Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Small and Medium Sized Business (Credit Information) Regulations 2015. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2015 No. 1945

FINANCIAL SERVICES AND MARKETS

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

Made - - - - 26th November 2015

Coming into force - - 1st January 2016

The Treasury make these Regulations in exercise of the powers conferred by sections 4, 6(1) to (8), 7(1) and (2), 28(2) and 161(2) of the Small Business, Enterprise and Employment Act 2015 [F1].

A draft of these Regulations has been laid before and approved by resolution of each House of Parliament in accordance with sections 6(10) and 161(4) of that Act.

F1 2015 c. 26.

PART 1

Introductory provisions

Citation and commencement

1.—(1) These Regulations may be cited as the Small and Medium Sized Business (Credit Information) Regulations 2015.

(2) These Regulations come into force on 1st January 2016.

Interpretation

2.—(1) In these Regulations—

"the 2000 Act" means the Financial Services and Markets Act 2000 [F2];

"credit information" means information, about a business, of a type specified in the Schedule;

"designated firm" means a designated bank or a designated credit reference agency;

"the FCA" means the Financial Conduct Authority;

"group" means a group as defined in section 474 of the Companies Act 2006 [F3]

"the PRA" means the Prudential Regulation Authority;

"relevant requirement" means a requirement on a designated bank under regulation 3 or regulation 5, a requirement on a designated credit reference agency under regulation 6 or 7, or any requirement or prohibition on a person other than the FCA imposed by or under Part 5 or Part 6;

"small or medium sized business" means a business of the type described in section 7(1) of the Small Business, Enterprise and Employment Act 2015, which—

(a) has an address in the United Kingdom,

(b) carries out commercial activities as its principal activity,

(c) is not part of a group which as a whole has an annual turnover which is equal to or greater than £25 million;

"subsidiary" means a subsidiary as defined in section 1159 of the Companies Act 2006.

(2) In these Regulations a reference to a finance provider does not include a reference to a finance provider that provides credit only by providing goods or services before payment of part or all of the amount to be paid for such goods or services.

F2 2000 c. 8.
F3 2006. c.46.

PART 2

Provision of credit information about small and medium sized businesses by banks and credit reference agencies

Designated banks to provide information to designated credit reference agencies

3.—(1) A designated bank must provide credit information that it holds about each customer of the bank which is a small or medium sized business to a designated credit reference agency if—

(a) the credit reference agency has requested that the bank provide the information;

(b) the request meets the requirements set out in regulation 4;

(2) But paragraph (1) does not require a bank to provide information about a customer who has not agreed to information being provided about it to the credit reference agency (see regulation 5).

(3) The bank must provide the information within a period of 30 days starting with the day on which the bank received the request.

(4) The bank must provide an update to the information in each month following the month in which the information was first provided, unless the credit reference agency has informed the bank in writing that it no longer requires such updates.

(5) Such update—

(a) need not include updated information relating to—

(i) a customer of the bank which has ceased to be a small or medium sized business; or

(ii) a former customer of the bank;

(b) must identify any customer or former customer in respect of which updated information is not provided reliant upon sub-paragraph (a), and in each case state whether such reliance is placed upon sub-paragraph (a)(i) or (a)(ii);

(c) must include information about any customer of the bank which is a small or medium sized business about which information has not previously been provided, if the customer has agreed to the information being provided to the credit reference agency (see regulation 5).

(6) The bank must provide the information and updates to the information—

(a) in a form agreed between the bank and the credit reference agency; or

(b) if there is no such agreement, electronically in a format which may be accessed using software commonly used to access financial information about businesses.

(7) When first providing information to each designated credit reference agency the bank must provide such information falling within paragraph 3 of the Schedule as it holds in relation to a period of six months ending on the date on which the bank provides the information.

Requests for information by credit reference agencies

4.—(1) A request under regulation 3(1)(a) must be made—

(a) in writing; and

(b) to the person identified by the bank to the credit reference agency, or identified by the bank to credit reference agencies generally, as the person to whom such requests should be made or, if no such person has been identified, to the head office of the bank.

(2) A request under regulation 3(1)(a)—

(a) may seek information falling within one or more of paragraphs 1 to 3 of the Schedule;

(b) must not seek only part of the information falling within one of those paragraphs which is held by a bank about its small and medium sized business customers.

Agreement by customers of banks

5.—(1) For the purposes of regulation 3(2) and (5)(c)—

(a) agreement may be indicated by inclusion in the terms on which a designated bank provides services to a customer of a term under which the customer agrees to the provision of information about the customer to credit reference agencies (including such a term included by way of a variation);

(b) agreement may relate to the provision of information about the customer to credit reference agencies generally; and

(c) agreement may be indicated by a term in a contract between the bank and its customer which predates the date of any request made under regulation 3(1)(a).

(2) Where a designated bank starts to provide a service referred to in the Schedule to a customer on or after the date on which these Regulations come into force, the bank must include in the standard terms on which it provides the service a term indicating the customer's agreement to the provision of information relating to that service under regulation 3(1).

