



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART X

RULES AND GUIDANCE

CHAPTER I

RULE-MAKING POWERS

138 General rule-making power

- (1) The Authority may make such rules applying to authorised persons—
 - (a) with respect to the carrying on by them of regulated activities, or
 - (b) with respect to the carrying on by them of activities which are not regulated activities,as appear to it to be necessary or expedient for the purpose of protecting the interests of consumers.
- (2) Rules made under this section are referred to in this Act as the Authority's general rules.
- (3) The Authority's power to make general rules is not limited by any other power which it has to make regulating provisions.
- (4) The Authority's general rules may make provision applying to authorised persons even though there is no relationship between the authorised persons to whom the rules will apply and the persons whose interests will be protected by the rules.
- (5) General rules may contain requirements which take into account, in the case of an authorised person who is a member of a group, any activity of another member of the group.
- (6) General rules may not—

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- (a) make provision prohibiting an EEA firm from carrying on, or holding itself out as carrying on, any activity which it has permission conferred by Part II of Schedule 3 to carry on in the United Kingdom;
 - (b) make provision, as respects an EEA firm, about any matter responsibility for which is, under any of the single market directives, reserved to the firm's home state regulator.
- (7) "Consumers" means persons—
- (a) who use, have used, or are or may be contemplating using, any of the services provided by—
 - (i) authorised persons in carrying on regulated activities; or
 - (ii) persons acting as appointed representatives;
 - (b) who have rights or interests which are derived from, or are otherwise attributable to, the use of any such services by other persons; or
 - (c) who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them.
- (8) If an authorised person is carrying on a regulated activity in his capacity as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or are or may be contemplating using services provided by the authorised person in his carrying on of that activity.
- (9) For the purposes of subsection (7) a person who deals with an authorised person in the course of the authorised person's carrying on of a regulated activity is to be treated as using services provided by the authorised person in carrying on those activities.

139 Miscellaneous ancillary matters

- (1) Rules relating to the handling of money held by an authorised person in specified circumstances ("clients' money") may—
- (a) make provision which results in that clients' money being held on trust in accordance with the rules;
 - (b) treat two or more accounts as a single account for specified purposes (which may include the distribution of money held in the accounts);
 - (c) authorise the retention by the authorised person of interest accruing on the clients' money; and
 - (d) make provision as to the distribution of such interest which is not to be retained by him.
- (2) An institution with which an account is kept in pursuance of rules relating to the handling of clients' money does not incur any liability as constructive trustee if money is wrongfully paid from the account, unless the institution permits the payment—
- (a) with knowledge that it is wrongful; or
 - (b) having deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.
- (3) In the application of subsection (1) to Scotland, the reference to money being held on trust is to be read as a reference to its being held as agent for the person who is entitled to call for it to be paid over to him or to be paid on his direction or to have it otherwise credited to him.

- (4) Rules may—
 - (a) confer rights on persons to rescind agreements with, or withdraw offers to, authorised persons within a specified period; and
 - (b) make provision, in respect of authorised persons and persons exercising those rights, for the restitution of property and the making or recovery of payments where those rights are exercised.
- (5) “Rules” means general rules.
- (6) “Specified” means specified in the rules.

140 Restriction on managers of authorised unit trust schemes

- (1) The Authority may make rules prohibiting an authorised person who has permission to act as the manager of an authorised unit trust scheme from carrying on a specified activity.
- (2) Such rules may specify an activity which is not a regulated activity.

141 Insurance business rules

- (1) The Authority may make rules prohibiting an authorised person who has permission to effect or carry out contracts of insurance from carrying on a specified activity.
- (2) Such rules may specify an activity which is not a regulated activity.
- (3) The Authority may make rules in relation to contracts entered into by an authorised person in the course of carrying on business which consists of the effecting or carrying out of contracts of long-term insurance.
- (4) Such rules may, in particular—
 - (a) restrict the descriptions of property or indices of the value of property by reference to which the benefits under such contracts may be determined;
 - (b) make provision, in the interests of the protection of policyholders, for the substitution of one description of property, or index of value, by reference to which the benefits under a contract are to be determined for another such description of property or index.
- (5) Rules made under this section are referred to in this Act as insurance business rules.

