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STATUTORY INSTRUMENTS

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**2017 No. 692**

**The Money Laundering, Terrorist Financing and Transfer  
of Funds (Information on the Payer) Regulations 2017**

**PART 9**

**Enforcement**

**CHAPTER 2**

**Civil penalties and notices**

**Power to impose civil penalties: fines and statements**

**76.**—(1) Paragraph (2) applies if a designated supervisory authority is satisfied that any person (“P”) has contravened a relevant requirement imposed on that person.

(2) A designated supervisory authority may do one or both of the following—

- (a) impose a penalty of such amount as it considers appropriate on P;
- (b) publish a statement censuring P.

(3) If a designated supervisory authority considers that another person who was at the material time an officer of P was knowingly concerned in a contravention of a relevant requirement by P, the designated supervisory authority may impose on that person a penalty of such amount as it considers appropriate.

(4) A designated supervisory authority must not impose a penalty on P under this regulation for contravention of a relevant requirement if the authority is satisfied that P took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(5) Where the FCA proposes to impose a penalty under this regulation on a PRA-authorised person or on a person who has a qualifying relationship with a PRA-authorised person, it must consult the PRA.

(6) In deciding whether P has contravened a relevant requirement, the designated supervisory authority must consider whether at the time P followed—

- (a) any relevant guidelines issued by the European Supervisory Authorities in accordance with—
  - (i) Articles 17, 18.4 or 48.10 of the fourth money laundering directive; or
  - (ii) Article 25 of the funds transfer regulation;
- (b) any relevant guidance which was at the time—
  - (i) issued by the FCA; or
  - (ii) issued by any other supervisory authority or appropriate body and approved by the Treasury.

(7) A penalty imposed under this Part is payable to the designated supervisory authority which imposes it.

(8) For the purposes of this regulation—

- (a) “appropriate” means (other than in references to an appropriate body) effective, proportionate and dissuasive;
- (b) “designated supervisory authority” means the FCA or the Commissioners.

**Power to impose civil penalties: suspension and removal of authorisation**

77.—(1) Paragraph (2) applies if the FCA is satisfied that a relevant person or a payment service provider has—

- (a) repeatedly or systematically failed to include the information it is required to include on the payer or the payee under Articles 4, 5 or 6 of the funds transfer regulation;
- (b) failed to implement effective risk-based procedures in breach of Articles 8 or 12 of the funds transfer regulation;
- (c) failed to comply with Articles 11, 12 or 16 of the funds transfer regulation, where the failure is a serious one;
- (d) repeatedly or systematically failed to retain records in breach of Article 16 of the funds transfer regulation; or
- (e) failed to comply with a relevant requirement.

(2) The FCA may take one or more of the measures set out in sub-paragraphs (a) and (b)—

- (a) to cancel or suspend, for such period as it considers appropriate—
  - (i) any permission which an authorised person has to carry on a regulated activity;
  - (ii) the authorisation of a payment service provider as an authorised payment institution under the Payment Services Regulations 2009<sup>(1)</sup>;
  - (iii) the registration of a payment service provider as a small payment institution under the Payment Services Regulations 2009;
  - (iv) the authorisation of a payment service provider as an authorised electronic money institution under the Electronic Money Regulations 2011<sup>(2)</sup>; or
  - (v) the registration of a payment service provider as a small electronic money institution under the Electronic Money Regulations 2011;
- (b) to impose, for such period as it considers appropriate, such limitations or other restrictions as it considers appropriate—
  - (i) in relation to the carrying on of a regulated activity by an authorised person;
  - (ii) on the authorisation of a payment service provider as a payment institution under the Payment Services Regulations 2009;
  - (iii) on the registration of a payment service provider as a small payment institution under the Payment Services Regulations 2009;
  - (iv) on the authorisation of a payment service provider as an electronic money institution under the Electronic Money Regulations 2011; or
  - (v) on the registration of a payment service provider as a small electronic money institution under the Electronic Money Regulations 2011.

(3) In paragraph (2)—

(1) S.I. 2009/209.

(2) S.I. 2011/99.

