



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XXVI

NOTICES

Publication

391 Publication.

[^{F1}(1) In the case of a warning notice falling within subsection (1ZB)—

- (a) neither the regulator giving the notice nor a person to whom it is given or copied may publish the notice,
- (b) a person to whom the notice is given or copied may not publish any details concerning the notice unless the regulator giving the notice has published those details, and
- (c) after consulting the persons to whom the notice is given or copied, the regulator giving the notice may publish such information about the matter to which the notice relates as it considers appropriate.

(1ZA) In the case of a warning notice not falling within subsection (1ZB), neither the regulator giving the notice nor a person to whom it is given or copied may publish the notice or any details concerning it.

(1ZB) A warning notice falls within this subsection if it is given under—

- (a) section 63B;
- (b) section 67;
- (c) section 87M;
- (d) section 88B;
- (e) section 89K;
- (f) section 89R;
- (g) section 92;
- (h) section 126;

Status: Point in time view as at 31/12/2020.

Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Publication is up to date with all changes known to be in force on or before 08 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (i) section 131H;
 - [^{F2}(ia) section 142N;]
 - (j) section 192L;
 - (k) section 207;
 - (l) section 312G;
 - (m) section 345B (whether as a result of section 345(2) or 345A(3) or section 249(1) [^{F3}or 261K(1)]).]
- [^{F4}(1A) A person to whom a decision notice is given or copied may not publish the notice or any details concerning it unless the [^{F5}regulator giving the notice] has published the notice or those details.]
- (2) A notice of discontinuance must state that, if the person to whom the notice is given consents, the [^{F6}regulator giving the notice] may publish such information as it considers appropriate about the matter to which the discontinued proceedings related.
- (3) A copy of a notice of discontinuance must be accompanied by a statement that, if the person to whom the notice is copied consents, the [^{F7}regulator giving the notice] may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.
- (4) [^{F8}The regulator giving a decision or final notice] must publish such information about the matter to which [^{F9}the notice] relates as it considers appropriate.
- [^{F10}(4A) Subsection (4) is subject to [^{F11}sections 391A [^{F12}, 391B [^{F13}, 391C [^{F14}391D, 391E and 391F]]]]].]
- (5) When a supervisory notice takes effect, the [^{F15}regulator giving the notice] must publish such information about the matter to which the notice relates as it considers appropriate.
- [^{F16}(5A) Subsection (5) does not apply in relation to a notice given in accordance with section 137S(5) or (8)(a) (but see section 137S(11)).]
- [^{F17}(6) The FCA may not publish information under this section if, in its opinion, publication of the information would be—
- (a) unfair to the person with respect to whom the action was taken (or was proposed to be taken),
 - (b) prejudicial to the interests of consumers, or
 - (c) detrimental to the stability of the UK financial system.
- (6A) The PRA may not publish information under this section if, in its opinion, publication of the information would be—
- (a) unfair to the person with respect to whom the action was taken (or was proposed to be taken),
 - (b) prejudicial to the safety and soundness of PRA-authorised persons, or
 - (c) in a case where section 2C applies, prejudicial to securing the appropriate degree of protection for policyholders.]

(7) Information is to be published under this section in such manner as the [^{F18}regulator] considers appropriate.

[^{F19}(7A)

[^{F19}(7B)

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(8) For the purposes of determining when a supervisory notice takes effect, a matter to which the notice relates is open to review if—

- (a) the period during which any person may refer the matter to the Tribunal is still running;
- (b) the matter has been referred to the Tribunal but has not been dealt with;
- (c) the matter has been referred to the Tribunal and dealt with but the period during which an appeal may be brought against the Tribunal’s decision is still running; or
- (d) such an appeal has been brought but has not been determined.

[^{F20}(8A) Where a decision notice or final notice relates to any decision or action under a provision of this Act in relation to the contravention of a [^{F21}CSD requirement], this section has effect subject to Article 62 of the CSD regulation (publication of decisions).]

[^{F22}(8AA) A “CSD requirement” is a requirement imposed by—

- (a) the CSD regulation,
- (b) any EU regulation, originally made under the CSD regulation, which is retained direct EU legislation, or
- (c) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the CSD regulation on or after IP completion day.]

[^{F23}(8B) Where a decision notice or final notice relates to any decision or action under a provision of this Act in relation to the contravention of a [^{F24}market abuse requirement], this section has effect subject to Article 34 of the market abuse regulation (publication of decisions).]

