



# Legal Services Act 2007

## 2007 CHAPTER 29

### PART 4

#### REGULATION OF APPROVED REGULATORS

##### *Financial penalties*

### 37 Financial penalties

- (1) This section applies if the Board is satisfied—
  - (a) that an approved regulator has failed to comply with a requirement to which this section applies, and
  - (b) that, in all the circumstances of the case, it is appropriate to impose a financial penalty on the approved regulator.
- (2) This section applies to any requirement imposed on the approved regulator—
  - (a) by rules under section 30 (internal governance rules),
  - (b) by a direction given under section 32 (Board directions), or
  - (c) by section 51 (control of practising fees charged by approved regulators) or by rules under that section.
- (3) The Board may impose a penalty, in respect of the failure, of such an amount as it considers appropriate, but not exceeding the maximum amount prescribed under subsection (4).
- (4) The Board must make rules prescribing the maximum amount of a penalty which may be imposed under this section.
- (5) Rules may be made only under subsection (4) with the consent of the Lord Chancellor.
- (6) A penalty under this section is payable to the Board.
- (7) In sections 38 to 40 references to a “penalty” are to a penalty under this section.

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Legal Services Act 2007, Cross Heading: Financial penalties. (See end of Document for details)*

#### Commencement Information

- II** S. 37 wholly in force at 1.1.2010; s. 37 not in force at Royal Assent see s. 211; s. 37(4)(5) in force at 1.1.2009 by S.I. 2008/3149, **art. 2(c)(i)**; s. 37 in force otherwise at 1.1.2010 by S.I. 2009/3250, **art. 2(c)(i)** (with art. 9)

### 38 Financial penalties: procedure

- (1) If the Board proposes to impose a penalty on an approved regulator, it must give notice to the approved regulator—
  - (a) stating that the Board proposes to impose a penalty and the amount of the penalty proposed to be imposed,
  - (b) specifying the failure to which the proposed penalty relates,
  - (c) specifying the other facts which, in the Board's opinion, justify the imposition of a penalty and the amount of the penalty, and
  - (d) specifying the time (not being earlier than the end of the period of 21 days beginning with the day on which the notice is published under subsection (8)) before which representations with respect to the proposed penalty may be made.
- (2) Before imposing a penalty on an approved regulator, the Board must consider any representations which are duly made.
- (3) Where the Board proposes to vary the amount of a proposed penalty stated in a notice under subsection (1)(a), the Board must give notice to the approved regulator—
  - (a) setting out the proposed variation and the reasons for it, and
  - (b) specifying the time (not being earlier than the end of the period of 21 days beginning with the day on which the notice is published under subsection (8)) before which representations with respect to the proposed variation may be made.
- (4) Before varying the proposal, the Board must consider any representations which are duly made.
- (5) As soon as practicable after imposing a penalty, the Board must give notice to the approved regulator—
  - (a) stating that it has imposed a penalty on the approved regulator and its amount,
  - (b) specifying the failure to which the penalty relates,
  - (c) specifying the other facts which, in the Board's opinion, justify the imposition of the penalty and its amount, and
  - (d) specifying a time (not being earlier than the end of the period of 3 months beginning with the day on which the notice is given to the approved regulator), before which the penalty is required to be paid.
- (6) The approved regulator may, within the period of 21 days beginning with the day on which it is given the notice under subsection (5), make an application to the Board for it to specify different times by which different portions of the penalty are to be paid.
- (7) If an application is made under subsection (6) in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (8) The Board must publish any notice given under this section.

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### **39 Appeals against financial penalties**

- (1) An approved regulator on whom a penalty is imposed may appeal to the court on one or more of the appeal grounds.
- (2) The appeal grounds are—
  - (a) that the imposition of the penalty was not within the power of the Board under section 37;
  - (b) that any of the requirements of section 38 have not been complied with in relation to the imposition of the penalty and the interests of the approved regulator have been substantially prejudiced by the non-compliance;
  - (c) that the amount of the penalty is unreasonable;
  - (d) that it was unreasonable of the Board to require the penalty imposed or any portion of it to be paid by the time or times by which it was required to be paid.
- (3) An appeal under subsection (1) must be made—
  - (a) within the period of 3 months beginning with the day on which the notice under section 38(5) is given to the approved regulator in respect of the penalty, or
  - (b) where the appeal relates to a decision of the Board on an application by the approved regulator under section 38(6), within the period of 3 months beginning with the day on which the approved regulator is notified of the decision.
- (4) On any such appeal, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the appeal grounds, the court may—
  - (a) quash the penalty,
  - (b) substitute a penalty of such lesser amount as the court considers appropriate, or
  - (c) in the case of the appeal ground in subsection (2)(d), substitute for any time imposed by the Board a different time or times.
- (5) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such time, as it considers just and equitable.
- (6) Where the court specifies as a time by which the penalty, or a portion of the penalty, is to be paid a time before the determination of the appeal under this section, it may require the payment of interest on the penalty, or portion, from that time at such rate as it considers just and equitable.
- (7) Except as provided by this section, the validity of a penalty is not to be questioned by any legal proceedings whatever.
- (8) In this section “the court” means the High Court.

### **40 Recovery of financial penalties**

- (1) If the whole or any part of a penalty is not paid by the time by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (c. 110).

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- (2) If an appeal is made under section 39 in relation to a penalty, the penalty is not required to be paid until the appeal has been determined or withdrawn.
- (3) If the Board grants an application under subsection (6) of section 38 in relation to a penalty but any portion of the penalty is not paid by the time specified in relation to it by the Board under that subsection, the Board may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.
- (4) Where a penalty, or any portion of it, has not been paid by the time when it is required to be paid and—
  - (a) no appeal relating to the penalty has been made under section 39 during the period within which such an appeal can be made, or
  - (b) an appeal has been made under that section and determined or withdrawn,the Board may recover from the approved regulator, as a debt due to the Board, any of the penalty and any interest which has not been paid.

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