

Draft Regulations laid before Parliament under sections 1132A(7) and 1290 of the Companies Act 2006, and sections 39(7) and 67(4) of the Economic Crime (Transparency and Enforcement) Act 2022, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2024 No.

COMPANIES

**The Economic Crime and Corporate Transparency
Act 2023 (Financial Penalty) Regulations 2024**

Made - - - -

Coming into force

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 1132A(7) and 1292(1) and (2) of the Companies Act 2006⁽¹⁾ and sections 39(1) and (2) and 67(2) and (3) of the Economic Crime (Transparency and Enforcement) Act 2022⁽²⁾.

In accordance with sections 1132A(7) and 1290 of the Companies Act 2006, and sections 39(7) and 67(4) of the Economic Crime (Transparency and Enforcement) Act 2022, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Economic Crime and Corporate Transparency Act 2023 (Financial Penalty) Regulations 2024 and come into force—

- (a) on 2nd May 2024, if the Regulations are made on or before 1st May 2024;
- (b) on the day after the day on which the Regulations are made, if they are made on or after 2nd May 2024.

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(1) 2006 c. 46. Section 1132A was inserted by section 104 of the Economic Crime and Corporate Transparency Act 2023.
(2) 2022 c. 10. Section 39 was amended by section 175 of the Economic Crime and Corporate Transparency Act 2023.

Interpretation

2. In these Regulations—

“conduct” means an act or omission;

“financial penalty” means a requirement to pay to the registrar a penalty, of an amount determined by the registrar in accordance with regulation 7, which may be—

- (a) a fixed amount (“a fixed penalty”);
- (b) an amount calculated by reference to a daily rate (“a daily rate penalty”); or
- (c) a combination of a fixed penalty and a daily rate penalty.

PART 2

Financial Penalties

The registrar’s powers

3.—(1) Subject to paragraph (2) and regulations 4, 5 and 7, the registrar may impose a financial penalty on a person if satisfied beyond reasonable doubt, that the person has engaged in conduct amounting to a relevant offence⁽³⁾.

(2) No financial penalty may be imposed on a person in respect of conduct amounting to an offence if—

- (a) proceedings have been brought against the person for that offence in respect of that conduct and the proceedings are ongoing; or
- (b) the person has been convicted of that offence in respect of that conduct.

(3) No proceedings may be brought against a person in respect of conduct amounting to an offence if the person has been given a financial penalty under these Regulations in respect of that conduct.

Warning and penalty notices

4.—(1) If the registrar suspects that a person has engaged in conduct amounting to a relevant offence, the registrar may issue a warning notice in writing to that person.

(2) The warning notice referred to in paragraph (1) above must contain—

- (a) the grounds for suspecting that an offence has been committed;
- (b) the period within which the person may make written representations to the registrar about their conduct (which must be at least 28 days beginning on the day after the date of the warning notice) and how such representations may be delivered; and
- (c) a warning that at the end of the period referred to in sub-paragraph (b) above, the registrar may impose a financial penalty.

5.—(1) After the end of the period stated in the warning notice, the registrar, if satisfied beyond reasonable doubt that the person has engaged in conduct amounting to a relevant offence, may issue a penalty notice to the person who was issued the warning notice.

(2) The penalty notice referred to in paragraph (1) above must be in writing and must set out—

- (a) the grounds for issuing the financial penalty;

(3) Relevant offence is defined in section 1132A of the Economic Crime and Corporate Transparency Act 2023 (c. 56).

- (b) whether the financial penalty is a fixed penalty, a daily rate penalty or a combination of both and how it is calculated;
- (c) in the case of a fixed penalty, the amount of the penalty;
- (d) in the case of a daily rate penalty, the amount of the daily rate, the day on which the amount started to accumulate and the day on which, or the circumstances in which, it ceased to accumulate;
- (e) how payment may be made;
- (f) the period within which payment is to be made (which period must not end sooner than the end of the period of 28 days beginning on the date the penalty notice is given);
- (g) rights of appeal; and
- (h) the consequences of non-payment.

Variation and revocation of financial penalties

6.—(1) Subject to regulation 7, the registrar may vary or revoke the penalty notice as the registrar considers appropriate.

(2) If a financial penalty is revoked under these Regulations, the registrar must, as soon as practicable, give a notice to the person upon whom the financial penalty was imposed.

(3) If a financial penalty, or the period within which a financial penalty is to be paid, is varied under this regulation, the registrar must, as soon as practicable, issue a new penalty notice which, in addition to the information referred to in regulation 5(2), must state the variation and the reasons for the variation.

Penalties

7.—(1) A financial penalty must not exceed the maximum fine that could be imposed by a court for the same offence under criminal proceedings in the jurisdiction in which the offence was committed and, in any event, must not exceed £10,000.

(2) The registrar may not impose a daily rate penalty unless the person's conduct constitutes an offence in respect of which a daily default fine may be imposed in the jurisdiction in which the offence was committed.

(3) In relation to conduct for which the fine for the relevant offence in the jurisdiction in which the offence was committed does not include a daily default fine, the registrar may impose more than one fixed penalty in relation to that conduct where there is a continuing contravention.

(4) For the purposes of a daily rate penalty—

- (a) the first day from which the amount may start to accumulate is the day after the day the registrar determines to be the day on which the person first engaged in the conduct amounting to a relevant offence;
- (b) unless the registrar determines an earlier date, the daily rate ceases to accumulate at the beginning of the earliest of—
 - (i) the day on which the requirement to comply to which the offence relates is satisfied,
 - (ii) the day on which that requirement no longer applies.

(5) Interest accrues on the amount of a financial penalty which has not been paid within the period stated in the penalty notice at such rate as the registrar may direct or, if no such direction is given, the rate for the time being specified in section 17 of the Judgments Act 1838(4).

