



# Regulatory Enforcement and Sanctions Act 2008

## 2008 CHAPTER 13

### PART 3

#### CIVIL SANCTIONS

##### *Orders under Part 3: introductory*

#### **36 Power to make orders providing for civil sanctions**

- (1) A Minister of the Crown may by order in accordance with this Part make—
  - (a) the provision specified in section 39 (fixed monetary penalties);
  - (b) the provision specified in section 42 (discretionary requirements);
  - (c) the provision specified in section 46 (stop notices);
  - (d) the provision specified in section 50 (enforcement undertakings).
- (2) The Welsh Ministers may by order in accordance with this Part make any such provision, where the provision relates to a Welsh ministerial matter.
- (3) An order under this Part is to be made by statutory instrument.

#### **37 “Regulator”**

- (1) In this Part, “regulator” means—
  - (a) a person specified in Schedule 5 (in this Part called a “designated regulator”),  
or
  - (b) a person, other than a designated regulator, who has an enforcement function in relation to an offence to which subsection (2) applies.
- (2) This subsection applies to an offence contained, immediately before the day on which this Act is passed, in an enactment specified in Schedule 6.

*Status: Point in time view as at 01/10/2008.*

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- (3) Subsection (1)(b) does not include—
- (a) the Crown Prosecution Service,
  - (b) a member of a police force in England or Wales,
  - (c) a Procurator Fiscal,
  - (d) a constable of a police force in Scotland,
  - (e) the Public Prosecution Service for Northern Ireland, or
  - (f) a member of the Police Service of Northern Ireland.

### **38 “Relevant offence”**

- (1) In this Part, “relevant offence”, in relation to a designated regulator, means an offence—
- (a) in relation to which the designated regulator has an enforcement function, and
  - (b) which is contained in an Act immediately before the day on which this Act is passed.
- (2) In this Part “relevant offence”, in relation to a regulator other than a designated regulator, means an offence—
- (a) which is contained, immediately before the day on which this Act is passed, in an enactment specified in Schedule 6, and
  - (b) in relation to which that regulator has an enforcement function.

#### *Fixed monetary penalties*

### **39 Fixed monetary penalties**

- (1) The provision which may be made under this section is provision to confer on a regulator the power by notice to impose a fixed monetary penalty on a person in relation to a relevant offence.
- (2) Provision under this section may only confer such a power in relation to a case where the regulator is satisfied beyond reasonable doubt that the person has committed the relevant offence.
- (3) For the purposes of this Part a “fixed monetary penalty” is a requirement to pay to a regulator a penalty of a prescribed amount.
- (4) Where the relevant offence is—
- (a) triable summarily (whether or not it is also triable on indictment), and
  - (b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment),
- the amount of the fixed monetary penalty may not exceed the maximum amount of that fine.

### **40 Fixed monetary penalties: procedure**

- (1) Provision under section 39 must secure the results in subsection (2).
- (2) Those results are that—

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- (a) where a regulator proposes to impose a fixed monetary penalty on a person, the regulator must serve on that person a notice of what is proposed (a “notice of intent”) which complies with subsection (3),
  - (b) the notice of intent also offers the person the opportunity to discharge the person's liability for the fixed monetary penalty by payment of a prescribed sum (which must be less than or equal to the amount of the penalty),
  - (c) if the person does not so discharge liability—
    - (i) the person may make written representations and objections to the regulator in relation to the proposed imposition of the fixed monetary penalty, and
    - (ii) the regulator must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
  - (d) where the regulator decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with subsection (5), and
  - (e) the person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it.
- (3) To comply with this subsection the notice of intent must include information as to—
- (a) the grounds for the proposal to impose the fixed monetary penalty,
  - (b) the effect of payment of the sum referred to in subsection (2)(b),
  - (c) the right to make representations and objections,
  - (d) the circumstances in which the regulator may not impose the fixed monetary penalty,
  - (e) the period within which liability to the fixed monetary penalty may be discharged, which shall not exceed the period of 28 days beginning with the day on which the notice of intent was received, and
  - (f) the period within which representations and objections may be made, which shall not exceed the period of 28 days beginning with the day on which the notice of intent was received.
- (4) Provision pursuant to subsection (2)(c)(ii)—
- (a) must secure that the regulator may not decide to impose a fixed monetary penalty on a person where the regulator is satisfied that the person would not, by reason of any defence, be liable to be convicted of the relevant offence, and
  - (b) may include provision for other circumstances in which the regulator may not decide to impose a fixed monetary penalty.
- (5) To comply with this subsection the final notice referred to in subsection (2)(d) must include information as to—
- (a) the grounds for imposing the penalty,
  - (b) how payment may be made,
  - (c) the period within which payment must be made,
  - (d) any early payment discounts or late payment penalties,
  - (e) rights of appeal, and
  - (f) the consequences of non-payment.
- (6) Provision pursuant to subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the regulator include the following—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;

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- (c) that the decision was unreasonable.

