

Status: Point in time view as at 06/06/2022. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Ivory Act 2018, SCHEDULE 1. (See end of Document for details)

SCHEDULES

SCHEDULE 1

Section 13

CIVIL SANCTIONS

PART 1

MONETARY PENALTIES

Imposition of monetary penalties

- 1 (1) The Secretary of State may impose a monetary penalty on a person if satisfied beyond reasonable doubt that the person has committed an offence under section 12.
- (2) In this Schedule “monetary penalty” means a requirement to pay to the Secretary of State a penalty of an amount determined by the Secretary of State.
- (3) The amount of a monetary penalty may not be more than £250,000.

Commencement Information

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|-----------|---|
| 11 | Sch. 1 para. 1 in force at 15.3.2022 for specified purposes by S.I. 2022/288, reg. 3(b) (with reg. 5) |
| 12 | Sch. 1 para. 1 in force at 6.6.2022 in so far as not already in force by S.I. 2022/288, reg. 3(b) (with reg. 5) |

Representations and appeals etc

- 2 (1) Where the Secretary of State proposes to impose a monetary penalty on a person, the Secretary of State must serve on the person a notice of what is proposed.
- (2) A notice under sub-paragraph (1) must offer the person the opportunity to discharge the person's liability for the monetary penalty by payment of a sum specified in the notice (which must be less than or equal to the amount of the penalty).
- (3) The person may make written representations and objections to the Secretary of State in relation to the proposed imposition of the monetary penalty.
- (4) After the end of the period for making such representations and objections (see paragraph 3(2)) the Secretary of State must decide whether to impose the monetary penalty.
- (5) The Secretary of State may not impose a monetary penalty on a person—
 - (a) if, taking into account (in particular) any matter raised by the person, the Secretary of State is no longer satisfied as mentioned in paragraph 1(1), or
 - (b) in prescribed circumstances.
- (6) A person on whom a monetary penalty is imposed may appeal against the decision to impose the penalty on the ground—

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- (a) that the decision was based on an error of fact,
 - (b) that the decision was wrong in law,
 - (c) that the amount of the penalty is unreasonable, or
 - (d) that the decision is unreasonable for any other reason,
- or on any other grounds that are prescribed.

(7) An appeal under sub-paragraph (6) is to the First-tier Tribunal.

Commencement Information

- I3** Sch. 1 para. 2 in force at 15.3.2022 for specified purposes by S.I. 2022/288, reg. 3(b) (with reg. 5)
- I4** Sch. 1 para. 2 in force at 6.6.2022 in so far as not already in force by S.I. 2022/288, reg. 3(b) (with reg. 5)

Information to be included in notices under paragraph 2

- 3 (1) A notice under paragraph 2(1) must include information as to—
- (a) the grounds for the proposal to impose the monetary penalty;
 - (b) the effect of payment of the sum referred to in paragraph 2(2);
 - (c) the right to make representations and objections;
 - (d) the circumstances in which the Secretary of State may not impose the monetary penalty.
- (2) Such a notice must also specify—
- (a) the period within which liability for the monetary penalty may be discharged, and
 - (b) the period within which representations and objections may be made.
- Neither period may be more than 28 days starting with the day on which the notice is received.
- (3) A notice under paragraph 2(4) must include information as to—
- (a) the grounds for imposing the monetary penalty;
 - (b) how payment may be made;
 - (c) the period within which payment is to be made;
 - (d) any early payment discounts or late payment penalties;
 - (e) rights of appeal;
 - (f) the consequences of non-payment.

The period referred to in paragraph (c) must be at least 28 days.

Commencement Information

- I5** Sch. 1 para. 3 in force at 15.3.2022 for specified purposes by S.I. 2022/288, reg. 3(b) (with reg. 5)
- I6** Sch. 1 para. 3 in force at 6.6.2022 in so far as not already in force by S.I. 2022/288, reg. 3(b) (with reg. 5)

Monetary penalties: criminal proceedings and conviction

- 4 (1) Where a notice under paragraph 2(1) is served on a person—
- (a) no criminal proceedings for an offence under section 12 may be instituted against the person in respect of the act or omission to which the notice

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- relates before the end of the period within which the person's liability may be discharged as mentioned in paragraph 2(2) (see paragraph 3(2));
- (b) if the liability is so discharged, the person may not at any time be convicted of an offence under section 12 in relation to that act or omission.
- (2) A person on whom a monetary penalty is imposed may not at any time be convicted of an offence under section 12 in respect of the act or omission giving rise to the penalty.

