

Financial Services and Markets Act 2000

2000 Chapter c.8 - *continued*

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PART XI

INFORMATION GATHERING AND INVESTIGATIONS

Powers to gather information

Authority's power to require information.

165.-(1) The Authority may, by notice in writing given to an authorised person, require him-

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

(2) The information or documents must be provided or produced-

(a) before the end of such reasonable period as may be specified; and

(b) at such place as may be specified.

(3) An officer who has written authorisation from the Authority to do so may require an authorised person without delay-

(a) to provide the officer with specified information or information of a specified description; or

(b) to produce to him specified documents or documents of a specified description.

(4) This section applies only to information and documents reasonably required in connection with the exercise by the Authority of functions conferred on it by or under this Act.

(5) The Authority may require any information provided under this section to be provided in such form as it may reasonably require.

(6) The Authority may require-

(a) any information provided, whether in a document or otherwise, to be verified in such manner, or

(b) any document produced to be authenticated in such manner,

as it may reasonably require.

(7) The powers conferred by subsections (1) and (3) may also be exercised to impose requirements on-

(a) a person who is connected with an authorised

person;

(b) an operator, trustee or depositary of a scheme recognised under section 270 or 272 who is not an authorised person;

(c) a recognised investment exchange or recognised clearing house.

(8) "Authorised person" includes a person who was at any time an authorised person but who has ceased to be an authorised person.

(9) "Officer" means an officer of the Authority and includes a member of the Authority's staff or an agent of the Authority.

(10) "Specified" means-

(a) in subsections (1) and (2), specified in the notice; and

(b) in subsection (3), specified in the authorisation.

(11) For the purposes of this section, a person is connected with an authorised person ("A") if he is or has at any relevant time been-

(a) a member of A's group;

(b) a controller of A;

(c) any other member of a partnership of which A is a member; or

(d) in relation to A, a person mentioned in Part I of Schedule 15.

Reports by skilled persons.

166.-(1) The Authority may, by notice in writing given to a person to whom subsection (2) applies, require him to provide the Authority with a report on any matter about which the Authority has required or could require the provision of information or production of documents under section 165.

(2) This subsection applies to-

(a) an authorised person ("A"),

(b) any other member of A's group,

(c) a partnership of which A is a member, or

(d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c),

who is, or was at the relevant time, carrying on a business.

(3) The Authority may require the report to be in such form as may be specified in the notice.

(4) The person appointed to make a report required by subsection (1) must be a person-

(a) nominated or approved by the Authority; and

(b) appearing to the Authority to have the skills necessary to make a report on the matter concerned.

(5) It is the duty of any person who is providing (or who at any time has provided) services to a person to whom subsection (2) applies in relation to a matter on which a report is required under subsection (1) to give a person appointed to provide such a report all such assistance as the appointed person may reasonably require.

(6) The obligation imposed by subsection (5) is enforceable, on the application of the Authority, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

Appointment of investigators

Appointment of persons to carry out general investigations.

167.-(1) If it appears to the Authority or the Secretary of State ("the investigating authority") that there is good reason for doing so, the investigating authority may appoint one or more competent persons to conduct an investigation on its behalf into-

- (a) the nature, conduct or state of the business of an authorised person or of an appointed representative;
- (b) a particular aspect of that business; or
- (c) the ownership or control of an authorised person.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of his investigation, he may also investigate the business of a person who is or has at any relevant time been-

- (a) a member of the group of which the person under investigation ("A") is part; or
- (b) a partnership of which A is a member.

(3) If a person appointed under subsection (1) decides to investigate the business of any person under subsection (2) he must give that person written notice of his decision.

(4) The power conferred by this section may be exercised in relation to a former authorised person (or appointed representative) but only in relation to-

- (a) business carried on at any time when he was an authorised person (or appointed representative); or
- (b) the ownership or control of a former authorised person at any time when he was an authorised person.

(5) "Business" includes any part of a business even if it does not consist of carrying on regulated activities.

Appointment of persons to carry out investigations in particular cases.

