



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XXVI

NOTICES

The [^{F1}FCA's and PRA's] procedures

Textual Amendments

- F1** Words in s. 395 cross-heading substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 34\(15\)](#) (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)

395 The [^{F2}FCA's and PRA's] procedures.

[^{F3}(1) Each regulator must determine the procedure that it proposes to follow in relation to the following—

- (a) a decision which gives rise to an obligation to give a supervisory notice,
- (b) in the case of the FCA, a decision which—
 - (i) gives rise to an obligation for it to give a warning notice or decision notice, or
 - (ii) gives rise to an obligation for the PRA to include a statement under section 387(1A) in a warning notice or a statement under section 388(1A) in a decision notice,
- (c) in the case of the PRA, a decision which gives rise to an obligation for it to give a warning notice or decision notice, other than a decision which depends entirely on a decision of the FCA of the kind mentioned in paragraph (b)(ii), and
- (d) a decision under section 391(1)(c) to publish information about the matter to which a warning notice relates.]

(2) That procedure must be designed to secure, among other things [^{F4}that—

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- (a) a decision falling within any of paragraphs (a) to (c) of subsection (1) is taken—
 - (i) by a person not directly involved in establishing the evidence on which the decision is based, or
 - (ii) by 2 or more persons who include a person not directly involved in establishing that evidence,
 - (b) a decision falling within paragraph (d) of subsection (1) is taken—
 - (i) by a person other than the person by whom the decision was first proposed, or
 - (ii) by 2 or more persons not including the person by whom the decision was first proposed, and
 - (c) a decision falling within paragraph (d) of subsection (1) is taken in accordance with a procedure which is, as far as possible, the same as that applicable to a decision which gives rise to an obligation to give a warning notice and which falls within paragraph (b) or (c) of subsection (1).]
- (3) But the procedure may permit a decision which gives rise to an obligation to give a supervisory notice to be [^{F5}taken otherwise than as mentioned in subsection (2) if the person taking the decision is of a level of seniority laid down by the procedure and—
- (a) in the case of procedure proposed by the FCA, the FCA considers that, in the particular case, it is necessary in order to advance one or more of its operational objectives, or
 - (b) in the case of procedure proposed by the PRA, the PRA considers that, in the particular case, it is necessary in order to advance any of its objectives.]
- (4) A level of seniority laid down by the procedure for the purposes of subsection (3)(b) must be appropriate to the importance of the decision.
- (5) [^{F6}Each regulator] must issue a statement of [^{F7}its procedure].
- (6) The statement must be published in the way appearing to [^{F8}the regulator issuing it] to be best calculated to bring [^{F9}the statement] to the attention of the public.
- (7) [^{F10}The regulator issuing the statement] may charge a reasonable fee for providing a person with a copy of the statement.
- (8) [^{F11}The regulator issuing a statement under this section] must, without delay, give the Treasury a copy of [^{F12}the statement].
- (9) When [^{F13}a regulator gives] a supervisory notice, or a warning notice or decision notice, [^{F14}other than a warning notice or decision notice relating to a decision of the PRA that is required by a decision of the FCA of the kind mentioned in subsection (1)(b)(ii)] [^{F15}the regulator] must follow its stated procedure.
- [^{F16}(9A) When the FCA takes a decision falling within subsection (1)(b)(ii), it must follow its stated procedure.]
- (10) If [^{F17}a regulator] changes [^{F18}its procedure] in a material way, it must publish a revised statement.
- (11) [^{F19}A regulator's] failure in a particular case to follow its procedure as set out in the latest published statement does not affect the validity of a notice given in that case.
- (12) But subsection (11) does not prevent the Tribunal from taking into account any such failure in considering a matter referred to it.

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- (13) “Supervisory notice” means a notice [^{F20}or notification] given in accordance with section—
- [^{F21}(a) 55Y(4), (7) or (8)(b);]
 - [^{F22}(aa) 63ZC(4), (8) or (9)(b);]
 - [^{F23}(ab) 71H(2), (3), (4), (9) or (11)(a);]
 - (b) 78(2) or (5);
 - [^{F24}(bza) 78A(2) or (8)(b);]
 - [^{F25}(bzb) section 88F(2), (5) or (6)(b);]
 - [^{F26}(bzc) section 89V(2), (5) or (6)(b);]
 - [^{F27}(ba)]
 - [^{F28}(bb) 87O(2) or (5);]
 - [^{F29}(bbza) 122I;]
 - [^{F30}(bbzb) section 122IA;]
 - [^{F31}(bba) section 137S(5) or (8)(a);]
 - [^{F32}(bc) 191B(1);]
 - (c) 197(3), (6) or (7)(b);
 - (d) 259(3), (8) or (9)(b);
 - [^{F33}(da) 261Z1(3), (8) or (9)(b);]
 - (e) 268(3), (7)(a) or (9)(a) (as a result of subsection (8)(b));
 - (f) 282(3), (6) or (7)(b);
 - [^{F34}(fa) 301J(1);]
 - (g) 321(2) or (5).