#### **41 Fixed monetary penalties: criminal proceedings and conviction**

Provision under section 39 must secure that—

- (a) in a case where a notice of intent referred to in section 40(2)(a) is served on a person—
- (i) no criminal proceedings for the relevant offence may be instituted against the person in respect of the act or omission to which the notice relates before the end of the period in which the person may discharge liability to the fixed monetary penalty pursuant to section 40(2)(b), and
  - (ii) if the person so discharges liability, the person may not at any time be convicted of the relevant offence in relation to that act or omission;
- (b) in a case where a fixed monetary penalty is imposed on a person, that person may not at any time be convicted of the relevant offence in respect of the act or omission giving rise to the penalty.

#### *Discretionary requirements*

#### **42 Discretionary requirements**

- (1) The provision which may be made under this section is provision to confer on a regulator the power by notice to impose one or more discretionary requirements on a person in relation to a relevant offence.
- (2) Provision under this section may only confer such a power in relation to a case where the regulator is satisfied beyond reasonable doubt that the person has committed a relevant offence.
- (3) For the purposes of this Part a “discretionary requirement” means—
  - (a) a requirement to pay a monetary penalty to a regulator of such amount as the regulator may determine,
  - (b) a requirement to take such steps as a regulator may specify, within such period as it may specify, to secure that the offence does not continue or recur, or
  - (c) a requirement to take such steps as a regulator may specify, within such period as it may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed.
- (4) Provision under this section may not permit discretionary requirements to be imposed on a person on more than one occasion in relation to the same act or omission.
- (5) In this Part—
 

“variable monetary penalty” means a requirement referred to in subsection (3)(a);

“non-monetary discretionary requirement” means a requirement referred to in subsection (3)(b) or (c).
- (6) Where a variable monetary penalty is imposed in relation to a relevant offence which is—
  - (a) triable summarily only, and

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(b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment),  
the amount of the variable monetary penalty may not exceed the maximum amount of that fine.

#### **43 Discretionary requirements: procedure**

- (1) Provision under section 42 must secure the results in subsection (2).
- (2) Those results are that—
  - (a) where a regulator proposes to impose a discretionary requirement on a person, the regulator must serve on that person a notice of what is proposed (a “notice of intent”) which complies with subsection (3),
  - (b) that person may make written representations and objections to the regulator in relation to the proposed imposition of the discretionary requirement,
  - (c) after the end of the period for making such representations and objections, the regulator must decide whether to—
    - (i) impose the discretionary requirement, with or without modifications, or
    - (ii) impose any other discretionary requirement which the regulator has power to impose under section 42,
  - (d) where the regulator decides to impose a discretionary requirement, the notice imposing it (the “final notice”) complies with subsection (6), and
  - (e) the person on whom a discretionary requirement is imposed may appeal against the decision to impose it.
- (3) To comply with this subsection the notice of intent must include information as to—
  - (a) the grounds for the proposal to impose the discretionary requirement,
  - (b) the right to make representations and objections,
  - (c) the circumstances in which the regulator may not impose the discretionary requirement, and
  - (d) the period within which representations and objections may be made, which may not be less than the period of 28 days beginning with the day on which the notice of intent is received.
- (4) Provision pursuant to subsection (2)(c)—
  - (a) must secure that the regulator may not decide to impose a discretionary requirement on a person where the regulator is satisfied that the person would not, by reason of any defence raised by that person, be liable to be convicted of the relevant offence, and
  - (b) may include provision for other circumstances in which the regulator may not decide to impose a discretionary requirement.
- (5) Provision pursuant to subsection (2)(c) must also include provision for—
  - (a) the person on whom the notice of intent is served to be able to offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any person affected by the offence,
  - (b) the regulator to be able to accept or reject such an undertaking, and
  - (c) the regulator to take any undertaking so accepted into account in its decision.

