

Status: Point in time view as at 01/03/2016.

Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Breach of short selling regulation etc is up to date with all changes known to be in force on or before 18 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)



Financial Services and Markets Act 2000

2000 CHAPTER 8

[^{F1}PART 8A

SHORT SELLING

[^{F1} Breach of short selling [^{F2}regulation] etc

Textual Amendments

- F1** Pt. 8A inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 8, 26(2)(b)
- F2** Word in cross-heading preceding s. 131G substituted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\)](#), regs. 1(1), 2(6)

131G Power to impose penalty or issue censure

- (1) This section applies if the [^{F3}FCA] is satisfied that a person has contravened—
 - (a) any provision of [^{F4} the short selling regulation] ; or
 - (b) any requirement imposed on the person under section 131E or 131F.
- (2) The [^{F3}FCA] may impose a penalty of such amount as it considers appropriate on—
 - (a) the person who contravened the provision or requirement; or
 - (b) any person who was knowingly concerned in the contravention.
- (3) It may, instead of imposing a penalty on a person, publish a statement censuring the person.
- (4) The [^{F3}FCA] may not take action against a person under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person under section 131H.
- (5) “ The limitation period ” means the period of three years beginning with the first day on which the [^{F3}FCA] knew of the contravention.

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- (6) For this purpose the [F³FCA] is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.

Textual Amendments

- F3** Word in Pt. 8A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 25(1), 122(3) (with s. 25(2), Sch. 20); S.I. 2013/423, art. 3, Sch.
- F4** Words in s. 131G(1)(a) substituted (1.11.2012) by The Financial Services and Markets Act 2000 (Short Selling) Regulations 2012 (S.I. 2012/2554), regs. 1(1), 2(7)

131H Procedure and right to refer to Tribunal

- (1) If the [F³FCA] proposes to take action against a person under section 131G, it must give the person a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (4) If the [F³FCA] decides to take action against a person under section 131G, it must give the person a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the [F³FCA] decides to take action against a person under section 131G, the person may refer the matter to the Tribunal.

Textual Amendments

- F3** Word in Pt. 8A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 25(1), 122(3) (with s. 25(2), Sch. 20); S.I. 2013/423, art. 3, Sch.

131I Duty on publication of statement

After a statement under section 131G(3) is published, the [F³FCA] must send a copy of the statement to—

- (a) the person in respect of whom it is made; and
- (b) any person to whom a copy of the decision notice was given under section 393(4).

Textual Amendments

- F3** Word in Pt. 8A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 25(1), 122(3) (with s. 25(2), Sch. 20); S.I. 2013/423, art. 3, Sch.

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131J Imposition of penalties under section 131G: statement of policy

- (1) The [F³FCA] must prepare and issue a statement of its policy with respect to—
 - (a) the imposition of penalties under section 131G; and
 - (b) the amount of penalties under that section.
- (2) The [F³FCA's] policy in determining what the amount of a penalty should be must include having regard to—
 - (a) the seriousness of the contravention;
 - (b) the extent to which the contravention was deliberate or reckless; and
 - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) The [F³FCA] may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the [F³FCA] must issue the altered or replaced statement.
- (5) The [F³FCA] must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (6) A statement issued under this section must be published by the [F³FCA] in the way appearing to the [F³FCA] to be best calculated to bring it to the attention of the public.
- (7) The [F³FCA] may charge a reasonable fee for providing a person with a copy of the statement.
- (8) In exercising, or deciding whether to exercise, a power under section 131G in the case of any particular contravention, the [F³FCA] must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.

Textual Amendments

- F3** Word in Pt. 8A substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 25(1)**, 122(3) (with s. 25(2), Sch. 20); S.I. 2013/423, art. 3, Sch.

131K Statement of policy: procedure

- (1) Before issuing a statement under section 131J, the [F³FCA] must publish a draft of the proposed statement in the way appearing to the [F³FCA] to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the [F³FCA] within a specified time.
- (3) Before issuing the proposed statement, the [F³FCA] must have regard to any representations made to it in accordance with subsection (2).
- (4) If the [F³FCA] issues the proposed statement it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (2); and
 - (b) its response to them.

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- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the [F3FCA], significant, the [F3FCA] must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The [F3FCA] may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.]

Textual Amendments

- F3** Word in Pt. 8A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 25(1), 122(3) (with s. 25(2), Sch. 20); S.I. 2013/423, art. 3, Sch.

[F5131L. Offences

- (1) If a relevant person (“A”) fails to comply with a requirement imposed on A under section 131E or 131F the [F3FCA] may certify that fact in writing to the court.
- (2) If the court is satisfied that A failed without reasonable excuse to comply with the requirement, it may deal with A (and where A is a body corporate, any director or officer) as if A (or as the case may be the director or officer) were in contempt; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.
- (3) A relevant person (“B”) who, in purported compliance with a requirement imposed on B under section 131E or 131F—
 - (a) provides information which B 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.
- (4) A person guilty of an offence under subsection (3) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding three 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.
- (5) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 131FB 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.
- (6) In relation to any contravention by a person, the [F3FCA] may not exercise both—
 - (a) its powers under section 131G(2), and
 - (b) its powers under subsection (1).
- (7) In this section—

“court” means—

 - (a) the High Court;
 - (b) in Scotland, the Court of Session;

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“relevant person” means—

- (a) an authorised person,
- (b) a person who has been an authorised person,
- (c) a person who is for the purposes of section 165 connected with an authorised person or with a person within paragraph (b).]

Textual Amendments

- F3** Word in Pt. 8A substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 25\(1\), 122\(3\)](#) (with s. 25(2), Sch. 20); S.I. 2013/423, art. 3, Sch.
- F5** S. 131L inserted (1.11.2012) by [The Financial Services and Markets Act 2000 \(Short Selling\) Regulations 2012 \(S.I. 2012/2554\), regs. 1\(1\), 2\(8\)](#)

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