

SCHEDULES

SCHEDULE 10

Section 144

FURTHER PROVISION ABOUT FIXED MONETARY PENALTIES UNDER SECTION 142

Fixed monetary penalties: other sanctions

- 1 (1) Provision under section 142 must secure that, in a case where a notice of intent referred to in section 143(2)(a) is served on a person—
 - (a) no criminal proceedings for the offence to which the notice relates 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 143(2)(b), and
 - (b) if the person so discharges liability, the person may not at any time be convicted of the offence to which the notice relates in relation to that act or omission.
- (2) Provision under section 142 must also secure that, in a case where a fixed monetary penalty is imposed on a person, that person may not at any time be convicted of the offence in relation to which the penalty is imposed in respect of the act or omission giving rise to the penalty.

Monetary penalties

- 2 (1) An order under section 142 which confers power on an enforcement authority to require a person to pay a fixed monetary penalty 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 sub-paragraph (1)(c) may include—
 - (a) provision for the enforcement authority 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.

Appeals

- 3 (1) An order under section 142 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.

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- (2) In sub-paragraph (1)(b) “tribunal” does not include an ordinary court of law.
- (3) An order under section 142 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 person is to be recoverable.
- (4) The provision referred to in sub-paragraph (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 enforcement authority 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 enforcement authority;
 - (e) to award costs.

Consultation

- 4 (1) Before making an order under section 142, the appropriate authority must consult the following—
 - (a) the enforcement authority to which the order relates,
 - (b) such organisations as appear to the appropriate authority to be representative of persons substantially affected by the proposals, and
 - (c) such other persons as the appropriate 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 such further consultation with respect to the changes as it considers appropriate.
- (3) If, before the day on which this Schedule 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 paragraph, those requirements may to that extent be taken to have been satisfied.

Guidance as to use of fixed monetary penalties

- 5 (1) Where power is conferred on an enforcement authority under section 142 to impose a fixed monetary penalty in relation to an offence, the provision conferring the power must secure the results in sub-paragraph (2).
- (2) Those results are that—
 - (a) the enforcement authority must publish guidance about its use of the penalty,
 - (b) the guidance must contain the relevant information,
 - (c) the enforcement authority must revise the guidance where appropriate,
 - (d) the enforcement authority must consult such persons as the provision may specify before publishing any guidance or revised guidance, and

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- (e) the enforcement authority must have regard to the guidance or revised guidance in exercising its functions.
- (3) The relevant information referred to in sub-paragraph (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.

Guidance as to enforcement of offences

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- (1) Where power is conferred on an enforcement authority under section 142 to impose a fixed monetary penalty in relation to an offence, the enforcement authority 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 enforcement authority may take to enforce the offence, whether by virtue of section 142 or otherwise, and
 - (c) the circumstances in which the enforcement authority is likely to take any such action.
 - (3) The enforcement authority may from time to time revise guidance published by it under this paragraph and publish the revised guidance.
 - (4) The enforcement authority must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this paragraph.

Publication of enforcement action

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- (1) Where power is conferred on an enforcement authority under section 142 to impose a fixed monetary penalty in relation to an offence, the provision conferring the power must, subject to this paragraph, secure the result in sub-paragraph (2).
 - (2) That result is that the enforcement authority must from time to time publish reports specifying—
 - (a) the cases in which a fixed monetary penalty has been imposed, and
 - (b) the cases in which liability to the penalty has been discharged pursuant to section 143(2)(b).
 - (3) In sub-paragraph (2)(a), the reference to cases in which a fixed monetary penalty has been imposed does not include cases where a penalty has been imposed but overturned on appeal.
 - (4) The provision conferring the power need not secure the result in sub-paragraph (2) in cases where the appropriate authority considers that it would be inappropriate to do so.

Payment of penalties into Consolidated Fund etc

- 8 (1) Where pursuant to any provision made under section 142 an enforcement authority receives—
- (a) a fixed monetary penalty, or
 - (b) any interest or other financial penalty for late payment of such a penalty,
- the authority must pay it into the relevant Fund.
- (2) In sub-paragraph (1) “the relevant Fund” means—
- (a) in a case where the authority has functions only in relation to Wales, the Welsh Consolidated Fund;
 - (b) in any other case, the Consolidated Fund.

Disclosure of information

- 9 (1) Information held by or on behalf of a person mentioned in sub-paragraph (2) may be disclosed to an enforcement authority on whom powers are conferred under section 142 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 enforcement authority of any powers conferred on it under that section in relation to that offence.
- (2) The persons are—
- (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.
- (3) It is immaterial for the purposes of sub-paragraph (1) whether the information was obtained before or after the coming into force of this paragraph.
- (4) A disclosure under this paragraph is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (5) Nothing in this paragraph 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 paragraph does not affect a power to disclose which exists apart from this paragraph.