



# 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;

*Status: Point in time view as at 03/07/2017. This version of this provision has been superseded.*

*Changes to legislation: Financial Services and Markets Act 2000, Section 391 is up to date with all changes known to be in force on or before 05 August 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;
- (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 [<sup>F12</sup>, 391C and 391D]]] .]

(5) When a supervisory notice takes effect, the [<sup>F13</sup>regulator giving the notice] must publish such information about the matter to which the notice relates as it considers appropriate.

[<sup>F14</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>F15</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>F16</sup>regulator] considers appropriate.

[<sup>F17</sup>(7A) Where [<sup>F18</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—
- <sup>F19</sup>(a) .....
  - <sup>F19</sup>(b) .....
  - (c) by or under any provision made by or under this Act which implements the markets in financial instruments directive, <sup>F20</sup>...
  - (d) by [<sup>F21</sup>or under] any directly applicable EU regulation made under the markets in financial instruments directive [<sup>F22</sup>; or
  - (e) by or under the markets in financial instruments regulation and any directly applicable EU regulation made under it.]]
- (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>F23</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).]
- [<sup>F24</sup>(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 requirement imposed by the market abuse regulation or a directly applicable EU regulation made under the market abuse regulation, this section has effect subject to Article 34 of the market abuse regulation (publication of decisions).]
- [<sup>F25</sup>(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).]
- (9) “Notice of discontinuance” means a notice given under section 389.
- (10) “Supervisory notice” has the same meaning as in section 395.
- [<sup>F26</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.](#)

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- 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**
- 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(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)
- F13** 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.
- F14** 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.
- F15** 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.
- F16** 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.
- F17** S. 391(7A)(7B) inserted (16.4.2012) by The Financial Services (Omnibus I Directive) Regulations 2012 (S.I. 2012/916), regs. 1, **2(13)**
- F18** 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.
- F19** S. 391(7B)(a)(b) omitted (3.7.2016) by virtue of The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, **10(17)(a)**
- F20** Word in s. 391(7B)(c) omitted (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 virtue of 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(b)(i)** (with reg. 7)
- F21** Words in s. 391(7B)(d) 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. 45(b)(ii)** (with reg. 7)
- F22** S. 391(7B)(e) and word 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. 45(b)(iii)** (with reg. 7)
- F23** S. 391(8A) inserted (21.11.2014) by The Central Securities Depositories Regulations 2014 (S.I. 2014/2879), regs. 1(1), **6(2)**
- F24** 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)**
- F25** 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)**
- F26** S. 391(11) substituted (8.4.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(1)(l), **Sch. 2 para. 28**

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#### **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** 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)**
- C5** 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))
- C6** 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.
- C7** 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)
- C8** S. 391 applied (21.11.2014) by [The Central Securities Depositories Regulations 2014](#) (S.I. 2014/2879), regs. 1(1), **5(11)**
- C9** 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**
- C10** 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)
- C11** 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))
- C12** 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)**
- C13** 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))
- C14** 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)**)
- C15** 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)**)
- C16** 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)
- C17** S. 391(11) modified (18.6.2001) by S.I. 2001/1821, **arts. 1(1), 3(5)**

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