168.-(1) Subsection (3) applies if it appears to an investigating authority that there are circumstances suggesting that-

(a) a person may have contravened any regulation made under section 142; or

(b) a person may be guilty of an offence under section 177, 191, 346 or 398(1) or under Schedule 4.

(2) Subsection (3) also applies if it appears to an investigating authority that there are circumstances suggesting that-

(a) an offence under section 24(1) or 397 or under Part V of the Criminal Justice Act 1993 may have been committed;

(b) there may have been a breach of the general prohibition;

(c) there may have been a contravention of section 21 or 238; or

(d) market abuse may have taken place.

(3) The investigating authority may appoint one or more competent persons to conduct an investigation on its behalf.

(4) Subsection (5) applies if it appears to the Authority that there are circumstances suggesting that-

(a) a person may have contravened section 20;

(b) a person may be guilty of an offence under prescribed regulations relating to money laundering;

(c) an authorised person may have contravened a rule made by the Authority;

(d) an individual may not be a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised or exempt person;

(e) an individual may have performed or agreed to perform a function in breach of a prohibition order;

(f) an authorised or exempt person may have failed to comply with section 56(6);

(g) an authorised person may have failed to comply with section 59(1) or (2);

(h) a person in relation to whom the Authority has given its approval under section 59 may not be a fit and proper person to perform the function to which that approval relates; or

(i) a person may be guilty of misconduct for the purposes of section 66.

(5) The Authority may appoint one or more competent persons to conduct an investigation on its behalf.

(6) "Investigating authority" means the Authority or the Secretary of State.

Assistance to overseas regulators

Investigations etc. in support of overseas regulator.

169.-(1) At the request of an overseas regulator, the Authority may-

- (a) exercise the power conferred by section 165; or
- (b) appoint one or more competent persons to investigate any matter.

(2) An investigator has the same powers as an investigator appointed under section 168(3) (as a result of subsection (1) of that section).

(3) If the request has been made by a competent authority in pursuance of any Community obligation the Authority must, in deciding whether or not to exercise its investigative power, consider whether its exercise is necessary to comply with any such obligation.

(4) In deciding whether or not to exercise its investigative power, the Authority may take into account in particular-

- (a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;
- (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
- (c) the seriousness of the case and its importance to persons in the United Kingdom;
- (d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(5) The Authority may decide that it will not exercise its investigative power unless the overseas regulator undertakes to make such contribution towards the cost of its exercise as the Authority considers appropriate.

(6) Subsections (4) and (5) do not apply if the Authority considers that the exercise of its investigative power is necessary to comply with a Community obligation.

(7) If the Authority has appointed an investigator in response to a request from an overseas regulator, it may direct the investigator to permit a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation.

(8) A direction under subsection (7) is not to be given unless the Authority is satisfied that any information obtained by an overseas regulator as a result of the interview will be subject to safeguards equivalent to those contained in Part XXIII.

(9) The Authority must prepare a statement of its policy with respect to the conduct of interviews in relation to which a direction under subsection (7) has been given.

(10) The statement requires the approval of the Treasury.

(11) If the Treasury approve the statement, the Authority must publish it.

(12) No direction may be given under subsection (7) before the statement has been published.

(13) "Overseas regulator" has the same meaning as in section 195.

(14) "Investigative power" means one of the powers mentioned in subsection (1).

(15) "Investigator" means a person appointed under subsection (1)(b).

Investigations: general.

Conduct of investigations

170.-(1) This section applies if an investigating authority appoints one or more competent persons ("investigators") under section 167 or 168(3) or (5) to conduct an investigation on its behalf.

(2) The investigating authority must give written notice of the appointment of an investigator to the person who is the subject of the investigation ("the person under investigation").

(3) Subsections (2) and (9) do not apply if -

(a) the investigator is appointed as a result of section 168(1) or (4) and the investigating authority believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated; or

(b) the investigator is appointed as a result of subsection (2) of section 168.

(4) A notice under subsection (2) must-

(a) specify the provisions under which, and as a result of which, the investigator was appointed; and

(b) state the reason for his appointment.

(5) Nothing prevents the investigating authority from appointing a person who is a member of its staff as an investigator.