142 Insurance business: regulations supplementing Authority’s rules

- (1) The Treasury may make regulations for the purpose of preventing a person who is not an authorised person but who—
 - (a) is a parent undertaking of an authorised person who has permission to effect or carry out contracts of insurance, and
 - (b) falls within a prescribed class,from doing anything to lessen the effectiveness of asset identification rules.
- (2) “Asset identification rules” means rules made by the Authority which require an authorised person who has permission to effect or carry out contracts of insurance to identify assets which belong to him and which are maintained in respect of a particular aspect of his business.

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- (3) The regulations may, in particular, include provision—
 - (a) prohibiting the payment of dividends;
 - (b) prohibiting the creation of charges;
 - (c) making charges created in contravention of the regulations void.
- (4) The Treasury may by regulations provide that, in prescribed circumstances, charges created in contravention of asset identification rules are void.
- (5) A person who contravenes regulations under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) “Charges” includes mortgages (or in Scotland securities over property).

143 Endorsement of codes etc

- (1) The Authority may make rules (“endorsing rules”)—
 - (a) endorsing the City Code on Takeovers and Mergers issued by the Panel on Takeovers and Mergers;
 - (b) endorsing the Rules Governing Substantial Acquisitions of Shares issued by the Panel.
- (2) Endorsement may be—
 - (a) as respects all authorised persons; or
 - (b) only as respects a specified kind of authorised person.
- (3) At any time when endorsing rules are in force, and if asked to do so by the Panel, the Authority may exercise its powers under Part IV or section 66 as if failure to comply with an endorsed provision was a ground entitling the Authority to exercise those powers.
- (4) At any time when endorsing rules are in force and if asked to do so by the Panel, the Authority may exercise its powers under Part XIII, XIV or XXV as if the endorsed provisions were rules applying to the persons in respect of whom they are endorsed.
- (5) For the purposes of subsections (3) and (4), a failure to comply with a requirement imposed, or ruling given, under an endorsed provision is to be treated as a failure to comply with the endorsed provision under which that requirement was imposed or ruling was given.
- (6) If endorsed provisions are altered, subsections (3) and (4) apply to them as altered, but only if before the alteration the Authority has notified the Panel (and has not withdrawn its notification) that it is satisfied with the Panel’s consultation procedures.
- (7) “Consultation procedures” means procedures designed to provide an opportunity for persons likely to be affected by alterations to those provisions to make representations about proposed alterations to any of those provisions.
- (8) Subsections (1), (2)(d), (4), (5), (6)(a) and (12) of section 155 apply (with the necessary modifications) to a proposal to give notification of the kind mentioned in subsection (6) as they apply to a proposal to make endorsing rules.
- (9) This section applies in relation to particular provisions of the code or rules mentioned in subsection (1) as it applies to the code or the rules.

Specific rules

144 Price stabilising rules

- (1) The Authority may make rules (“price stabilising rules”) as to—
 - (a) the circumstances and manner in which,
 - (b) the conditions subject to which, and
 - (c) the time when or the period during which,action may be taken for the purpose of stabilising the price of investments of specified kinds.
- (2) Price stabilising rules—
 - (a) are to be made so as to apply only to authorised persons;
 - (b) may make different provision in relation to different kinds of investment.
- (3) The Authority may make rules which, for the purposes of section 397(5)(b), treat a person who acts or engages in conduct—
 - (a) for the purpose of stabilising the price of investments, and
 - (b) in conformity with such provisions corresponding to price stabilising rules and made by a body or authority outside the United Kingdom as may be specified in the rules under this subsection,as acting, or engaging in that conduct, for that purpose and in conformity with price stabilising rules.
- (4) The Treasury may by order impose limitations on the power to make rules under this section.
- (5) Such an order may, in particular—
 - (a) specify the kinds of investment in relation to which price stabilising rules may make provision;
 - (b) specify the kinds of investment in relation to which rules made under subsection (3) may make provision;
 - (c) provide for price stabilising rules to make provision for action to be taken for the purpose of stabilising the price of investments only in such circumstances as the order may specify;
 - (d) provide for price stabilising rules to make provision for action to be taken for that purpose only at such times or during such periods as the order may specify.
- (6) If provisions specified in rules made under subsection (3) are altered, the rules continue to apply to those provisions as altered, but only if before the alteration the Authority has notified the body or authority concerned (and has not withdrawn its notification) that it is satisfied with its consultation procedures.
- (7) “Consultation procedures” has the same meaning as in section 143.

