



Regulatory Enforcement and Sanctions Act 2008

2008 CHAPTER 13

PART 3

CIVIL SANCTIONS

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 [^{F1}(if any)] of that fine.

Changes to legislation: Regulatory Enforcement and Sanctions Act 2008, Cross Heading: Fixed monetary penalties is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F1** Words in s. 39(4) inserted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 5 para. 12(2)** (with reg. 5(1))

Modifications etc. (not altering text)

- C1** S. 39(4) excluded (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\)](#), **ss. 10(3)(a)**, 21(2)
- C2** S. 39(4) excluded by 2010 nawm 8, s. 10(3) (as substituted (E.W.) (18.10.2023) by [Environment \(Wales\) Act 2016 \(anaw 3\)](#), **ss. 68(6)**, 88(3)(b); S.I. 2023/1096, art. 2(c))

40 Fixed monetary penalties: procedure

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

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- (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;
 - (c) that the decision was unreasonable.

Modifications etc. (not altering text)

- C3** Pt. 3 modified (18.10.2023) by [Environment \(Wales\) Act 2016 \(anaw 3\)](#), ss. **68(1)**, 88(3)(b); S.I. 2023/1096, art. 2(c)

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.

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 70(6) inserted by [2018 c. 12 Sch. 19 para. 152\(3\)](#)