Commencement Information

I7 Sch. 1 para. 4 in force at 6.6.2022 by S.I. 2022/288, reg. 4(x) (with reg. 5)

PART 2

STOP NOTICES

Imposition of stop notices

- 5 (1) Where sub-paragraph (2) or (3) applies, the Secretary of State may serve on a person a notice (a “stop notice”)—
- (a) prohibiting the person from carrying on an activity specified in the notice, or
- (b) prohibiting the person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.
- (2) This sub-paragraph applies where—
- (a) the person is carrying on the activity, and
- (b) the Secretary of State reasonably believes that the activity as carried on by the person involves or is likely to involve the person committing an offence under section 12.
- (3) This sub-paragraph applies where—
- (a) the person is likely to carry on the activity, and
- (b) the Secretary of State reasonably believes that the activity as carried on by the person will involve or will be likely to involve the person committing an offence under section 12.
- (4) Steps referred to in sub-paragraph (1)(b) must be steps to secure that the activity is carried on or (as the case may be) will be carried on in a way that does not involve the person acting as mentioned in sub-paragraph (2)(b) or (3)(b).

Commencement Information

I8 Sch. 1 para. 5 in force at 15.3.2022 for specified purposes by S.I. 2022/288, reg. 3(b) (with reg. 5)

I9 Sch. 1 para. 5 in force at 6.6.2022 in so far as not already in force by S.I. 2022/288, reg. 3(b) (with reg. 5)

Information to be included in stop notices

- 6 A stop notice must include information as to—
- (a) the grounds for serving the notice;

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- (b) rights of appeal;
- (c) the consequences of not complying with the notice.

Commencement Information

- I10** Sch. 1 para. 6 in force at 15.3.2022 for specified purposes by S.I. 2022/288, reg. 3(b) (with reg. 5)
- I11** Sch. 1 para. 6 in force at 6.6.2022 in so far as not already in force by S.I. 2022/288, reg. 3(b) (with reg. 5)

Completion certificates

- 7
- (1) This paragraph applies where a person is served with a stop notice prohibiting the person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.
 - (2) Where the Secretary of State is satisfied that the person has taken the specified steps, the Secretary of State must issue a certificate to that effect (a “completion certificate”).
 - (3) The person served with the stop notice may at any time apply for a completion certificate.
 - (4) Where a completion certificate is issued, the stop notice to which it relates ceases to have effect.

Commencement Information

- I12** Sch. 1 para. 7 in force at 15.3.2022 for specified purposes by S.I. 2022/288, reg. 3(b) (with reg. 5)
- I13** Sch. 1 para. 7 in force at 6.6.2022 in so far as not already in force by S.I. 2022/288, reg. 3(b) (with reg. 5)

Appeals

- 8
- (1) A person served with a stop notice may appeal against the decision to serve it on the ground—
 - (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 under paragraph 5(1)(b) is unreasonable, or
 - (e) that the person has not acted as mentioned in paragraph 5(2)(b) or (3)(b) and would not have done so even if the stop notice had not been served,
 or on any other grounds that are prescribed.
 - (2) Where paragraph 7 applies and a decision is made not to issue a completion certificate, the person served with the stop notice may appeal against the decision on the ground that—
 - (a) it was based on an error of fact,
 - (b) it was wrong in law, or
 - (c) it was unfair or unreasonable,
 or on any other grounds that are prescribed.
 - (3) An appeal under sub-paragraph (1) or (2) is to the First-tier Tribunal.

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Commencement Information

- I14** Sch. 1 para. 8 in force at 15.3.2022 for specified purposes by S.I. 2022/288, reg. 3(b) (with reg. 5)
I15 Sch. 1 para. 8 in force at 6.6.2022 in so far as not already in force by S.I. 2022/288, reg. 3(b) (with reg. 5)

Offence of failure to comply with stop notice

- 9 (1) A person served with a stop notice who does not comply with it commits an offence.
- (2) A person who commits an offence under this paragraph is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding six months or a fine (or both);
 - (b) on summary conviction in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale (or both).

Commencement Information

- I16** Sch. 1 para. 9 in force at 6.6.2022 by S.I. 2022/288, reg. 4(x) (with reg. 5)

PART 3

ENFORCEMENT UNDERTAKINGS

- 10 (1) This paragraph applies where—
- (a) the Secretary of State has reasonable grounds to suspect that a person has committed an offence under section 12,
 - (b) the person offers an undertaking (an “enforcement undertaking”) to take specified action, within a specified period,
 - (c) the action specified is—
 - (i) action to secure that the offence does not continue or recur, or
 - (ii) action of a prescribed description,
- and
- (d) the Secretary of State accepts the undertaking.
- (2) Unless the person has failed to comply with the undertaking or any part of it—
- (a) the person may not at any time be convicted of an offence under section 12 in respect of the act or omission to which the undertaking relates;
 - (b) the Secretary of State may not impose on the person any monetary penalty that he or she would otherwise have power to impose by virtue of paragraph 1 in respect of that act or omission.