145 Financial promotion rules

- (1) The Authority may make rules applying to authorised persons about the communication by them, or their approval of the communication by others, of invitations or inducements—
 - (a) to engage in investment activity; or

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- (b) to participate in a collective investment scheme.
- (2) Rules under this section may, in particular, make provision about the form and content of communications.
- (3) Subsection (1) applies only to communications which—
 - (a) if made by a person other than an authorised person, without the approval of an authorised person, would contravene section 21(1);
 - (b) may be made by an authorised person without contravening section 238(1).
- (4) “Engage in investment activity” has the same meaning as in section 21.
- (5) The Treasury may by order impose limitations on the power to make rules under this section.

146 Money laundering rules

The Authority may make rules in relation to the prevention and detection of money laundering in connection with the carrying on of regulated activities by authorised persons.

147 Control of information rules

- (1) The Authority may make rules (“control of information rules”) about the disclosure and use of information held by an authorised person (“A”).
- (2) Control of information rules may—
 - (a) require the withholding of information which A would otherwise have to disclose to a person (“B”) for or with whom A does business in the course of carrying on any regulated or other activity;
 - (b) specify circumstances in which A may withhold information which he would otherwise have to disclose to B;
 - (c) require A not to use for the benefit of B information A holds which A would otherwise have to use in that way;
 - (d) specify circumstances in which A may decide not to use for the benefit of B information A holds which A would otherwise have to use in that way.

Modification or waiver

148 Modification or waiver of rules

- (1) This section applies in relation to the following—
 - (a) auditors and actuaries rules;
 - (b) control of information rules;
 - (c) financial promotion rules;
 - (d) general rules;
 - (e) insurance business rules;
 - (f) money laundering rules; and
 - (g) price stabilising rules.

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- (2) The Authority may, on the application or with the consent of an authorised person, direct that all or any of the rules to which this section applies—
 - (a) are not to apply to the authorised person; or
 - (b) are to apply to him with such modifications as may be specified in the direction.
- (3) An application must be made in such manner as the Authority may direct.
- (4) The Authority may not give a direction unless it is satisfied that—
 - (a) compliance by the authorised person with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made; and
 - (b) the direction would not result in undue risk to persons whose interests the rules are intended to protect.
- (5) A direction may be given subject to conditions.
- (6) Unless it is satisfied that it is inappropriate or unnecessary to do so, a direction must be published by the Authority in such a way as it thinks most suitable for bringing the direction to the attention of—
 - (a) those likely to be affected by it; and
 - (b) others who may be likely to make an application for a similar direction.
- (7) In deciding whether it is satisfied as mentioned in subsection (6), the Authority must—
 - (a) take into account whether the direction relates to a rule contravention of which is actionable in accordance with section 150;
 - (b) consider whether its publication would prejudice, to an unreasonable degree, the commercial interests of the authorised person concerned or any other member of his immediate group; and
 - (c) consider whether its publication would be contrary to an international obligation of the United Kingdom.
- (8) For the purposes of paragraphs (b) and (c) of subsection (7), the Authority must consider whether it would be possible to publish the direction without either of the consequences mentioned in those paragraphs by publishing it without disclosing the identity of the authorised person concerned.
- (9) The Authority may—
 - (a) revoke a direction; or
 - (b) vary it on the application, or with the consent, of the authorised person to whom it relates.
- (10) “Direction” means a direction under subsection (2).
- (11) “Immediate group”, in relation to an authorised person (“A”), means—
 - (a) A;
 - (b) a parent undertaking of A;
 - (c) a subsidiary undertaking of A;
 - (d) a subsidiary undertaking of a parent undertaking of A;
 - (e) a parent undertaking of a subsidiary undertaking of A.

Contravention of rules

149 Evidential provisions

- (1) If a particular rule so provides, contravention of the rule does not give rise to any of the consequences provided for by other provisions of this Act.
- (2) A rule which so provides must also provide—
 - (a) that contravention may be relied on as tending to establish contravention of such other rule as may be specified; or
 - (b) that compliance may be relied on as tending to establish compliance with such other rule as may be specified.
- (3) A rule may include the provision mentioned in subsection (1) only if the Authority considers that it is appropriate for it also to include the provision required by subsection (2).