[^{F25}(8BA) A “market abuse requirement” is a requirement imposed by—

- (a) the market abuse regulation,
- (b) any EU regulation, originally made under the market abuse regulation, which is retained direct EU legislation, or
- (c) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the market abuse regulation on or after IP completion day.]

[^{F26}(8C) Where a decision notice, final notice or supervisory notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement imposed by or under Article 4 or 15 of the SFT regulation, this section has effect subject to Article 26 of the SFT regulation (publication of decisions).]

[^{F27}(8D) Where a decision notice, final notice or supervisory notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement imposed by—

- (a) Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (the “PRIIPs regulation”),^{F28} ...
- (b) any [^{F29}EU regulation, originally] made under the PRIIPs regulation, [^{F30}which is retained direct EU legislation,][^{F31}or
- (c) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the PRIIPs regulation on or after IP completion day.]

this section has effect subject to Article 29 of the PRIIPs regulation (publication of decisions).]

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[^{F32}(8E) Where a decision notice or final notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement [^{F33}imposed by—

- (a) the EU Benchmarks Regulation 2016,
- (b) any EU regulation, originally made under the EU Benchmarks Regulation 2016, which is retained direct EU legislation, or
- (c) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the EU Benchmarks Regulation on or after IP completion day,

this section] has effect subject to Article 45 of the EU Benchmarks Regulation 2016 (publication of decisions).]

^{F34}(8F)

[^{F35}(8G) Where a decision notice or final notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement [^{F36}imposed by—

- (a) the prospectus regulation,
- (b) any EU regulation, originally made under the prospectus regulation, which is retained EU law, or
- (c) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the prospectus regulation on or after IP completion day,

this section] has effect subject to Article 42 of the prospectus regulation (publication of decisions).]

(9) “Notice of discontinuance” means a notice given under section 389.

(10) “Supervisory notice” has the same meaning as in section 395.

[^{F37}(11) Section 425A (meaning of “consumers”) applies for the purposes of this section.]

Textual Amendments

- F1** S. 391(1)(1ZA)(1ZB) substituted for s. 391(1) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F2** S. 391(1ZB)(ia) inserted (1.1.2019) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [ss. 4\(3\), 148\(5\)](#); S.I. 2018/1306, art. 2(d)
- F3** Words in s. 391(1ZB)(m) inserted (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\)](#), [regs. 1, 3\(18\)](#) (with [reg. 24](#))
- F4** S. 391(1A) inserted (12.10.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 13\(3\), 26\(3\)](#); S.I. 2010/2480, [art. 2](#) (with [art. 4](#))
- F5** Words in s. 391(1A) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F6** Words in s. 391(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F7** Words in s. 391(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F8** Words in s. 391(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(4\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F9** Words in s. 391(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(4\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F10** S. 391(4A) inserted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 22](#)

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- F11** Words in s. 391(4A) substituted (26.11.2015) by The Transparency Regulations 2015 (S.I. 2015/1755), regs. 1(3), **4(5)**
- F12** Words in s. 391(4A) substituted (18.3.2016) by The Undertakings for Collective Investment in Transferable Securities Regulations 2016 (S.I. 2016/225), regs. 1, **2(7)**
- F13** Words in s. 391(4A) substituted (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. 45(a)** (with reg. 7)
- F14** Words in s. 391(4A) substituted (21.7.2019) by The Financial Services and Markets Act 2000 (Prospectus) Regulations 2019 (S.I. 2019/1043), regs. 1(1), **33(1)(a)** (with reg. 40)
- F15** Words in s. 391(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 30(5)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F16** S. 391(5A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 24(2)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F17** S. 391(6)(6A) substituted for s. 391(6) (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 30(6)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F18** Word in s. 391(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 30(7)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F19** S. 391(7A)(7B) omitted (31.12.2020) by virtue of The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **74(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F20** S. 391(8A) inserted (21.11.2014) by The Central Securities Depositories Regulations 2014 (S.I. 2014/2879), regs. 1(1), **6(2)**
- F21** Words in s. 391(8A) substituted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **74(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F22** S. 391(8AA) inserted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **74(4)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 33(g)(i)**); 2020 c. 1, **Sch. 5 para. 1(1)** Edit
- F23** S. 391(8B) inserted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, **10(17)(b)**
- F24** Words in s. 391(8B) substituted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **74(5)**; 2020 c. 1, Sch. 5 para. 1(1)
- F25** S. 391(8BA) inserted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **74(6)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 33(g)(ii)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F26** S. 391(8C) inserted (13.7.2016) by The Financial Services and Markets Act 2000 (Transparency of Securities Financing Transactions and of Reuse) Regulations 2016 (S.I. 2016/715), reg. 1(2), **Sch. 1 para. 1(4)**
- F27** S. 391(8D) inserted (1.1.2018) by The Packaged Retail and Insurance-based Investment Products Regulations 2017 (S.I. 2017/1127), reg. 1, **Sch. 2 para. 1**
- F28** Word in s. 391(8D)(a) omitted (31.12.2020) by virtue of The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **74(7)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F29** Words in s. 391(8D)(b) substituted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **74(7)(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F30** Words in s. 391(8D)(b) inserted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **74(7)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

