



# Localism Act 2011

## 2011 CHAPTER 20

### PART 3

#### EU FINANCIAL SANCTIONS: WALES

- 58 Power to require Welsh public authorities to make payments in respect of certain EU financial sanctions**
- (1) The Welsh Ministers may, in accordance with the provisions of this Part, require Welsh public authorities to make payments of amounts determined by the Welsh Ministers in respect of an EU financial sanction to which this Part applies.
  - (2) A requirement to make a payment under this Part—
    - (a) may only be imposed on a Welsh public authority if—
      - (i) the authority has been designated under section 62; and
      - (ii) the EU financial sanction concerned is one to which the designation applies; and
    - (b) must be imposed by a notice given to the authority under section 66 (referred to in this Part as a final notice).
  - (3) If a final notice is registered in accordance with rules of court or any practice direction, it is enforceable in the same manner as an order of the High Court.
  - (4) Any sums paid by a Welsh public authority under this Part are to be paid into the Welsh Consolidated Fund.
  - (5) In this Part—
    - (a) “EU financial sanction” means a sanction consisting of a lump sum or penalty payment (or both) imposed by the Court of Justice in Article 260(2) proceedings for an infraction of EU law;
    - (b) “infraction of EU law”, in relation to an EU financial sanction, means the failure to comply with a judgment of the Court of Justice given in proceedings under Article 258 or 259 of the Treaty on the Functioning of the European Union; and

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- (c) “Article 260(2) proceedings” means proceedings under Article 260(2) of that Treaty.

## **59 Duty of the Welsh Ministers to issue a policy statement**

- (1) The Welsh Ministers must publish a statement of policy with respect to—
- (a) the designation of Welsh public authorities under section 62;
  - (b) the imposition and variation of requirements to make payments under this Part; and
  - (c) such other matters relating to the operation of the provisions of this Part as the Welsh Ministers may think it appropriate to include in the statement.
- (2) The Welsh Ministers may from time to time revise and republish the statement of policy required by this section.
- (3) A revised statement of policy may include saving or transitional provisions relating to the continued application for any purpose of any provisions of an earlier published version of the statement.
- (4) The Welsh Ministers must consult such persons as the Welsh Ministers consider appropriate before publishing, or revising and republishing, the statement of policy required by this section.
- (5) In exercising functions under this Part in relation to an EU financial sanction which has been or may be imposed on the United Kingdom—
- (a) the Welsh Ministers, and
  - (b) a panel established under section 63,
- must have regard to the statement of policy most recently published under this section.

## **60 The EU financial sanctions to which Part 3 applies**

- (1) This Part applies to an EU financial sanction imposed on the United Kingdom if—
- (a) the sanction is imposed after the commencement of this Part, and
  - (b) the Welsh Ministers certify that this Part applies to the sanction.
- (2) If a certificate under subsection (1)—
- (a) specifies a part or parts of the EU financial sanction concerned, and
  - (b) states that this Part applies only to that part, or those parts, of the sanction,
- this Part applies to the sanction as if it included only that part or those parts.
- (3) A certificate under subsection (1)—
- (a) may make different provision about any of the following—
    - (i) the lump sum (if any) paid by the United Kingdom;
    - (ii) any periodic payment due from the United Kingdom under the terms of the EU financial sanction before the certificate is given; and
    - (iii) any future periodic payment that may fall due from the United Kingdom under those terms; and
  - (b) must be given in such form and published in such manner as the Welsh Ministers think fit.
- (4) Any provision of a certificate under subsection (1) which has the effect of excluding the whole or part of any periodic payment mentioned in subsection (3)(a)(iii)

(including any such payment which has fallen due from the United Kingdom since the earlier certificate was given) may be varied by a further certificate under subsection (1).

