
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under Part 1 of the Small Business Enterprise and Employment Act 2015 (c.26) and impose a duty on designated banks to provide specified information about their small and medium sized business customers that they reject for finance to designated finance platforms ('FPs'), and a duty, in turn, on designated FPs to provide specified information to finance providers who seek to access it.

Part 1 of the Regulations includes relevant definitions including in relation to the specified information that is within scope of the Regulations (this is set out fully in the Schedule). It also sets out what is meant by an unsuccessful finance application.

Part 2 of the Regulations places a duty on designated banks to provide specified information to designated FPs where a small or medium sized business has made an unsuccessful finance application. A number of exclusions to this duty are specified, and the duty only applies if the business to which the information relates has agreed. It specifies that designated banks must ask the business whether it agrees and the time at which it must do this and, where a business does agree, it provides that the designated bank must ask the business for any specified information which the bank does not hold.

Additionally, this Part places a duty on a designated FP to provide finance providers with access to information the FP has received by virtue of the Regulations, providing the finance provider has requested it, and has agreed to and, where relevant, met the designated FP's terms. It provides that information the designated FP initially makes available to a finance provider must not identify the business in question (or any person associated with the business), and that the business must only be identified to a finance provider where the finance provider subsequently requests it and the business has agreed that identifying information may be provided. It specifies the time periods in which a designated FP must maintain access to information and when such access must cease. Finally, this Part makes provisions for designated FPs to provide statistical information relating to information received and provided under the Regulations to the Treasury on request, and makes provision for this information to be provided anonymously.

Part 3 of the Regulations provides that the Treasury may designate a bank or a finance platform, and may revoke such a designation. It specifies criteria the Treasury must have regard to when considering whether to make such a designation, and other factors the Treasury may consider when making a designation or revocation. It provides that the Treasury may consult other persons when considering a designation or revocation, and that the Treasury may exercise this power on its own initiative or at the request of another person. It also specifies that the Treasury must publish details of designations and revocations and maintain a publicly accessible record of current designations.

Part 4 of the Regulations applies provisions in the Financial Services and Markets Act 2000 to extend the remit of the Financial Ombudsman Service ('FOS') so that a complaint may be referred to the FOS about a designated FP. This extends the remit of the FOS such that a person who would be able to seek a FOS decision when dealing with a FP authorised by the Financial Conduct Authority ('FCA') is also able to seek a FOS decision when dealing with a designated FP which is not so authorised. It provides that the FCA must make compulsory jurisdiction rules relating to the activity of designated FPs.

Part 5 of the Regulations makes provision in respect of the FCA. In particular, it confers on the FCA functions in relation to the monitoring of compliance with, and enforcement of, certain provisions of the Regulations (regulations 3, 4, 5, 6, 7 and 8 and any requirements on persons other than the

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FCA imposed under Part 4 or Part 5). In doing so, Part 5 applies certain provisions of primary and secondary legislation (with modifications) in respect of the FCA's function under the Regulations.

Part 6 of the Regulations provides that the Treasury must review the Regulations from time to time, and publish a report of its conclusions. The first such report must be published within five years of the commencement date of the Regulations, and thereafter at least every five years.

An impact assessment of the effect of the Regulations has been prepared and is available on the Government's website (<https://www.gov.uk>) or from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is annexed to the Explanatory Memorandum to these Regulations.