150 Actions for damages

- (1) A contravention by an authorised person of a rule is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (2) If rules so provide, subsection (1) does not apply to contravention of a specified provision of those rules.
- (3) In prescribed cases, a contravention of a rule which would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (4) In subsections (1) and (3) “rule” does not include—
 - (a) listing rules; or
 - (b) a rule requiring an authorised person to have or maintain financial resources.
- (5) “Private person” has such meaning as may be prescribed.

151 Limits on effect of contravening rules

- (1) A person is not guilty of an offence by reason of a contravention of a rule made by the Authority.
- (2) No such contravention makes any transaction void or unenforceable.

Procedural provisions

152 Notification of rules to the Treasury

- (1) If the Authority makes any rules, it must give a copy to the Treasury without delay.
- (2) If the Authority alters or revokes any rules, it must give written notice to the Treasury without delay.
- (3) Notice of an alteration must include details of the alteration.

153 Rule-making instruments

- (1) Any power conferred on the Authority to make rules is exercisable in writing.
- (2) An instrument by which rules are made by the Authority (“a rule-making instrument”) must specify the provision under which the rules are made.
- (3) To the extent to which a rule-making instrument does not comply with subsection (2), it is void.
- (4) A rule-making instrument must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (5) The Authority may charge a reasonable fee for providing a person with a copy of a rule-making instrument.
- (6) A person is not to be taken to have contravened any rule made by the Authority if he shows that at the time of the alleged contravention the rule-making instrument concerned had not been made available in accordance with this section.

154 Verification of rules

- (1) The production of a printed copy of a rule-making instrument purporting to be made by the Authority—
 - (a) on which is endorsed a certificate signed by a member of the Authority’s staff authorised by it for that purpose, and
 - (b) which contains the required statements,is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (2) The required statements are—
 - (a) that the instrument was made by the Authority;
 - (b) that the copy is a true copy of the instrument; and
 - (c) that on a specified date the instrument was made available to the public in accordance with section 153(4).
- (3) A certificate purporting to be signed as mentioned in subsection (1) is to be taken to have been properly signed unless the contrary is shown.
- (4) A person who wishes in any legal proceedings to rely on a rule-making instrument may require the Authority to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (1).

155 Consultation

- (1) If the Authority proposes to make any rules, it must publish a draft of the proposed rules in the way appearing to it 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) an explanation of the Authority’s reasons for believing that making the proposed rules is compatible with its general duties under section 2; and

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- (d) notice that representations about the proposals may be made to the Authority within a specified time.
- (3) In the case of a proposal to make rules under a provision mentioned in subsection (9), the draft must also be accompanied by details of the expected expenditure by reference to which the proposal is made.
- (4) Before making the proposed rules, the Authority must have regard to any representations made to it in accordance with subsection (2)(d).
- (5) If the Authority makes the proposed rules, it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (2)(d); and
 - (b) its response to them.
- (6) If the rules differ from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant—
 - (a) the Authority must (in addition to complying with subsection (5)) publish details of the difference; and
 - (b) those details must be accompanied by a cost benefit analysis.
- (7) Subsections (1) to (6) do not apply if the Authority considers that the delay involved in complying with them would be prejudicial to the interests of consumers.
- (8) Neither subsection (2)(a) nor subsection (6)(b) applies if the Authority considers—
 - (a) that, making the appropriate comparison, there will be no increase in costs; or
 - (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.
- (9) Neither subsection (2)(a) nor subsection (6)(b) requires a cost benefit analysis to be carried out in relation to rules made under—
 - (a) section 136(2);
 - (b) subsection (1) of section 213 as a result of subsection (4) of that section;
 - (c) section 234;
 - (d) paragraph 17 of Schedule 1.
- (10) “Cost benefit analysis” means an estimate of the costs together with an analysis of the benefits that will arise—
 - (a) if the proposed rules are made; or
 - (b) if subsection (6) applies, from the rules that have been made.
- (11) “The appropriate comparison” means—
 - (a) in relation to subsection (2)(a), a comparison between the overall position if the rules are made and the overall position if they are not made;
 - (b) in relation to subsection (6)(b), a comparison between the overall position after the making of the rules and the overall position before they were made.
- (12) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

156 General supplementary powers

- (1) Rules made by the Authority may make different provision for different cases and may, in particular, make different provision in respect of different descriptions of authorised person, activity or investment.
- (2) Rules made by the Authority may contain such incidental, supplemental, consequential and transitional provision as the Authority considers appropriate.