

2017 No. 1301

FINANCIAL SERVICES

**The Oversight of Professional Body Anti-Money Laundering
and Counter Terrorist Financing Supervision Regulations 2017**

<i>Made</i>	- - - -	<i>14th December 2017</i>
<i>Laid before Parliament</i>		<i>18th December 2017</i>
<i>Coming into force</i>	- -	<i>18th January 2018</i>

The Treasury are designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the prevention of money laundering and terrorist financing.

The Treasury, in exercise of the powers conferred by section 2(2) of that Act and by sections 168(4)(b) and 402(1)(b) of the Financial Services and Markets Act 2000^(c), make the following Regulations.

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 and come into force on 18th January 2018.

(2) Regulation 28 extends to Scotland only.

Interpretation

2. In these Regulations—

“The European Supervisory Authorities” means—

- (a) the European Securities and Markets Authority;
- (b) the European Banking Authority; and

(a) S.I. 2007/2133.

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment to section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), an order may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

(c) 2000 c.8. Section 168(4)(b) was amended by the Financial Services Act 2012 (c.21), Schedule 12, Part 1. Section 402(1) was amended by the Financial Services Act 2012, Schedule 9, Parts 1 and 7.

(c) the European Insurance and Occupational Pensions Authority;

“the FCA” means the Financial Conduct Authority;

“fourth money laundering directive” means Directive 2015/849/EU of the European Parliament and of the Council of 20th May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing^(a);

“FSMA” means the Financial Services and Markets Act 2000^(b);

“the MLR” means the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017^(c);

“self-regulatory organisation” means one of the professional bodies listed in Schedule 1 to the MLR;

“supervision requirement” means any requirement imposed by the MLR on a self-regulatory organisation (whether imposed on a self-regulatory organisation in terms or in its capacity as a supervisory authority within the meaning given by regulation 3 of the MLR).

Duties of the FCA

3. The FCA must have regard to the importance of ensuring that self-regulatory organisations comply with any supervision requirement—

- (a) when discharging the FCA’s functions under these Regulations; and
- (b) in drafting any guidance in relation to self-regulatory organisations that the FCA may issue under section 139A of FSMA^(d) in relation to the MLR.

PART 2

Applications

Application to be added to Schedule 1 to the MLR

4.—(1) This Part applies where a person (“the applicant”) wishes to be added to the list of self-regulatory organisations in Schedule 1 to the MLR.

(2) The applicant must make an application to the FCA in such manner as the FCA may specify, setting out how the applicant proposes to meet the supervision requirements and providing such other information as the FCA may specify as part of the application.

(3) At any time after receiving an application and before making a recommendation to the Treasury concerning the application, the FCA may require the applicant to provide such further information as the FCA reasonably considers necessary to enable it to make the recommendation.

(4) Any information to be provided to the FCA under this regulation must be in such form and verified in such manner as the FCA may reasonably specify.

Determination of applications

5.—(1) Before the end of the period of 6 months beginning with the date on which the FCA receives the completed application, the FCA must make a recommendation to the Treasury as to whether the applicant should be added to Schedule 1 to the MLR.

(2) The FCA may consider an incomplete application if, in the FCA’s opinion, it is appropriate to do so, but must in any event make a recommendation to the Treasury concerning such an

(a) OJ L 141, 05.06.15, p. 73.

(b) 2000 c.8.

(c) S.I. 2017/692.

(d) Section 139A was inserted by section 24(1) of the Financial Services Act 2012 (c.21).

application within 12 months beginning with the date on which it receives the incomplete application.

(3) The Treasury must take the FCA's recommendation into account when deciding whether to make regulations which add the applicant to Schedule 1 to the MLR.

