



# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 5

#### INQUIRIES AND INVESTIGATIONS

##### *Inquiries*

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

- (1) This section applies in [<sup>F1</sup>three] 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.
- (3) The second case is where it appears to the Treasury that—
  - (a) events have occurred in relation to a recognised clearing house or [<sup>F2</sup>, a recognised payment system or a recognised CSD] which—
    - (i) posed or could have posed a serious threat to the stability of or confidence in the UK financial system, or

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- (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 [<sup>F3</sup> or central securities depositories] ,
    - (ii) the system established by Part 5 of the Banking Act 2009 for the regulation of <sup>F4</sup>... payment systems, or
    - (iii) the operation of either of those systems.
- [<sup>F5</sup>(3A) The third case is where it appears to the Treasury that—
- (a) events have occurred in relation to a regulated payment system which 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 5 of the Financial Services (Banking Reform) Act 2013 for the regulation of payment systems, or
    - (ii) the operation of that system.]
- (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 <sup>F6</sup>... payment system” means [<sup>F7</sup>a] 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.

#### Textual Amendments

- F1** Word in s. 68(1) substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), ss. 105\(2\), 148\(5\); S.I. 2014/377, art. 2\(1\)\(a\), Sch. Pt. 1](#)
- F2** Words in s. 68(3)(a) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\), reg. 1, Sch. para. 17\(2\)\(a\)](#) (with regs. 7(4), 9(1))
- F3** Words in s. 68(3)(b)(i) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\), reg. 1, Sch. para. 17\(2\)\(b\)](#) (with regs. 7(4), 9(1))
- F4** Word in s. 68(3)(b)(ii) omitted (27.6.2017) by virtue of [Digital Economy Act 2017 \(c. 30\), s. 118\(2\), Sch. 9 para. 32\(2\)](#)
- F5** S. 68(3A) inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), ss. 105\(3\), 148\(5\); S.I. 2014/377, art. 2\(1\)\(a\), Sch. Pt. 1](#)
- F6** Word in s. 68(5) omitted (27.6.2017) by virtue of [Digital Economy Act 2017 \(c. 30\), s. 118\(2\), Sch. 9 para. 32\(3\)\(a\)](#)
- F7** Word in s. 68(5) substituted (27.6.2017) by [Digital Economy Act 2017 \(c. 30\), s. 118\(2\), Sch. 9 para. 32\(3\)\(b\)](#)

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

- C1** S. 68 modified (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6)**65(3)(d)**

**Commencement Information**

- I1** S. 68 in force at 1.4.2013 by [S.I. 2013/423](#), art. 3, [Sch.](#)

**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.

**Commencement Information**

- I2** S. 69 in force at 1.4.2013 by [S.I. 2013/423](#), art. 3, [Sch.](#)

**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.

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**Commencement Information**

**I3** S. 70 in force at 1.4.2013 by [S.I. 2013/423](#), art. 3, [Sch.](#)

**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.

**Commencement Information**

**I4** S. 71 in force at 1.4.2013 by [S.I. 2013/423](#), art. 3, [Sch.](#)

**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.

**Commencement Information**

**I5** S. 72 in force at 1.4.2013 by [S.I. 2013/423](#), art. 3, [Sch.](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act power to apply conferred (temp.) by [2014 c. 21 s. 79\(4\)](#)
- Act power to apply conferred (temp.) by [2014 c. 21 s. 81\(10\)](#)