

## SCHEDULES

### SCHEDULE 7

Section 97

#### FURTHER PROVISION ABOUT CIVIL SANCTIONS UNDER PART 4

##### *Interpretation*

- 1 In this Schedule “civil sanction” means a fixed monetary penalty or a variable monetary penalty.

##### *Fixed monetary penalties: other sanctions*

- 2 (1) Provision under section 93 must secure that, in a case where a notice of intent referred to in section 94(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 94(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 93 must also secure that, in a case where a fixed monetary penalty is imposed on a person—
- (a) 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;
  - (b) the enforcement authority may not issue a compliance notice or a remediation notice to that person in respect of the act or omission giving rise to the penalty.

##### *Variable monetary penalties: other sanctions*

- 3 Provision under section 95 must secure that, in a case where a variable monetary penalty is imposed on a person—
- (a) 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;
  - (b) the enforcement authority may not issue a compliance notice to that person in respect of the act or omission giving rise to the penalty.

##### *Combination of sanctions*

- 4 (1) Provision may not be made under section 93 and section 95 conferring powers on an enforcement authority in relation to the same offence unless it secures that—

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- (a) the authority may not serve a notice of intent referred to in section 94(2)(a) on a person in relation to any act or omission where a variable monetary penalty has been imposed on that person in relation to that act or omission, and
  - (b) the authority may not serve a notice of intent referred to in section 96(2)(a) on a person in relation to any act or omission where—
    - (i) a fixed monetary penalty has been imposed on that person in relation to that act or omission, or
    - (ii) the person has discharged liability to a fixed monetary penalty in relation to that act or omission pursuant to section 94(2)(b).
- (2) Provision under section 93 which results in an enforcement authority having power to impose a fixed monetary penalty or to issue a stop notice in relation to the same offence must secure that—
- (a) the authority may not serve a notice of intent referred to in section 94(2)(a) on a person in relation to any act or omission where a stop notice has been served on that person in relation to that act or omission, and
  - (b) the authority may not serve a stop notice on a person in relation to any act or omission where—
    - (i) a fixed monetary penalty has been imposed on that person in relation to that act or omission, or
    - (ii) the person has discharged liability to a fixed monetary penalty in relation to that act or omission pursuant to section 94(2)(b).

#### *Monetary penalties*

- 5 (1) An order under section 93 or 95 which confers power on an enforcement authority to require a person to pay a fixed monetary penalty or a variable 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.

#### *Costs recovery*

- 6 (1) Provision under section 95 may include provision for an enforcement authority, by notice, to require a person on whom a variable monetary penalty is imposed to pay the costs incurred by the enforcement authority in relation to the imposition of the penalty up to the time of its imposition.
- (2) In sub-paragraph (1) the references to costs include in particular—
- (a) investigation costs;
  - (b) administration costs;

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- (c) costs of obtaining expert advice (including legal advice).
- (2) Provision under this paragraph must secure that, in any case where a notice requiring payment of costs is served—
  - (a) the notice specifies the amount required to be paid;
  - (b) the enforcement authority may be required to provide a detailed breakdown of that amount;
  - (c) the person required to pay costs is not liable to pay any costs shown by the person to have been unnecessarily incurred;
  - (d) the person required to pay costs may appeal against—
    - (i) the decision of the enforcement authority to impose the requirement to pay costs;
    - (ii) the decision of the enforcement authority as to the amount of those costs.
- (4) Provision under this paragraph may include the provision referred to in sub-paragraphs (1)(b) and (c) and (2) of paragraph 5.
- (5) Provision under this paragraph must secure that an enforcement authority is required to publish guidance about how it will exercise the power conferred by the provision.

### *Appeals*

- 7 (1) An order under section 93 or 95 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.
- This sub-paragraph does not apply in the case of an order made by the Scottish Ministers.
- (2) In sub-paragraph (1)(b)—
- “enactment” includes an enactment contained in, or in an instrument made under, Northern Ireland legislation;
  - “tribunal” does not include an ordinary court of law.
- (3) An order under section 93 or 95 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 any person to whom 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 person to whom 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;

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- (e) to award costs.

### *Consultation*

- 8 (1) Before making an order under section 93 or 95, the appropriate licensing authority must consult the following (in addition to any persons who must be consulted under paragraph 9)—
- (a) the enforcement authority to which the order relates,
  - (b) such organisations as appear to the licensing authority to be representative of persons substantially affected by the proposals, and
  - (c) such other persons as the licensing authority considers appropriate.
- (2) If, as a result of any consultation required by sub-paragraph (1), it appears to the licensing authority that it is appropriate substantially to change the whole or any part of the proposals, the licensing 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 civil sanctions*

- 9 (1) Where power is conferred on an enforcement authority under section 93 or 95 to impose a civil sanction 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 sanction,
  - (b) in the case of guidance relating to a fixed monetary penalty or a variable monetary penalty, 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
  - (e) the enforcement authority must have regard to the guidance or revised guidance in exercising its functions.
- (3) In the case of guidance relating to a fixed monetary penalty, 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.
- (4) In the case of guidance relating to a variable monetary penalty, 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,

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- (c) the matters likely to be taken into account by the enforcement authority in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance), and
- (d) rights to make representations and objections and rights of appeal.

#### *Guidance as to enforcement of offences*

- 10 (1) Where power is conferred on an enforcement authority under section 93 or 95 to impose a civil sanction 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 93 or 95 or otherwise, and
  - (c) the circumstances in which the enforcement authority is likely to take any such action.
- (3) An 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*

- 11 (1) Where power is conferred on an enforcement authority under section 93 or 95 to impose a civil sanction 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 the civil sanction has been imposed,
  - (b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged pursuant to section 94(2)(b), and
  - (c) where the civil sanction is a variable monetary penalty, the cases in which an undertaking referred to in section 96(5) is accepted from such a person.
- (3) In sub-paragraph (2)(a), the reference to cases in which the civil sanction has been imposed does not include cases where the sanction 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 licensing authority considers that it would be inappropriate to do so.

#### *Payment of penalties into Consolidated Fund etc*

- 12 (1) Where pursuant to any provision made under section 93 or 95 an enforcement authority receives—
- (a) a fixed monetary penalty or a variable monetary penalty, or
  - (b) any interest or other financial penalty for late payment of such a penalty,

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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 a case where the authority has functions only in relation to Scotland, the Scottish Consolidated Fund;
  - (c) in a case where the authority has functions only in relation to Northern Ireland, the Consolidated Fund of Northern Ireland;
  - (d) in any other case, the Consolidated Fund.

*Disclosure of information*

- 13 (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 93 or 95 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 any of those sections 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.