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- (6) To comply with this subsection the final notice referred to in subsection (2)(d) must include information as to—
- (a) the grounds for imposing the discretionary requirement,
  - (b) where the discretionary requirement is a variable monetary penalty—
    - (i) how payment may be made,
    - (ii) the period within which payment must be made, and
    - (iii) any early payment discounts or late payment penalties,
  - (c) rights of appeal, and
  - (d) the consequences of non-compliance.
- (7) Provision pursuant to subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the regulator include the following—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;
  - (d) in the case of a non-monetary discretionary requirement, that the nature of the requirement is unreasonable;
  - (e) that the decision was unreasonable for any other reason.

#### **44 Discretionary requirements: criminal proceedings and conviction**

- (1) Provision under section 42 must secure the result in subsection (2) in a case where—
- (a) a discretionary requirement is imposed on a person, or
  - (b) an undertaking referred to in section 43(5) is accepted from a person.
- (2) The result in this subsection is that the person may not at any time be convicted of the relevant offence in respect of the act or omission giving rise to the discretionary requirement or undertaking except in a case referred to in subsection (3).
- (3) The case referred to in subsection (2) is a case where—
- (a) a non-monetary discretionary requirement is imposed on the person or an undertaking referred to in section 43(5) is accepted from a person,
  - (b) no variable monetary penalty is imposed on the person, and
  - (c) the person fails to comply with the non-monetary discretionary requirement or undertaking.
- (4) Provision under section 42 may for the purposes of the case referred to in subsection (3) extend any period within which criminal proceedings may be instituted against the person.

#### **45 Discretionary requirements: enforcement**

- (1) Provision under section 42 may include provision for a person to pay a monetary penalty (a “non-compliance penalty”) to a regulator if the person fails to comply with—
- (a) a non-monetary discretionary requirement imposed on the person, or
  - (b) an undertaking referred to in section 43(5) which is accepted from the person.
- (2) Provision under subsection (1) may—

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- (a) specify the amount of the non-compliance penalty,
  - (b) provide for the amount to be calculated by reference to prescribed criteria,
  - (c) provide for the amount to be determined by the regulator, or
  - (d) provide for the amount to be determined in any other way.
- (3) Provision under subsection (1) must secure that—
- (a) the non-compliance penalty is imposed by notice served by the regulator, and
  - (b) the person on whom it is imposed may appeal against that notice.
- (4) Provision pursuant to paragraph (b) of subsection (3) must secure that the grounds on which a person may appeal against a notice referred to in that subsection include the following—
- (a) that the decision to serve the notice was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unfair or unreasonable for any reason (including, in a case where the amount of the non-compliance penalty was determined by the regulator, that the amount is unreasonable).

### *Stop notices*

## **46 Stop notices**

- (1) The provision which may be made under this section is provision conferring on a regulator the power to serve a stop notice on a person.
- (2) For the purposes of this Part a “stop notice” is a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.
- (3) Provision under this section may only confer such a power in relation to a case falling within subsection (4) or (5).
- (4) A case falling within this subsection is a case where—
- (a) the person is carrying on the activity,
  - (b) the regulator reasonably believes that the activity as carried on by that person is causing, or presents a significant risk of causing, serious harm to any of the matters referred to in subsection (6), and
  - (c) the regulator reasonably believes that the activity as carried on by that person involves or is likely to involve the commission of a relevant offence by that person.
- (5) A case falling within this subsection is a case where the regulator reasonably believes that—
- (a) the person is likely to carry on the activity,
  - (b) the activity as likely to be carried on by that person will cause, or will present a significant risk of causing, serious harm to any of the matters referred to in subsection (6), and
  - (c) the activity as likely to be carried on by that person will involve or will be likely to involve the commission of a relevant offence by that person.
- (6) The matters referred to in subsections (4)(b) and (5)(b) are—
- (a) human health,

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- (b) the environment (including the health of animals and plants), and
- (c) the financial interests of consumers.

(7) The steps referred to in subsection (2) must be steps to remove or reduce the harm or risk of harm referred to in subsection (4)(b) or (5)(b).

#### **47 Stop notices: procedure**

(1) Provision under section 46 must secure the results in subsection (2) in a case where a stop notice is served.