Commencement Information

- I17** Sch. 1 para. 10 in force at 15.3.2022 for specified purposes by S.I. 2022/288, reg. 3(b) (with reg. 5)
I18 Sch. 1 para. 10 in force at 6.6.2022 in so far as not already in force by S.I. 2022/288, reg. 3(b) (with reg. 5)

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PROSPECTIVE

PART 4

ENFORCEMENT COST RECOVERY NOTICES

Imposition of enforcement cost recovery notices

- 11 (1) The Secretary of State may serve an enforcement cost recovery notice on a person on whom—
- (a) a monetary penalty has been imposed, or
 - (b) a stop notice has been served.
- (2) For the purposes of this Schedule an “enforcement cost recovery notice” is a notice requiring the person to pay to the Secretary of State the costs incurred by the Secretary of State in relation to the monetary penalty or stop notice up to the time when it was imposed or served.
- (3) In sub-paragraph (2) “costs” includes (in particular)—
- (a) investigation costs;
 - (b) administration costs;
 - (c) costs of obtaining expert advice (including legal advice).

Information to be included in enforcement cost recovery notices

- 12 (1) An enforcement cost recovery notice must specify the amount to be paid and must include information as to—
- (a) the grounds for serving the notice;
 - (b) how payment may be made;
 - (c) the period within which payment is to be made;
 - (d) any early payment discounts or late payment penalties;
 - (e) rights of appeal;
 - (f) the consequences of non-payment.

The period referred to in paragraph (c) must be at least 28 days.

- (2) A person required by an enforcement cost recovery notice to pay an amount to the Secretary of State may require the Secretary of State to provide a detailed breakdown of that amount.

Appeals

- 13 (1) A person served with an enforcement cost recovery notice may appeal against the decision to serve it on the ground—
- (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, or
 - (d) that any of the costs to which the notice relates were unreasonably incurred or unreasonable in amount,

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or on any other grounds that are prescribed.

(2) An appeal under sub-paragraph (1) is to the First-tier Tribunal.

PART 5

POWER TO MAKE SUPPLEMENTARY PROVISION ETC BY REGULATIONS

Supplementary regulations: general

- 14 (1) The appropriate national authority may by regulations (“supplementary regulations”)
- (a) make provision (including transitional provision) supplementing that made by this Schedule;
 - (b) make provision that is consequential on or incidental to that made by this Schedule.
- (2) The following provisions of this Part are not to be read as limiting the power conferred by sub-paragraph (1).

Commencement Information

I19 Sch. 1 para. 14 in force at 15.3.2022 for specified purposes by S.I. 2022/288, reg. 3(b) (with reg. 5)

I20 Sch. 1 para. 14 in force at 6.6.2022 in so far as not already in force by S.I. 2022/288, reg. 3(b) (with reg. 5)

Consultation

- 15 (1) Before making supplementary regulations the appropriate national authority must consult any persons that the authority considers appropriate.
- (2) If, as a result of any consultation required by sub-paragraph (1), it appears to the authority that it is appropriate substantially to change the whole or any part of the proposals, the authority must undertake whatever further consultation the authority considers appropriate with respect to the changes.

Commencement Information

I21 Sch. 1 para. 15 in force at 15.3.2022 for specified purposes by S.I. 2022/288, reg. 3(b) (with reg. 5)

I22 Sch. 1 para. 15 in force at 6.6.2022 in so far as not already in force by S.I. 2022/288, reg. 3(b) (with reg. 5)

Monetary penalties and costs

- 16 (1) Supplementary regulations may make any of the following provision in relation to the power of the Secretary of State to require a person to pay a monetary penalty (under paragraph 1) or costs (under paragraph 11)—
- (a) provision for early payment discounts;
 - (b) provision for the payment of interest or other financial penalties for late payment;
 - (c) provision for enforcement.

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- (2) Provision made by virtue of sub-paragraph (1)(b) must secure that the interest or other financial penalties for late payment do not in total exceed the amount of the penalty or costs to which the interest or other financial penalties relate.
- (3) Provision made by virtue of sub-paragraph (1)(c) may include—
- (a) provision for the Secretary of State to recover the penalty or costs, and any interest or other financial penalty for late payment, as a civil debt;
 - (b) provision for the penalty or costs, 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.