(4) 1838 c. 110. Section 17 was amended by S.I. 1993/564 and S.I. 1998/2940.

PART 3

Appeals

8.—(1) Subject to paragraph (3), a person who has received a penalty notice under regulations 5 or 6(3) may appeal to the County Court or, in Scotland, the Sheriff Court on the grounds mentioned in paragraph (2).

(2) The grounds referred to in paragraph (1) are that the decision to issue a financial penalty, the level or type of financial penalty or any condition stated in the penalty notice—

- (a) is unlawful;
- (b) is irrational or unreasonable; or
- (c) has been made on the basis of a procedural impropriety or otherwise contravenes the rules of natural justice.

(3) No appeal may be brought unless the permission of the court has been obtained.

(4) No application for such permission may be made after 28 days beginning on the day after the date the penalty notice is given unless the court is satisfied that there was good reason for the failure of the applicant to seek permission before the end of that period.

(5) An applicant who seeks permission to appeal must serve written notice of the application on the registrar within 7 days beginning with the date on which the application for permission was issued. Such written notice must include a statement setting out the grounds on which the appeal is made.

(6) The court determining an appeal may—

- (a) dismiss the appeal;
- (b) vary the amount of the financial penalty;
- (c) change the nature of the financial penalty between a fixed penalty, a daily rate penalty or a combination of a fixed penalty and a daily rate penalty; or
- (d) quash the financial penalty in whole or in part.

PART 4

Enforcement

Recovering penalties

9.—(1) The registrar may recover any of the amount of the financial penalty and any interest that has not been paid if—

- (a) no appeal relating to the financial penalty has been brought under regulation 8 during the period within which such an appeal may be brought; or
- (b) an appeal has been determined or withdrawn.

(2) In England and Wales, and in Northern Ireland, the amount of the financial penalty is recoverable as if it were payable under an order of the High Court.

(3) In Scotland, the financial penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the Sheriff Court of any sheriffdom in Scotland.

(4) Where action is taken under this regulation for the recovery of a sum payable under a penalty notice, the financial penalty is—

- (a) in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003⁽⁵⁾ as if it were a judgment entered in the High Court, and
- (b) in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981⁽⁶⁾ as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.

PART 5

Register of Overseas Entities Financial Penalties

Amendments to the Register of Overseas Entities (Penalties and Northern Ireland Dispositions) Regulations 2023

10. The Register of Overseas Entities (Penalties and Northern Ireland Dispositions) Regulations 2023⁽⁷⁾ are amended as follows.

11. For regulation 3(2) substitute—

“(2) No financial penalty may be imposed on a person in respect of conduct amounting to an offence if—

- (a) proceedings have been brought against the person for that offence in respect of that conduct and the proceedings are ongoing; or
- (b) the person has been convicted of that offence in respect of that conduct.”

12. In regulation 5(2) for “contain” substitute “set out”.

13. In regulation 5(2)(d) for “starts” substitute “started” and for “ceases” substitute “ceased”.

14. In regulation 5(2)(f) after “sooner than” insert “the end of the period of” and after “penalty notice” insert “is given”.

15. For regulation 7(4)(a) substitute—

“(a) the first day from which the amount may start to accumulate is the day after the day the registrar determines to be the day on which the person first engaged in the conduct amounting to a relevant offence;”

16. In regulation 7(5) after “accrues on” insert “the amount of”.

17. In regulation 8(4) after “penalty notice” insert “is given”.

18. In regulation 8(6)(b) after “the amount” insert “of”.

19. In regulation 9(1) after “any of” insert “the amount of”.

20. In regulation 9(2) after “Northern Ireland,” insert “the amount of”.

Name
Title
Department for Business and Trade

(5) 2003 c. 39.

(6) S.I. 1981/226 (N.I. 6).

(7) S.I. 2023/696.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision relating to companies on the register kept by the registrar of companies (“the registrar”) in accordance with the Companies Act 2006 (c. 46). The provisions relate to financial penalties, appeals and enforcement.

The Regulations also amend the Register of Overseas Entities (Penalties and Northern Ireland Dispositions) Regulations 2023 in relation to the circumstances in which a financial penalty may not be imposed.

Part 2 confers power on the registrar to impose a financial penalty on a person if satisfied beyond reasonable doubt that the person has engaged in conduct amounting to a relevant offence, as defined in section 1132A of the Companies Act 2006.

Regulations 4 and 5 set out the process by which the registrar may issue warning and penalty notices, as well as the necessary content of such notices, and the time periods for issuing such notices.

Regulation 6 allows the registrar to vary or revoke a penalty notice, as they consider appropriate, subject to regulation 7.

Regulation 7 sets out the maximum financial penalty that may be imposed under these Regulations and the rules for imposing and calculating penalties under a penalty notice.

Regulation 8 describes the process by which a person who has received a penalty notice may appeal and the time limits for applying for such an appeal.

Regulation 9 allows the registrar to recover the financial penalty (with any accrued interest) after the expiry of the period stated in the penalty notice, if no appeal has been brought or if an appeal has been determined or withdrawn. It also describes how the financial penalty is treated for recovery purposes in England and Wales, Northern Ireland and Scotland.

Part 5 makes amendments to the Register of Overseas Entities (Penalties and Northern Ireland Dispositions) Regulations 2023. Regulation 11 substitutes a new regulation 3(2), which clarifies the circumstances in which a financial penalty may not be imposed and aligns with the amendments made to the Economic Crime (Transparency and Enforcement) Act 2022 by the Economic Crime and Corporate Transparency Act 2023. Regulations 12 to 20 make minor amendments to clarify the process for issuing a financial penalty and the calculation of such a penalty.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.