(2) Those results are that—

- (a) the stop notice must comply with subsection (3),
- (b) the person on whom it is served may appeal against the decision to serve it,
- (c) where, after service of the notice, the regulator is satisfied that the person has taken the steps specified in the notice, the regulator must issue a certificate to that effect (a “completion certificate”),
- (d) the notice ceases to have effect on the issue of a completion certificate,
- (e) the person on whom the notice is served may at any time apply for a completion certificate,
- (f) the regulator must make a decision as to whether to issue a completion certificate within 14 days of such an application, and
- (g) the person on whom the notice is served may appeal against a decision not to issue a completion certificate.

(3) To comply with this subsection a stop notice must include information as to—

- (a) the grounds for serving the notice,
- (b) rights of appeal, and
- (c) the consequences of non-compliance.

(4) Provision pursuant to subsection (2)(b) must secure that the grounds on which a person may appeal against a decision of the regulator to serve a stop notice include the following—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable;
- (d) that any step specified in the notice is unreasonable;
- (e) that the person has not committed the relevant offence and would not have committed it had the stop notice not been served;
- (f) that the person would not, by reason of any defence, have been liable to be convicted of the relevant offence had the stop notice not been served.

(5) Provision pursuant to subsection (2)(g) must secure that the grounds on which a person may appeal against a decision of the regulator not to issue a completion certificate include the following—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unfair or unreasonable.



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#### **48 Stop notices: compensation**

- (1) Provision under section 46 conferring power on a regulator to serve a stop notice on a person must include provision for the regulator to compensate the person for loss suffered as the result of the service of the notice.
- (2) Provision under subsection (1) may provide for compensation—
  - (a) only in prescribed cases;
  - (b) only in relation to prescribed descriptions of loss.
- (3) Provision under subsection (1) must secure that the person on whom the stop notice is served is able to appeal against—
  - (a) a decision by the regulator not to award compensation, or
  - (b) a decision of the regulator as to the amount of the compensation.

#### **49 Stop notices: enforcement**

- (1) Provision under section 46 conferring power on a regulator to serve a stop notice must provide that, where a person on whom a notice is served does not comply with it, the person is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding £20,000, or imprisonment for term not exceeding twelve months, or both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.
- (2) In the application of this section—
  - (a) in England and Wales, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), or
  - (b) in Northern Ireland,the reference in subsection (1)(a) to twelve months is to be read as a reference to six months.

#### *Enforcement undertakings*

#### **50 Enforcement undertakings**

- (1) The provision which may be made under this section is provision—
  - (a) to enable a regulator to accept an enforcement undertaking from a person in a case where the regulator has reasonable grounds to suspect that the person has committed a relevant offence, and
  - (b) for the acceptance of the undertaking to have the consequences in subsection (4).
- (2) For the purposes of this Part, an “enforcement undertaking” is an undertaking to take such action as may be specified in the undertaking within such period as may be so specified.
- (3) The action specified in an enforcement undertaking must be—
  - (a) action to secure that the offence does not continue or recur,
  - (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,

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- (c) action (including the payment of a sum of money) to benefit any person affected by the offence, or
  - (d) action of a prescribed description.
- (4) The consequences in this subsection are that, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—
- (a) that person may not at any time be convicted of the relevant offence in respect of the act or omission to which the undertaking relates,
  - (b) the regulator may not impose on that person any fixed monetary penalty which it would otherwise have power to impose by virtue of section 39 in respect of that act or omission, and
  - (c) the regulator may not impose on that person any discretionary requirement which it would otherwise have power to impose by virtue of section 42 in respect of that act or omission.
- (5) Provision under this section may in particular include provision—
- (a) as to the procedure for entering into an undertaking;
  - (b) as to the terms of an undertaking;
  - (c) as to publication of an undertaking by a regulator;
  - (d) as to variation of an undertaking;
  - (e) as to circumstances in which a person may be regarded as having complied with an undertaking;
  - (f) as to monitoring by a regulator of compliance with an undertaking;
  - (g) as to certification by a regulator that an undertaking has been complied with;
  - (h) for appeals against refusal to give such certification;
  - (i) in a case where a person has given inaccurate, misleading or incomplete information in relation to the undertaking, for that person to be regarded as not having complied with it;
  - (j) in a case where a person has complied partly but not fully with an undertaking, for that part-compliance to be taken into account in the imposition of any criminal or other sanction on the person;
  - (k) for the purpose of enabling criminal proceedings to be instituted against a person in respect of the relevant offence in the event of breach of an undertaking or any part of it, to extend any period within which those proceedings may be instituted.

