

SCHEDULE 4

(introduced by section 38(3))

FINANCIAL PENALTIES

Application

- 1 This schedule applies where the Scottish Ministers are satisfied that an approved regulator has failed to—
- (a) adhere to its internal governance arrangements (including, in particular, those relating to the independent and effective exercise of its regulatory functions), or
 - (b) comply with a direction given in accordance with schedule 2.

Power to impose penalty

- 2 (1) The Scottish Ministers may impose on the approved regulator a penalty, in respect of a failure mentioned in paragraph 1, of an amount not exceeding the prescribed maximum.
- (2) Here, the prescribed maximum is the maximum amount that is prescribed in regulations made by the Scottish Ministers for the purpose of this paragraph.
- (3) A financial penalty imposed under this paragraph is payable to the Scottish Ministers.

Amount of penalty

- 3 (1) When considering the appropriate amount of a penalty to be imposed under paragraph 2, the Scottish Ministers must have regard to—
- (a) the seriousness of the failure,
 - (b) the nature of the failure in other respects.
- (2) It is material for the purpose of sub-paragraph (1)—
- (a) whether the failure was deliberate,
 - (b) if the failure is attributable to recklessness or negligence, the degree involved.
- (3) The Scottish Ministers may consult such person or body as they consider appropriate when considering—
- (a) whether to impose a penalty,
 - (b) the appropriate amount of the penalty.

Notice of intention

- 4 (1) Before imposing a financial penalty, the Scottish Ministers must give the approved regulator a notice (a “notice of intention”) of their intention to do so.
- (2) The notice of intention must—
- (a) state—
 - (i) that the Scottish Ministers intend to impose a financial penalty,
 - (ii) the amount of the proposed penalty,
 - (b) by reference to the failure concerned and any other relevant facts, explain why the Scottish Ministers consider that—

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- (i) it is appropriate to impose a penalty,
- (ii) the amount of the proposed penalty is appropriate.

Consultation

- 5
- (1) The approved regulator has 28 days beginning with the date of receipt of the notice of intention (or such longer period as the approved regulator and the Scottish Ministers may agree) to make representations to the Scottish Ministers about the proposed penalty.
 - (2) The Scottish Ministers must—
 - (a) publish the notice of intention in such manner as they consider most appropriate for bringing it to the attention of any relevant person or body,
 - (b) give a copy of that notice, and a copy of any representations received from the approved regulator, to any person whom or body that they consult under sub-paragraph (3).
 - (3) After the expiry of the period for representations, the Scottish Ministers may consult such person or body as they consider appropriate about the appropriateness of—
 - (a) imposing the penalty,
 - (b) its amount.

Decision

- 6
- (1) The Scottish Ministers must have regard to any representations made to them by the approved regulator, and any consultee under paragraph 5(3), when deciding whether to proceed with imposing the penalty.
 - (2) The Scottish Ministers must—
 - (a) give a notice to the approved regulator (a “decision notice”) of their decision,
 - (b) notify the consultees under paragraph 5(3) of their decision,
 - (c) publish the decision notice in such manner as they consider most appropriate for bringing it to the attention of any relevant person or body.
 - (3) The decision notice must—
 - (a) state whether or not a financial penalty is being imposed,
 - (b) give the reason for the imposition (or otherwise) of a penalty,
 - (c) if a penalty is being imposed—
 - (i) state the amount of the penalty (and mention any allowance made for payment by instalments),
 - (ii) explain why the Scottish Ministers consider that amount to be appropriate,
 - (iii) specify the date by which the penalty requires to be paid in full.
 - (4) That date must not be within the 3 months beginning with the day on which the decision notice is given to the approved regulator (but this does not preclude earlier payment at the initiative of the approved regulator).
 - (5) For the purpose of this schedule, relevant persons or bodies include—
 - (a) other approved regulators,
 - (b) providers of legal services,
 - (c) organisations representing the interests of consumers,

- (d) members of the public.

Variation of penalty

- 7 (1) The Scottish Ministers may, on an application from an approved regulator received within 21 days beginning with the day on which the decision notice is given to the approved regulator—
- (a) vary the date by which the penalty requires to be paid,
 - (b) allow for the penalty to be paid by—
 - (i) instalments (if not already allowed), or
 - (ii) different instalments (if allowed).
- (2) Where an application is made under sub-paragraph (1), no part of the penalty is required to be paid before the Scottish Ministers notify the approved regulator of their determination of the application.

Appeal

- 8 (1) An approved regulator on which a financial penalty is imposed under paragraph 2 may appeal to the Court of Session against the penalty on one or more of the appeal grounds.
- (2) On an appeal under this paragraph—
- (a) the Court may—
 - (i) uphold, vary or quash the decision that is the subject of the appeal,
 - (ii) make such further order as is necessary in the interests of justice,
 - (b) the Court's determination is final.

Appeal grounds

- 9 The grounds for an appeal under paragraph 8 are—
- (a) that, in the circumstances of the case—
 - (i) it was not appropriate to impose the penalty, or
 - (ii) the amount of the penalty is excessive,
 - (b) that the date specified under paragraph 6(3)(c)(iii) is unreasonable,
 - (c) that the other arrangements for payment are unreasonable, including—
 - (i) the absence of any provision for payment by instalments, or
 - (ii) any provision for payment by instalments that has been allowed,
 - (d) that—
 - (i) the penalty was imposed otherwise than in accordance with this schedule, and
 - (ii) the approved regulator's interests have been substantially prejudiced as a result.

Time for appeal

- 10 (1) An appeal under paragraph 8 is to be made—
- (a) within the 3 months beginning with the day on which the decision notice is given to the approved regulator, or

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- (b) where the ground of appeal is referable to something done under paragraph 7(1), within the 3 months beginning with the day on which the approved regulator is notified of the thing done.
- (2) Where an appeal is made under paragraph 8, no part of the penalty requires to be paid before the appeal is determined or withdrawn.

Interest

- 11 (1) If the whole or part of a penalty is not paid as required in accordance with this schedule the unpaid amount carries interest at the prescribed rate.
- (2) Here, the prescribed rate is the rate that is prescribed in regulations made by the Scottish Ministers for the purpose of this paragraph.

Default

- 12 (1) Sub-paragraph (2) applies where the whole or part of a penalty is not paid as required in accordance with this schedule.
- (2) The Scottish Ministers may recover from the approved regulator, as a debt due to them—
- (a) the penalty or (as the case may be) the part of it, and
 - (b) the interest that it carries.