



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXVI

#### NOTICES

##### *Publication*

#### **391 Publication.**

[<sup>F1</sup>(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;

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- (i) section 131H;
- (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) [<sup>F2</sup>or 261K(1)]).

[<sup>F3</sup>(1A) A person to whom a decision notice is given or copied may not publish the notice or any details concerning it unless the [<sup>F4</sup>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 [<sup>F5</sup>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 [<sup>F6</sup>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) [<sup>F7</sup>The regulator giving a decision or final notice] must publish such information about the matter to which [<sup>F8</sup>the notice] relates as it considers appropriate.

[<sup>F9</sup>(4A) Subsection (4) is subject to [<sup>F10</sup>sections 391A [<sup>F11</sup>, 391B and 391C]].]

(5) When a supervisory notice takes effect, the [<sup>F12</sup>regulator giving the notice] must publish such information about the matter to which the notice relates as it considers appropriate.

[<sup>F13</sup>(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)).]

[<sup>F14</sup>(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-authorized 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 [<sup>F15</sup>regulator] considers appropriate.

[<sup>F16</sup>(7A) Where [<sup>F17</sup>a regulator] publishes information under subsection (4) or (5) in respect of a final notice or a supervisory notice which relates to a contravention of a requirement falling within subsection (7B) at the same time as it publishes the information it must notify ESMA that it has done so.

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- (7B) A requirement falls within this subsection if it is imposed—
- (a) by or under any provision made by or under this Act which implements Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse),
  - (b) by any directly applicable EU regulation made under that directive,
  - (c) by or under any provision made by or under this Act which implements the markets in financial instruments directive, or
  - (d) by any directly applicable EU regulation made under the markets in financial instruments directive.]
- (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.
- [<sup>F18</sup>(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 requirement imposed by the CSD regulation or any directly applicable regulation made under the CSD regulation, this section has effect subject to Article 62 of the CSD 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.
- [<sup>F19</sup>(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** 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)
- F3** 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)
- F4** 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.
- F5** 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.
- F6** 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.
- F7** 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.
- F8** Words in s. 391(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(4\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F9** 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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- F10** Words in s. 391(4A) substituted (26.11.2015) by The Transparency Regulations 2015 (S.I. 2015/1755), regs. 1(3), **4(5)**
- F11** 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)**
- F12** 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.
- F13** 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.
- F14** 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.
- F15** 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.
- F16** S. 391(7A)(7B) inserted (16.4.2012) by The Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916), regs. 1, **2(13)**
- F17** Words in s. 391(7A) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 30(8)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F18** S. 391(8A) inserted (21.11.2014) by The Central Securities Depositories Regulations 2014 (S.I. 2014/2879), regs. 1(1), **6(2)**
- F19** 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** 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)**
- C3** 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))
- C4** 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.
- C5** 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)
- C6** S. 391 applied (21.11.2014) by The Central Securities Depositories Regulations 2014 (S.I. 2014/2879), regs. 1(1), **5(11)**
- C7** 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**
- C8** 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)
- C9** 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))
- C10** 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)**
- C11** 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))
- C12** 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)**)
- C13** 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

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Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (S.I. 2014/366), arts. 1(3)(4), 12(4)

- C14** 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)
- C15** S. 391(11) modified (18.6.2001) by S.I. 2001/1821, arts. 1(1), 3(5)

[<sup>F20</sup>391A][<sup>F21</sup>Publication: special provisions relating to the capital requirements directive]

- (1) This section applies where a decision notice or final notice relates to the imposition of a penalty to which Article 68(1) of the capital requirements directive applies.
- (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;
  - (b) ensure the information remains on its official website for at least five years, unless the information is personal data and the Data Protection Act 1998 requires the information to be retained for a different period; and
  - (c) disclose to EBA any penalty imposed, any appeal against such a penalty and the outcome of the appeal, unless such a disclosure is not permitted by section 348.]

**Textual Amendments**

- F20** S. 391A inserted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 23
- F21** S. 391A heading substituted (26.11.2015) by The Transparency Regulations 2015 (S.I. 2015/1755), regs. 1(3), 4(6)

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**[<sup>F22</sup>391B Publication: special provisions relating to the transparency obligations directive**

- (1) This section applies where a decision notice, final notice or notice under section 89M relates to the imposition of a sanction or measure to which Article 29(1) of the transparency obligations directive applies.
- (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—
  - (a) the FCA must include information to that effect in the publication at the time of the publication, or,
  - (b) 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—
  - (a) the sanction 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 seriously jeopardise the stability of the financial system or an ongoing official investigation; or
  - (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**

**F22** S. 391B inserted (26.11.2015) by [The Transparency Regulations 2015 \(S.I. 2015/1755\)](#), regs. 1(3), 4(7)

**[<sup>F23</sup>391C Publication: special provisions relating to the UCITS directive**

- (1) This section applies where a supervisory notice, decision notice or final notice relates to the imposition of a sanction or measure to which Article 99 of the UCITS directive applies.
- (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.

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- (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—
  - (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 the Data Protection Act 1998 requires the information to be retained for a different period; and
  - (b) promptly report the information to ESMA.]

#### **Textual Amendments**

**F23** 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)**

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