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STATUTORY INSTRUMENTS

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**2015 No. 1945**

The Small and Medium Sized Business  
(Credit Information) Regulations 2015

PART 6

Monitoring of compliance and enforcement

CHAPTER 7

Procedure

**Requirement to issue warning notice**

**39.**—(1) Where the FCA proposes to—

- (a) publish a statement under regulation 28 (public censure),
- (b) impose a penalty under regulation 29 (financial penalties),
- (c) impose a limitation on a permission under regulation 30 (limitations on permission to carry on regulated activities), or
- (d) exercise the power in regulation 32(2) (power of FCA to require restitution),

it must give the person concerned a warning notice.

(2) The warning notice must set out the following—

- (a) in the case of a statement under regulation 28, the terms of the proposed statement;
- (b) in the case of a penalty under regulation 29, the amount of the proposed penalty;
- (c) in the case of a limitation on a permission under regulation 30, the limitation and the period for which it is to have effect;
- (d) in the case of the exercise of the power in regulation 32(2), the amount which the FCA proposes to require to be paid or distributed as mentioned in regulation 32(2).

**Requirement to issue decision notice**

**40.**—(1) If, having considered any representations made in response to the warning notice, the FCA decides to—

- (a) publish a statement under regulation 28 (public censure);
- (b) impose a penalty under regulation 29 (financial penalties);
- (c) impose a limitation on a permission under regulation 30 (limitations on permission to carry on regulated activities); or
- (d) exercise the power in regulation 32(2) (power of FCA to require restitution),

it must without delay give the person concerned a decision notice.

(2) The decision notice must set out the following—

- (a) in the case of a statement under regulation 28, the terms of the statement;
- (b) in the case of a penalty under regulation 29, the amount of the penalty;
- (c) in the case of a limitation on a permission under regulation 30, the limitation and the period for which it is to have effect;
- (d) in the case of the exercise of the power in regulation 32(2)—
  - (i) the amount to be paid or distributed;
  - (ii) the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and
  - (iii) the arrangements in accordance with which the payment or distribution is to be made.

### Third party rights

**41.** After a statement under regulation 28 (public censure) is published, the FCA must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4) (third party rights) of the 2000 Act<sup>(1)</sup> (as applied by regulation 44 (application of Part 26 of the 2000 Act)).

### Service of notices

**42.—**(1) Section 414 of the 2000 Act (service of notices) applies for the purposes of this Part as if in subsection (1) and (4) for “this Act” there were substituted “the Small and Medium Sized Business (Credit Information) Regulations 2015”.

(2) The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001<sup>(2)</sup> apply to any notice, direction or document of any kind given by or to the FCA under this Part as they apply to any notice, direction or document of any kind under the 2000 Act.

### Statements of policy

**43.—**(1) Sections 210 (statements of policy) and 211 (statements of policy: procedure) of the 2000 Act<sup>(3)</sup> apply to the FCA with respect to—

- (a) the imposition of penalties or restrictions under regulations 29 (financial penalties) and 30 (limitations on permission to carry on regulated activities);
- (b) the amount of penalties imposed under regulation 29<sup>(1)</sup>; and
- (c) the period for which restrictions imposed under regulation 30 are to have effect,

as they apply with respect to action the FCA may take under sections 206 (financial penalties) and 206A (suspending permission to carry on regulated activities) of the 2000 Act<sup>(4)</sup>.

But see paragraph (2).

(2) Section 210 of the 2000 Act applies as if subsection (1A) were omitted.

### Application of Part 26 of the 2000 Act

**44.** Part 26 (notices) of the 2000 Act<sup>(5)</sup> applies for the purposes of this Part as if—

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(1) Section 393(4) is amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012.  
 (2) [S.I. 2001/1420](#). This has been amended by [S.I. 2005/274](#), [S.I. 2010/1193](#), [S.I. 2013/472](#), and [S.I. 2014/549](#).  
 (3) Section 210 is amended by paragraph 20 of Schedule 2 to the Financial Services Act 2010 and paragraph 17 of Schedule 9 to the Financial Services Act 2012. Section 211 is amended by paragraph 18 of Schedule 9 to the Financial Services Act 2012.  
 (4) Part 14 is amended by sections 9 and 10 of and Schedule 2 to the Financial Services Act 2010, Schedule 9 to the Financial Services Act 2012 and [S.I. 2013/1773](#).  
 (5) Part 26 is amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 ([c.23](#)), sections 13 and 24 of and paragraphs 28 and 29 of Schedule 2 to the Financial Services Act 2010, sections 17, 18, 19 and 24 of and paragraph

- (a) references to the PRA in that Part were omitted;
- (b) each reference in that Part to either regulator were a reference to the FCA only;
- (c) in section 387 (warning notices), subsections (1A) and (3A) were omitted;
- (d) in section 388 (decision notices), subsections (1A) and (2) were omitted;
- (e) in section 390 (final notices), in subsection (6) for “section 384(5)” there were substituted “regulation 32 of the Small and Medium Sized Business (Credit Information) Regulations 2015”;
- (f) in section 391 (publication)—
  - (i) in subsection (1) for “falling within subsection (1ZB)” there were substituted “given under regulation 39 of the Small and Medium Sized Business (Credit Information) Regulations 2015”;
  - (ii) subsections (1ZA), (1ZB), (4A), (5), (5A), (6A), (7A), (7B), (8A), (8), (10) and (11) were omitted;
- (g) section 391A were omitted;
- (h) for section 392(a) and (b) (application of sections 393 and 394) there were substituted—
  - “(a) a warning notice given in accordance with regulation 39 of the Small and Medium Sized Business (Credit Information) Regulations 2015;
  - (b) a decision notice given in accordance with regulation 40 of those Regulations.”
- (i) in section 395 (the FCA’s and PRA’s procedures)—
  - (i) for subsections (1) and (2) there were substituted—
    - “(1) The FCA must determine the procedure that it proposes to follow in relation to a decision which gives rise to an obligation for it to give a warning notice or decision notice.
    - (2) That procedure must be designed to secure, among other things, that a decision falling within subsection (1) is taken—
      - (a) by a person not directly involved in establishing the evidence on which the decision is based, or
      - (b) by two or more persons who include a person not directly involved in establishing that evidence.”;
  - (ii) subsections (3), (4), (9A) and (13) were omitted, and
  - (iii) in subsection (9), there were omitted “supervisory notice, or a” and “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)”.