PART 3

Information and directions

Interpretation

6. In this Part—

“body corporate”—

(a) includes—

(i) a body corporate incorporated under the laws of the United Kingdom or any part of the United Kingdom, and

(ii) a body corporate constituted under the law of a country or territory outside the United Kingdom;

(b) but does not include—

(i) a corporation sole, or

(ii) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;

“connected person”, in relation to a self-regulatory organisation, means—

(a) if the self-regulatory organisation is a body corporate, any person who is or has been—

(i) an officer or manager of the body corporate;

(ii) an employee of the body corporate;

(iii) an agent of the body corporate;

(iv) an officer, manager or agent of a parent undertaking of the body corporate;

(b) if the self-regulatory organisation is a partnership, any person who is or has been a member, manager, employee or agent of the partnership;

(c) if the self-regulatory organisation is an unincorporated association of persons (other than a partnership), any person who is or has been a member, officer, manager, employee or agent of the association;

“manager”, in relation to a body corporate, partnership or other unincorporated association, means a person who has control, authority or responsibility for managing the business of that body, partnership or association;

“officer” means—

(a) in relation to a body corporate or a parent undertaking of a body corporate—

(i) a director, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity, or

(ii) an individual who is a controller of the body, or a person purporting to act as a controller;

(b) in relation to an unincorporated association, any officer of the association or any member of its governing body, or a person purporting to act in such a capacity;

“officer of the FCA” means an officer or agent of the FCA or a member of the FCA's staff;

“skilled person” means a person appointed under regulation 13(2).

Power to require information

7.—(1) The FCA may, by notice in writing to a person who is (or was at any time) a self-regulatory organisation or a connected person, require that person to—

- (a) provide specified information, or information of a specified description;
- (b) produce specified documents, or documents of a specified description; or
- (c) attend before an officer of the FCA at a time and place specified in the notice and answer questions.

(2) The information or documents must be provided or produced—

- (a) before the end of such reasonable period as may be specified; and
- (b) at such place as may be specified.

(3) An officer of the FCA who has written authorisation from the FCA to do so may require a person who is (or was at any time) a self-regulatory organisation or a connected person without delay to—

- (a) provide the officer with specified information or information of a specified description; or
- (b) produce to the officer specified documents or documents of a specified description.

(4) The powers in this regulation may only be exercised in relation to information or documents which are reasonably required by the FCA in connection with the exercise by the FCA of any of its functions under these Regulations.

(5) Where the FCA or an officer of the FCA requires information to be provided or documents to be produced under paragraph (1) or (3), the FCA or the officer must give the reasons why the information is required to be provided or the documents produced, unless the disclosure of those reasons would be likely to prejudice any criminal investigation or criminal proceedings.

(6) An officer of the FCA may require—

- (a) information contained in a computer or other storage device, or recorded in any other way otherwise than in legible form to be produced to it in legible form or in a form from which the information can readily be produced in visible and legible form, and
- (b) any information provided under this regulation to be provided in such form as the officer may reasonably require.

(7) The production of a document does not affect any lien which a person has on the document.

Retention of documents provided under regulation 7

8.—(1) The FCA may retain any material which was provided under regulation 7 for so long as it is necessary to retain it (rather than copies of it) in connection with the exercise of the functions of the FCA under these Regulations for the purposes for which the information was required under regulation 7.

(2) If an officer of the FCA has reasonable grounds for suspecting that—

- (a) the material may need to be produced for the purposes of legal proceedings, and
- (b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

(3) A person claiming to be the owner of any material provided under regulation 7 may apply to the Crown Court or (in Scotland) the sheriff or the summary sheriff for an order for the delivery of the material to the person appearing to the court, the sheriff or the summary sheriff to be the owner.

(4) If on an application under paragraph (3) the court or (in Scotland) the sheriff or the summary sheriff cannot ascertain who is the owner of the material the court, the sheriff or the summary sheriff may make such order as the court, the sheriff or the summary sheriff thinks fit.

(5) An order under paragraph (3) or (4) does not affect the right of any person to take legal proceedings against any person in possession of material for the recovery of the material.

Provision of information: safeguards

9.—(1) A person may not be required under regulation 7—

- (a) to produce excluded material, or
- (b) to provide information, produce documents or answer questions which that person would be entitled to refuse to provide, produce or answer on grounds of legal professional privilege in proceedings in the High Court.

