to hold an inquiry under section 69 (“A”) may—
  - (a) obtain such information from such persons and in such manner as A thinks fit,
  - (b) make such inquiries as A thinks fit, and
  - (c) determine the procedure to be followed in connection with the inquiry.
- (2) A may require any person who, in A's opinion, is able to provide any information, or produce any document, which is relevant to the inquiry to provide any such information or produce any such document.
- (3) For the purposes of an inquiry, A has the same powers as the court in respect of the attendance and examination of witnesses (including the examination of witnesses abroad) and in respect of the production of documents.
- (4) “The court” means—
  - (a) the High Court, or
  - (b) in Scotland, the Court of Session.

## **71 Conclusion of inquiry**

- (1) On completion of an inquiry under section 69, the person holding the inquiry must make a written report to the Treasury—
  - (a) setting out the result of the inquiry, and
  - (b) making such recommendations (if any) as the person considers appropriate.
- (2) Any expenses reasonably incurred in holding an inquiry under section 69 are to be met by the Treasury out of money provided by Parliament.

## **72 Obstruction and contempt**

- (1) If a person (“P”)—
  - (a) fails to comply with a requirement imposed on P by a person holding an inquiry under section 69, or
  - (b) otherwise obstructs such an inquiry,the person holding the inquiry may certify the matter to the High Court (or, in Scotland, the Court of Session).
- (2) The court may enquire into the matter.
- (3) If, after hearing—
  - (a) any witnesses who may be produced against or on behalf of P, and
  - (b) any statement made by or on behalf of P,the court is satisfied that P would have been in contempt of court if the inquiry had been proceedings before the court, it may deal with P as if P were in contempt.

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## Investigations

VALID FROM 01/04/2013

### 73 Duty of FCA to investigate and report on possible regulatory failure

- (1) Subsection (3) applies where it appears to the FCA that—
- (a) events have occurred in relation to a regulated person or collective investment scheme which—
    - (i) indicated a significant failure to secure an appropriate degree of protection for consumers,
    - (ii) had or could have had a significant adverse effect on the integrity of the UK financial system, as defined by section 1D of FSMA 2000 (the integrity objective), or
    - (iii) had or could have had a significant adverse effect on effective competition in the interests of consumers in the markets for the services described in paragraphs (a) and (b) of section 1E(1) of FSMA 2000 (the competition objective), and
  - (b) those events might not have occurred, or the failure or adverse effect might have been reduced, but for a serious failure in—
    - (i) the system established by FSMA 2000 for the regulation of authorised persons and their activities, for the listing of securities or for the regulation of collective investment schemes, so far as it relates to the functions of the FCA, or
    - (ii) the operation of that system, so far as it relates to those functions.
- (2) Subsection (3) also applies where the Treasury direct the FCA that it appears to the Treasury that the conditions in subsection (1) are met in relation to specified events.
- (3) The FCA must carry out an investigation into the events and the circumstances surrounding them and report to the Treasury on the result of the investigation.
- (4) Subsection (3) does not apply by virtue of subsection (1) if the Treasury direct the FCA that it is not required to carry out an investigation into the events concerned.
- (5) “Regulated person” means—
- (a) an authorised person,
  - (b) a recognised investment exchange,
  - (c) any other person lawfully carrying on a regulated activity,
  - (d) a person carrying on business in contravention of the general prohibition in section 19 of FSMA 2000, or
  - (e) an issuer of listed securities.

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### 74 Duty of PRA to investigate and report on possible regulatory failure

- (1) Subsection (4) applies where it appears to the PRA that—

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- (a) relevant public expenditure has been incurred in respect of a PRA-  
authorised person, and
  - (b) that expenditure might not have been incurred but for a serious failure in—
    - (i) the system established by FSMA 2000 for the regulation of PRA-  
authorised persons and their activities, so far as it relates to the  
functions of the PRA, or
    - (ii) the operation of that system, so far as it relates to those functions.
- (2) Subsection (4) also applies where it appears to the PRA that—
- (a) events have occurred which—
    - (i) had or could have had a significant adverse effect on the safety or  
soundness of one or more PRA-  
authorised persons, or
    - (ii) if the effecting and carrying out of contracts of insurance is a PRA-  
regulated activity for the purposes of FSMA 2000, related to a  
PRA-  
authorised person carrying on that activity and indicated a  
significant failure to secure an appropriate degree of protection for  
policyholders, and
  - (b) those events might not have occurred, or the adverse effect or failure might  
have been reduced, but for a serious failure in—
    - (i) the system established by FSMA 2000 for the regulation of PRA-  
authorised persons and their activities, so far as it relates to the  
functions of the PRA, or
    - (ii) the operation of that system, so far as it relates to those functions.
- (3) Subsection (4) also applies where the Treasury direct the PRA that it appears to  
the Treasury—
- (a) that the conditions in subsection (1)(a) and (b) are met in relation to a  
specified person, or
  - (b) that the conditions in subsection (2)(a) and (b) are met in relation to  
specified events.
- (4) The PRA must—
- (a) carry out an investigation into—
    - (i) the events that gave rise to the incurring of the public expenditure  
mentioned in subsection (1)(a) and the circumstances surrounding  
them, or
    - (ii) the events mentioned in subsection (2)(a) and the circumstances  
surrounding them, and
  - (b) report to the Treasury on the result of the investigation.
- (5) Subsection (4) does not apply by virtue of subsection (1) if the Treasury direct the  
PRA that it is not required to carry out an investigation into the events concerned.

