
STATUTORY INSTRUMENTS

2017 No. 692

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

PART 9

Enforcement

CHAPTER 1

General

Meaning of “relevant requirement”

75. For the purposes of this Part, “relevant requirement” has the meaning given in Schedule 6.

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-authorized person or on a person who has a qualifying relationship with a PRA-authorized 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⁽¹⁾;
 - (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⁽²⁾; 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;

⁽¹⁾ S.I. 2009/209.

⁽²⁾ S.I. 2011/99.

(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)—

(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.

(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).

(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.

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-authorized person or on a person who has a qualifying relationship with a PRA-authorized 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.

(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.

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 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;

(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 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.

- (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.

(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

⁽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.

- (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—
- (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⁽¹⁰⁾ 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)⁽¹¹⁾.

CHAPTER 3

Criminal offences, penalties and proceedings etc.

Criminal offence

86.—(1) A person who contravenes a relevant requirement imposed on that person is guilty of an offence and liable—

- (a) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding three months, to a fine or to both;
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding three months, to a fine not exceeding the statutory maximum or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both.

(2) In deciding whether a person has committed an offence under paragraph (1), the court must decide whether that person followed—

⁽¹⁰⁾ 1998 (c.29).

⁽¹¹⁾ 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) any guidelines issued by the European Supervisory Authorities in accordance with Article 17, 18.4 and 48.10 of the fourth money laundering directive or Article 25 of the funds transfer regulation; and
 - (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.
- (3) A person is not guilty of an offence under this regulation if that person took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (4) Where a person has been convicted of an offence under this regulation, that person is not also to be liable to a sanction under Chapter 2 of this Part.

Offences of prejudicing investigations

87.—(1) This regulation applies if a person (“P”) knows or suspects that an appropriate officer is acting (or proposing to act) in connection with an investigation into a potential contravention of a relevant requirement which is being or is about to be conducted.

- (2) P commits an offence if—
 - (a) P makes a disclosure which is likely to prejudice the investigation; or
 - (b) P falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.
- (3) P does not commit an offence under paragraph (2)(a) if—
 - (a) P does not know or suspect that the disclosure is likely to prejudice the investigation;
 - (b) the disclosure is made in the exercise of a function under these Regulations, or in compliance with a requirement imposed by or under these Regulations;
 - (c) the disclosure is made in the exercise of a function, or in compliance with a requirement imposed, by or under the Terrorism Act 2000(**12**);
 - (d) the disclosure is made in the exercise of a function, or in compliance with a requirement imposed, by or under the Proceeds of Crime Act 2002(**13**);
 - (e) the disclosure is made in the exercise of a function, or in compliance with a requirement imposed, under any Act relating to criminal conduct or benefit from criminal conduct; or
 - (f) P is a professional legal adviser and the disclosure falls within paragraph (6).
- (4) Criminal conduct is conduct which—
 - (a) constitutes an offence in any part of the United Kingdom; or
 - (b) would constitute an offence in any part of the United Kingdom if it occurred there.
- (5) A person benefits from conduct if that person obtains property as a result of or in connection with the conduct.
- (6) Subject to paragraph (7), a disclosure falls within this paragraph if it is a disclosure—
 - (a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client; or
 - (b) to any person in connection with legal proceedings or contemplated legal proceedings.

(12) 2000 c.11.

(13) 2002 c. 29.

(7) A disclosure does not fall within paragraph (6) if it is made with the intention of furthering a criminal purpose.

(8) P does not commit an offence under paragraph (2)(b) if—

- (a) P does not know or suspect that the documents are relevant in connection with the investigation; or
- (b) P does not intend to conceal any facts disclosed by the documents from any appropriate officer acting in connection with the investigation.

(9) A person guilty of an offence under paragraph (2) is liable—

- (a) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding three months, to a fine or to both,
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding three months, to a fine not exceeding the statutory maximum or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(10) For the purposes of this regulation—

“appropriate officer” means—

- (a) an officer of the FCA, including a member of the FCA’s staff or an agent of the FCA;
- (b) an officer of Revenue and Customs;
- (c) an employee or agent of a professional body listed in Schedule 1 who is authorised by the body to act on behalf of the body for the purposes of this Part; or
- (d) a relevant officer;

“relevant officer” means—

- (a) in Great Britain, an officer of a local weights and measures authority;
 - (b) in Northern Ireland, an officer of the Department for the Economy;
- acting pursuant to arrangements made with the FCA or with the Commissioners for the purposes of these Regulations.

Information offences

88.—(1) A person (“P”) commits an offence if, in purported compliance with a requirement imposed on P by or under these Regulations, P provides information to any person which is false or misleading in a material particular, and—

- (a) P knows that the information is false or misleading; or
- (b) P is reckless as to whether the information is false or misleading.

