

Financial Services (Banking Reform) Bill

Government annotated amendments: Financial Penalty

After Clause 120

LORD DEIGHTON

1 Insert the following new Clause -

“Power to impose penalties on persons providing claims management services

- (1) The schedule to the Compensation Act 2006 (claims management regulations) is amended as follows.
- (2) In paragraph 8 (rules about conduct of authorised persons), in sub-paragraph (2)(b), after sub-paragraph (i) insert -
 “(ia) provision enabling the Regulator to require an authorised person to pay a penalty;”.

This enables the Secretary of State to make regulations which allow the Regulator to impose a financial penalty as a consequence of a failure by an authorised person (ie a Claims Management Company) to comply with the rules of professional conduct.

- (3) In paragraph 9 (codes of practice about conduct of authorised persons), in
 sub-paragraph (2)(b), after sub-paragraph (i) insert -
 “(ia) enable the Regulator to require an authorised person to pay a penalty;”.

This enables the Secretary of State to make regulations which allow the Regulator to impose a financial penalty as a consequence of a failure by an authorised person to comply with a code of practice issued by the Regulator.

- (4) In paragraph 10 (complaints about conduct of authorised persons), after sub-paragraph (2) insert -
 “(3) Regulations under sub-paragraph (1) may enable the Regulator to require an authorised person to pay a penalty.”

This enables the Secretary of State to make regulations which allow the Regulator to issue a financial penalty in relation to investigating a complaint about the professional conduct of an authorised person.

- (5) In paragraph 11 (requirement to have indemnity insurance), in sub-paragraph (2)(b), after “Regulator” insert “to require the payment of a penalty by an authorised person or”.

This enables the Secretary of State to make regulations, which enable the Regulator to issue a financial penalty to an authorised person where the authorised person has failed to comply with a requirement of the Regulator to take out a policy of professional indemnity insurance in respect of his actions in the course of providing or purporting to provide regulated claims management services.

- (6) In paragraph 14 (enforcement), in sub-paragraph (4), for the words from “impose” to “authorisation” substitute “require an authorised person to pay a penalty, or to impose conditions on, suspend or cancel a person’s authorisation,”.

This enables the Secretary of State to make regulations which enable the Regulator to issue a financial penalty to an authorised person where the authorised person has failed to comply with a requirement to provide information or documents for the purpose of the Regulator investigating a complaint about the activities of the authorised person or for the purpose of assessing the authorised person’s compliance with the terms and conditions of an authorisation.

Additionally it provides that the Secretary of State may make regulations which enable the Regulator to issue a financial penalty where:

- an authorised person obstructs the Regulator executing a warrant issued by a judge of the High Court, Circuit judge or justice of the peace authorising the Regulator to enter and search premises for the purposes of investigating a complaint about the activities of an authorised person; or
- assessing the authorised person’s compliance with the terms and conditions of their authorisation.

Regulations may also enable the Regulator to issue a financial penalty where an authorised person obstructs the Regulator from attempting to take copies of written or electronic records found on such a search for the same purposes for which the search was undertaken.

- (7) After paragraph 15 insert –

“Penalties: supplementary provision

- 16 (1) This paragraph applies in any case where regulations include provision enabling the Regulator to require an authorised person to pay a penalty.

- (2) The regulations –

- (a) shall include provision about how the Regulator is to determine the amount of a penalty, and
- (b) may, in particular, include provision specifying a minimum or maximum amount.

(3) The regulations –

- (a) shall provide for income from penalties imposed by the Regulator to be paid into the Consolidated Fund, but
- (b) may provide that such income is to be paid into the Consolidated Fund after the deduction of costs incurred by the Regulator in collecting, or enforcing the payment of, such penalties.

(4) The regulations may also include, in particular –

- (a) provision for a penalty imposed by the Regulator to be enforced as a debt;
- (b) provision specifying conditions that must be met before any action to enforce a penalty may be taken.”

These provisions provide that regulations that are made by the Secretary of State in relation to financial penalties shall include provision about how the amount of the penalty is to be calculated and may specify a maximum and minimum amount.

These provisions require regulations to be made to provide for income received from the financial penalties imposed to be paid into the Consolidated Fund. Further to this, regulations may be made that enable the Regulator to deduct costs resulting from the collection or enforcement of the payment of financial penalties before the income is paid into the Consolidated Fund.