(2) The provision of information in accordance with regulation 7 is not to be taken to breach any restriction on the disclosure of information, however imposed.

(3) Where a disclosure is made in good faith in accordance with regulation 7 no civil liability arises in respect of the disclosure on the part of the person by whom, or on whose behalf, it is made.

(4) In the application of this regulation to Scotland, the references in paragraph (1)—

- (a) to proceedings in the High Court are to be read as references to proceedings in the Court of Session, and
- (b) to an entitlement on grounds of legal professional privilege are to be read as references to an entitlement on the grounds of confidentiality of communication—
 - (i) between professional legal advisers and their clients, or
 - (ii) made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings.

(5) For the purposes of paragraph (1)—

“excluded material” means personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which is held subject—

- (a) to an express or implied undertaking to hold it in confidence; or
- (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, including an enactment contained in, or made under, an Act passed after these Regulations;

“personal records” means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating to the individual’s physical or mental health.

Admissibility of statements

10.—(1) A statement made by a person in response to a requirement imposed under regulation 7(1)(c) may not be used in evidence against the person in criminal proceedings.

(2) Paragraph (1) does not apply—

- (a) on a prosecution for an offence under section 5 of the Perjury Act 1911 (false statements)(a);
- (b) on a prosecution for an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (false statements)(b);
- (c) on a prosecution for an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations)(c); or
- (d) for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in paragraph (1).

(3) A statement may not be used by virtue of paragraph (2)(d) against a person unless—

(a) 1911 c.6. Section 5 was amended by virtue of section 1(2) of the Criminal Justice Act 1948 (c.58).
(b) S.I. 1979/1714 (NI 19).
(c) 1995 c.39.

- (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked,
- by that person or on their behalf in the proceedings arising out of the prosecution.

Confidential information

11.—(1) Subject to paragraph (2), confidential information must not be disclosed by any of the following (each a “primary recipient”)—

- (a) the FCA;
- (b) any person who is or has been an officer of the FCA;
- (c) a skilled person;
- (d) any person who is or has been employed by a skilled person,

or by any person obtaining the information directly or indirectly from a primary recipient.

(2) This regulation does not prevent disclosure where the disclosure—

- (a) has the consent of—
 - (i) the person from whom the primary recipient obtained the information; and
 - (ii) if different, the person to whom it relates;
- (b) is made in accordance with regulation 12;
- (c) is made by a skilled person to the FCA (and the FCA is then treated for the purposes of paragraph (1) as a person obtaining the information from a primary recipient); or
- (d) is required by law.

(3) In this regulation, “confidential information” means information which—

- (a) relates to the business or other affairs of any person;
- (b) was received by the primary recipient for the purposes of, or in the discharge of, any functions of the primary recipient under these Regulations; and
- (c) is not prevented from being confidential information by paragraph (4).

(4) Information is not confidential information if—

- (a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this regulation; or
- (b) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.

Disclosure

12.—(1) The FCA may disclose information it holds to a relevant authority, provided the disclosure is made—

- (a) for purposes connected with the effective exercise of the functions of the FCA under these Regulations;
- (b) for purposes connected with the effective exercise of the functions of that relevant authority under these Regulations or the MLR; or
- (c) with a view to the institution of, or otherwise for the purposes of, any criminal or other enforcement proceedings.

(2) Information disclosed to a relevant authority under paragraph (1) may not be further disclosed by that authority except where the further disclosure—

- (a) has the consent of the person or persons mentioned in regulation 11(2)(a);
- (b) is made to another relevant authority for purposes connected with the effective exercise of the functions of either relevant authority under these Regulations or the MLR;

- (c) is made by, or to, the Secretary of State for purposes connected with the effective exercise of his or her functions under enactments relating to companies and insolvency;
- (d) is made with a view to the institution of, or otherwise for the purposes of, any criminal or other enforcement proceedings; or
- (e) is required by law.