(6) An investigator must make a report of his investigation to the investigating authority.

(7) The investigating authority may, by a direction to an investigator, control-

(a) the scope of the investigation;

(b) the period during which the investigation is to be conducted;

- (c) the conduct of the investigation; and
 - (d) the reporting of the investigation.
- (8) A direction may, in particular-

- (a) confine the investigation to particular matters;
- (b) extend the investigation to additional matters;
- (c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction;
- (d) require the investigator to make such interim reports as are so specified.

(9) If there is a change in the scope or conduct of the investigation and, in the opinion of the investigating authority, the person subject to investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.

(10) "Investigating authority", in relation to an investigator, means-

- (a) the Authority, if the Authority appointed him;
- (b) the Secretary of State, if the Secretary of State appointed him.

Powers of persons appointed under section 167.

171.-(1) An investigator may require the person who is the subject of the investigation ("the person under investigation") or any person connected with the person under investigation-

- (a) to attend before the investigator at a specified time and place and answer questions; or
- (b) otherwise to provide such information as the investigator may require.

(2) An investigator may also require any person to produce at a specified time and place any specified documents or documents of a specified description.

(3) A requirement under subsection (1) or (2) may be imposed only so far as the investigator concerned reasonably considers the question, provision of information or production of the document to be relevant to the purposes of the investigation.

(4) For the purposes of this section and section 172, a person is connected with the person under investigation ("A") if he is or has at any relevant time been-

- (a) a member of A's group;
- (b) a controller of A;
- (c) a partnership of which A is a member; or
- (d) in relation to A, a person mentioned in Part I or II of Schedule 15.

(5) "Investigator" means a person conducting an investigation under section 167.

(6) "Specified" means specified in a notice in writing.

Additional power of persons appointed as a result of section 168(1) or (4).

172.-(1) An investigator has the powers conferred by section 171.

(2) An investigator may also require a person who is neither the subject of the investigation ("the person under investigation") nor a person connected with the person under investigation-

(a) to attend before the investigator at a specified time and place and answer questions; or

(b) otherwise to provide such information as the investigator may require for the purposes of the investigation.

(3) A requirement may only be imposed under subsection (2) if the investigator is satisfied that the requirement is necessary or expedient for the purposes of the investigation.

(4) "Investigator" means a person appointed as a result of subsection (1) or (4) of section 168.

(5) "Specified" means specified in a notice in writing.

Powers of persons appointed as a result of section 168(2).

173.-(1) Subsections (2) to (4) apply if an investigator considers that any person ("A") is or may be able to give information which is or may be relevant to the investigation.

(2) The investigator may require A-

(a) to attend before him at a specified time and place and answer questions; or

(b) otherwise to provide such information as he may require for the purposes of the investigation.

(3) The investigator may also require A to produce at a specified time and place any specified documents or documents of a specified description which appear to the investigator to relate to any matter relevant to the investigation.

(4) The investigator may also otherwise require A to give him all assistance in connection with the investigation which A is reasonably able to give.

(5) "Investigator" means a person appointed under subsection (3) of section 168 (as a result of subsection (2) of that section).

Admissibility of statements made to investigators.

174.-(1) A statement made to an investigator by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(2) But in criminal proceedings in which that person is charged with an offence to which this subsection applies or in proceedings in relation to action to be taken against that person under section 123-

(a) no evidence relating to the statement may be adduced, and

(b) no question relating to it may be asked, by or on behalf of the prosecution or (as the case may be) the Authority, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Subsection (2) applies to any offence other than one-

(a) under section 177(4) or 398;

(b) under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath);

(c) under section 44(2) of the Criminal Law (Consolidation)(Scotland) Act 1995 (false statements made otherwise than on oath); or

(d) under Article 10 of the Perjury (Northern Ireland) Order 1979.

(4) "Investigator" means a person appointed under section 167 or 168(3) or (5).

(5) "Information requirement" means a requirement imposed by an investigator under section 171, 172, 173 or 175.

Information and documents: supplemental provisions.

175.-(1) If the Authority or an investigator has power under this Part to require a person to produce a document but it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.