*Orders under Part 3: supplementary provision*

**51 Combination of sanctions**

- (1) Provision may not be made under section 39 and section 42 conferring powers on a regulator in relation to the same offence unless it secures that—
- (a) the regulator may not serve a notice of intent referred to in section 40(2)(a) on a person in relation to any act or omission where a discretionary requirement has been imposed on that person in relation to that act or omission, and
  - (b) the regulator may not serve a notice of intent referred to in section 43(2)(a) on a person in relation to any act or omission where—
    - (i) a fixed monetary penalty has been imposed on that person in relation to that act or omission, or

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- (ii) the person has discharged liability to a fixed monetary penalty in relation to that act or omission pursuant to section 40(2)(b).
- (2) Provision may not be made under section 39 and section 46 conferring powers on a regulator in relation to the same offence unless it secures that—
- (a) the regulator may not serve a notice of intent referred to in section 40(2)(a) on a person in relation to any act or omission where a stop notice has been served on that person in relation to that act or omission, and
  - (b) the regulator may not serve a stop notice on a person in relation to any act or omission where—
    - (i) a fixed monetary penalty has been imposed on that person in relation to that act or omission, or
    - (ii) the person has discharged liability to a fixed monetary penalty in relation to that act or omission pursuant to section 40(2)(b).

## **52 Monetary penalties**

- (1) An order under this Part which confers power on a regulator to require a person to pay a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty under section 45(1) may include provision—
- (a) for early payment discounts;
  - (b) for the payment of interest or other financial penalties for late payment of the penalty, such interest or other financial penalties not in total to exceed the amount of that penalty;
  - (c) for enforcement of the penalty.
- (2) Provision under subsection (1)(c) may include—
- (a) provision for the regulator to recover the penalty, and any interest or other financial penalty for late payment, as a civil debt;
  - (b) provision for the penalty, and any interest or other financial penalty for late payment to be recoverable, on the order of a court, as if payable under a court order.

## **53 Costs recovery**

- (1) Provision under section 42 may include provision for a regulator, by notice, to require a person on whom a discretionary requirement is imposed to pay the costs incurred by the regulator in relation to the imposition of the discretionary requirement up to the time of its imposition.
- (2) Provision under section 46 may include provision for a regulator, by notice, to require a person on whom a stop notice is served to pay the costs incurred by the regulator in relation to the service of the notice up to the time of service.
- (3) In subsections (1) and (2), the references to costs include in particular—
- (a) investigation costs;
  - (b) administration costs;
  - (c) costs of obtaining expert advice (including legal advice).
- (4) Provision under this section must secure that, in any case where a notice requiring payment of costs is served—
- (a) the notice specifies the amount required to be paid;

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- (b) the regulator may be required to provide a detailed breakdown of that amount;
  - (c) the person required to pay costs is not liable to pay any costs shown by the person to have been unnecessarily incurred;
  - (d) the person required to pay costs may appeal against—
    - (i) the decision of the regulator to impose the requirement to pay costs;
    - (ii) the decision of the regulator as to the amount of those costs.
- (5) Provision under this section may include the provision referred to in section 52(1)(b) and (c) and (2).
- (6) Provision under this section must secure that regulator is required to publish guidance about how it will exercise the power conferred by the provision.

## 54 Appeals

- (1) An order under this Part may not provide for the making of an appeal other than to—
- (a) the First-tier Tribunal, or
  - (b) another tribunal created under an enactment.
- (2) In subsection (1)(b) “tribunal” does not include an ordinary court of law.
- (3) An order under this Part which makes provision for an appeal in relation to the imposition of any requirement or service of any notice may include—
- (a) provision suspending the requirement or notice pending determination of the appeal;
  - (b) provision as to the powers of the tribunal to which the appeal is made;
  - (c) provision as to how any sum payable in pursuance of a decision of that tribunal is to be recoverable.
- (4) The provision referred to in subsection (3)(b) includes provision conferring on the tribunal to which the appeal is made power—
- (a) to withdraw the requirement or notice;
  - (b) to confirm the requirement or notice;
  - (c) to take such steps as the regulator could take in relation to the act or omission giving rise to the requirement or notice;
  - (d) to remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the regulator;
  - (e) to award costs.