Commencement Information

I23 Sch. 1 para. 16 in force at 15.3.2022 for specified purposes by S.I. 2022/288, reg. 3(b) (with reg. 5)

I24 Sch. 1 para. 16 in force at 6.6.2022 in so far as not already in force by S.I. 2022/288, reg. 3(b) (with reg. 5)

Enforcement undertakings

- 17 Supplementary regulations may make any of the following provision in relation to an enforcement undertaking—
- (a) provision as to the procedure for entering into an undertaking;
 - (b) provision as to the terms of an undertaking;
 - (c) provision as to publication of an undertaking by the Secretary of State;
 - (d) provision as to variation of an undertaking;
 - (e) provision as to circumstances in which a person may be regarded as having complied with an undertaking;
 - (f) provision as to monitoring by the Secretary of State of compliance with an undertaking;
 - (g) provision as to certification by the Secretary of State that an undertaking has been complied with;
 - (h) provision 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 an undertaking, provision for the 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, provision for that part-compliance to be taken into account in the imposition of any criminal or other sanction on the person.

Commencement Information

I25 Sch. 1 para. 17 in force at 15.3.2022 for specified purposes by S.I. 2022/288, reg. 3(b) (with reg. 5)

I26 Sch. 1 para. 17 in force at 6.6.2022 in so far as not already in force by S.I. 2022/288, reg. 3(b) (with reg. 5)

Appeals

- 18 (1) Supplementary regulations may make any of the following provision in relation to an appeal in respect of the imposition of a requirement, or the service of a notice, under this Schedule—

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- (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.
- (2) Provision made by virtue of sub-paragraph (1)(b) may in particular include provision conferring on the tribunal to which the appeal is made—
- (a) power to withdraw the requirement or notice;
 - (b) power to confirm the requirement or notice;
 - (c) power to take any steps that the Secretary of State could take in relation to the act or omission giving rise to the requirement or notice;
 - (d) power to remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the Secretary of State.

Commencement Information

I27 Sch. 1 para. 18 in force at 15.3.2022 for specified purposes by S.I. 2022/288, reg. 3(b) (with reg. 5)

I28 Sch. 1 para. 18 in force at 6.6.2022 in so far as not already in force by S.I. 2022/288, reg. 3(b) (with reg. 5)

PART 6

GENERAL AND SUPPLEMENTAL

Combination of sanctions

- 19 (1) The Secretary of State may not serve on a person a notice under paragraph 2(1) (notice of proposed monetary penalty) in relation to any act or omission in relation to which a stop notice has been served on that person.
- (2) The Secretary of State may not serve a stop notice on a person in relation to any act or omission in relation to which—
- (a) a monetary penalty has been imposed on that person, or
 - (b) the person's liability for a monetary penalty has been discharged as mentioned in paragraph 2(2).

Commencement Information

I29 Sch. 1 para. 19 in force at 6.6.2022 by S.I. 2022/288, reg. 4(x) (with reg. 5)

Unincorporated associations

- 20 Any amount that is payable under this Schedule by an unincorporated association is to be paid out of the funds of the association.

Commencement Information

I30 Sch. 1 para. 20 in force at 6.6.2022 by S.I. 2022/288, reg. 4(x) (with reg. 5)

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Guidance as to enforcement

- 21 (1) The Secretary of State must prepare and publish guidance as to—
- (a) the sanctions that may be imposed on a person who commits an offence under section 12;
 - (b) the action that the Secretary of State may take in relation to such a person;
 - (c) the circumstances in which the Secretary of State is likely to take any such action.
- (2) The guidance must include guidance about the Secretary of State's use of the power to impose a monetary penalty, with information as to—
- (a) the circumstances in which such a penalty may not be imposed;
 - (b) the amount of such a penalty;
 - (c) the matters likely to be taken into account by the Secretary of State in determining that amount (including, where relevant, any discounts for voluntary reporting of non-compliance);
 - (d) how liability for such a penalty may be discharged and the effect of discharge;
 - (e) rights to make representations and objections and rights of appeal in relation to such a penalty.
- (3) The guidance must include guidance about the Secretary of State's use of the power to serve a stop notice, with information as to—
- (a) the circumstances in which such a notice may not be served;
 - (b) rights of appeal in relation to such a notice.
- (4) The guidance must include guidance about the Secretary of State's use of the power to serve an enforcement cost recovery notice, with information as to—
- (a) the circumstances in which such a notice may not be served;
 - (b) the amount that a person may be required to pay;
 - (c) the matters likely to be taken into account by the Secretary of State in determining that amount;
 - (d) how liability for the costs to which the notice relates may be discharged and the effect of discharge;
 - (e) rights to make representations and objections and rights of appeal in relation to those costs.
- (5) The guidance must include guidance about the Secretary of State's use of the power to accept an enforcement undertaking.
- (6) Where appropriate, the Secretary of State must revise guidance published under this paragraph and publish the revised guidance.
- (7) The Secretary of State must consult—
- (a) the Welsh Ministers, the Scottish Ministers and the Northern Ireland department, and
 - (b) any other persons the Secretary of State considers appropriate, before publishing guidance or revised guidance under this paragraph.
- (8) The Secretary of State must have regard to the guidance or revised guidance published under this paragraph in exercising his or her functions under this Schedule.