(3) For the purposes of this regulation, “relevant authority” means—

- (a) the Commissioners for Her Majesty’s Revenue and Customs;
- (b) the Financial Reporting Council;
- (c) the Gambling Commission;
- (d) the Legal Services Board;
- (e) the National Crime Agency;
- (f) an overseas authority;
- (g) the police forces maintained under section 2 of the Police Act 1996^(a) (maintenance of police forces);
- (h) the Police of the Metropolis;
- (i) the Police for the City of London;
- (j) the Police Service of Scotland;
- (k) the Police Service of Northern Ireland;
- (l) a self-regulatory organisation;
- (m) the Secretary of State;
- (n) the Serious Fraud Office;
- (o) a skilled person;
- (p) the Treasury.

(4) For the purposes of paragraph (3)(f), an “overseas authority” means an authority within the meaning of regulation 50(4) of the MLR which undertakes to comply with such conditions in relation to the information as the FCA considers appropriate.

Report by a skilled person

13.—(1) This regulation applies where the FCA reasonably considers that a report by a skilled person, concerning a matter relating to the exercise of the FCA’s functions under these Regulations, is required in connection with the exercise by the FCA of any of its functions under these Regulations.

(2) The FCA may either—

- (a) by notice in writing to the self-regulatory organisation, require the self-regulatory organisation to appoint a skilled person to provide the FCA with a report on the matter concerned, or
- (b) itself appoint a skilled person to do so.

(3) When acting under paragraph (2)(a), the FCA may require—

- (a) the report to be in such form as may be specified in the notice; and
- (b) that the contract between the skilled person and the self-regulatory organisation contain certain terms that the FCA considers appropriate.

(4) The FCA must give notice in writing of an appointment under paragraph (2)(b) to the self-regulatory organisation.

^(a) 1996 c.16. Section 2 was amended by paragraph 3 and 4 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c.13).

- (5) References in this regulation to a skilled person are to a person—
- (a) appearing to the FCA to have the skills necessary to make a report on the matter concerned, and
 - (b) where the appointment is to be made by the self-regulatory organisation, nominated or approved by the FCA.

(6) Subject to paragraph (7), it is the duty of the self-regulatory organisation and any connected person to give the skilled person all such assistance as the skilled person may reasonably require.

(7) Regulation 9 applies to the provision of any information under paragraph (6) as it applies to the provision of information under regulation 7.

Directions

14.—(1) The FCA may give a direction in writing to a self-regulatory organisation.

(2) A direction may be given for the purpose of—

- (a) remedying a failure to comply with a supervision requirement;
- (b) preventing a failure to comply, or continued non-compliance, with a supervision requirement.

(3) A direction may require or prohibit the taking of specified action.

(4) In deciding whether to give a direction to a self-regulatory organisation, the FCA must consider whether at the time the self-regulatory organisation followed—

- (a) any relevant guidance which was at the time issued by the FCA;
- (b) any relevant guidelines issued by a European Supervisory Authority in accordance with Articles 17, 18(4) or 48(10) of the fourth money laundering directive.

PART 4

Enforcement and appeals

Interpretation

15. In this Part—

“censuring statement” means a statement published in accordance with regulation 16;

“recommendation for removal” means a recommendation made in accordance with regulation 17.

Public censure

16.—(1) If the FCA considers that a self-regulatory organisation has failed to comply with—

- (a) a supervision requirement,
- (b) a requirement under regulation 7 (power to require information), regulation 12 (disclosure), or regulation 13 (report by a skilled person),
- (c) a direction given under regulation 14, or
- (d) a requirement under regulation 27 (costs of supervision),

the FCA may publish a statement censuring the self-regulatory organisation.

(2) The FCA may publish a statement censuring a self-regulatory organisation which, in purported compliance with a supervision requirement or a requirement imposed on the self-regulatory organisation by or under these Regulations, provides information to the FCA which is false or misleading in a material particular and—

- (a) knows that the information is false or misleading, or

(b) is reckless as to whether the information is false or misleading.

