

2013 No. 418

FINANCIAL SERVICES AND MARKETS

**The Payment to Treasury of Penalties (Enforcement Costs)
Order 2013**

<i>Made</i> - - - -	<i>26th February 2013</i>
<i>Laid before Parliament</i>	<i>27th February 2013</i>
<i>Coming into force</i> - -	<i>1st April 2013</i>

The Treasury, in exercise of the powers conferred by paragraph 20(4)(d) and (5)(e) of Schedule 1ZA to the Financial Services and Markets Act 2000(a), paragraph 28(4)(d) and (5)(c) of Schedule 1ZB to that Act and sections 109(4)(b), (6)(d), 110(4)(b), (c), (d) and 115(2) of the Financial Services Act 2012(b), make the following Order.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Payment to Treasury of Penalties (Enforcement Costs) Order 2013 and comes into force on 1st April 2013.

(2) In this Order—

“the 2012 Act” means the Financial Services Act 2012;

“FSMA 2000” means the Financial Services and Markets Act 2000.

Enforcement powers

2.—(1) The following enactments are specified for the purposes of paragraph 20(4)(d) of Schedule 1ZA to FSMA 2000 (payment to the Treasury of penalties received by Financial Conduct Authority) and section 109(4)(b) of the 2012 Act (payment to Treasury of penalties received by Financial Services Authority)—

- (a) section 359(1)(c) of FSMA 2000 (administration order in relation to a company or insolvent partnership carrying on a regulated activity in contravention of the general prohibition)(c),
- (b) section 367(1)(c) of FSMA 2000 (winding-up petitions in relation to a body carrying on a regulated activity in contravention of the general prohibition)(d),
- (c) section 372(1) of FSMA 2000 (bankruptcy petitions)(e) in relation to a individual falling within section 372(7)(b) (individual who is carrying on, or has carried on, a regulated activity in contravention of the general prohibition),

(a) 2000 c.8. Schedules 1ZA and 1ZB were inserted by Schedule 3 to the Financial Services Act 2012.

(b) 2012 c.21.

(c) Substituted by Schedule 17 to the Enterprise Act 2002 (c.40). Amended by Schedule 14 to the Financial Services Act 2012.

(d) Amended by Schedule 14 to the Financial Services Act 2012.

(e) Amended by Schedule 14 to the Financial Services Act 2012.

- (d) regulation 42 of the Money Laundering Regulations 2007^(a),
- (e) regulation 11 of the Transfer of Funds (Information on Payer) Regulations 2007^(b),
- (f) regulations 30, 31(1)(c), 33 and 34 of the Regulated Covered Bonds Regulations 2008^(c),
- (g) regulations 84, 85, 87, 88 and 90 of the Payment Services Regulations 2009^(d),
- (h) regulations 50, 51, 52, 54, 55 and 57 of the Electronic Money Regulations 2011^(e),
- (i) regulation 5A of the Recognised Auction Platforms Regulations 2011^(f), and
- (j) regulations 5, 6, 8 or 9 of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012^(g).

(2) Regulations 8 and 9 of the Uncertificated Securities Regulations 2001^(h) are specified for the purposes of section 110(4)(b) of the 2012 Act (payment to Treasury of penalties received by Bank of England).

Relevant offences

3.—(1) The offences specified in paragraph (2) are specified for the purposes of—

- (a) paragraph 20(5)(e) of Schedule 1ZA to FSMA 2000 (payment to Treasury of penalties received by the Financial Conduct Authority),
- (b) paragraph 28(5)(c) of Schedule 1ZB to FSMA 2000 (payment to Treasury of penalties received by the Prudential Regulation Authority),
- (c) section 109(6)(d) of the 2012 Act (payment to Treasury of penalties received by Financial Services Authority), and
- (d) section 110(4)(c) and (d) of the 2012 Act (payment to Treasury of penalties received by Bank of England).

(2) The offences specified in this paragraph are any offence under the law of any part of the United Kingdom other than—

- (a) an offence under FSMA 2000,
- (b) an offence under subordinate legislation made under that Act,
- (c) an offence falling within section 402(1) of that Act (power of the FCA to institute proceedings for certain other offences)⁽ⁱ⁾, or
- (d) an offence under Part 7 of the 2012 Act (offences relating to financial services).

Mark Lancaster
David Evennett

Two of the Lords Commissioners of Her Majesty's Treasury

26th February 2013

(a) SI 2007/2157. Amended by SI 2007/3299 and by SI 2009/56.
 (b) SI 2007/3298.
 (c) SI 2008/346.
 (d) SI 2009/209.
 (e) SI 2011/99.
 (f) SI 2011/2699; regulation 5A inserted by SI 2012/1906.
 (g) SI 2012/3122.
 (h) SI 2001/3755.
 (i) Amended by Schedule 9 to the 2012 Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order relates to provisions of the Financial Services and Markets Act 2000 (c.8) (“FSMA 2000”) and the Financial Services Act 2012 (c.21) (“the 2012 Act”) which require the regulator of financial services (the Financial Services Authority for the period up to 31 March 2013 and, for the period after that date, the Financial Conduct Authority, the Prudential Regulation Authority and the Bank of England) to pay to the Treasury the amounts received by the regulator by way of penalties imposed under FSMA 2000 or (in the case of the Bank of England) under the Banking Act 2009 (c.1). The regulator must make the payment after deducting its enforcement costs.

This Order supplements the definitions of enforcement costs in FSMA 2000 and the 2012 Act in two ways.

The effect of article 2 is that the expenses incurred in connection with the exercise or consideration of the possible exercise of any of the powers specified in article 2(1) is to be regarded as an enforcement cost by the Financial Services Authority (for the purposes of section 109 of the 2012 Act) or the Financial Conduct Authority (for the purposes of paragraph of Schedule 1ZA to FSMA 2000). The enactments specified are powers to initiate insolvency proceedings in relation to a person who is carrying on a regulated activity in breach of the general prohibition in section 19 of FSMA 2000 and powers to take enforcement action under various regulatory regimes other than the regime provided for by FSMA 2000 itself. Article 2 also specifies the enforcement powers of the Bank of England under the Uncertificated Securities Regulations 2001 for the purposes of section 110(4)(b) of the 2012 Act.

The effect of article 3 is that the expenses incurred in connection with the exercise or consideration of the possible exercise of powers in relation to the investigation of, or (in England and Wales or Northern Ireland) prosecution of the offences specified in article 3 is to be regarded as an enforcement cost by the Financial Services Authority (for the purposes of section 109 of the 2012 Act), the Financial Conduct Authority (for the purposes of paragraph 20 of Schedule 1ZA to FSMA 2000), the Prudential Regulation Authority (for the purposes of paragraph 28 of Schedule 1ZB to FSMA 2000) and the Bank of England (for the purposes of section 110 of the 2012 Act). All offences under the law of a part of the United Kingdom, other than those already specified by the 2012 Act or FSMA 2000 or those offences which only certain regulators may prosecute are specified for this purpose.

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.hm-treasury.gov.uk and is published alongside the Order on www.legislation.gov.uk.

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