

Schedules

Schedule 2

Section 37.

Further provision about fixed monetary penalties under section 35

Fixed monetary penalties: other sanctions

1.—(1) An order under section 35 must secure that, in a case where a notice of intent referred to in section 36(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 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 36(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.

(2) An order under section 35 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 giving rise to the penalty.

Monetary penalties

2.—(1) An order under section 35 may include provision—

- (a) for early payment discounts;
- (b) for the payment of interest or other financial penalties for late payment of the fixed monetary 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 Department to recover the fixed monetary penalty, and any interest or other financial penalty for late payment, as a civil debt;
- (b) provision for the fixed monetary 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 35 may not provide for the making of an appeal other than to a tribunal created under a statutory provision.

(2) In sub-paragraph (1) “tribunal” does not include an ordinary court of law.

(3) An order under section 35 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 tribunal 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 Department could take in relation to the act 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 Department;
- (e) to award costs.

Consultation

4.—(1) Before making an order under section 35, the Department must consult the following—

- (a) such organisations as appear to the Department to be representative of persons substantially affected by the proposals, and
- (b) such other persons as the Department considers appropriate.

(2) If, as a result of any consultation required by sub-paragraph (1), it appears to the Department that it is appropriate substantially to change the whole or any part of the proposals, the Department 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 operation, 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.

Status: This is the original version (as it was originally enacted).

Guidance as to use of fixed monetary penalties

- 5.—(1) An order under section 35 must secure the results in sub-paragraph (2).
- (2) Those results are that—
- (a) the Department must publish guidance about its use of the fixed monetary penalty,
 - (b) the guidance must contain the relevant information,
 - (c) the Department must revise the guidance where appropriate,
 - (d) the Department must consult such persons as the order may specify before publishing any guidance or revised guidance, and
 - (e) the Department 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 fixed monetary 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

- 6.—(1) Where an order under section 35 confers powers to impose a fixed monetary penalty in relation to an offence, the Department 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 Department may take to enforce the offence, whether by virtue of section 35 or otherwise, and
 - (c) the circumstances in which the Department is likely to take any such action.
- (3) The Department may from time to time revise guidance published by it under this paragraph and publish the revised guidance.
- (4) The Department must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this paragraph.

Publication of enforcement action

7.—(1) An order under section 35 must secure the result in sub-paragraph (2) unless the Department considers that it would be inappropriate to do so.

(2) That result is that the Department 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 36(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.

Disclosure of information

8.—(1) Information held by or on behalf of a person mentioned in sub-paragraph (2) may be disclosed to the Department 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 Department of any powers conferred on it under section 35 in relation to that offence.

(2) The persons are—

- (a) the Public Prosecution Service for Northern Ireland, or
- (b) 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 operation 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, or
- (b) Part 1 of the Regulation of Investigatory Powers Act 2000.

(6) This paragraph does not affect a power to disclose which exists apart from this paragraph.