(3) The FCA must not censure a self-regulatory organisation under this regulation for failure to comply with a requirement listed in paragraph (1) if the FCA is satisfied that the self-regulatory organisation took all reasonable steps and exercised all due diligence to ensure that such a requirement would be complied with.

(4) In deciding whether a self-regulatory organisation has failed to comply with a supervision requirement, the FCA must consider whether at the time the self-regulatory organisation followed—

- (a) any relevant guidance which was at the time issued by the FCA;
- (b) any relevant guidelines issued by a European Supervisory Authority in accordance with Articles 17, 18(4) or 48(10) of the fourth money laundering directive.

Recommendation for removal from Schedule 1 to the MLR

17.—(1) If the FCA is satisfied that a self-regulatory organisation has failed to comply with—

- (a) a supervision requirement,
- (b) a requirement under regulation 7, regulation 12 or regulation 13,
- (c) a direction given under regulation 14, or
- (d) a requirement under regulation 27,

the FCA may make a recommendation to the Treasury that the self-regulatory organisation is removed from Schedule 1 to the MLR.

(2) The FCA may make a recommendation for removal if, in purported compliance with a supervision requirement or a requirement imposed on the self-regulatory organisation by or under these Regulations, it provides information to the FCA which is false or misleading in a material particular and—

- (a) knows that the information is false or misleading, or
- (b) is reckless as to whether the information is false or misleading.

(3) The FCA must not make a recommendation for removal for failure to comply with a requirement listed in paragraph (1) if the FCA is satisfied that the self-regulatory organisation took all reasonable steps and exercised all due diligence to ensure that such a requirement would be complied with.

(4) In deciding whether a self-regulatory organisation has failed to comply with a supervision requirement, the FCA must consider whether at the time the self-regulatory organisation followed—

- (a) any relevant guidance which was at the time issued by the FCA;
- (b) any relevant guidelines issued by a European Supervisory Authority in accordance with Articles 17, 18(4) or 48(10) of the fourth money laundering directive.

(5) The Treasury must take the FCA's recommendation for removal into account when deciding whether to make regulations removing a self-regulatory organisation from Schedule 1 to the MLR.

Application of one or more measures

18. One or both of the measures in regulations 16 and 17 may be exercised in relation to the same contravention.

Procedure for disciplinary measures

19.—(1) If the FCA proposes to publish a censuring statement or make a recommendation for removal, it must give the self-regulatory organisation concerned a warning notice.

(2) Section 387 of FSMA(a) applies in relation to a notice given under paragraph (1) as it applies in relation to a warning notice given by the FCA under FSMA, subject to paragraph (3).

(3) In complying with section 387(1)(a), a warning notice must—

- (a) if it is about a proposal to publish a censuring statement, set out the terms of the proposed statement;
- (b) if it is about a proposal to make a recommendation for removal, set out the reasons for the proposal.

(4) If the FCA decides to publish a censuring statement or make a recommendation for removal, it must, without undue delay, give a decision notice to the self-regulatory organisation concerned.

(5) If the decision is to publish a censuring statement, the decision notice must set out the terms of the statement.

(6) If the decision is to make a recommendation for removal, the decision notice must set out the reasons for the decision.

(7) Section 388 (decision notices) of FSMA(b) applies in relation to a decision notice given under paragraph (4) as it applies in relation to a decision notice given by the FCA under FSMA.

Procedure (general)

20.—(1) Section 389 (notices of discontinuance) of FSMA(c) applies in relation to a warning notice given under regulation 19(1) and a decision notice given under regulation 19(4) as it applies in relation to warning notices or decision notices given under FSMA.

(2) Section 390 (final notices) of FSMA applies to a decision notice given under regulation 19(4) in relation to public censure as it applies in relation to decision notices given under FSMA, except with subsections (4) to (10) being omitted.

Publication

21.—(1) Where a warning notice is given by the FCA under regulation 19(1), neither the FCA nor any person to whom it is given or copied may publish the notice or any details concerning it.

(2) Where a decision notice is given by the FCA under regulation 19(4) relating to a recommendation for removal, neither the FCA nor any person to whom it is given or copied may publish the notice or any details concerning it.

