
STATUTORY INSTRUMENTS

2015 No. 1945

**The Small and Medium Sized Business
(Credit Information) Regulations 2015**

PART 6

Monitoring of compliance and enforcement

CHAPTER 5

Injunctions and restitution

Injunctions

31.—(1) If, on the application of the FCA, the court is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a relevant requirement; or
- (b) that any person has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or, in Scotland, an interdict prohibiting) the contravention.

(2) If, on the application of the FCA, the court is satisfied—

- (a) that any person has contravened a relevant requirement; and
- (b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the FCA, the court is satisfied that any person may have—

- (a) contravened a relevant requirement imposed; or
- (b) been knowingly concerned in the contravention of such a requirement,

it may make an order restraining (or, in Scotland, an interdict prohibiting) them from disposing of, or otherwise dealing with, any assets of theirs which it is satisfied that they are reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(5) In paragraph (2), references to remedying a contravention include references to mitigating its effect.

Power of FCA to require restitution

32.—(1) The FCA may exercise the power in paragraph (2) if it is satisfied that a designated firm (referred to in this regulation as “the person concerned”) has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to the person concerned as a result of the contravention; or
- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The power referred to in paragraph (1) is a power to require the person concerned, in accordance with such arrangements as the FCA considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the FCA to be just having regard—

- (a) in a case within sub-paragraph (a) of paragraph (1), to the profits appearing to the FCA to have accrued;
- (b) in a case within sub-paragraph (b) of that paragraph, to the extent of the loss or other adverse effect;
- (c) in a case within both of those sub-paragraphs, to the profits appearing to the FCA to have accrued and to the extent of the loss or other adverse effect.

(3) In paragraph (2) “appropriate person” means a person appearing to the FCA to be someone—

- (a) to whom the profits mentioned in paragraph (1)(a) are attributable; or
- (b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).

Restitution orders

33.—(1) The court may, on the application of the FCA, make an order under paragraph (2) if it is satisfied that a designated firm has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to the designated firm as a result of the contravention; or
- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The court may order the designated firm to pay to the FCA such sum as appears to the court to be just having regard—

- (a) in a case within sub-paragraph (a) of paragraph (1), to the profits appearing to the court to have accrued;
- (b) in a case within sub-paragraph (b) of that paragraph, to the extent of the loss or other adverse effect;
- (c) in a case within both those sub-paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(3) Any amount paid to the FCA in pursuance of an order under paragraph (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.

(4) In paragraph (3), “qualifying person” means a person appearing to the court to be someone—

- (a) to whom the profits mentioned in paragraph (1)(a) are attributable; or
- (b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).

(5) On an application under paragraph (1) the court may require the designated firm to supply it with such accounts or other information as it may require for any one or more of the following purposes—

- (a) establishing whether any and, if so, what profits have accrued to them as mentioned in sub-paragraph (a) of that paragraph;
- (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in sub-paragraph (b) of that paragraph; and
- (c) determining how any amounts are to be paid or distributed under paragraph (3).

(6) The court may require any accounts or other information supplied under paragraph (5) to be verified in such manner as it may direct.

(7) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(8) Nothing in this regulation affects the right of any person other than the FCA to bring proceedings in respect of the matters to which this regulation applies.

Changes to legislation:

There are currently no known outstanding effects for the The Small and Medium Sized Business (Credit Information) Regulations 2015, CHAPTER 5.