## **61 Meaning of “Welsh public authority” and related terms**

- (1) Subsections (2) to (5) define various terms used in this Part.
- (2) “Welsh public authority” means—
  - (a) a council of a county or county borough in Wales; or
  - (b) any other person or body which has any Welsh devolved functions.
- (3) References to functions are to functions of a public nature.
- (4) References to Welsh devolved functions are to functions which are exercisable in relation to Wales and could be conferred by provision falling within the legislative competence of the National Assembly for Wales as defined in section 108 of the Government of Wales Act 2006.
- (5) The “appropriate national authority”, in relation to a Welsh public authority with any functions other than Welsh devolved functions, means the following national authority or authorities (according to whichever one or more of the following paragraphs apply to that Welsh public authority)—
  - (a) a Minister of the Crown, if the Welsh public authority has any functions which are not devolved functions;
  - (b) the Scottish Ministers, if the Welsh public authority has any Scottish devolved functions; and
  - (c) the relevant Northern Ireland Department, if the Welsh public authority has any Northern Ireland devolved functions.
- (6) In subsection (5)(a) “devolved functions” means—
  - (a) Welsh devolved functions;
  - (b) Scottish devolved functions; or
  - (c) Northern Ireland devolved functions.
- (7) In subsections (5) and (6)—

“Northern Ireland devolved functions” means functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998);

“Scottish devolved functions” means functions the exercise of which would be within devolved competence (within the meaning of section 54 of the Scotland Act 1998).

## **62 Designation of Welsh public authorities**

- (1) The Welsh Ministers may by order designate a Welsh public authority for the purposes of this Part.
- (2) The order must—
  - (a) specify the Welsh public authority by name;
  - (b) identify any EU financial sanction to which the designation applies; and
  - (c) describe the activities of the authority which are covered by the designation.

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- (3) The order may identify an EU financial sanction for the purposes of subsection (2)(b) by—
- (a) specifying an EU financial sanction that has been imposed on the United Kingdom;
  - (b) specifying any Article 260(2) proceedings that have been commenced and providing that the designation is to apply to any EU financial sanction that may be imposed on the United Kingdom in those proceedings;
  - (c) specifying a judgment of the Court of Justice finding that the United Kingdom has failed to comply with an EU obligation and providing that the designation is to apply to any EU financial sanction that may be imposed on the United Kingdom for failing to comply with that judgment; or
  - (d) specifying or describing any proceedings under Article 258 or 259 of the Treaty on the Functioning of the European Union that have been or may be commenced and providing that the designation is to apply to any EU financial sanction that may be imposed on the United Kingdom for failing to comply with a judgment of the Court of Justice given in those proceedings.
- (4) The order may, for the purposes of subsection (3)(d), describe any proceedings under Article 258 or 259 that may be commenced by reference to the subject-matter of—
- (a) a Reasoned Opinion addressed to the United Kingdom under Article 258 or 259 (as the case may be); or
  - (b) any other document sent to the Government of the United Kingdom by the Commission of the European Union or by another member State which gives notice to the Government of the possibility of proceedings being commenced against the United Kingdom.
- (5) The activities described for the purposes of subsection (2)(c) must be activities of the Welsh public authority which—
- (a) are carried out in the exercise of Welsh devolved functions of the authority; and
  - (b) take place after the provisions of the order describing the activities come into force.
- (6) The following may not be designated under this section—
- (a) the National Assembly for Wales;
  - (b) a Minister of the Crown or a United Kingdom government department;
  - (c) a member of the Welsh Assembly Government;
  - (d) a court or tribunal.
- (7) Before making an order designating a Welsh public authority the Welsh Ministers must consult—
- (a) the authority concerned; and
  - (b) if the authority concerned has any functions other than Welsh devolved functions, the appropriate national authority.
- (8) In sections 64 to 66 references to “acts”, in relation to a Welsh public authority which has been designated under this section, are to acts within a description of activities covered by the designation.

