

CONSTITUTIONAL REFORM AND GOVERNANCE ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 4: Parliamentary Standards Act 2009: new Schedule 4

196. New Schedule 4 to the 2009 Act sets out the enforcement powers of the Compliance Officer. These take two forms. Part 1 of the Schedule sets out powers to recover overpaid expenses and Part 2 confers powers to impose a civil penalty on MPs in defined circumstances.
197. Paragraph 1 of new Schedule 4 confers power on the Compliance Officer to issue an MP with a repayment direction. The power is exercisable where, following an investigation under section 9 of the 2009 Act, the Compliance Officer has found that an MP has been paid an amount under the allowances scheme which should not have been paid and that the amount has not been repaid (sub-paragraph (1)). Where the Compliance Officer makes a finding that the IPSA was wholly or partly at fault in making an overpayment, he or she has a discretion whether or not to issue a repayment direction; where there is no such finding the Compliance Officer must issue a repayment direction (sub-paragraphs (2) and (3)). Where the Compliance Officer issues a repayment direction in circumstances where he or she has made a finding that the IPSA is wholly or partly at fault, the direction must require such amount to be repaid as the Compliance Officer considers reasonable; in all other cases the repayment direction must require the full amount of the overpayment to be repaid (sub-paragraph (4)). A repayment direction must specify the date by which the required repayment must be made (sub-paragraph (5)). A repayment direction may also require the MP concerned to pay interest on the amount overpaid and the costs of the IPSA in relation to the amount to be repaid, including the costs of the Compliance Officer's investigation (sub-paragraph (6)).
198. The decision whether to require an MP to pay interest on the overpayment or the costs of the investigation will be at the discretion of the Compliance Officer. However, the Compliance Officer will be required to have regard to guidance issued by the IPSA under paragraph 2. Such guidance must, in particular, cover whether, if at all, the Compliance Officer should require an MP to pay interest or costs in circumstances where the Compliance Officer has found the IPSA to be wholly or partly at fault (paragraph 2(2)). Where the Compliance Officer imposes a requirement to pay costs, the amount is to be calculated in accordance with a scheme prepared by the IPSA (paragraph 2(3)).
199. Paragraph 3 provides for appeals against a repayment direction. An appeal will be to the First-tier Tribunal. An MP will be able to challenge a finding by the Compliance Officer that there has been an overpayment of expenses; a decision by the Compliance Officer to require the MP to pay interest on the overpayment and/or the costs of the investigation; a decision by the Compliance Officer to impose a repayment direction in circumstances where the Compliance Office has made a finding that the IPSA was

wholly or partly at fault; and, in cases where such a finding has been made, the amount specified in the repayment direction (sub-paragraph (1)). An appeal must be lodged within 28 days of the repayment direction being sent to a member; although the First-tier Tribunal may give permission for an out of time appeal to be lodged (sub-paragraph (2)). An appeal to the First-tier Tribunal will be by way of a rehearing (sub-paragraph (3)). Where the First-tier Tribunal allows an appeal it may revoke the repayment direction (and, by implication, the decision of the Compliance Officer that there has been an overpayment), revoke or vary any requirement contained in the repayment direction (for example, the requirement to pay interest or costs may be overturned or reduced, or the amount of expenses to be repaid by the MP could be reduced), or make any other order it thinks fit (sub-paragraph (5)).

200. Paragraph 4 enables an MP subject to a repayment direction to apply to the Compliance Officer to extend (or further extend) the repayment period specified in the repayment direction. Such an application must be made before the expiry of the repayment period (sub-paragraph (1)). An MP may appeal to the First-tier Tribunal against the decision of the Compliance Officer (in practice, a decision to refuse to extend the repayment period or to extend it by the duration requested by the MP). An appeal must be lodged within 28 days of the day the Compliance Office sends notice of his or her decision to the MP, although the First-tier Tribunal may give permission for an out of time appeal to be lodged (sub-paragraph (5)). The appeal will be by way of a rehearing (sub-paragraph (6)). The Tribunal may revoke or vary (for example, by substituting a new repayment period) the Compliance Officer's decision and make such other order as it thinks fit (sub-paragraph (8)).
201. Paragraph 5 provides for the enforcement of a repayment direction. Enforcement action can only be taken on the expiry of the 28 day period for bringing an appeal against a repayment direction or, if an appeal is lodged in time, on the withdrawal or determination of that appeal (and any subsequent in time appeal) (sub-paragraphs (1) and (2)). The IPSA may recover the amount specified in the repayment direction (that is, the overpaid expenses and any interest or costs) by deducting the amount from the MP's salary or any allowances payable to the MP (sub-paragraph (3)). It is expected that this method of recovery will be used in the majority of cases. Where this method of recovery is not possible, for example, where the person subject to a repayment direction is no longer an MP, the Compliance Officer may seek to enforce payment through an order of the county court or, in Scotland, the sheriff's court (sub-paragraphs (4) and (5)).
202. Paragraph 6 enables the Compliance Officer to impose a civil monetary penalty if he or she has made a finding that the MP has, without reasonable excuse, failed to provide the Compliance Officer with information pursuant to his or her investigation (sub-paragraph (3)). A penalty notice may also be imposed if an MP has failed to comply with the requirements of a repayment direction (that is, that the MP has failed to pay the amount specified or failed to do so within the repayment period) (sub-paragraph (4)).
203. Under paragraph 7 the maximum amount of the penalty that the Compliance Officer may impose is £1,000 (sub-paragraph (2)). This amount may be increased (but not decreased) by order subject to the affirmative resolution procedure in the House of Commons (sub-paragraphs (3) to (5)).
204. A penalty notice must include specified information, including the amount of the penalty, the reasons for imposing the penalty, the deadline for paying the penalty and the procedure for appealing (paragraph 8).
205. Paragraph 9 requires the IPSA to prepare guidance about the circumstances in which the Compliance Officer should impose a penalty and how the Compliance Officer should determine the amount of the penalty (subject to the statutory maximum) (sub-paragraph (1)). The Compliance Officer will be required to have regard to such guidance.

These notes refer to the Constitutional Reform and Governance Act 2010 (c.25) which received Royal Assent on 8th April 2010

206. Paragraph 10 enables the Compliance Officer to review the decision to impose a penalty notice. Such a review may be at the request of the MP concerned or on the Compliance Officer's own initiative.
207. Paragraph 11 confers a right of appeal to the First-tier Tribunal against the imposition of a penalty notice (sub-paragraph (1)). An appeal must be lodged within 28 days of the penalty notice being sent to a member; although the First-tier Tribunal may give permission for an out of time appeal to be lodged (sub-paragraph (2)). The appeal is by way of a rehearing (sub-paragraph (3)). Where it allows an appeal, the Tribunal may either cancel the penalty notice or reduce the penalty (sub-paragraph (4)).
208. Paragraph 12 makes similar provision for the enforcement of penalty notices as paragraph 5 does for the enforcement of repayment directions.
209. Paragraph 13 provides for the payment of monies paid in pursuance of a penalty notice to be paid into the Consolidated Fund.