(3) Where the FCA gives a decision notice under regulation 19(4) relating to public censure the FCA must, without undue delay, publish on its official website—

- (a) information on the type and nature of the breach, and on the identity of the self-regulatory organisation on whom the measure is imposed; and
- (b) such other information about the matter to which the notice relates as it considers appropriate,

subject to paragraphs (4) to (6).

(4) Where the FCA publishes information under paragraph (3) and the self-regulatory organisation concerned refers the matter to the Upper Tribunal (see regulation 22), the FCA must, without undue delay, publish on its official website information about the status of the appeal and its outcome.

(5) This paragraph applies where, in the FCA's opinion, publication of any information under paragraph (3) would—

- (a) jeopardise the stability of the financial markets or an ongoing investigation; or

(a) 2000 c.8. Section 387 was amended by paragraph 26 of Schedule 9 to the Financial Services Act 2012 and paragraph 12 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33).

(b) Section 388 has been amended (and subsection (1A) inserted) by paragraph 27 of Schedule 9 to the Financial Services Act 2012 and paragraph 13 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33).

(c) Section 389 has been amended by paragraph 28 of Schedule 9 to the Financial Services Act 2012.

(b) cause disproportionate damage to the persons involved.

(6) Where paragraph (5) applies, the FCA must defer publication of the information concerned until such time as paragraph (5) ceases to apply, except that—

(a) if paragraph (5) continues to apply five years after the decision notice, that information must not be published; and

(b) in the meantime, the FCA must publish such other information under paragraph (3) as would not have the effect mentioned in paragraph (5)(a) or (b).

(7) Where the FCA publishes information in accordance with paragraphs (3) to (6), the FCA must ensure that the information remains on its official website for at least five years, unless the information is personal data and the Data Protection Act 1998(a) requires the information to be retained for a different period.

(8) For the purposes of this regulation “personal data” has the meaning given in section 1 of the Data Protection Act 1998(b).

Appeals against decisions of the FCA

22.—(1) A self-regulatory organisation may appeal to the Upper Tribunal from a decision by the FCA to publish a censuring statement.

(2) The provisions of Part 9 of FSMA (hearings and appeals) apply, subject to the modifications set out in paragraph (3), in respect of appeals to the Upper Tribunal made under this regulation as they apply in respect of references made to that Tribunal under FSMA.

(3) Part 9 of FSMA has effect as if—

(a) in section 133 (proceedings before Tribunal: general provision), in subsection (7A)(c), after paragraph (o) there were inserted—

“(p) a decision to take action under regulation 16 of the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017.”; and

(b) for section 133A(d) there were substituted—

“Proceedings before Tribunal: decision notices

133A.—(1) The action specified in a decision notice given in relation to regulation 16 under regulation 19(4) of the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 must not be taken—

(a) during the period within which the matter to which the notice relates may be referred to the Tribunal under the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017; and

(b) if the matter is so referred, until the reference, and any appeal against the Tribunal’s determination, has been finally disposed of.

(2) The Tribunal may, on determining a reference under these Regulations in respect of a decision of the FCA, make recommendations as to its regulating provisions or its procedures.”.

(a) 1998 c.29.

(b) Section 1 was amended by section 68 of, and Part 3 of Schedule 8 to, the Freedom of Information Act 2000 (c.36) and by S.I. 2004/3089.

(c) 2000 (c.8). Subsection (7A) was inserted by section 23 of the Financial Services Act 2012 and amended by section 4(2) of the Financial Services (Banking Reform) Act 2013 and by S.I. 2013/1388; 2014/3329.

(d) Section 133A was inserted by S.I. 2010/22 and amended by section 23 of the Financial Services Act 2012.

Offences

23.—(1) If a person fails to comply with a requirement imposed on that person under regulation 7 or regulation 13, the FCA may certify that fact in writing to the court.

(2) If the court is satisfied that the person failed without reasonable excuse to comply with the requirement, it may deal with the person as if that person were in contempt.