- (a) “permission” means any permission that the authorised person has, whether given (or treated as given) under Part 4A of FSMA(3);
- (b) “regulated activity” has the meaning given by section 22 of FSMA(4)).
- (4) The period for which a suspension, limitation or other restriction is to have effect may not exceed 12 months.
- (5) A suspension may relate only to the carrying on of an activity in circumstances specified by the FCA when the suspension is imposed.
- (6) A restriction may, in particular, be imposed so as to require the person concerned to take, or refrain from taking, specified action.
- (7) The FCA may—
  - (a) withdraw a suspension, limitation or other restriction; or
  - (b) vary a suspension, limitation or other restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (8) For the purposes of this regulation, “appropriate” means effective, proportionate and dissuasive.

#### **Power to impose civil penalties: prohibitions on management**

**78.**—(1) Paragraph (2) applies if a designated supervisory authority considers that another person who was at the material time an officer of P was knowingly concerned in a contravention of a relevant requirement by P.

(2) The designated supervisory authority may impose one of the following measures on the person concerned—

- (a) a temporary prohibition on the individual concerned holding an office or position involving responsibility for taking decisions about the management of a relevant person or a payment service provider (“having a management role”);
- (b) a permanent prohibition on the individual concerned having a management role.

(3) A prohibition may be expressed to expire at the end of such period as the designated supervisory authority may specify, but the imposition of a prohibition under paragraph (2)(a) that expires at the end of a specified period does not affect the designated supervisory authority’s power to impose a new prohibition under paragraph (2)(a).

(4) A prohibition imposed under paragraph (2) may be expressed to be a prohibition on an individual having a management role in—

- (a) a named relevant person or payment service provider;
- (b) a relevant person or payment service provider of a description specified by the designated supervisory authority when the prohibition is imposed; or
- (c) any relevant person or payment service provider.

(5) A relevant person or payment service provider must take reasonable care to ensure that no individual who is subject to a prohibition under paragraph (2) on having a management role with that relevant person or payment service provider is given such a role, or continues to act in such a role.

#### **Imposition of civil penalties**

**79.** Any one or more of the powers in regulations 76, 77 and 78 may be exercised by a designated supervisory authority in relation to the same contravention.

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(3) Part 4A was substituted by section 11 of the Financial Services Act 2012 (c.21).

(4) 2000 (c.8). Section 22 was amended by section 7 of the Financial Services Act 2012 (c.21).

**Injunctions**

**80.**—(1) If, on the application of a designated supervisory authority, the court is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a relevant requirement; or
- (b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) If on the application of a designated supervisory authority the court is satisfied—

- (a) that any person has contravened a relevant requirement; and
- (b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of a designated supervisory authority, the court is satisfied that any person may have—

- (a) contravened a relevant requirement; or
- (b) been knowingly concerned in the contravention of a relevant requirement,

the court may make an order restraining (or in Scotland an interdict prohibiting) that person from disposing or otherwise dealing with any assets belonging to that person which it is satisfied that that person is reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction in this regulation is exercisable by the High Court and the Court of Session.

(5) In paragraph (2), references to remedying a contravention include references to mitigating its effect.

**The FCA: disciplinary measures (procedure)**

**81.**—(1) When determining the type of sanction, and level of any penalty, to be imposed on a person (“P”) under regulation 76, 77 or 78, the FCA must take into account all relevant circumstances, including where appropriate—

- (a) the gravity and the duration of the contravention or failure;
- (b) the degree of responsibility of P;
- (c) the financial strength of P;
- (d) the amount of profits gained or losses avoided by P;
- (e) the losses for third parties caused by the contravention or failure;
- (f) the level of co-operation of P with the FCA;
- (g) previous contraventions or failures by P; and
- (h) any potential systemic consequences of the contravention or failure.

(2) If the FCA proposes to impose a sanction on P under regulation 76, 77 or 78 it must give P a warning notice.

(3) Where the FCA proposes to impose a penalty on a PRA-authorised person or on a person who has a qualifying relationship with a PRA-authorised person, it must consult the PRA.