### **63 Establishment of independent panel**

- (1) This section applies where—
  - (a) an EU financial sanction to which this Part applies has been imposed by the Court of Justice; and
  - (b) at least one Welsh public authority is the subject of a designation order under section 62 which applies to that EU financial sanction.
- (2) The Welsh Ministers must establish a panel for the purpose of carrying out any functions it may be given by or under any provision of this Part in relation to that EU financial sanction.
- (3) The panel must be established before any warning notice is given to a Welsh public authority in relation to that EU financial sanction.
- (4) The panel is to consist of one or more individuals appointed by the Welsh Ministers who appear to the Welsh Ministers to have suitable qualifications, expertise or experience to carry out their duties.
- (5) The Welsh Ministers may invite nominations for appointment to the panel from such organisations as the Welsh Ministers consider appropriate.
- (6) The validity of any acts of the panel is not affected by a vacancy among its members.
- (7) The Welsh Ministers may pay to a member of the panel such fees, allowances or expenses as the Welsh Ministers may determine.
- (8) The Welsh Ministers may provide such staff, accommodation or other facilities as the Welsh Ministers may consider necessary to enable the panel to carry out its functions.

### **64 Warning notices**

- (1) Before a Welsh public authority which has been designated under section 62 can be required to make any payment under this Part in respect of an EU financial sanction to which the designation applies—
  - (a) the Welsh Ministers must give a warning notice under this section to the authority;
  - (b) the procedures set out in the warning notice (with any changes made under subsection (9)) must be followed; and
  - (c) the Welsh Ministers must determine the matters mentioned in section 65(4).
- (2) A warning notice is a notice stating that the Welsh Ministers, having regard to the judgment of the Court of Justice imposing the EU financial sanction, believe—
  - (a) that acts of the authority may have caused or contributed to the infraction of EU law for which the EU financial sanction was imposed; and
  - (b) that, if acts of the authority did cause or contribute to that infraction of EU law, it would be appropriate to consider requiring the authority to make payments under this Part (which may be or include ongoing payments) in respect of the EU financial sanction.
- (3) The warning notice must also—
  - (a) identify the EU financial sanction to which the notice relates;
  - (b) specify the total amount of that sanction (see subsection (7));

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- (c) if that sanction is or includes a penalty payment, specify the amount and frequency of any periodic payments that fall due from the United Kingdom under the terms of the penalty payment (see subsection (8));
  - (d) set out the reasons for making the statement required by subsection (2);
  - (e) set out the proposed procedures and arrangements for determining the matters mentioned in section 65(4) (which may include arrangements for securing that matters arising under the notice are dealt together with matters arising under other warning notices given to other Welsh public authorities in respect of the same EU financial sanction);
  - (f) propose a timetable for those procedures and for any steps to be taken by the panel or the Welsh Ministers before any requirement to make a payment can be imposed on the authority;
  - (g) invite the authority to make representations to the Welsh Ministers about the matters mentioned in paragraphs (e) and (f);
  - (h) invite the authority to make representations to the panel (with any supporting evidence) about anything the authority considers relevant to the matters mentioned in section 65(4), including its response to any representations made (and any supporting evidence submitted) to the panel —
    - (i) by the Welsh Ministers (whether in relation to matters arising from the notice or matters arising from any other warning notice given to another Welsh public authority in relation to the same EU financial sanction);
    - (ii) by another Welsh public authority which has been given a warning notice in relation to the same EU financial sanction; or
    - (iii) by the appropriate national authority in response to an invitation under paragraph (j) included in the notice; and
  - (j) if the authority has any functions other than Welsh devolved functions, invite the appropriate national authority to make representations about anything contained in or arising from the notice.
- (4) The warning notice may contain such other information as the Welsh Ministers consider appropriate.
- (5) Before giving a warning notice to the authority, the Welsh Ministers must consult the panel as to the contents of the notice (including in particular the proposed procedures and timetable mentioned in subsection (3)(e) and (f)).
- (6) If the authority has any functions other than Welsh devolved functions, the Welsh Ministers must—
- (a) consult the appropriate national authority before deciding to give a warning notice to the authority; and
  - (b) give the appropriate national authority a copy of any warning notice the Welsh Ministers decide to give.
- (7) In subsection (3)(b) the “total amount of the sanction” means the sum of the following—
- (a) the amount of the lump sum (if any) due from the United Kingdom under the terms of the EU financial sanction (disregarding any amount that falls to be excluded from the lump sum by virtue of section 60(2)); and
  - (b) the total amount of the periodic payments (if any) which have fallen due from the United Kingdom on or before a day specified in the notice (disregarding

