



# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 9

#### MISCELLANEOUS

##### *Penalties received by Financial Services Authority or Bank of England*

#### **109 Payment to Treasury of penalties received by Financial Services Authority**

- (1) The Financial Services Authority (“the FSA”) must in respect of its financial year beginning with 1 April 2012 and each subsequent financial year pay to the Treasury its penalty receipts after deducting its enforcement costs.
- (2) The FSA's “penalty receipts” in respect of a financial year are any amounts received by it during the year by way of penalties imposed under FSMA 2000.
- (3) The FSA's “enforcement costs” in respect of a financial year are the expenses incurred by it during the year in connection with—
  - (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
  - (b) the recovery of penalties imposed under FSMA 2000.
- (4) For this purpose the FSA's enforcement powers are—
  - (a) its powers under any of the provisions mentioned in subsection (5),
  - (b) its powers under any other enactment specified by the Treasury by order,
  - (c) its powers in relation to the investigation of relevant offences, and
  - (d) its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.
- (5) The provisions referred to in subsection (4)(a) are the following provisions of FSMA 2000—
  - (a) section 56 (prohibition orders),
  - (b) section 63A (penalties relating to performance of controlled functions without approval),

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*Status: Point in time view as at 27/06/2017.*

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- (c) section 66 (disciplinary powers in relation to approved persons),
  - (d) section 87M (public censure of issuer),
  - (e) section 89 (public censure of sponsor),
  - (f) section 89K (public censure of issuer),
  - (g) section 91 (penalties for breach of Part 6 rules),
  - (h) section 123 (penalties in case of market abuse),
  - (i) section 131G (short selling etc: power to impose penalty or issue censure),
  - (j) sections 205, 206 and 206A (disciplinary measures),
  - (k) section 249 (disqualification of auditor for breach of trust scheme rules),
  - (l) section 345 (disqualification of auditor or actuary), and
  - (m) Part 25 (injunctions and restitution).
- (6) “Relevant offences” are—
- (a) offences under FSMA 2000,
  - (b) offences under subordinate legislation made under that Act,
  - (c) offences falling within section 402(1) of that Act, and
  - (d) any other offences specified by the Treasury by order.
- (7) The Treasury may give directions to the FSA as to how the FSA is to comply with its duty under subsection (1).
- (8) The directions may in particular—
- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in subsection (3),
  - (b) relate to the calculation and timing of the deduction in respect of the FSA's enforcement costs, and
  - (c) specify the time when any payment is required to be made to the Treasury.
- (9) The directions may also require the FSA to provide the Treasury at specified times with information relating to—
- (a) penalties that the FSA has imposed under FSMA 2000, or
  - (b) the FSA's enforcement costs.
- (10) The Treasury must pay into the Consolidated Fund any sums received by them under this section.
- (11) The scheme operated by the FSA under paragraph 16 of Schedule 1 to FSMA 2000 is, in the case of penalties received by the FSA on or after 1 April 2012, to apply only in relation to sums retained by the FSA as a result of the deduction for which subsection (1) provides.
- (12) When section 6(2) is fully in force, the Treasury may by order repeal this section.

## **110 Payment to Treasury of penalties received by Bank of England**

- (1) The Bank of England (“the Bank”) must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.
- (2) The Bank's “penalty receipts” in respect of a financial year are any amounts received by the Bank during the year by way of penalties imposed under any of the following provisions—
  - (a) sections 192K and 312F of FSMA 2000, and

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- (b) section 198 of the Banking Act 2009.
- (3) The Bank's "enforcement costs" in respect of a financial year are the expenses incurred by it during the year in connection with—
- (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
  - (b) the recovery of penalties imposed under any of the provisions mentioned in subsection (2).
- (4) For this purpose the Bank's enforcement powers are—
- (a) its powers under any of the provisions mentioned in subsection (5),
  - (b) its powers under any other enactment specified by the Treasury by order,
  - (c) its powers in relation to the investigation of offences under FSMA 2000 or of any other offences specified by the Treasury by order, and
  - (d) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under FSMA 2000 or of any other offences specified by the Treasury by order.
- (5) The provisions referred to in subsection (4)(a) are as follows—
- (a) sections 192K to 192N of FSMA 2000 (parent undertakings), as applied to the Bank by Schedule 17A to that Act,
  - (b) sections 312E and 312F of that Act (disciplinary measures in relation to clearing houses),
  - (c) sections 380, 382 and 384 of that Act (injunctions and restitution), as applied to the Bank by Schedule 17A to that Act, and
  - (d) sections 197 to 200 and 202A of the Banking Act 2009 (<sup>F1</sup>... payment systems).
- (6) The Treasury may give directions to the Bank as to how the Bank is to comply with its duty under subsection (1).
- (7) The directions may in particular—
- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in subsection (3),
  - (b) relate to the calculation and timing of the deduction in respect of the Bank's enforcement costs, and
  - (c) specify the time when any payment is required to be made to the Treasury.
- (8) The directions may also require the Bank to provide the Treasury at specified times with specified information relating to—
- (a) penalties that the Bank has imposed under the provisions mentioned in subsection (2), or
  - (b) the Bank's enforcement costs.
- (9) The Treasury must pay into the Consolidated Fund any sums received by them under this section.

#### Textual Amendments

- F1** Word in s. 110(5)(d) omitted (27.6.2017) by virtue of [Digital Economy Act 2017 \(c. 30\), s. 118\(2\), Sch. 9 para. 34](#)

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#### **Commencement Information**

- I1** S. 110 in force at 24.1.2013 for specified purposes by [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#)
- I2** S. 110 in force at 1.4.2013 in so far as not already in force by [S.I. 2013/423, art. 3](#), [Sch.](#)

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