(4) Section 387 of FSMA (warning notices)(5) applies in relation to a notice given under paragraph (2) as it applies in relation to a warning notice given by the FCA under that Act, subject to paragraph (5).

(5) In complying with section 387(1)(a), a warning notice must—

- (a) if it is about a proposal to publish a statement, set out the terms of the statement;
- (b) if it is about a proposal to impose a penalty, specify the amount of the penalty;
- (c) if it is about a proposal to impose a suspension, limitation or other restriction—
  - (i) state the period for which the suspension, limitation or restriction is to have effect,
  - (ii) sets out the terms of the suspension, limitation or other restriction;
- (d) if it is about a proposal to cancel, state the date from which the cancellation is to have effect;
- (e) if it is about a proposal to impose a prohibition on an individual, set out the terms of the proposed prohibition.

(6) If the FCA decides to impose a sanction on P under regulation 76, 77 or 78 it must without undue delay give P a decision notice.

(7) If the decision is to publish a statement, the decision notice must set out the terms of the statement.

(8) If the decision is to impose a penalty, the decision notice must specify the amount of the penalty.

(9) If the decision is to impose a suspension, limitation or other restriction, the decision notice must—

- (a) state the period for which the suspension, limitation or restriction is to have effect;
- (b) sets out the terms of the suspension, limitation or other restriction.

(10) If the decision is to cancel a permission, registration or authorisation, the decision notice must state the date from which the cancellation is to have effect.

(11) If the decision is to impose a prohibition on an individual, the decision notice must set out the terms of the prohibition.

(12) Section 388 of FSMA (decision notices)(6) applies in relation to a decision notice given under paragraph (6) as it applies in relation to a decision notice given by the FCA under FSMA, subject to paragraph (13).

(13) Section 388 of FSMA has effect for the purposes of paragraph (12) as if—

- (a) in subsection (1)(e)(i) for “this Act” there were substituted “regulation 93(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017”, and
- (b) subsections (1A) and (2) were omitted.

### **The FCA: procedure (general)**

**82.**—(1) Sections 389 (notices of discontinuance), 390 (final notices) and 392 (application of sections 393 and 394) to 395 (the FCA’s and PRA’s procedures) of FSMA(7) apply in relation to a

(5) Section 387 was amended by paragraph 26 of Schedule 9 to the Financial Services Act 2012 (c.21), paragraph 12 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33).

(6) Section 388 was amended (and subsection (1A) inserted) by paragraph 27 of Schedule 9 to the Financial Services Act 2012 and paragraph 13 of Schedule 3 to the Financial Services (Banking Reform) Act 2013.

(7) Section 389 was amended by paragraph 28 of Schedule 9 to the Financial Services Act 2012. Section 390 was amended by paragraph 29 of Schedule 9 to the Financial Services Act 2012 and S.I. 2010/22. Section 392 was amended by paragraph 29 of Schedule 2 to the Financial Services Act 2010 (c.28); section 18 of, paragraph 31 of Schedule 9, paragraph 37 of Schedule 8

warning notice given under regulation 81(2) and a decision notice given under regulation 81(6) as they apply in relation to a warning notice or decision notice given under FSMA, subject to paragraphs (2) to (3).

(2) Section 390 of FSMA has effect as if—

(a) for subsection (4) there were substituted—

“(4) A final notice about a cancellation, suspension, limitation or other restriction under regulation 77 or 78 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“the 2017 Regulations”) must—

(a) specify the permission, authorisation or registration which is being cancelled, suspended or the terms of the limitation or other restriction being imposed, and

(b) give details of—

(i) the date on which the cancellation, suspension, limitation or other restriction has effect, and

(ii) the period for which the suspension, limitation or other restriction is imposed.

(4A) A final notice about a prohibition under regulation 78 of the 2017 Regulations must—

(a) specify the extent of the prohibition; and

(b) give details of the date on which the prohibition has effect, and if relevant the period for which it has effect.”;

(b) subsections (6), (7) and (10) were omitted.