Regulations may also provide for financial penalties to be enforced as a debt and to specify conditions that must be met before any such enforcement of the penalty may be taken.

(8) In Section 13 of the Compensation Act 2006 (appeals and reference to Tribunal) –

after (a) in subsection (1), omit the “or” at the end of paragraph (d) and

paragraph (e) insert “, or

(f) imposes a penalty on the person.”;

(b) after subsection (1) insert –

“(1A) A person who is appealing to the Tribunal against a decision

to impose a penalty may appeal against –

- (a) the imposition of the penalty,
- (b) the amount of the penalty, or

- (c) any date by which the penalty, or any part of it, is required to be paid.”;
- (c) in subsection (3), after paragraph (d) insert -
 - “(da) may require a person to pay a penalty (which may be of a different amount from that of any penalty imposed by the Regulator);
 - (db) may vary any date by which a penalty, or any part of a penalty, is required to be paid;”.

These provisions provide for appeals to the First-tier Tribunal against a decision taken by the Regulator to impose a financial penalty. An appeal may be made against the imposition of a penalty, the amount of a penalty or any date by which the penalty, or any part of it, is required to be paid. As a result of these amendments, the Tribunal will be able to require a person to pay a penalty, vary the date by which any payment or part payment of a penalty is due. This is in addition to the Tribunal’s existing powers to impose or remove conditions, suspend or cancel a person’s authorisation or remit the matter to the Regulator. The Tribunal can already take any decision which the Regulator could have taken by virtue of its existing powers.

Before Clause 122

LORD DEIGHTON

- 2 Insert the following new Clause -

“Orders and regulations: general

- (1) Any power of the Treasury or the Secretary of State to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) Subsection (1) does not apply to an order under section 34 (payment systems: designation orders).
- (3) An order or regulations made by the Treasury or Secretary of State under this Act may -
 - (a) make different provision for different cases, and
 - (b) contain such incidental or transitional provision as the Treasury or Secretary of State consider appropriate.”

Clause 122

LORD DEIGHTON

- 3 Page 94, line 9, leave out subsection (1)

These amendments provide that any power to make an order or regulations by the Treasury or the Secretary of State under this Act, except for orders made under section 34 (payment systems: designated orders), be exercisable by statutory instrument. Any such order or regulations may make different provision for different cases, and may contain such incidental or transitional provision as the Treasury or Secretary of State consider appropriate.

Clause 124

LORD DEIGHTON

- 4 Page 95, line 7, after “Treasury” insert “ or Secretary of State”

Clause 124

LORD DEIGHTON

- 5 Page 95, line 9, leave out “they consider” and insert “the Treasury or Secretary of State considers”

These amendments provide for the Secretary of State to make consequential amendments by order as considered necessary or expedient in consequence of any provision made by or under the Act.

Clause 125

LORD DEIGHTON

- 6 Page 95, line 18, after “Treasury” insert “or Secretary of State”

Clause 125

LORD DEIGHTON

- 7 Page 95, line 18, leave out “they consider” and insert “the Treasury or Secretary of State considers”

These amendments provide for the Secretary of State to make transitional, transitory or saving provisions by order, in connection with the commencement of any provision made by or under the Act.

Clause 126

LORD DEIGHTON

- 7 on Page 95, line 28, after “Britain)” insert “and section (*Power to impose penalties on persons providing claims management services*) (power to impose penalties on persons providing claims management services)”

This provides that the amendments relating to claims management services have the same extent as the Compensation Act 2006, the relevant parts of which extend to England and Wales only.

Clause 127

LORD DEIGHTON

- 8 Page 95, line 33, at end insert -
- “() Section (*Power to impose penalties on persons providing claims management services*) comes into force on such a day as the Secretary of State may by order appoint.”

This provides for the Secretary of State to commence provisions relating to the power to impose financial penalties on persons providing claims management services by way of a commencement order.

In the Title

LORD DEIGHTON

- 9 Line 6, after “subsidiaries;” insert “to make provision enabling penalties to be imposed on persons providing claims management services;”

This provides for a reference to the claims management services amendments to be included in the long title to the Act.