## 55 Other provision

- (1) An order under this Part may include consequential, supplementary, incidental or transitional provision.
- (2) The consequential provision referred to in subsection (1) includes—
- (a) provision as to how any enactment passed or made before the day on which this Act is passed applies or operates in relation to the imposition of a fixed monetary penalty or discretionary requirement or service of a stop notice, and
  - (b) in particular, where such an enactment applies in relation to a person convicted of a criminal offence, provision to make the enactment apply in relation to a person on whom a fixed monetary penalty or discretionary requirement is imposed or a stop notice is served in relation to that offence.

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- (3) The supplementary provision referred to in subsection (1) includes provision for the purpose of facilitating the use of powers conferred by an order under this Part, and in particular provision which for that purpose—
  - (a) confers or extends powers to require information;
  - (b) confers or extends powers of entry, search or seizure;
  - (c) where information is authorised to be used in evidence in criminal proceedings, authorises its use in relation to the use of any power to impose a civil sanction conferred under or by virtue of this Part.
- (4) The provision which may be made by an order under this Part may be made by repealing, revoking or amending an enactment (whenever passed or made).

*Orders under Part 3: exclusions*

**56 Excluded provision: Scotland**

An order under this Part may not, except for consequential purposes, make any provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament.

**57 Excluded provision: Northern Ireland**

An order under this Part may not, except for consequential purposes, make any provision which would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly.

*Orders under Part 3: procedure*

**58 Consultation and consent: Scotland**

- (1) A Minister of the Crown must obtain the consent of the Lord Advocate before making an order under this Part in relation to an offence in Scotland.
- (2) A Minister of the Crown must consult the Scottish Ministers before making an order under this Part in relation to a regulator which is a local authority in Scotland.
- (3) In subsection (2), “local authority in Scotland” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

**59 Consultation and consent: Wales**

- (1) A Minister of the Crown must consult the Welsh Ministers before making an order under this Part in relation to an offence which applies in or in relation to Wales.
- (2) A Minister of the Crown must obtain the consent of the Welsh Ministers before making an order under this Part containing provision which relates to a Welsh ministerial matter.
- (3) The Welsh Ministers must consult the Secretary of State before making an order under this Part.

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## **60 Consultation: general**

- (1) Before making an order under this Part the relevant authority must consult the following (in addition to any persons who must be consulted under sections 58 and 59)—
  - (a) the regulator to which the order relates,
  - (b) such organisations as appear to the relevant authority to be representative of persons substantially affected by the proposals, and
  - (c) such other persons as the relevant authority considers appropriate.
- (2) If, as a result of any consultation required by subsection (1), it appears to the relevant authority that it is appropriate substantially to change the whole or any part of the proposals, the relevant authority must undertake such further consultation with respect to the changes as it considers appropriate.
- (3) If, before the day on which this Part comes into force, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of this section, those requirements may to that extent be taken to have been satisfied.

## **61 Parliamentary and Assembly procedure**

- (1) A statutory instrument containing an order under this Part made by a Minister of the Crown may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (2) A statutory instrument containing an order under this Part made by the Welsh Ministers may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.

*Extension of powers to make subordinate legislation*

## **62 Offences under subordinate legislation**

- (1) This section applies where, by virtue of a specified enactment—
  - (a) a Minister of the Crown has, or the Welsh Ministers have, power by statutory instrument to make provision creating a criminal offence, and
  - (b) the power has been or is being exercised so as to create the offence.
- (2) The power includes power to make, in relation to a relevant enforcement authority, any provision which could be made by an order under this Part if, for the purposes of this Part—
  - (a) the relevant enforcement authority were a regulator, and
  - (b) the offence were a relevant offence in relation to that regulator.
- (3) Where a statutory instrument containing provision made under the power referred to in subsection (1) pursuant to subsection (2) would, apart from this subsection, be subject to annulment in pursuance of a resolution of either House of Parliament or of the National Assembly for Wales—
  - (a) the instrument is not subject to such annulment; but

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- (b) the instrument may not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament or (as the case may be) the National Assembly for Wales.
- (4) In subsection (1) “specified enactment” means any enactment specified in Schedule 7.
- (5) In subsection (2) “relevant enforcement authority” means a person, other than a person referred to in section 37(3), who has an enforcement function in relation to the offence.