(3) Section 392 of FSMA has effect as if for paragraphs (a) and (b) there were substituted—

“(a) a warning notice given under regulation 81(2) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“the 2017 Regulations”);

(b) a decision notice given under regulation 81(6) of the 2017 Regulations.”.

### **The Commissioners: disciplinary measures (procedure)**

83.—(1) When determining the type of sanction, and level of any penalty, to be imposed on a person (“P”) under regulation 76 or 78, the Commissioners must take into account all relevant circumstances, including where appropriate—

(a) the gravity and the duration of the contravention or failure;

(b) the degree of responsibility of P;

(c) the financial strength of P;

(d) the amount of profits gained or losses avoided by P;

(e) the losses for third parties caused by the contravention or failure;

(f) the level of co-operation of P with the Commissioners;

(g) previous contraventions or failures by P; and

(h) any potential systemic consequences of the contravention or failure.

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and paragraph 8 of Schedule 13 to, the Financial Services Act 2012; section 4 of the Financial Services (Banking Reform) Act 2013 (c.33); S.I. 2007/126 and 2013/1388. Section 395 was amended by sections 17, 18, 19 and 24 of, and paragraph 34 of Schedule 9 to the Financial Services Act 2012, and paragraph 14 of Schedule 3 to the Financial Services (Banking Reform) Act 2013; S.I. 2005/381, 2005/1433, 2007/1973, 2009/534 and 2013/1388.

(2) Where the Commissioners decide to impose a penalty or publish a statement under regulation 76, or impose a prohibition under regulation 78, the Commissioners must give P a notice in accordance with paragraph (3).

(3) A notice must be given of—

(a) the Commissioners' decision—

- (i) to impose a penalty, and the amount of the penalty;
- (ii) to publish a statement, and the terms of the statement;
- (iii) to impose a prohibition, and the terms of the prohibition;

(b) the Commissioners' reasons for imposing a penalty, publishing a statement or imposing a prohibition;

(c) the right to a review under regulation 94; and

(d) the right to appeal under regulation 99.

(4) A notice about a penalty must—

(a) state the manner in which and the period within which, the penalty is to be paid;

(b) give details of the way in which the penalty may be recovered if it is not paid by the date stated in the notice.

### **Publication: the FCA**

**84.**—(1) Where a warning notice is given by the FCA under regulation 81(2), neither the FCA nor any person to whom it is given or copied may publish the notice or any details concerning it.

(2) Where the FCA gives a decision notice under regulation 81(6), the FCA must publish on their official website such information about the matter to which the notice relates as it considers appropriate, subject to paragraphs (3) to (9).

(3) Where the FCA publishes information under paragraph (2) or (4) about a matter to which a decision notice relates and the person to whom the notice is given refers the matter to the Upper Tribunal (see regulation 93), the FCA must, without undue delay, publish on its official website information about the status of the appeal and its outcome.

(4) Subject to paragraph (5), (6) and (9) where the FCA gives a final notice, it must, without undue delay, publish on its official website information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.

(5) Subject to paragraph (8) and (9), information about a matter to which a final notice relates must be published in accordance with paragraph (6) where—

- (a) the FCA considers it to be disproportionate to publish the identity of a legal person on whom the sanction or measure is imposed following an assessment by the FCA of the proportionality of publishing the person's identity;
- (b) the FCA considers it to be disproportionate to publish the personal data of the individual on whom the sanction or measure is imposed following an assessment by the FCA of the proportionality of publishing the personal data; or
- (c) the publication of information under paragraph (4) would jeopardise the stability of the financial markets or an ongoing investigation.

(6) Where paragraph (5) applies, the FCA must—

- (a) defer the publication of the information about a matter to which a final notice relates until such time as paragraph (5) ceases to apply; or
- (b) publish the information on an anonymous basis if publication on that basis would ensure the effective protection of any anonymised personal data in the information.

(7) Where paragraph (6)(b) applies, the FCA may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction or measure is imposed.

(8) The FCA may make arrangements for the postponed publication of personal data that is anonymised in information it publishes under paragraph (6)(b) if—

- (a) the publication of the data is postponed for a reasonable period of time; and
- (b) the FCA considers that paragraphs (5)(b) and (6)(b) will no longer apply in respect of that data at the time of the postponed publication.

