

REGULATORY ENFORCEMENT AND SANCTIONS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part Three: Civil Sanctions

Section 43: Discretionary requirements: procedure

122. **Section 43** specifies certain minimum requirements that the order implementing discretionary requirements must include. In particular, the order must require the regulator to serve a notice on the person of its intention to impose discretionary requirements on that person and the time within which he can make representations and objections (which cannot be less than 28 days from receipt of the notice) against the proposed sanction.
123. The order must also permit the person the opportunity to offer an undertaking to benefit any person affected by the offence and for the regulator to take that into account when making its determination. For example, if a regulator was minded to issue a variable monetary penalty, the person could offer to pay compensation to a third party affected by their actions. The regulator could then adjust the level of the variable monetary penalty to take account of this. The regulator can, however, reject an offered undertaking.
124. After the end of the time for making representations and objections, and offering undertakings, the regulator can then decide whether to impose, withdraw or vary the discretionary requirement or replace it with a different requirement.
125. Where the regulator decides to impose a discretionary requirement, this must be done by way of a notice. The notice must contain the information set out in subsection (6) of this section, including the person's right of appeal against the sanction.
126. Subsection (7) of this section sets out the minimum grounds for appeal against the discretionary requirement that must be available.