- any amount that falls to be excluded from any of those payments by virtue of section 60(2));
- and the day specified for the purposes of paragraph (b) must be no later than the day on which the warning notice is given to the authority.
- (8) The periodic payments to be taken into account for the purposes of subsection (3)(c) do not include—
- (a) any periodic payment taken into account in calculating the total amount of the sanction for the purposes of subsection (3)(b); or
  - (b) any periodic payment, or any part of a periodic payment, that falls to be excluded from the EU financial sanction by virtue of section 60(2).
- (9) The Welsh Ministers may, after considering any representations made by the authority under subsection (3)(g) but before the matters mentioned in section 65(4) are determined, give the authority—
- (a) a notice stating any changes that the Welsh Ministers have decided to make to the procedures or timetable as originally set out in the warning notice under subsection (3)(e) and (f); and
  - (b) a copy of the warning notice incorporating those changes.
- (10) The Welsh Ministers must consult the panel before making any changes under subsection (9).
- (11) A warning notice given to a Welsh public authority may be withdrawn at any time before the matters mentioned in section 65(4) are determined, but this does not prevent another warning notice being given to the authority in relation to the same EU financial sanction.
- (12) In this section and section 65 “the panel” means the panel established under section 63 to deal with the EU financial sanction to which the notice relates.

## **65 Matters to be determined before a final notice is given**

- (1) This section applies where—
- (a) a warning notice has been given to a Welsh public authority; and
  - (b) the panel has considered all representations made to it under the procedures set out in that notice.
- (2) The panel must make a report to the Welsh Ministers on the matters to which the representations made to the panel relate.
- (3) The report—
- (a) may be published by the panel in such manner as the panel thinks fit and, if not published by the panel, must be published by the Welsh Ministers in such manner as they think fit;
  - (b) must include recommendations as to the determination of the matters mentioned in subsection (4)(a) and (b);
  - (c) if the authority has made representations to the panel about anything the authority considers relevant to any of the matters mentioned in paragraphs (c) to (e) of subsection (4), must include recommendations as to the determination of the matters mentioned in those paragraphs; and
  - (d) must include the panel’s reasons for any recommendations included in the report.

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- (4) After having had regard to the report, the Welsh Ministers must determine the following matters—
- (a) whether any acts of the authority did cause or contribute to the infraction of EU law concerned and, in relation to any periodic payments, whether any acts of the authority have continued, and will continue, to cause or contribute to the continuation of that infraction;
  - (b) the proportion of—
    - (i) the total amount of the sanction (being the amount to be specified under section 66(2)(b) if a final notice is given), and
    - (ii) any periodic payments not included in that total amount (including both payments that have fallen due since the date specified under section 64(7)(b) and future periodic payments),
 that, in the light of the acts of the authority which are determined to be relevant for the purposes of paragraph (a), is to be regarded as reflecting the authority's share of the responsibility for the infraction of EU law concerned or, in relation to a periodic payment mentioned in sub-paragraph (ii), the continuing infraction of EU law concerned;
  - (c) whether the authority should be required to make any payment or payments in respect of the EU financial sanction;
  - (d) if so, what payment or payments the authority should make towards—
    - (i) the total amount of the sanction referred to in paragraph (b)(i); and
    - (ii) any periodic payments referred to in paragraph (b)(ii); and
  - (e) when any such payment or payments should be made.
- (5) In determining the matters mentioned in subsection (4)(c), (d) and (e) the Welsh Ministers must have regard to—
- (a) the effect on the authority's finances of any amount it may be required to pay and in particular, if the authority has any functions other than Welsh devolved functions, the need to avoid any prejudicial effect on the performance by the authority of those other functions;
  - (b) the determination under subsection (4)(b); and
  - (c) any other relevant considerations.
- (6) Before making a final decision on the matters mentioned in subsection (4)(c), (d) and (e), the Welsh Ministers must invite—
- (a) representations from the authority about the potential effect on its finances and, if it has any functions other than Welsh devolved functions, the effect on those other functions of any amount it may be required to pay; and
  - (b) if the authority has any functions other than Welsh devolved functions, representations from the appropriate national authority.

