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## STATUTORY INSTRUMENTS

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# 2018 No. 1288

## The Securitisation Regulations 2018

### PART 2

#### Disciplinary measures and procedures

##### Temporary prohibition relating to management functions

5.—(1) If the appropriate regulator considers that an individual has contravened or has been knowingly concerned in the contravention of a relevant requirement, the appropriate regulator may impose a temporary prohibition on that individual from holding an office or position involving responsibility for taking decisions about the management of an originator, sponsor or SSPE.

(2) A temporary prohibition imposed under paragraph (1) expires at the end of such period as the appropriate regulator may specify, but the imposition of a temporary prohibition does not affect the appropriate regulator's power to impose a further temporary prohibition under paragraph (1).

(3) A temporary prohibition under paragraph (1) may relate to the management of—

- (a) a named originator, sponsor or SSPE;
- (b) an originator, sponsor or SSPE of a specified description; or
- (c) any originator, sponsor or SSPE.

(4) The appropriate regulator may revoke a temporary prohibition imposed by it under this regulation, or vary it so as to reduce the period for which it has effect.

##### Temporary prohibition relating to management functions: obligations on originator, sponsor or SSPE

6.—(1) An originator, sponsor or SSPE must take reasonable care to ensure that no individual holds an office or position involving responsibility for taking decisions about the management of that entity in contravention of a temporary prohibition imposed under regulation 5(1).

(2) Except in the cases given in paragraph (3), if an originator, sponsor or SSPE fails to comply with paragraph (1), it is taken to have contravened a requirement imposed by the FCA under these Regulations. If an originator, sponsor or SSPE fails to comply with paragraph (1) and—

- (a) it is a PRA authorised person or a SRUP; and
- (b) the temporary prohibition has been imposed by the PRA;

the originator, sponsor or SSPE is taken to have contravened a requirement imposed by the PRA under these Regulations.

##### Public censure

7.—(1) If the appropriate regulator considers that—

- (a) a SRUP has contravened a relevant requirement;

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- (b) a member of the management body of a SRUP was knowingly concerned in the contravention by the SRUP of a relevant requirement; or
- (c) another member of the senior management of a SRUP was knowingly concerned in the contravention by the SRUP of a relevant requirement;

the appropriate regulator may publish a statement to that effect.

(2) If the appropriate regulator considers that an individual on whom a temporary prohibition has been imposed under regulation 5 has breached the prohibition, the appropriate regulator may publish a statement to that effect.

### **Financial penalties**

**8.—**(1) If the appropriate regulator considers that—

- (a) a SRUP has contravened a relevant requirement;
- (b) a member of the management body of a SRUP was knowingly concerned in the contravention by the SRUP of a relevant requirement; or
- (c) another member of the senior management of a SRUP was knowingly concerned in the contravention by the SRUP of a relevant requirement;

the appropriate regulator may impose a penalty of such amount as it considers appropriate.

(2) If the appropriate regulator considers that an individual on whom a temporary prohibition has been imposed under regulation 5 has breached the prohibition, the appropriate regulator may impose a penalty of such amount as it considers appropriate on that individual.

(3) A penalty imposed under this regulation is payable to the appropriate regulator and may be recovered as a debt owed to the appropriate regulator.

### **Statements of policy**

**9.—**(1) The FCA and the PRA must prepare and issue a statement of policy with respect to their exercise of the following functions as appropriate regulator—

- (a) the imposition of a prohibition under regulation 5 (temporary prohibition relating to management functions);
- (b) the period of a prohibition under that regulation;
- (c) the imposition of penalties under regulation 8 (financial penalties); and
- (d) the amount of penalties under that regulation.

[<sup>F1</sup>(2) The policy must require the appropriate regulator, in determining the amount of a penalty to be imposed on any person, to take account of all relevant circumstances including, where appropriate—

- (a) the impact, gravity and duration of the contravention for which the penalty is to be imposed;
- (b) the extent of the person's responsibility for the contravention;
- (c) the financial position of the person;
- (d) the amount of profit gained or of loss avoided as a result of the contravention, so far as this can be determined;
- (e) the amount of loss sustained as a result of the contravention by any other person, so far as this can be determined;

- (f) the level of co-operation by the person with the appropriate regulator (without prejudice to the need to ensure that the person accounts for or makes good any profit gained or loss avoided as a result of the contravention);
  - (g) any previous contravention by the person for which a penalty was, or could have been, imposed under regulation 8.]
- (3) The FCA or the PRA may at any time alter or replace a statement issued by it under this regulation.
- (4) If a statement issued under this regulation is altered or replaced by the FCA or the PRA, the FCA or the PRA must issue the altered or replacement statement.
- (5) The FCA or the PRA must, without delay, give the Treasury a copy of any statement which it issues under this regulation.
- (6) A statement issued under this regulation by the FCA or the PRA must be published by the FCA or the PRA in the way appearing to the FCA or the PRA to be best calculated to bring it to the attention of the public.
- (7) The FCA or the PRA may charge a reasonable fee for providing a person with a copy of the statement.
- (8) In exercising, or deciding whether to exercise, its power under regulation 5 (temporary prohibition relating to management functions) or under regulation 8 (financial penalties) in the case of any particular contravention, the appropriate regulator must have regard to any statement of policy published by it under this regulation and in force at the time when the contravention in question occurred.

**F1** Reg. 9(2) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/660), regs. 1(2), **58(4)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### Statements of policy: procedure

- 10.**—(1) Before the appropriate regulator issues a statement under regulation 9 (statements of policy), the appropriate regulator must publish a draft of the proposed statement in the way appearing to the appropriate regulator to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by a notice that representations about the proposal may be made to the regulator within a specified time.
- (3) Before issuing the proposed statement the appropriate regulator must have regard to any representations made to it in accordance with paragraph (2).
- (4) If the appropriate regulator issues the proposed statement it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with paragraph (2); and
  - (b) its response to them.
- (5) If the statement differs from the draft published under paragraph (1) in a way which is, in the opinion of the appropriate regulator, significant, the appropriate regulator must (in addition to complying with paragraph (4)) publish details of the difference.
- (6) The appropriate regulator may charge a reasonable fee for providing a person with a copy of a draft published by it under paragraph (1).
- (7) This regulation also applies to a proposal to alter or replace a statement.

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## Restriction on penalties

**11.**—(1) A person who is convicted of an offence under section 398 of the Act <sup>F2</sup> as applied by paragraph 8 of Schedule 1 of these Regulations is not subsequently liable to a penalty under regulation 8 (financial penalties) in respect of the same acts or omissions that constituted the offence.

(2) A person on whom a penalty has been imposed under regulation 8 (financial penalties) is not subsequently liable for an offence under section 398 of the Act as applied by these Regulations in respect of the same contravention that led to the imposition of the penalty.

**F2** [Section 398](#) was amended by paragraph 36 of Schedule 9 to the [Financial Services Act 2012 \(c.21\)](#) and [S.I. 2013/1773](#). There are other amendments but none is relevant.

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**Changes and effects yet to be applied to :**

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)