(2) A person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding three months, to a fine or to both,
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding three months, to a fine not exceeding the statutory maximum or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(3) A person who discloses information in contravention of a relevant requirement is guilty of an offence and liable—

(a) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding three months, to a fine or to both,

(ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding three months, to a fine not exceeding the statutory maximum or to both;

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

(4) It is a defence for a person charged with an offence under paragraph (3) of disclosing information to prove that they reasonably believed—

(a) that the disclosure was lawful; or

(b) that the information had already and lawfully been made available to the public.

Proceedings: general

89.—(1) Proceedings for an offence under these Regulations may be instituted by—

(a) order of the Commissioners;

(b) a local weights and measures authority;

(c) the Department for the Economy;

(d) the Director of Public Prosecutions; or

(e) the Director of Public Prosecutions for Northern Ireland.

(2) Where proceedings under paragraph (1) are instituted by order of the Commissioners, the proceedings must be brought in the name of an officer of Revenue and Customs.

(3) A local weights and measures authority must, whenever the FCA or (where the authority is acting pursuant to arrangements made with the Commissioners) the Commissioners require, report in such form and with such particulars as the FCA or the Commissioners require on the exercise of its functions under these Regulations.

(4) Where the Commissioners investigate, or propose to investigate, any matter with a view to determining—

(a) whether there are grounds for believing that an offence under these Regulations has been committed by any person; or

(b) whether a person should be prosecuted for such an offence,

that matter is to be treated as an assigned matter within the meaning of section 1(1) of the Customs and Excise Management Act 1979 (interpretation)(**14**).

(5) Paragraphs (1) and (3) do not extend to Scotland.

(6) In its application to the Commissioners acting in Scotland, paragraph (4)(b) is to be read as referring to the Commissioners determining whether to refer the matter to the Crown Office and Procurator Fiscal Service with a view to the Procurator Fiscal determining whether a person should be prosecuted for such an offence.

(14) 1979 c.2. The definition of “assigned matter” was substituted by paragraph 22 of Schedule 4 to the Commissioners of Revenue and Customs Act 2006 (c.11) and amended by section 24(7) of the Scotland Act 2012 (c.11) and section 7 of the Wales Act 2014 (c.29).

Proceedings: jurisdiction

90.—(1) Proceedings against any person for an offence under these Regulations may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.

(2) Proceedings against any person for an offence under these Regulations which cannot be taken under paragraph (1) may be taken at any appropriate court in the United Kingdom.

(3) An offence falling under these Regulations which is committed wholly or partly outside the United Kingdom may for all incidental purposes be treated as having been committed within the jurisdiction of the court where proceedings were taken.

Proceedings: partnership or unincorporated association

91.—(1) Proceedings for an offence alleged to have been committed by—

- (a) a partnership must be brought in the name of the partnership; or
- (b) an unincorporated association must be brought in the name of the association,

and not in that of its members.

(2) A fine imposed on—

- (a) a partnership on its conviction of an offence is to be paid out of the funds of the partnership; and
- (b) an unincorporated association on its conviction of an offence is to be paid out of the funds of the association.

(3) Rules of court relating to the service of documents are to have effect as if a partnership or unincorporated association were a body corporate.

(4) In proceedings for an offence brought against a partnership or an unincorporated association—

- (a) section 33 of the Criminal Justice Act 1925(**15**) (procedure on charge of offence against corporation) and Schedule 3 to the Magistrates' Courts Act 1980(**16**) (corporations) apply as they do in relation to a body corporate; and
- (b) section 18 of the Criminal Justice (Northern Ireland) Act 1945(**17**) (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(**18**) (corporations) apply as they do in relation to a body corporate.

Offence by bodies corporate, partnership or unincorporated association

92.—(1) If an offence under this Part committed by a body corporate is shown—

- (a) to have been committed with the consent or the connivance of an officer of the body corporate; or
- (b) to be attributable to any neglect on the part of an officer,

the officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(15) 1995 c.86. Section 33 was amended by Schedule 6 to the Magistrates' Court Act 1952 (c.55) and paragraph 19 of Schedule 8 to the Courts Act 1971 (c.23).

(16) 1980 c.43. Schedule 3 was amended by sections 25 and 101 and Schedule 13 to the Criminal Justice Act 1991; paragraph 51 of Schedule 3 and by Schedule 37 to the Criminal Justice Act 2003 (c.44).

(17) 1945 c.15 (N.I.1). Section 18 was amended by paragraph 1 of Schedule 12 to the Justice (Northern Ireland) Act 2002 (c.26) and by S.I. 1972/538 (N.I.1).

(18) S.I. 1981/1675 (N.I. 26).

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with their functions of management as if the member was a director of the body.

(3) If an offence under this Part committed by a partnership is shown—

(a) to have been committed with the consent or the connivance of an officer; or

(b) to be attributable to any neglect on the part of an officer,

that officer (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) If an offence under this Part committed by an unincorporated association (other than a partnership) is shown—

(a) to have been committed with the consent or the connivance of an officer of the association;
or

(b) to be attributable to any neglect on the part of an officer,

that officer (as well as the association) is guilty of the offence and is liable to be proceeded against and punished accordingly.