

*These notes refer to the Financial Services Act 2012
(c.21) which received Royal Assent on 19 December 2012*

FINANCIAL SERVICES ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 5 – Inquiries and Investigations

Investigations

Section 78: Conduct of investigation

537. *Section 78* provides that it is for the regulator carrying out the investigation to decide how it is to be carried out, subject to any direction given by the Treasury under *subsection (5)*. The regulator in carrying out an investigation, and the Treasury in exercising the power to direct the conduct of the investigation, 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. For example, a regulator might postpone the start of the investigation until enforcement action being carried out by the regulator has been completed, where an investigation might adversely affect the carrying out of the enforcement action. *Subsection (3)* enables the regulator to 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 its functions. The regulator must notify the Treasury that it has done so and indicate when the investigation will begin or resume. Such notification may be given in general terms such as “when the Tribunal has made a determination and the period for an appeal against the Tribunal’s determination has expired”.