### *Guidance*

## **63 Guidance as to use of civil sanctions**

- (1) Where power is conferred on a regulator under or by virtue of this Part to impose a civil sanction in relation to an offence, the provision conferring the power must secure the results in subsection (2).
- (2) Those results are that—
  - (a) the regulator must publish guidance about its use of the sanction,
  - (b) in the case of guidance relating to a fixed monetary penalty, discretionary requirement or stop notice, the guidance must contain the relevant information,
  - (c) the regulator must revise the guidance where appropriate,
  - (d) the regulator must consult such persons as the provision may specify before publishing any guidance or revised guidance, and
  - (e) the regulator must have regard to the guidance or revised guidance in exercising its functions.
- (3) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in subsection (2)(b) is information as to—
  - (a) the circumstances in which the penalty is likely to be imposed,
  - (b) the circumstances in which it may not be imposed,
  - (c) the amount of the penalty,
  - (d) how liability for the penalty may be discharged and the effect of discharge, and
  - (e) rights to make representations and objections and rights of appeal.
- (4) In the case of guidance relating to a discretionary requirement, the relevant information referred to in subsection (2)(b) is information as to—
  - (a) the circumstances in which the requirement is likely to be imposed,
  - (b) the circumstances in which it may not be imposed,
  - (c) in the case of a variable monetary penalty, the matters likely to be taken into account by the regulator in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance), and
  - (d) rights to make representations and objections and rights of appeal.
- (5) In the case of guidance relating to a stop notice, the relevant information referred to in subsection (2)(b) is information as to—
  - (a) the circumstances in which the regulator is likely to serve the notice,
  - (b) the circumstances in which it may not be imposed, and
  - (c) rights of appeal.

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## **64 Guidance as to enforcement of relevant offences**

- (1) Where power is conferred on a regulator under or by virtue of this Part to impose a civil sanction in relation to an offence, the regulator must prepare and publish guidance about how the offence is enforced.
- (2) The guidance must include guidance as to—
  - (a) the sanctions (including criminal sanctions) to which a person who commits the offence may be liable,
  - (b) the action which the regulator may take to enforce the offence, whether by virtue of this Part or otherwise, and
  - (c) the circumstances in which the regulator is likely to take any such action.
- (3) A regulator may from time to time revise guidance published by it under this section and publish the revised guidance.
- (4) The regulator must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this section.

## **65 Publication of enforcement action**

- (1) Where power is conferred on a regulator under or by virtue of this Part to impose a civil sanction in relation to an offence, the provision conferring the power must, subject to this section, secure the result in subsection (2).
- (2) That result is that the regulator must from time to time publish reports specifying—
  - (a) the cases in which the civil sanction has been imposed,
  - (b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged pursuant to section 40(2)(b), and
  - (c) where the civil sanction is a discretionary requirement, the cases in which an undertaking referred to in section 43(5) is accepted from a person.
- (3) In subsection (2)(a), the reference to cases in which the civil sanction has been imposed does not include cases where the sanction has been imposed but overturned on appeal.
- (4) The provision conferring the power need not secure the result in subsection (2) in cases where the relevant authority considers that it would be inappropriate to do so.

*Exercise of powers: general*

## **66 Compliance with regulatory principles**

The relevant authority may not make any provision under or by virtue of this Part conferring power on a regulator to impose a civil sanction in relation to an offence unless the authority is satisfied that the regulator will act in accordance with the principles referred to in section 5(2) in exercising that power.

## **67 Review**

- (1) The relevant authority must in accordance with this section review the operation of any provision made under or by virtue of this Part conferring power on a regulator to impose a civil sanction in relation to an offence.



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- (2) The review must take place as soon as practicable after the end of the period of three years beginning with the day on which the provision comes into force.
- (3) The review must in particular consider whether the provision has implemented its objectives efficiently and effectively.
- (4) In conducting a review under this section the relevant authority must consult such persons as the authority considers appropriate.
- (5) The relevant authority must publish the results of a review under this section.
- (6) The relevant authority must lay a copy of a review under this section—
  - (a) before Parliament (where the relevant authority is a Minister of the Crown), or
  - (b) before the National Assembly for Wales (where the relevant authority is the Welsh Ministers).