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- F31** S. 391(8D)(c) and word inserted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **74(7)(c)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 33(g)(iii)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F32** S. 391(8E) inserted (27.2.2018) by The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135), regs. 1(2), **46**
- F33** Words in s. 391(8E) substituted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **74(8)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 33(g)(iv)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F34** S. 391(8F) omitted (31.12.2020) by virtue of The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **74(9)**; 2020 c. 1, Sch. 5 para. 1(1)
- F35** S. 391(8G) inserted (21.7.2019) by The Financial Services and Markets Act 2000 (Prospectus) Regulations 2019 (S.I. 2019/1043), regs. 1(1), **33(1)(b)** (with reg. 40)
- F36** Words in s. 391(8G) substituted (31.12.2020) by The Prospectus (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1234), regs. 1(4), **8** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 48(b)**) (with savings in S.I. 2019/680, **reg. 11** (as amended by S.I. 2019/1234, **reg. 29(2)**)); 2020 c. 1, **Sch. 5 para. 1(1)**
- F37** S. 391(11) substituted (8.4.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(1)(l), **Sch. 2 para. 28**

Modifications etc. (not altering text)

- C1** Pt. 26 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882), arts. 1(1), **3(11)**
- C2** Pt. 26 modified (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. 1 para. 22** (with reg. 7)
- C3** Pt. 26 applied (with modifications) (3.7.2017 for specified purposes, 3.1.2018 in so far as not already in force, 3.1.2018 in so far as not already in force) by The Data Reporting Services Regulations 2017 (S.I. 2017/699), regs. 1(2)(a)(b), **37**
- C4** Pt. 26 applied (with modifications) (1.1.2019) by The Securitisation Regulations 2018 (S.I. 2018/1288), reg. 1, **Sch. 1 para. 7** (with Sch. 1 paras. 13, 14)
- C5** S. 391 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c)**, 9 (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**
- C6** S. 391 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **9** (with reg. 1(2))
- C7** S. 391: power to amend conferred (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 37(2)(a)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- C8** S. 391 applied (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **56** (with regs. 52-58)
- C9** S. 391 applied (21.11.2014) by The Central Securities Depositories Regulations 2014 (S.I. 2014/2879), regs. 1(1), **5(11)**
- C10** S. 391 applied (with modifications) by S.I. 2014/2879, reg. 5C(11) (as inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **5(9)** (with regs. 7(4), 9(1)))
- C11** S. 391(1)(c) restricted (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013 (S.I. 2013/441), arts. 1(1), **33**
- C12** S. 391(4)(6)(7) applied (1.12.2001) by S.I. 2001/2957, **arts. 1**, 13(8)(a), S.I. 2001/3538, art. 2(1)
- C13** S. 391(4) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 61(7), 85(5)(b), 110(7), 115(5), 122(4), 129 (with art. 23(2))