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## 75 Interpretation of section 74

- (1) This section has effect for the interpretation of section 74.
- (2) “Policyholder” has the same meaning as in FSMA 2000.

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- (3) Relevant public expenditure has been incurred in respect of a PRA-authorised person (“P”) in each of the following cases (but no others)—
- (a) where the Treasury or the Secretary of State have provided financial assistance to or in respect of P for the purposes of resolving or reducing a threat to the stability of the UK financial system;
  - (b) where the Treasury have incurred expenditure in connection with the exercise by the Treasury, the Secretary of State or the Bank of England of any power under Parts 1 to 3 of the Banking Act 2009 in relation to P;
  - (c) where the scheme manager of the Financial Services Compensation Scheme has received a loan from the National Loans Fund, or financial assistance from the Treasury, for the purpose of funding expenses incurred or expected to be incurred under the Financial Services Compensation Scheme by reason of events relating to P.
- (4) In subsection (3)(a) and (c) “financial assistance” includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent), but does not include the giving by the Treasury of an indemnity or guarantee in respect of the provision of financial assistance by the Bank of England.
- (5) The Treasury may by order made by statutory instrument provide that a specified activity or transaction, or class of activity or transaction, is to be or is not to be treated as financial assistance for the purposes of subsection (3)(a), and subsection (4) is subject to this subsection.

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## **76 Modification of section 74 in relation to Lloyd's**

- (1) This section applies only if PRA-authorised persons include—
- (a) the Society, or
  - (b) other persons who carry on regulated activities in relation to anything done at Lloyd's.
- (2) Section 74 has effect as if—
- (a) in subsection (1)(a) (and section 75(3)), the reference to a PRA-authorised person included a reference to a member of the Society,
  - (b) in subsection (2)(a)(i), the reference to one or more PRA-authorised persons included a reference to the Society, and the members of the Society, taken together, and
  - (c) in subsection (2)(a)(ii), the reference to a PRA-authorised person carrying on the activity of effecting and carrying out contracts of insurance included a reference to—
    - (i) the Society, or
    - (ii) any other person who carries on PRA-regulated activities in relation to anything done at Lloyd's.
- (3) In this section—
- (a) “PRA-regulated activity” is to be read in accordance with section 22A of FSMA 2000, and

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- (b) terms which are defined in Lloyd's Act 1982 have the same meaning as in that Act.

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## **77 Power of Treasury to require FCA or PRA to undertake investigation**

- (1) This section applies where—
- (a) the Treasury consider that it is in the public interest that either regulator should undertake an investigation into any relevant events, and
  - (b) it does not appear to the Treasury that the regulator has undertaken or is undertaking an investigation (under this Part or otherwise) into those events.
- (2) The Treasury must give the regulator a direction specifying the relevant events and requiring the regulator to undertake an investigation into those events and the circumstances surrounding them and to report to the Treasury on the result of the investigation.
- (3) “Relevant events” means events that have occurred in relation to—
- (a) a collective investment scheme,
  - (b) a person who is, or was at the time of the events, carrying on a regulated activity (whether or not as an authorised person), or
  - (c) listed securities or an issuer of listed securities.
- (4) “Relevant events” do not include any events occurring before 1 December 2001 (but no such limitation applies to the reference in subsection (2) to surrounding circumstances).

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## **78 Conduct of investigation**

- (1) Where a regulator is required by section 73 or 74 or under section 77 to carry out an investigation, it is for the regulator to decide how it is to be carried out, but this is subject to the following provisions.
- (2) In carrying out such an investigation, the regulator must have regard to the desirability of minimising any adverse effect that the carrying out of the investigation may have on the exercise by the regulator of any of its other functions.
- (3) The regulator may postpone the start of, or suspend, an investigation if it considers it necessary to do so to avoid a material adverse effect on the exercise by it of any of its other functions.
- (4) The regulator must notify the Treasury if it postpones the start of, or suspends, an investigation under subsection (3), and the notification must specify when the investigation will begin or resume.
- (5) The Treasury may, by a direction to the regulator, control—