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- I31** Sch. 1 para. 21 in force at 15.3.2022 for specified purposes by S.I. 2022/288, **reg. 3(b)** (with reg. 5)
I32 Sch. 1 para. 21 in force at 6.6.2022 in so far as not already in force by S.I. 2022/288, **reg. 3(b)** (with reg. 5)

Pre-commencement consultation

- 22 If, before the day on which this Schedule comes into effect, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of paragraph 15 or 21, those requirements may to that extent be taken to have been satisfied.

Commencement Information

- I33** Sch. 1 para. 22 in force at 15.3.2022 for specified purposes by S.I. 2022/288, **reg. 3(b)** (with reg. 5)
I34 Sch. 1 para. 22 in force at 6.6.2022 in so far as not already in force by S.I. 2022/288, **reg. 3(b)** (with reg. 5)

Reports on use of civil sanctions

- 23 (1) The Secretary of State must from time to time publish reports about the use made by the Secretary of State of his or her powers under this Schedule.
- (2) Each report must, in particular, specify—
- (a) the cases in which a monetary penalty was imposed, or a stop notice or enforcement costs recovery notice was served, during the period to which the report relates (other than cases in which the penalty or notice was overturned on appeal);
 - (b) the cases in which liability for a monetary penalty was discharged as mentioned in paragraph 2(2);
 - (c) the cases in which an enforcement undertaking was accepted.
- (3) This paragraph does not require the Secretary of State to include in a report any information that, in his or her opinion, it would be inappropriate to include on the ground that to do so—
- (a) would or might be unlawful, or
 - (b) might adversely affect any current investigation or proceedings.

Commencement Information

- I35** Sch. 1 para. 23 in force at 6.6.2022 by S.I. 2022/288, **reg. 4(x)** (with reg. 5)

Disclosure of information

- 24 (1) Information held by or on behalf of—
- (a) a police or customs officer,
 - (b) the Crown Prosecution Service,
 - (c) a procurator fiscal, or
 - (d) the Public Prosecution Service for Northern Ireland,

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may be disclosed to the Secretary of State for the purpose of the exercise by the Secretary of State of any powers conferred on him or her under or by virtue of this Schedule.

- (2) It does not matter for the purposes of sub-paragraph (1) whether the information was obtained before or after this Schedule comes into force.
- (3) A disclosure under this paragraph is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (4) Nothing in this paragraph authorises the making of a disclosure in contravention of—
 - (a) the data protection legislation, or
 - (b) Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- (5) This paragraph does not affect a power to disclose that exists apart from this paragraph.
- (6) In this paragraph “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

Commencement Information

I36 Sch. 1 para. 24 in force at 6.6.2022 by S.I. 2022/288, reg. 4(x) (with reg. 5)

PART 7

INTERPRETATION

Interpretation of Schedule

- 25 In this Schedule—
- “completion certificate” has the meaning given by paragraph 7(2);
 - “enforcement cost recovery notice” has the meaning given by paragraph 11(2);
 - “enforcement undertaking” has the meaning given by paragraph 10(1)(b);
 - “monetary penalty” has the meaning given by paragraph 1(2);
 - “prescribed” means prescribed in supplementary regulations;
 - “stop notice” has the meaning given by paragraph 5(1);
 - “supplementary regulations” has the meaning given by paragraph 14(1).

Commencement Information

I37 Sch. 1 para. 25 in force at 15.3.2022 for specified purposes by S.I. 2022/288, reg. 3(b) (with reg. 5)

I38 Sch. 1 para. 25 in force at 6.6.2022 in so far as not already in force by S.I. 2022/288, reg. 3(b) (with reg. 5)

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