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- C14** S. 391(6)(b) modified (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **65(3)(c)**
- C15** S. 391(8) applied (N.I.) (1.11.2004) by [Open-Ended Investment Companies Regulations \(Northern Ireland\) 2004 \(S.R. 2004/335\)](#), regs. 1(1)(b), **27(14)** (with reg. 1(2))
- C16** S. 391(8) applied (with modifications) by S.I. 2011/99, Sch. 2A para. 1(9)(10)(12) (as inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), **18(3)**)
- C17** S. 391(8) applied (with modifications) by S.I. 2009/209, Sch. 4A para. 1(9)(10) (as inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), **12(4)**)
- C18** S. 391(8) applied (1.1.2019) by [The Securitisation Regulations 2018 \(S.I. 2018/1288\)](#), regs. 1, **15(8)**
- C19** S. 391(8) applied (1.1.2019) by [The Securitisation Regulations 2018 \(S.I. 2018/1288\)](#), regs. 1, **22(8)**
- C20** S. 391(8)(a)-(d) applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(b)(v)(c), {11(13)} (with reg. 3)
- C21** S. 391(11) modified (18.6.2001) by [S.I. 2001/1821](#), arts. **1(1)**, 3(5)

[^{F38}**391A**[^{F39}**Publication: special provisions relating to** [^{F40}**capital requirements**]]

- (1) This section applies where a decision notice or final notice relates to the imposition of a penalty [^{F41}for breach of—
 - (a) a provision made in or under this Act for the purpose of implementing the capital requirements directive, or
 - (b) a provision of the capital requirements regulation.]
- (2) Where a regulator publishes information under section 391(4) about a matter to which a decision notice relates and the person to whom the notice is given refers the matter to the Tribunal, the regulator must, without undue delay, publish on its official website information about the status of the appeal and its outcome.
- (3) Subject to subsection (4), where a regulator gives a final notice, the regulator must publish information on the type and nature of the breach and the identity of the person on whom the penalty is imposed.
- (4) Information about a matter to which a final notice relates must be published anonymously where—
 - (a) the penalty is imposed on an individual and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
 - (b) publication would jeopardise the stability of financial markets or an ongoing criminal investigation; or
 - (c) publication would cause, insofar as it can be determined, disproportionate damage to the persons involved.
- (5) Where subsection (4) applies, the regulator 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 penalty is imposed.
- (6) Where a regulator publishes information in accordance with subsections (2) to (5), the regulator must—
 - (a) publish the information on its official website; [^{F42}and]

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- (b) ensure the information remains on its official website for at least five years, unless the information is personal data and [^{F43}the data protection legislation] requires the information to be retained for a different period; ^{F44}...
- ^{F44}(c)]

Textual Amendments

- F38** S. 391A inserted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(2), [Sch. 2 para. 23](#)
- F39** S. 391A heading substituted (26.11.2015) by [The Transparency Regulations 2015 \(S.I. 2015/1755\)](#), regs. 1(3), [4\(6\)](#)
- F40** Words in s. 391A heading substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), [75\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F41** Words in s. 391A(1) substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), [75\(3\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F42** Word in s. 391A(6)(a) inserted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), [75\(4\)\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F43** Words in s. 391A(6)(b) substituted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), [Sch. 19 para. 50](#) (with ss. 117, 209, 210); [S.I. 2018/625](#), reg. 2(1)(g)
- F44** S. 391A(6)(c) and word omitted (31.12.2020) by virtue of [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), [75\(4\)\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)

[^{F45}391B Publication: special provisions relating to [^{F46}transparency obligations]

- (1) This section applies where a decision notice, final notice or notice under section 89M relates to the imposition of a sanction or measure [^{F47}for breach of a provision made in or under this Act for the purpose of implementing the transparency obligations directive].
- (2) Where the FCA publishes information under section 391(4) or subsection (3) about a matter to which a decision notice or a notice under section 89M relates and the person to whom the notice is given refers the matter to the Tribunal—
- the FCA must include information to that effect in the publication at the time of the publication, or,
 - if the matter is referred to the Tribunal after the publication, the FCA must update the publication or publish that information separately.
- (3) Subject to subsection (4), where the FCA gives a final notice or a notice under section 89M, it must publish information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.
- (4) Information about a matter to which a final notice or a notice under section 89M relates may be published anonymously where—
- the sanction is imposed on an individual and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
 - failing to publish anonymously would seriously jeopardise the stability of the financial system or an ongoing official investigation; or

Status: Point in time view as at 31/12/2020.

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- (c) failing to publish anonymously would cause, insofar as it can be determined, disproportionate and serious damage to the persons involved.
- (5) Where subsection (4) 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.
- (6) In this section, the “transparency obligations directive” has the same meaning as in section 103(1).]

