

FINANCIAL SERVICES AND MARKETS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part Xi: Information Gathering & Investigations

Section 169: Investigations etc in support of overseas regulator

326. This section gives the Authority new powers comparable to those held concurrently by the Treasury and the Secretary of State under section 82 of the Companies Act 1989 to investigate matters on behalf of an overseas regulator. In deciding whether it is appropriate to exercise this power to require information or to appoint investigators on behalf of an overseas authority, the Authority is directed to take account of the factors listed in *subsection (4)*, which include the seriousness of the case and the wider public interest in providing the assistance.
327. When the request comes from another competent authority under any of the single market directives (see the notes on Schedule 3 for a brief explanation), the Authority is also required to consider whether the assistance must be given in order to fulfil the obligations to co-operate imposed by those directives. If it decides that it is, the other factors fall away.
328. The Authority may make the exercise of the power conditional on the overseas authority making an appropriate contribution towards the cost of doing so, except where it considers that exercise is necessary in order to fulfil the obligations to co-operate under the directives.
329. Under *subsection (7)*, the Authority may decide to permit representatives to attend and participate in any interview to be conducted by the investigators it has appointed. But in order to permit this, the Authority is required to be satisfied that the information thus obtained by the overseas regulator will be subject to equivalent safeguards on its subsequent use and disclosure as are contained in Part XXIII of the Act. The Authority must also prepare a statement of its policy on the exercise of this discretion, which must be approved by the Treasury and, if approved, published. The discretion may not be exercised until this statement has been approved and published.