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- (a) the scope of the investigation;
  - (b) the period during which the investigation is to be carried out;
  - (c) the conduct of the investigation;
  - (d) the making of reports.
- (6) A direction may, in particular—
- (a) confine the investigation to particular matters;
  - (b) extend the investigation to additional matters;
  - (c) require the regulator to postpone the start of, or suspend, an investigation until a specified time or until a further direction;
  - (d) where a notification has been received under subsection (3), require the regulator to begin or resume the investigation immediately or at a specified time;
  - (e) require the regulator to discontinue the investigation or to take only such steps as are specified in the direction;
  - (f) require the regulator to make such interim reports as are so specified.
- (7) In exercising the power conferred on them by this section, the Treasury must have regard to the desirability of minimising any adverse effect that the carrying out of the investigation may have on the exercise by the regulator of any of its other functions.

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## 79 Conclusion of investigation

On completion of an investigation required by section 73 or 74 or under section 77, the regulator must make a written report to the Treasury—

- (a) setting out the result of the investigation,
- (b) setting out the lessons (if any) that the regulator considers that it should learn from the investigation, and
- (c) making such recommendations (if any) as the regulator considers appropriate.

## 80 Statements of policy

- (1) Each regulator must prepare and issue a statement of its policy with respect to the exercise of its functions under sections 73 to 79 (“the relevant sections”) and, in particular—
- (a) the matters it will take into account in determining whether the conditions which give rise to its duty to carry out an investigation under section 73 or 74 (as the case may be) are met, and
  - (b) how it will carry out investigations under the relevant sections.
- (2) A regulator may at any time alter or replace a statement issued by it under this section.
- (3) If a statement issued under this section is altered or replaced by a regulator, the regulator must issue the altered or replacement statement.



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- (4) A regulator must obtain the consent of the Treasury before issuing a statement under this section.
- (5) A statement issued under this section by a regulator must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (6) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (7) In exercising, or deciding whether to exercise, its functions under the relevant sections a regulator must have regard to any statement published by it under this section and for the time being in force.
- (8) A regulator may charge a reasonable fee for providing a person with a copy of a statement issued by it.

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## **81 Publication of directions**

- (1) This section applies to a direction given by the Treasury under any of the following provisions—
  - (a) section 73(4);
  - (b) section 74(5);
  - (c) section 78(5).
- (2) As soon as practicable after giving the direction, the Treasury must—
  - (a) lay before Parliament a copy of the direction, and
  - (b) publish the direction in such manner as the Treasury think fit.
- (3) Subsection (2) does not apply where the Treasury consider that publication of the direction would be against the public interest.

VALID FROM 01/04/2013

### *Publication of reports*

## **82 Publication of reports of inquiries and investigations**

- (1) This section applies where a report is made to the Treasury under section 71 or 79.
- (2) Subject to subsection (3), the Treasury must publish the report in full.
- (3) The Treasury may withhold material in the report from publication to such extent—
  - (a) as is required by any statutory provision, enforceable EU obligation or rule of law, or
  - (b) as the Treasury consider to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).

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- (4) Those matters are—
- (a) the extent to which withholding material might inhibit the allaying of public concern;
  - (b) the risk of harm or damage that could be avoided or reduced by withholding any material;
  - (c) any conditions of confidentiality subject to which any person acquired information that was given to the inquiry or used in the investigation.
- (5) In subsection (4)(b) “harm or damage” includes in particular—
- (a) damage to national security or international relations;
  - (b) damage to the economic interests of the United Kingdom or a part of the United Kingdom;
  - (c) damage caused by disclosure of commercially sensitive information.
- (6) The Treasury must lay before Parliament whatever is published under subsection (2).
- (7) If the Treasury receive a report under section 71 or 79, but withhold all or part of the material in the report from publication, they must publish and lay before Parliament a statement of their reasons for not publishing the report in full.
- (8) Publication under subsection (2) or (7) is to be in such manner as the Treasury think fit.
- (9) References to a report under section 71 or 79 include references to an interim report required under section 69 or 78.

### *Supplementary*

## **83 Interpretation and supplementary provision**

- (1) In this Part—
- “authorised person” has the same meaning as in FSMA 2000;
  - “collective investment scheme” has the same meaning as in FSMA 2000;
  - “consumer” has the meaning given in section 1G of FSMA 2000;
  - “listed securities” means anything which has been admitted to the official list under Part 6 of FSMA 2000;
  - “PRA-authorised person” has the same meaning as in FSMA 2000;
  - “recognised clearing house” has the same meaning as in FSMA 2000;
  - “recognised investment exchange” has the same meaning as in FSMA 2000;
  - “regulated activity” has the same meaning as in FSMA 2000;
  - “regulator” means the FCA or the PRA.
- (2) A direction by the Treasury under this Part must be given in writing.

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