Textual Amendments

- F45** S. 391B inserted (26.11.2015) by [The Transparency Regulations 2015 \(S.I. 2015/1755\)](#), regs. 1(3), 4(7)
- F46** Words in s. 391B heading substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), 76(2); 2020 c. 1, Sch. 5 para. 1(1)
- F47** Words in s. 391B(1) substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), 76(3); 2020 c. 1, Sch. 5 para. 1(1)

[^{F48}391C] **Publication: special provisions relating to [^{F49}UCITS]**

- (1) This section applies where a supervisory notice, decision notice or final notice relates to the imposition of a sanction or measure [^{F50}for breach of a provision made in or under this Act for the purpose of implementing the UCITS directive].
- (2) Where the FCA publishes information under section 391(4) or (5) about a matter to which a decision notice or supervisory notice relates and the person to whom the notice is given refers the matter to the Tribunal, the FCA must, without undue delay, publish on its official website information about the status of the appeal and its outcome.
- (3) Subject to subsection (4), 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.
- (4) Subject to subsection (6), information about a matter to which a final notice relates must be published anonymously where—
 - (a) the sanction or measure is imposed on an individual and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
 - (b) failing to publish anonymously would jeopardise the stability of financial markets or an ongoing investigation; or
 - (c) failing to publish anonymously would cause, insofar as it can be determined, disproportionate damage to the persons involved.
- (5) Where subsection (4) 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.
- (6) Information about a matter to which a final notice relates must not be published where anonymous publication under subsection (4) is considered by the FCA to be insufficient to ensure—

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- (a) that the stability of the financial markets would not be put in jeopardy; or
 - (b) that the publication would be proportionate with regard to sanctions or measures which are considered by the FCA to be of a minor nature.
- (7) Where the FCA publishes information in accordance with subsections (2) to (5), the FCA must—
- (a) ensure the information remains on its official website for at least five years, unless the information is personal data and [^{F51}the data protection legislation] requires the information to be retained for a different period; ^{F52}...
 - ^{F52}(b)]

Textual Amendments

- F48** S. 391C inserted (18.3.2016) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2016 \(S.I. 2016/225\)](#), regs. 1, **2(8)**
- F49** Word in s. 391C heading substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **77(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F50** Words in s. 391C(1) substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **77(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F51** Words in s. 391C(7)(a) substituted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), **Sch. 19 para. 51** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)
- F52** S. 391C(7)(b) and word omitted (31.12.2020) by virtue of [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **77(4)**; 2020 c. 1, Sch. 5 para. 1(1)

[^{F53}391D] **Publication: special provisions relating to [^{F54}markets in financial instruments]**

- (1) This section applies where a supervisory notice, decision notice or final notice relates to the imposition of a sanction or measure [^{F55}for breach of—
 - (a) a provision made in or under this Act for the purpose of implementing the markets in financial instruments directive, or
 - (b) a provision of the markets in financial instruments regulation.]
- (2) Where a regulator publishes information under section 391(4) or (5) about a matter to which a supervisory notice or decision notice relates and the person to whom the notice is given refers the matter to the Tribunal, the regulator must, without undue delay, publish on its official website information about the status of the appeal and its outcome.
- (3) Subject to subsections (4), (5), and (8) where a regulator 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.
- (4) Subject to subsection (7) and (8), information about a matter to which a final notice relates must be published in accordance with subsection (5) where—
 - (a) a regulator 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 regulator of the proportionality of publishing the person's identity;

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- (b) a regulator considers it to be disproportionate to publish the personal data of an individual on whom the sanction or measure is imposed following an assessment by the regulator of the proportionality of publishing the personal data; or
 - (c) the publication of information under subsection (3) would jeopardise the stability of the financial markets or an ongoing investigation.
- (5) Where subsection (4) applies, a regulator must—
- (a) defer the publication of the information about a matter to which a final notice relates until such time as subsection (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 subsection (5)(b) applies, the regulator 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 regulator may make arrangements for the postponed publication of any personal data that is anonymised in information it publishes under subsection (5)(b) if—
- (a) publication of the data is postponed for a reasonable period of time; and
 - (b) the regulator considers that subsection (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 final notice relates must not be published if publication in accordance with subsection (5) is considered by the regulator 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 regulator to be of a minor nature.
- (9) Where a regulator publishes information in accordance with subsections (2) to (7), the regulator must—
- (a) ensure the information remains on its official website for at least five years, unless the information is personal data and [^{F56}the data protection legislation] requires the information to be retained for a different period; ^{F57} ...
 - ^{F57}(b)]

