

Introduction

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('the New Act'), which received the Royal Assent on 1 May 2012, provides, among other things, for increases in the level of fines payable by those found guilty of criminal offences in the magistrates' courts. The relevant sections have not yet been brought into force but, once implemented, will apply to a number of offences under the Companies Act 2006 ('CA 2006') for which directors may be found liable.

What changes does the New Act make to the level of magistrates' courts fines?

The changes apply to all legislation (whether a statute or statutory instrument) that authorises the magistrates' courts to impose a fine for a criminal offence, although they will only be brought into force in England and Wales. The New Act includes provisions for increases in fines falling within the following categories:

Category 1 fines

Fines currently capped at the general £5,000 statutory maximum (or any higher, specifically prescribed, statutory amount) whether the fine relates to a summary offence¹ or to an offence triable either way²: the cap on these fines will be removed and no upper limit will apply.

When the relevant provisions of the New Act are implemented, the Government will have the option to set new caps for Category 1 fines. However, it is on record as noting that the general removal of the cap provided for by the New Act will give magistrates the discretion to impose more proportionate fines in cases involving corporate and wealthy defendants and it remains to be seen what action the Government proposes to take in this regard. We will up-date you once the situation becomes clearer and when the implementation date for the changes is announced.

Category 2 fines

Fines currently fixed at sums below £5,000: once the New Act is in force, the Government will be able to increase the level of these fines, although they will remain subject to a cap.

The impact of the new regime

The changes will have far-reaching implications for businesses in view of the range of offences to which the changes apply. Criminal offence provisions are contained in a broad array of legislation affecting commercial operations, including the Data Protection Act 1998, the Competition Act 1998 and the Financial Services and Markets Act 2000, as well as the CA 2006.

The Companies Act 2006

The CA 2006 includes, for example, a number of offences for which a fine falling within Category 1 may be imposed, such as the failure to notify Companies House of changes in directorships, default in filing accounts and reports or the annual return, and (for public companies) the failure to lay accounts and reports before a general meeting. Criminal liability in all these cases may attach to the directors of a company in default.

How Squire Sanders can help

While an increase in the level of potential fines is a matter of note, the focus should remain firmly on timely compliance with the provisions of the CA 2006, in order to ensure good corporate governance and the avoidance of criminal prosecution. Our Company Secretarial Unit has a wealth of experience in this field and would be pleased to help you meet the statutory requirements.

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¹ A 'summary' offence is one which may only be tried in a magistrates' court.

² An offence which is 'triable either way' is one that may be tried in either a magistrates' court or in the Crown Court (by judge and jury).