

LOCALISM ACT 2011

EXPLANATORY NOTES

COMMENTARY

Part 2: Eu Financial Sanctions

Section 48: Power to require public authorities to make payments in respect of certain EU financial sanctions

144. **Section 48** gives discretionary power to a Minister of the Crown to require a public authority to pay all, or part, of a financial sanction imposed on the UK by the Court of Justice of the European Union. Such a sanction would be imposed for failure by the UK to remedy a breach of EU law that the Court had previously found. This requirement can only be imposed if the public authority has been designated in relation to the specific EU infraction case in question (also see section 52), and it must be imposed by way of a final notice (see section 56), which must be preceded by a warning notice (see section 54).

Section 49: Duty of the Secretary of State to issue a policy statement

145. The Secretary of State must issue a policy statement concerning the operation of Part 2 of the Localism Act and consult prior to publication. Any Minister using the powers under this Part and any independent panel set up under them (described in section 53) must have regard to the policy statement.

Section 50: The EU sanctions to which Part 2 applies

146. **Section 50** clarifies that Part 2 applies in principle to EU financial sanctions imposed on the UK after the commencement of Part 2. It also enables a Minister to give a certificate which has the effect of specifying a part of an EU financial sanction to which the powers under this Part do not apply. The intention is that this power will be used for parts of the EU financial sanction which relate to devolved matters.

Section 51: Meaning of “public authority and related terms”

147. **Section 51** defines some of the terms used in this Part. A public authority is a local authority (as specified) or any other body or person which has any non-devolved public functions. A public authority with mixed functions is one which has both devolved and non-devolved functions; and the ‘appropriate national authority’, in relation to a public authority with mixed functions, is such of the devolved administrations of Scotland, Wales and Northern Ireland as are relevant, depending on the body’s devolved functions.

Section 52: Designation of Public Authorities

148. **Section 52** gives power to a Minister to designate by order one or more named public authorities, identify the specific infraction case to which the designation relates, and describe the activities of the authority covered by the designation. Only acts or omissions after designation can be taken into account when passing on a financial

sanction, and only activities which are carried out in the exercise of non-devolved functions of the authority can be included.

149. The Minister must consult with a public authority, and the appropriate national authority if the public authority has mixed functions, designating it. A Minister would be able to make an order at any point once an infraction case had been initiated by the Commission, and the UK Government had been formally notified – the earliest would be following a formal notice letter under Article 258 on the Treaty of the Functioning of the European Union.
150. All orders under this section are subject to the affirmative procedure, that is, the approval of both Houses of Parliament must be obtained – see section 235.

Section 53: Establishment of independent panel

151. **Section 53** sets out that, once a financial sanction has been imposed on the UK and a public authority has been designated by order for the related infraction case, then the Minister must set up an independent advisory panel before issuing any warning notice. The panel will have a number of functions under Part 2, including dealing with representations following the giving of a warning notice to a designated public authority.

Section 54: Warning notices

152. **Section 54** sets out the procedural requirements for warning notices. The Minister must consult with the independent panel and any appropriate national authority before issuing a warning notice.
153. Following any representations on procedures, the Minister may consult with the independent panel and then issue a revised warning notice, listing any changes to the timetable or procedures set out in the notice for the particular case.

Section 55: Matters to be determined before a final notice is given

154. **Section 55** sets out the matters which must be determined before issuing a final notice. The independent panel must provide an evidenced report containing recommendations about the apportionment of the lump sum and any periodic penalties due under the terms of the EU financial sanction, and the report must be published. The Minister must then invite further representations from the public authority, and appropriate national authority if relevant, on ability of the authority to pay and potential impact on finances and any devolved functions. The Minister must have regard to the independent panel's report, any impact on the authority's finances and not prejudicing the performance by the authority of any of its devolved functions.

Section 56: Final notices

155. **Section 56** sets out the contents of a final notice, requiring payment following a determination under section 55 that a public authority should be required to pay. This will deal with all parts of the EU financial sanction including the lump sum, periodic payments already due from the UK and future periodic payments. The Minister may terminate the requirement to make payments towards future periodic payments, or vary it to make it less onerous, if he or she sees fit due to changing circumstances, either on the application of the public authority or of his or her own motion. If such an application is made then, while the application is being considered the Minister may suspend any payments which would otherwise fall due, but this does not affect the liability to make any payment once the suspension is ended, unless the Minister so decides. The Minister may consult the independent panel, and seek representations from the public authority and any appropriate national authority, before reducing or terminating the requirement to pay.