

REGULATORY ENFORCEMENT AND SANCTIONS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part Three: Civil Sanctions

Section 50: Enforcement undertakings

135. **Section 50** enables a Minister to make an order allowing a regulator to accept “enforcement undertakings” offered by a person. An enforcement undertaking is an undertaking or promise by a person to take certain actions. A regulator will not be able to impose enforcement undertakings.
136. The regulator may only accept enforcement undertakings when it has reasonable grounds for suspecting that an act or omission of the person constitutes a relevant offence. Once that enforcement undertaking is accepted, the person may not be prosecuted for the act or omission or have a fixed monetary penalty or discretionary requirement imposed on them, unless they fail, or are deemed to have failed, to comply with the undertakings. Where there is such non-compliance, the regulator will be able to prosecute the person for the original offence or impose a fixed monetary penalty or discretionary requirement.
137. A person may offer the following type of action as part of its undertakings:
- Actions that ensure that the person does not repeat or continue their non-compliant actions. For example, the person may undertake to fix faulty equipment that breaches safety standards;
 - Actions that restore the position, as far as possible, to what it would have been had the non-compliant action not taken place. For example, the person may undertake to clean up an area that has been contaminated by its non-compliant actions;
 - Actions that benefit any person affected by the non-compliant actions of the person (including payment of money). For example, the person may set up a compensation scheme for victims of its non-compliance; and
 - Other action that may be prescribed by the Minister in the order.
138. Subsection (5) of this section enables the Minister to include further provision in the order such as the procedure for entering into the enforcement undertaking, certification by the regulator that the undertaking has been complied with and the consequences for a person providing misleading or inaccurate information.
139. There is no right of appeal against the enforcement undertaking itself, as the undertaking is volunteered by the person and is not imposed by the regulator. There may be, however, a right of appeal against a regulator’s refusal to certify that the undertaking has been completed, where the Minister provides for such right in the order.