The Decision Procedure and Penalties manual

Chapter 1

Application and Purpose



#### 1.2 Introduction to statutory notices

#### Statutory and related notices

G 1.2.1

Section 395 of the Act (The FCA's and PRA's procedures) requires the FCA to publish a statement of its procedure for the giving of statutory notices. The procedure must be designed to secure, among other things, that the decision which gives rise to the obligation to give a statutory notice is taken by a person not directly involved in establishing the evidence on which that decision is based or by two or more persons who include a person not directly involved in establishing that evidence. The types of statutory notices and related notices, and the principal references to them in the Act and DEPP are set out in ■ DEPP 1.2.2 G.

1.2.2 G

Table: Summary of statutory and related notices

Notice	Description	Act reference	Further in- formation
Warning notice	Gives the recipient details about action that the FCA proposes to take and about the right to make representations.	Section 387	DEPP 2.2
Decision notice	Gives the recipient details about action that the FCA has decided to take. The FCA may also give a further decision notice if the recipient of the original decision notice consents.	Section 388	DEPP 2.3
Notice of discontinuance	Identifies proceedings set out in a warning notice or decision notice and which are not being taken or are being discontinued.	Section 389	DEPP 1.2.4 G and DEPP 3.2.26 G

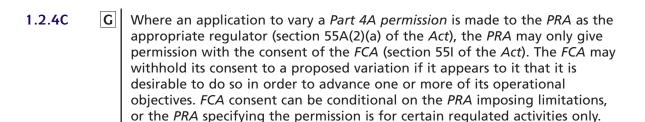
## **DEPP 1 : Application and Purpose**

Notice	Description	Act reference	Further in- formation
Final notice	Sets out the terms of the action that the FCA is taking.	Section 390	DEPP 1.2.4 G
Supervisory notice	Gives the recipient details about action that the FCA has taken or proposes to take, for example to vary a Part 4A permission.	Section 395(13)	DEPP 2.2 and DEPP 2.3

- In *DEPP* the *supervisory notice* about a matter first given to the recipient is referred to as the "first *supervisory notice*" and the *supervisory notice* given after consideration of any representations is referred to as the "second *supervisory notice*".
- The requirement in section 395 of the Act to publish a procedure for the giving of notices does not extend to the giving of a notice of discontinuance or a final notice. Neither of these notices is a statutory notice for the purposes of DEPP; nor is the decision to give such a notice a statutory notice associated decision.

## Decisions relating to applications for authorisation or approval made to the PRA

- Section 395 of the *Act* also requires the *FCA* to publish a statement of its procedure for decisions which give rise to an obligation for the *PRA* to include a statement under section 387(1A) in a *warning notice* or a statement under section 388(1A) in a *decision notice* as follows:
  - (1) Section 387(1A) provides that where the FCA proposes to refuse consent for the purposes of section 55F, 55I or 59 of the Act, or to give conditional consent as mentioned in section 55F(5), 55I(8) or 61(2D), the warning notice given by the PRA must (a) state that fact, and (b) give the reasons for the FCA's proposal.
  - (2) Section 388(1A) provides that where the FCA has decided to refuse consent for the purposes of section 55F, 55I or 59 of the Act, or to give conditional consent as mentioned in section 55F(5), 55I(8) or 61(2D), the decision notice given by the PRA must (a) state that fact, and (b) give the reasons for the FCA's decision.
- 1.2.4B G Where an application for *Part 4A permission* is made to the *PRA* as the appropriate regulator (section 55A(2)(a) of the *Act*), the *PRA* may only give permission with the consent of the *FCA* (section 55F of the *Act*). *FCA* consent can be conditional on the *PRA* imposing limitations or specifying the permission is for certain regulated activities only.



- 1.2.4D Where an application to perform a controlled function is made to the PRA as the appropriate regulator, the PRA can only approve a person to perform a controlled function with the consent of the FCA (section 59(4)(b) of the Act). Where the application is a relevant senior management application, the FCA's consent can be conditional on the PRA imposing conditions, or the PRA giving approval only for a limited period.
- G 1.2.4E The procedure must be designed to secure, among other things, that the decision is taken by a person not directly involved in establishing the evidence on which that decision is based, or by two or more persons who include a person not directly involved in establishing that evidence.

#### The decision makers

- G 1.2.5 Decisions on whether to give a *statutory notice* will be taken by a 'decision maker'. The FCA's assessment of who is the appropriate decision maker is subject to the requirements of section 395 of the Act and will depend upon the nature of the decision, including its complexity, importance and urgency. References to the 'decision maker' in DEPP are to:
  - (1) FCA staff under executive procedures; or
  - (2) the Regulatory Decisions Committee (RDC); or
  - (3) FCA staff under the settlement decision procedure.
- 1.2.6 The decision maker will also take decisions associated with a statutory notice (a 'statutory notice associated decision'). Statutory notice associated decisions include decisions:
  - (1) to set or extend the period for making representations;
  - (2) on whether the FCA is required to give a copy of the statutory notice to any third party and, if so, the period for the third party to make representations; and
  - (3) on whether to refuse access to FCA material, relevant to the relevant statutory notice, under section 394 of the Act.
- G 1.2.6A Statutory notice associated decisions do not include decisions relating to the publication of a statutory notice.
- G 1.2.7 In each case, the decision maker will make decisions by applying the relevant statutory tests, having regard to the context and nature of the matter, that

# **DEPP 1 : Application and Purpose**

is, the relevant facts, law, and FCA priorities and policies (including on matters of legal interpretation).

- 1.2.8 G The FCA will make and retain appropriate records of those decisions, including records of meetings and the representations (if any) and materials considered by the decision makers.
- **1.2.9 G** DEPP 2 to DEPP 5 set out:
  - (1) which decisions require the giving of statutory notices and who takes them (■ DEPP 2);
  - (2) the nature and procedures of the RDC (■ DEPP 3);
  - (3) the procedure for decision making by FCA staff under executive procedures (■ DEPP 4);
  - (4) the procedure for decision making by FCA staff under the settlement decision procedure ( DEPP 5).