## **66 Final notices**

- (1) The Welsh Ministers may give a final notice to a Welsh public authority only if they have decided in accordance with section 65 to impose a requirement under this Part on the authority.
- (2) The final notice must—
- (a) identify the EU financial sanction to which the notice relates;



- (b) specify the total amount of the sanction (see subsection (3)) and, where relevant, the amount and frequency of any future periodic payments (see subsection (4));
  - (c) describe the acts of the authority that the Welsh Ministers have under section 65(4) determined—
    - (i) have caused or contributed to the infraction of EU law concerned; or
    - (ii) have caused or contributed, or will continue to cause or contribute, to the continuation of that infraction;and set out the reasons for that determination;
  - (d) summarise the other determinations made by the Welsh Ministers under section 65(4) and set out the reasons for making them;
  - (e) specify the amount required to be paid by the authority towards the total amount of the sanction and when it is to be paid (and if it is to be paid in instalments, the instalments and the date on which they become payable);
  - (f) specify the amount or proportion required to be paid towards any future periodic payment (as defined for the purposes of paragraph (b)) and the time when that amount is to be paid (or, if the notice so provides, the time when two or more such amounts are to be paid); and
  - (g) specify how and to whom payments are to be made.
- (3) In subsection (2)(b) and (e) the “total amount of the sanction” means the sum of the following—
- (a) the amount of the lump sum (if any) due from the United Kingdom under the terms of the EU financial sanction (disregarding any amount that falls to be excluded from the lump sum by virtue of section 60(2)); and
  - (b) the total amount of the periodic payments (if any) which have fallen due from the United Kingdom on or before a day specified in the final notice (disregarding any amount that falls to be excluded from any of those payments by virtue of section 60(2));
- and the day specified for the purposes of paragraph (b) must be no later than the day on which the final notice is given to the authority.
- (4) In subsection (2)(b) “future periodic payments” means periodic payments due from the United Kingdom other than—
- (a) any periodic payment taken into account in calculating the total amount of the sanction; or
  - (b) any periodic payment, or any part of a periodic payment, that falls to be excluded from the EU financial sanction by virtue of section 60(2).
- (5) The requirement to make payments towards periodic payments falling due from the United Kingdom after the notice is given continues so long as those periodic payments continue to fall due, unless the Welsh Ministers give the authority a notice under this subsection terminating the requirement or varying it so as to make it less onerous for the authority.
- (6) A notice under subsection (5) may be given, either on the application of the authority or without such an application, where the Welsh Ministers consider it appropriate in the light of a change in the circumstances which applied when the final notice was given or when it was last varied (as the case may be).
- (7) The Welsh Ministers may—

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- (a) consult the panel, or refer any matter relating to the possible termination or variation of the requirement for its advice or recommendations;
  - (b) invite the authority to make representations; and
  - (c) if the authority has any functions other than Welsh devolved functions, invite the appropriate national authority to make representations,
- before deciding whether to terminate or vary the requirement mentioned in subsection (5).
- (8) If the authority makes an application under subsection (6) the Welsh Ministers may by notice to the authority suspend the requirement until further notice (but this does not affect the liability to make any payment once the suspension is ended, unless the final notice is varied to have that effect).

## 67 Interpretation of Part: general

In this Part—

- “act” includes omission;
- “the appropriate national authority”, in relation to a Welsh public authority with any functions other than Welsh devolved functions, has the meaning given by section 61(5);
- “Article 260(2) proceedings” has the meaning given by section 58(5)(c);
- “Court of Justice” means the Court of Justice of the European Union;
- “EU financial sanction” has the meaning given by section 58(5)(a);
- “final notice” means a notice under section 66;
- “functions” and “Welsh devolved functions” are to be construed in accordance with section 61(3) and (4);
- “infraction of EU law”, in relation to an EU financial sanction, has the meaning given by section 58(5)(b);
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
- “periodic payment”, in relation to an EU financial sanction that is or includes a penalty payment, means a payment due under the terms of the penalty payment;
- “warning notice” means a notice under section 64;
- “Welsh public authority” has the meaning given in section 61(2).