Textual Amendments

- F53** S. 391D 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. 46](#) (with reg. 7)
- F54** Words in s. 391D heading substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), [78\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F55** Words in s. 391D(1) substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), [78\(3\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F56** Words in s. 391D(9)(a) substituted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), [Sch. 19 para. 52](#) (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

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F57 S. 391D(9)(b) and word omitted (31.12.2020) by virtue of [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **78(4)**; 2020 c. 1, Sch. 5 para. 1(1)

[^{F58}391E. Publication: special provisions relating to [^{F59}insurance distribution]

- (1) This section applies where a supervisory notice, decision notice or final notice relates to the imposition of a sanction or measure [^{F60}for breach of a provision made in or under this Act for the purpose of implementing the insurance distribution directive].
- (2) Where a regulator publishes information under section 391(4) or (5) about a matter to which a decision notice or supervisory notice relates and the person to whom the notice is given refers the matter to the Tribunal, the regulator must, without undue delay, publish on its official website information about the status of the appeal and its outcome.
- (3) Subject to subsection (4), where the regulator 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.
- (4) The regulator may publish the information anonymously, defer publication of the information or withhold some, or all, of the information where—
 - (a) following an obligatory prior assessment, the regulator considers that publication of the identity of the person, or any personal data, would be disproportionate; or
 - (b) the regulator considers that publication would jeopardise the stability of financial markets or an ongoing investigation.

^{F61}(5)

- (6) In this section “supervisory notice” has the same meaning as in section 395.]

Textual Amendments

- F58** S. 391E inserted (1.10.2018) by [The Insurance Distribution \(Regulated Activities and Miscellaneous Amendments\) Order 2018 \(S.I. 2018/546\)](#), arts. 1(2), **16**
- F59** Words in s. 391E heading substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **79(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F60** Words in s. 391E(1) substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **79(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F61** S. 391E(5) omitted (31.12.2020) by virtue of [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **79(4)**; 2020 c. 1, Sch. 5 para. 1(1)

[^{F62}391F. Publication: special provisions relating to the prospectus regulation

- (1) Subsection (2) applies where a decision notice or final notice relates to the imposition of a sanction or measure [^{F63}for an infringement of the prospectus regulation], and —

Status: Point in time view as at 31/12/2020.

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- (a) following an assessment by the FCA of the proportionality of publishing personal data of a person on whom the sanction or measure is imposed, the FCA considers it disproportionate to do so, or
 - (b) publication of personal data of a person on whom the sanction or measure is imposed would jeopardise the stability of financial markets or an ongoing investigation.
- (2) The FCA—
- (a) if publication on an anonymous basis of information about the matter to which the notice relates would ensure the effective protection of the personal data, must publish the information on an anonymous basis;
 - (b) otherwise, must defer publication of the information until the conditions in subsection (1) cease to be met,
- but this is subject to subsection (4).
- (3) The FCA may make such arrangements as to the publication of information under subsection (2)(a) (including as to the timing of publication) as the FCA considers necessary to ensure effective protection of the personal data.
- (4) The FCA must not publish the notice, or information about the matter to which the notice relates, if actions under subsection (2) are considered by the FCA to be insufficient to ensure —
- (a) that the stability of the financial markets would not be put in jeopardy; or
 - (b) that, in cases involving sanctions or measures considered by the FCA to be of a minor nature, information is published only where it is proportionate to do so.
- (5) In this section, “personal data”, in relation to a person who is not an individual, means the person’s identity.]

Textual Amendments

- F62** S. 391F inserted (21.7.2019) by [The Financial Services and Markets Act 2000 \(Prospectus\) Regulations 2019 \(S.I. 2019/1043\)](#), regs. 1(1), **33(2)** (with reg. 40)
- F63** Words in s. 391F(1) substituted (31.12.2020) by [The Prospectus \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1234\)](#), regs. 1(4), **9** (with savings in S.I. 2019/680, reg. 11 (as amended by S.I. 2019/1234, reg. 29(2))); 2020 c. 1, Sch. 5 para. 1(1)

Status:

Point in time view as at 31/12/2020.

Changes to legislation:

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