Designated credit reference agencies to provide information to finance providers

6.—(1) A designated credit reference agency must provide credit information that it holds about a small or medium sized business to a finance provider for the purposes specified in paragraph (3) if—

(a) the finance provider has requested that the credit reference agency provide the information;

(b) the business to which the information relates has agreed to the information being provided to the finance provider and the finance provider has confirmed such agreement to the credit reference agency;

(c) the finance provider has agreed to the standard terms on which the credit reference agency provides credit information relating to small and medium sized businesses, including the payment of any fees for the provision of such information;

(d) the finance provider has met any conditions which are required by those terms to be met before the information is provided;

(e) in the case of a finance provider which is not a designated bank, the finance provider has agreed with the credit reference agency that it will, by the end of a period of 12 months starting on the day on which the credit reference agency first provides credit information to the finance provider and at other such time as it agrees with the credit reference agency, provide to the credit reference agency all credit information—

(i) that it holds about each customer of the finance provider which is a small or medium sized business (but see paragraph (2)); and

(ii) which relates to the period starting on the day on which the credit reference agency first provides credit information to the finance provider;

(f) the finance provider has confirmed that, in respect of any service referred to in the Schedule which it offers to provide to small or medium sized business customers in the future, the standard terms provide for agreement by the customer that the finance provider may provide credit information to credit reference agencies.

(2) A finance provider is not required to provide information pursuant to an agreement under paragraph (1)(e) if—

(a) the customer to which the information relates has not agreed to the provision of such information; or

(b) the provision of such information would be unlawful.

(3) Any information provided under paragraph (1) is provided for the purpose of assisting a finance provider to decide whether to offer a business any kind of finance, lending or credit having in particular regard to—

(a) the ability of the business to repay any debts resulting from the provision of such finance, lending or credit;

(b) the ability of the finance provider to verify the identity of persons related to the business and to take steps to prevent fraud;

(c) the ability of the finance provider or another party to recover debts resulting from the provision of such finance, lending or credit; or

(d) the need for the finance provider to comply with its statutory or other legal obligations relating generally to the provision of finance, lending or credit.

Designated credit reference agencies to provide information to the Bank of England

7.—(1) A designated credit reference agency must provide information received under regulation 3 or by virtue of regulation 6 to the Bank of England on request.

(2) The Bank of England must provide information received from a designated credit reference agency pursuant to paragraph (1) to the Treasury on request, but such information must be so framed that it is not possible to ascertain from it information relating to a particular small or medium sized business.

(3) The Bank of England may otherwise provide information received from a designated credit reference agency pursuant to paragraph (1) only where such disclosure is—

F4(a) . . . . . .

(b) to any F5... person where—

(i) such information has already lawfully been made available to the public;

(ii) such information 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 a particular person;

(iii) the person to whom the information relates has provided consent for such disclosure;

(iv) such disclosure is for the purposes of any criminal investigation or criminal proceedings whether in the United Kingdom or elsewhere;

(v) such disclosure is for the institution of, or otherwise for the purposes of, any proceedings arising by virtue of these Regulations or under the 2000 Act or any proceedings to which the Bank of England is, or is proposed to be, a party; or

(vi) such disclosure is in pursuance of an EU obligation.

F4(4) . . . . . .

F4(5) . . . . . .

F4 Reg. 7(3)(a)(4)(5) omitted (1.3.2017) by virtue of The Bank of England and Financial Services (Consequential Amendments) Regulations 2017 (S.I. 2017/80), reg. 1, **Sch. para. 45**

F5 Word in reg. 7(3)(b) omitted (1.3.2017) by virtue of The Bank of England and Financial Services (Consequential Amendments) Regulations 2017 (S.I. 2017/80), reg. 1, **Sch. para. 45**

Right of action for failure to provide information

8. A failure by a designated bank to comply with an obligation arising under regulation 3, or by a designated credit reference agency to comply with regulation 6, is actionable at the suit of a person who suffers loss as a result of such failure, subject to the defences and other incidents applying to actions for breach of statutory duty.

PART 3

Designation of banks and credit reference agencies

Power to designate banks and credit reference agencies and to revoke designations

9.—(1) The Treasury may designate a bank or a credit reference agency for the purposes of these Regulations, and may revoke such designation.

(2) A designation, or the revocation of a designation—

(a) takes effect on the date specified by the Treasury, or

(b) if no such date is specified, takes effect immediately.

(3) The Treasury may exercise the power in paragraph (1) on its own initiative or at the request of another person.

(4) Paragraph (1) is subject to the requirements set out in this Part.

Criteria for the designation of a bank

10.—(1) The Treasury may designate a bank only if it is—

(a) an institution that is a bank for the purposes of Part 1 of the Banking Act 2009 F6, or

(b) a finance provider that is a member of a banking group as defined in section 1164 of the Companies Act 2006 F7.