(2) If a document is produced in response to a requirement imposed under this Part, the person to whom it is produced may-

(a) take copies or extracts from the document; or

(b) require the person producing the document, or any relevant person, to provide an explanation of the document.

(3) If a person who is required under this Part to produce a document fails to do so, the Authority or an investigator may require him to state, to the best of his knowledge and belief, where the document is.

(4) A lawyer may be required under this Part to furnish the name and address of his client.

(5) No person may be required under this Part to disclose

information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless-

(a) he is the person under investigation or a member of that person's group;

(b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person's group;

(c) the person to whom the obligation of confidence is owed consents to the disclosure or production; or

(d) the imposing on him of a requirement with respect to such information or document has been specifically authorised by the investigating authority.

(6) If a person claims a lien on a document, its production under this Part does not affect the lien.

(7) "Relevant person", in relation to a person who is required to produce a document, means a person who-

(a) has been or is or is proposed to be a director or controller of that person;

(b) has been or is an auditor of that person;

(c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or

(d) has been or is an employee of that person.

(8) "Investigator" means a person appointed under section 167 or 168(3) or (5).

Entry of premises under warrant.

176.-(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, the Authority or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.

(2) The first set of conditions is-

(a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it; and

(b) that on the premises specified in the warrant-

(i) there are documents which have been required; or

(ii) there is information which has been required.

(3) The second set of conditions is-

(a) that the premises specified in the warrant are premises of an authorised person or an appointed representative;

(b) that there are on the premises documents or information in relation to which an information requirement could be imposed; and

(c) that if such a requirement were to be imposed-

- (i) it would not be complied with; or
- (ii) the documents or information to which it related would be removed, tampered with or destroyed.

(4) The third set of conditions is-

- (a) that an offence mentioned in section 168 for which the maximum sentence on conviction on indictment is two years or more has been (or is being) committed by any person;
- (b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed;
- (c) that an information requirement could be imposed in relation to those documents or information; and
- (d) that if such a requirement were to be imposed-
 - (i) it would not be complied with; or
 - (ii) the documents or information to which it related would be removed, tampered with or destroyed.

(5) A warrant under this section shall authorise a constable-

- (a) to enter the premises specified in the warrant;
- (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this section was issued ("the relevant kind") or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;
- (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and
- (e) to use such force as may be reasonably necessary.

(6) In England and Wales, sections 15(5) to (8) and section 16 of the Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this section.

(7) In Northern Ireland, Articles 17(5) to (8) and 18 of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this section.

(8) Any document of which possession is taken under this section may be retained-

- (a) for a period of three months; or
- (b) if within that period proceedings to which the

document is relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.

(9) In the application of this section to Scotland-

(a) for the references to a justice of the peace substitute references to a justice of the peace or a sheriff; and

(b) for the references to information on oath substitute references to evidence on oath.

(10) "Investigator" means a person appointed under section 167 or 168(3) or (5).

(11) "Information requirement" means a requirement imposed-

(a) by the Authority under section 165 or 175; or

(b) by an investigator under section 171, 172, 173 or 175.

Offences

Offences.

177.-(1) If a person other than the investigator ("the defaulter") fails to comply with a requirement imposed on him under this Part the person imposing the requirement may certify that fact in writing to the court.

(2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and in the case of a body corporate, any director or officer) as if he were in contempt.

(3) A person who knows or suspects that an investigation is being or is likely to be conducted under this Part is guilty of an offence if-

(a) he falsifies, conceals, destroys or otherwise disposes of a document which he knows or suspects is or would be relevant to such an investigation, or

(b) he causes or permits the falsification, concealment, destruction or disposal of such a document,

unless he shows that he had no intention of concealing facts disclosed by the documents from the investigator.

(4) A person who, in purported compliance with a requirement imposed on him under this Part-

(a) provides information which he knows to be false or misleading in a material particular, or

(b) recklessly provides information which is false or misleading in a material particular,

is guilty of an offence.

(5) A person guilty of an offence under subsection (3) or

(4) is liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(6) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 176 is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.

(7) "Court" means-

(a) the High Court;

(b) in Scotland, the Court of Session.

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