## 68 Suspension

- (1) Where provision has been made under or by virtue of this Part conferring power on a regulator to impose a civil sanction in relation to an offence, the relevant authority may direct the regulator—
  - (a) where the power is power to impose a fixed monetary penalty, not to serve any further notice of intent referred to in section 40(2)(a) in relation to that offence,
  - (b) where the power is power to impose a discretionary requirement, not to serve any further notice of intent referred to in section 43(2)(a) in relation to that offence,
  - (c) where the power is power to serve a stop notice, not to serve any further stop notice in relation to that offence, and
  - (d) where the power is power to accept an enforcement undertaking, not to accept any further enforcement undertaking in relation to that offence.
- (2) The relevant authority may only give a direction under subsection (1) in relation to an offence if it is satisfied that the regulator has failed on more than one occasion—
  - (a) to comply with any duty imposed on it under or by virtue of this Part in relation to that offence,
  - (b) to act in accordance with the guidance it has published in relation to that offence (in particular, the guidance published under sections 63 and 64), or
  - (c) to act in accordance with the principles referred to in section 5(2) or with other principles of best practice in relation to the enforcement of that offence.
- (3) The relevant authority may by direction revoke a direction given by it under subsection (1) if satisfied that the regulator has taken the appropriate steps to remedy the failure to which that direction related.
- (4) Before giving a direction under subsection (1) or (3) the relevant authority must consult—
  - (a) the regulator, and
  - (b) such other persons as the authority considers appropriate.
- (5) Where the relevant authority gives a direction under this section, the authority must lay a copy before Parliament (where the relevant authority is a Minister of the Crown) or the National Assembly for Wales (where the relevant authority is the Welsh Ministers).

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- (6) Where the relevant authority gives a direction under this section, the regulator must—
- (a) publish the direction in such manner as the relevant authority thinks fit, and
  - (b) take such other steps as the regulator thinks fit or the relevant authority may require to bring the direction to the attention of other persons likely to be affected by it.

### *Supplementary and general*

## **69 Payment of penalties into Consolidated Fund etc**

- (1) Where pursuant to any provision made under or by virtue of this Part a regulator receives—
- (a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty under section 45(1),
  - (b) any interest or other financial penalty for late payment of such a penalty, or
  - (c) a sum paid in discharge of liability to a fixed monetary penalty pursuant to section 40(2)(b),
- the regulator must pay it into the relevant Fund.
- (2) In subsection (1) “relevant Fund” means—
- (a) in a case where the regulator has functions only in relation to Wales, the Welsh Consolidated Fund,
  - (b) in a case where the regulator has functions only in relation to Scotland, the Scottish Consolidated Fund,
  - (c) in a case where the regulator has functions only in relation to Northern Ireland, the Consolidated Fund of Northern Ireland, and
  - (d) in any other case, the Consolidated Fund.

## **70 Disclosure of information**

- (1) Information held by or on behalf of a person referred to in section 37(3) may be disclosed to a regulator on whom powers are conferred under or by virtue of this Part where—
- (a) the person has an enforcement function in relation to an offence, and
  - (b) the information is disclosed for the purpose of the exercise by the regulator of any powers conferred on it under or by virtue of this Part in relation to that offence.
- (2) It is immaterial for the purposes of subsection (1) whether the information was obtained before or after the coming into force of this section.
- (3) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (4) Nothing in this section authorises the making of a disclosure in contravention of—
- (a) the Data Protection Act 1998 (c. 29), or
  - (b) Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
- (5) This section does not affect a power to disclose which exists apart from this section.

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## 71 Interpretation of Part 3

(1) In this Part—

“civil sanction” means a fixed monetary penalty, discretionary requirement, stop notice or enforcement undertaking (and references to imposition of a civil sanction include acceptance of an enforcement undertaking);

“discretionary requirement” has the meaning given in section 42(3);

“enforcement function”, in relation to an offence, means a function (whether or not statutory) of taking any action with a view to or in connection with the imposition of any sanction, criminal or otherwise, in a case where the offence is committed;

“enforcement undertaking” has the meaning given in section 50(2);

“fixed monetary penalty” has the meaning given in section 39(3);

“non-monetary discretionary requirement” has the meaning given in section 42(5);

“prescribed” means prescribed in an order under this Part;

“regulator” has the meaning given in section 37;

“relevant authority” means—

(a) in relation to provision made under or by virtue of this Part by a Minister of the Crown, that Minister, and

(b) in relation to provision made under or by virtue of this Part by the Welsh Ministers, the Welsh Ministers;

“relevant offence” has the meaning given in section 38;

“stop notice” has the meaning given in section 46(2);

“variable monetary penalty” has the meaning given in section 42(5).

(2) For the purposes of this Part, any reference to a person who has an enforcement function in relation to an offence includes a reference to a person who is in any circumstances capable of exercising an enforcement function in relation to the offence.

**Status:**

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**Changes to legislation:**

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