(9) Information about a matter to which a final notice relates must not be published if publication in accordance with paragraph under paragraph (6) is considered by the FCA insufficient to ensure—

- (a) that the stability of the financial markets would not be put in jeopardy; or
- (b) that the publication of the information would be proportionate with regard to sanctions or measures which are considered by the FCA to be of a minor nature.

(10) Where the FCA publishes information in accordance with paragraphs (2) to (8), the FCA must ensure that the information remains on its official website for at least five years, unless the information is personal data and the Data Protection Act 1998(8) requires the information to be retained for a different period.

(11) For the purposes of this regulation “personal data” has the meaning given in section 1 of the Data Protection Act 1998 (basic interpretative provisions)(9).

### **Publication: the Commissioners**

**85.**—(1) Where the Commissioners give a notice under regulation 83, the Commissioners must publish on their official website such information about the matter to which the notice relates as they consider appropriate, subject to paragraphs (2) to (8).

(2) Where the Commissioners publish information under paragraph (1) or (3) about a matter to which a notice under regulation 83 relates and the person to whom the notice is given refers the matter to the tribunal (see regulation 99), the Commissioners must, without undue delay, publish on their official website information about the status of the appeal and its outcome.

(3) Subject to paragraph (4), (5) and (8) where the Commissioners give a notice under regulation 83, they must, without undue delay, publish on their official website information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.

(4) Subject to paragraph (7) and (8), information about a matter to which a notice under regulation 83 relates must be published in accordance with paragraph (5) where—

- (a) the Commissioners consider it to be disproportionate to publish the identity of a legal person on whom the sanction or measure is imposed following an assessment by the Commissioners of the proportionality of publishing the person’s identity;
- (b) the Commissioners consider it to be disproportionate to publish the personal data of the individual on whom the sanction or measure is imposed following an assessment by the Commissioners of the proportionality of publishing the personal data; or
- (c) the publication of information under paragraph (3) would jeopardise the stability of the financial markets or an ongoing investigation.

(5) Where paragraph (4) applies, the Commissioners must—

(8) 1998 (c.29).

(9) Section 1 was amended by section 68 of and Part 3 of Schedule 8 to the Freedom of Information Act 2000 (c.36), and by S.I. 2004/3089.

- (a) defer the publication of the information about a matter to which a notice under regulation 83 relates until such time as paragraph (4) ceases to apply; or
  - (b) publish the information on an anonymous basis if publication on that basis would ensure the effective protection of any anonymised personal data in the information.
- (6) Where paragraph (5)(b) applies, the Commissioners may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction or measure is imposed.
- (7) The Commissioners may make arrangements for the postponed publication of personal data that is anonymised in information they publish under paragraph (5)(b) if—
- (a) the publication of the data is postponed for a reasonable period of time; and
  - (b) the Commissioners consider that paragraphs (4)(b) and (5)(b) will no longer apply in respect of that data at the time of the postponed publication.
- (8) Information about a matter to which a notice relates must not be published if publication in accordance with paragraph under paragraph (5) is considered by the Commissioners insufficient to ensure—
- (a) that the stability of the financial markets would not be put in jeopardy; or
  - (b) that the publication of the information would be proportionate with regard to sanctions or measures which are considered by the Commissioners to be of a minor nature.
- (9) Where the Commissioners publish information in accordance with paragraphs (1) to (7), the Commissioners must ensure that the information remains on their official website for at least five years, unless the information is personal data and the Data Protection Act 1998<sup>(10)</sup> requires the information to be retained for a different period.
- (10) For the purposes of this regulation “personal data” has the meaning given in section 1 of the Data Protection Act 1998 (basic interpretative provisions)<sup>(11)</sup>.

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<sup>(10)</sup> 1998 (c.29).

<sup>(11)</sup> Section 1 was amended by section 68 of and Part 3 of Schedule 8 to the Freedom of Information Act 2000 (c.36), and by S.I. 2004/3089.