Textual Amendments

- F2** Words in s. 395 heading substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 34\(14\)](#) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F3** S. 395(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 34\(2\)](#) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F4** Words in s. 395(2) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 34\(3\)](#) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F5** Words in s. 395(3) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 34\(4\)](#) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F6** Words in s. 395(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 34\(5\)\(a\)](#) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F7** Words in s. 395(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 34\(5\)\(b\)](#) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F8** Words in s. 395(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 34\(6\)\(a\)](#) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F9** Words in s. 395(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 9 para. 34\(6\)\(b\)](#) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

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- F10** Words in s. 395(7) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 34(7)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F11** Words in s. 395(8) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 34(8)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F12** Words in s. 395(8) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 34(8)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F13** Words in s. 395(9) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 34(9)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F14** Words in s. 395(9) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 34(9)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F15** Words in s. 395(9) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 34(9)(c)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F16** S. 395(9A) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 34(10)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F17** Words in s. 395(10) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 34(11)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F18** Words in s. 395(10) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 34(11)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F19** Words in s. 395(11) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 34(12)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F20** Words in s. 395(13) inserted (19.3.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), **ss. 17(3), 122(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.; S.I. 2013/651, art. 2(a)
- F21** S. 395(13)(a) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 34(13)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F22** S. 395(13)(aa) inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 3 para. 14**; S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))
- F23** S. 395(13)(ab) inserted (16.12.2016) by The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), **35**
- F24** S. 395(13)(bza) inserted (12.7.2007) by The Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (S.I. 2007/1973), **art. 8**
- F25** S. 395(13)(bzb) inserted (19.3.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), **ss. 18(6), 122(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.; S.I. 2013/651, art. 2(a)
- F26** S. 395(13)(bzc) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 19(2), 122(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F27** S. 395(13)(ba) omitted (3.7.2016) by virtue of The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, **10(18)(a)**
- F28** S. 395(13)(bb) inserted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 14**

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- F29** S. 395(13)(bbza) inserted (3.7.2016) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2016 \(S.I. 2016/680\)](#), regs. 1, **10(18)(b)**
- F30** S. 395(13)(bbzb) inserted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), **Sch. 2 para. 47** (with reg. 7)
- F31** S. 395(13)(bba) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 24(3)**, 122(3) (with Sch. 20); [S.I. 2013/113](#), art. 2(1)(c), Sch. Pt. 3; [S.I. 2013/423](#), art. 3, Sch.
- F32** S. 395(13)(bc) inserted (21.3.2009) by [The Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009 \(S.I. 2009/534\)](#), **reg. 6(a)**
- F33** S. 395(13)(da) inserted (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\)](#), regs. 1, **3(20)** (with reg. 24)
- F34** S. 395(13)(fa) inserted (21.3.2009) by [The Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009 \(S.I. 2009/534\)](#), **reg. 6(b)**

Modifications etc. (not altering text)

- C1** S. 395 applied (1.12.2001) by [S.I. 2001/1228](#), **regs. 1(2)(c)**, 10 (with reg. 1(2)(3)); [S.I. 2001/3538](#), **art. 2(1)**
S. 395 amended (1.12.2001) by [S.I. 2001/1228](#), **regs. 1(2)(c)**, 27(15) (with reg. 1(2)(3)); [S.I. 2001/3538](#), **art. 2(1)**
- C2** S. 395 applied (N.I.) (1.11.2004) by [Open-Ended Investment Companies Regulations \(Northern Ireland\) 2004 \(S.R. 2004/335\)](#), regs. 1(1)(b), **10** (with reg. 1(2))
- C3** S. 395 modified (N.I.) (1.11.2004) by [Open-Ended Investment Companies Regulations \(Northern Ireland\) 2004 \(S.R. 2004/335\)](#), regs. 1(1)(b), **27(15)** (with reg. 1(2))
- C4** Ss. 392-395 applied (with modifications) (26.6.2017) by [The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017 \(S.I. 2017/692\)](#), regs. 1(2), **82** (with regs. 8, 15)
- C5** S. 395(1)(9) excluded (1.12.2001) by [S.I. 2001/2957](#), **arts. 1**, 12(9); [S.I. 2001/3538](#), **art. 2(1)**
- C6** S. 395(1)(d): power to repeal conferred (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 37(2)(b)**, 122(3) (with Sch. 20); [S.I. 2013/423](#), art. 3, Sch.
- C7** S. 395(2)(b): power to repeal conferred (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 37(2)(b)**, 122(3) (with Sch. 20); [S.I. 2013/423](#), art. 3, Sch.
- C8** S. 395(2)(c): power to repeal conferred (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 37(2)(b)**, 122(3) (with Sch. 20); [S.I. 2013/423](#), art. 3, Sch.

396 Statements under section 395: consultation.

- (1) Before issuing a statement of ^[F35]its procedure under section 395, ^[F36]the regulator must publish a draft of the proposed statement in the way appearing to ^[F37]it to be best calculated to bring ^[F38]the draft to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the ^[F39]regulator publishing the draft within a specified time.
- (3) ^[F40]Before a regulator issues the proposed statement of its procedure, it must have regard to any representations made to it in accordance with subsection (2).
- (4) If the ^[F41]regulator issues the proposed statement of its procedure, 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 ^{F42}statement of the regulator's procedure differs from the draft published by it] under subsection (1) in a way which is ^{F43}, in its opinion,] significant, ^{F44}it must] (in addition to complying with subsection (4)) publish details of the difference.
- (6) ^{F45}The regulator publishing a draft under subsection (1)] may charge a reasonable fee for providing a person with a copy of ^{F46}the draft].
- (7) This section also applies to a proposal to revise a statement of policy.

Textual Amendments

- F35** Word in s. 396(1) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 35(2)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F36** Words in s. 396(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 35(2)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F37** Word in s. 396(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 35(2)(c)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F38** Words in s. 396(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 35(2)(d)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F39** Words in s. 396(2) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 35(3)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F40** Words in s. 396(3) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 35(4)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F41** Words in s. 396(4) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 35(5)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F42** Words in s. 396(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 35(6)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F43** Words in s. 396(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 35(6)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F44** Words in s. 396(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 35(6)(c)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F45** Words in s. 396(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 35(7)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F46** Words in s. 396(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 35(7)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

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