(3) A person commits an offence if that person discloses information in contravention of regulation 11 or 12, or publishes information in contravention of regulation 21.

(4) A person guilty of an offence under paragraph (3) is liable—

(a) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding three months, to a fine or to both,

(ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding three months, to a fine not exceeding the statutory maximum or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(5) It is a defence for a person charged with an offence under paragraph (3) of disclosing or publishing information to prove that they reasonably believed—

(a) that the disclosure or publication was lawful; or

(b) that the information had already and lawfully been made available to the public.

(6) In this regulation, “court” means—

(a) the High Court;

(b) in Scotland, the Court of Session.

Proceedings

24. Proceedings for an offence under these Regulations may be instituted—

(a) in England and Wales, by the Director of Public Prosecutions; or

(b) in Northern Ireland, by the Director of Public Prosecutions for Northern Ireland.

Prescribed regulations

25. These Regulations are prescribed for the purposes of sections 168(4)(b) (appointment of persons to carry out investigations in particular cases) and 402(1)(b) (power of the FCA to institute proceedings for certain other offences) of FSMA(a).

PART 5

Miscellaneous Provisions

Recovery of charges through the court

26. Any charge imposed on a self-regulatory organisation by the FCA under these Regulations is a debt due from that self-regulatory organisation to the FCA, and is recoverable accordingly.

(a) 2000 c.8. Section 168(4)(b) was amended by Part 1 of Schedule 12 to the Financial Services Act 2012 (c.21); and section 402(1) was amended by Parts 1 and 7 of Schedule 9 to the Financial Services Act 2012.

Costs of supervision

27.—(1) The FCA may impose charges on—

- (a) an applicant under regulation 4;
- (b) a self-regulatory organisation for supervision by the FCA under these Regulations;
- (c) a self-regulatory organisation for expenses incurred by the FCA in relation to an appointment under regulation 13(2)(b).

(2) Charges levied under paragraph (1) must not exceed such amount as the FCA considers will enable it to meet any expenses reasonably incurred by it in carrying out its functions under these Regulations or for any incidental purpose.

(3) A self-regulatory organisation must, at such times and in such form as the FCA may direct, provide the FCA with such information as the FCA may require for the purpose of calculating charges under paragraph (1)(b).

Consequential amendment of the Solicitors (Scotland) Act 1980

28.—(1) The Solicitors (Scotland) Act 1980(a) is amended as follows.

(2) In the italic cross-heading before section 35 at the end insert “and fees”.

(3) In section 37A (accounts fee)—

- (a) for the heading substitute “Accounts and anti-money laundering fees”;
- (b) in subsection (1) for the words from “An annual fee” to “paid by each” substitute “An annual accounts fee (the “accounts fee”) and an annual anti-money laundering fee (the “anti-money laundering fee”) are to be paid by each”;
- (c) in subsection (2) for “The accounts fee is” substitute “The accounts fee and the anti-money laundering fee are”;
- (d) after subsection (3) insert—

“(3A) The anti-money laundering fee is to be set by the Council for the purpose of funding the exercise of their functions of—

- (i) complying with the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017, and
- (ii) securing compliance (by the categories specified in subsections (1) and (2)) with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017(b).”;
- (e) in subsection (4) for “The accounts fee is” substitute “The accounts fee and the anti-money laundering fee are”;
- (f) in subsections (5) and (6) in each case after “fee” insert “and the anti-money laundering fee”.

(4) In section 65(1) (interpretation) in the appropriate place insert—

““anti-money laundering fee” has the meaning given by section 37A(1);”.

Financial Conduct Authority

29. The functions of the FCA under these Regulations shall be treated for the purposes of Parts 1, 2 and 4 of Schedule 1ZA to FSMA(c) (the Financial Conduct Authority) as functions conferred on the FCA under FSMA.

(a) 1980 c.46. Section 37A was inserted by section 138(1) of the Legal Services (Scotland) Act 2010 (asp 16). Section 65 was amended by section 138(2) of the Legal Services (Scotland) Act 2010.

(b) S.I. 2017/692.

