
DRAFT STATUTORY INSTRUMENTS

2015 No.

**The Small and Medium Sized Business
(Finance Platforms) Regulations 2015**

PART 5

Monitoring of compliance and enforcement

CHAPTER 6

Misleading the FCA

Offence of misleading the FCA

31.—(1) A person must not, for the purposes of compliance or purported compliance with a relevant requirement, knowingly or recklessly give the FCA information which is false or misleading in a material particular.

- (2) A person must not provide information to another person—
- (a) knowing, or
 - (b) being reckless as to whether,

the information is false or misleading in a material particular and knowing that the information is to be provided to, or to be used for the purposes of providing information to, the FCA in connection with the discharge of its functions under this Part.

- (3) A person who contravenes paragraph (1) or (2) is guilty of an offence.
- (4) A person guilty of an offence under this regulation is liable—
- (a) on summary conviction, to a fine, or
 - (b) on conviction on indictment, to a fine.

Restriction on penalties

32. A person who is convicted of an offence under regulation 31 (misleading the FCA) is not subsequently liable to a penalty under regulation 26 (financial penalties) in respect of the same acts or omissions that constituted the offence.

Liability of officers of bodies corporate etc

- 33.**—(1) If an offence under regulation 31 committed by a body corporate is shown—
- (a) to have been committed with the consent or connivance of an officer; or
 - (b) to be attributable to any neglect of such officer,

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

(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 such member's functions of management as if the member were a director of the body.

(3) If an offence under regulation 31 committed by a partnership is shown—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect of such partner,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If an offence under regulation 31 committed by an unincorporated association (other than a partnership) is shown—

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

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

(5) In this regulation—

“officer”—

- (a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in that capacity; and
- (b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such capacity;

“partner” includes a person purporting to act as a partner.

Proceedings for offence

34.—(1) Proceedings for an offence under regulation 31 (misleading the FCA) may be instituted—

- (a) in England and Wales only by the FCA or by or with the consent of the Director of Public Prosecutions, or
- (b) in Northern Ireland only by the FCA or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(2) In exercising its power to institute proceedings for an offence under regulation 31, the FCA must comply with any conditions or restrictions imposed in writing by the Treasury in relation to such proceedings.

(3) Conditions or restrictions may be imposed under paragraph (2) in relation to—

- (a) proceedings generally; or
- (b) such proceedings, or categories of proceedings, as the Treasury may direct.

Further provisions relating to proceedings for offence

35.—(1) Proceedings for an offence under regulation 31 (misleading the FCA) alleged to have been committed by a partnership or other unincorporated association must be brought in the name of the partnership or association (and not in those of its members).

(2) A fine imposed on a partnership or unincorporated association on its conviction of an offence under regulation 31 is to be paid out of the funds of the partnership or 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 under regulation 31 brought against a partnership or unincorporated association—

- (a) section 33 (procedure on charge of offence against corporation) of the Criminal Justice Act 1925⁽¹⁾ and Schedule 3 to the Magistrates' Courts Act 1980⁽²⁾ apply as they do in relation to a body corporate;
- (b) sections 70 and 143 (proceedings against organisations) of the Criminal Procedure (Scotland) Act 1995⁽³⁾ apply;
- (c) section 18 (procedure on charge) of the Criminal Justice (Northern Ireland) Act 1945⁽⁴⁾ and Schedule 4 (corporations) to the Magistrates' Courts (Northern Ireland) Order 1981⁽⁵⁾ apply as they do in relation to a body corporate.

(5) Summary proceedings for an offence under regulation 31 may be taken—

- (a) against a body corporate or unincorporated association at any place at which it has a place of business;
- (b) against an individual at any place where that individual is for the time being.

(6) Paragraph (5) does not affect any jurisdiction exercisable apart from this regulation.

(1) 1925 c.86. Section 33 is amended by the Magistrates' Courts Act 1952 (c.55), section 132 and Schedule 6, the Courts Act 1971 (c.23), Schedule 8, and the Courts Act 2003 (c.39), Schedule 8, paragraph 71 and Schedule 10.

(2) 1980 c.43. Schedule 3 is amended by the Criminal Justice Act 1991 (c.53), section 25(2) and Schedule 13, and the Criminal Justice Act 2003 (c.44), Schedule 3, paragraph 51 and Schedule 37, Part 4.

(3) 1995 c.46. Section 70 is amended by section 66 of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13. Section 143 is amended by section 67 of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13, section 17 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 asp 6 and S.S.I. 2001/128.

(4) 1945 c.15.

(5) S.I. 1981/1675.