(c) 2000 c.8. Schedule 1ZA was substituted, with Schedule 1ZB, for Schedule 1 to the Financial Services and Markets Act 2000, by section 6(2) of the Financial Services Act 2012; and amended by paragraphs 14 and 16 of Schedule 3, and paragraph 7 of Schedule 8, to the Financial Services (Banking Reform) Act 2013; paragraph 13 of Schedule 3 to the

Notices

30. The provisions of the Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001^(a) apply in respect of any notice, direction or document given under these Regulations.

Application to the Crown

31.—(1) These Regulations bind the Crown.

(2) No contravention of a provision of these Regulations makes the Crown criminally liable.

(3) These Regulations apply to persons in the service of the Crown as they apply to other persons.

Review

32.—(1) The Treasury must from time to time—

(a) carry out a review of the regulatory provision contained in these Regulations, and

(b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 26th June 2022.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015^(b) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how Article 48 of the fourth money laundering directive is implemented in other member States.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

(a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),

(b) assess the extent to which those objectives are achieved,

(c) assess whether those objectives remain appropriate, and

(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Mark Spencer

David Rutley

14th December 2017

Two of the Lords Commissioners of Her Majesty’s Treasury

Pensions Scheme Act 2015 (c.8); section 18 of the Bank of England and Financial Services Act 2016 (c.14); and by S.I. 2013/1388.

(a) S.I. 2001/1420, amended by S.I. 2005/274, 2010/1193, 2013/472 and 2014/549.

(b) 2015 c.26.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give the Financial Conduct Authority (“FCA”) powers to supervise professional body anti-money laundering supervisors (“self-regulatory organisations”), in relation to compliance with anti-money laundering and counter terrorist financing requirements.

The requirements derive from the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) (“the MLR”) and the Fourth Money Laundering Directive 2015/849/EU of the European Parliament and of the Council of 20th May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing (OJ L 141, 05.06.2015, p.73) (“4MLD”). Article 48 of 4MLD requires Member States to ensure that competent authorities monitor effectively and take necessary measures to ensure compliance with 4MLD.

Part 1 (introduction) sets out the definitions and meanings that apply throughout these Regulations, and the duty on the FCA to have regard to the importance of ensuring that self-regulatory organisations comply with any supervision requirement placed on them by the MLR (regulation 3).

Part 2 (applications) sets out the process for applying to be considered for inclusion as a self-regulatory organisation (regulations 4 and 5).

Part 3 (information and directions) gives the FCA information gathering powers (regulation 7) and makes provision for the way in which the power in regulation 7 may be exercised (regulations 8 to 10). Regulation 11 prohibits the disclosure of confidential information by the FCA subject to regulation 12. Regulation 12 provides that the FCA may disclose information they hold in certain circumstances. Regulation 13 gives the FCA the power to commission or to require a self-regulatory organisation to commission and provide the FCA with a skilled person’s report. Regulation 14 gives the FCA the power to issue directions to a self-regulatory organisation.

Part 4 (enforcement and appeals) gives the FCA powers to impose measures on self-regulatory organisations who have contravened certain requirements (regulations 16 to 21), and regulation 22 provides for appeals against a decision by the FCA to publish a statement of censure. Regulations 23 to 25 make provision about criminal offences, investigations and proceedings.

Part 5 (miscellaneous provisions), among other things, ensures that charges imposed by the FCA may be recovered as a debt in civil proceedings (regulation 26) and ensures that the FCA can recover the costs of its supervision (regulation 27). Regulation 28 extends to Scotland only and makes a consequential amendment to the Solicitors (Scotland) Act 1980 in connection with fees.

A full regulatory impact statement of the effect that the Regulations will have on the costs of business and the voluntary sector is published with the Explanatory Memorandum to the Regulations on legislation.gov.uk.

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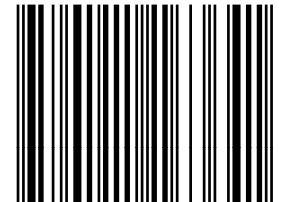
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