

Statutory Document No. 2023/0073



Insurance Act 2008

INSURANCE (CIVIL PENALTIES) REGULATIONS 2023¹

Laid before Tynwald: 25 April 2023
Coming into Operation: 1 May 2023

The Isle of Man Financial Services Authority makes the following Regulations under section 50(1) of the Insurance Act 2008¹, after carrying out the consultations required by section 50(3) of that Act.

1 Title

These Regulations are the Insurance (Civil Penalties) Regulations 2023.

2 Commencement

These Regulations come into operation on 1 May 2023.

3 Interpretation

In these Regulations —

“**the Act**” means the Insurance Act 2008 and “**section**” means a section of the Act;

“**business day**” means any day other than —

- (a) Saturday;
- (b) Sunday;
- (c) a bank holiday under the Bank Holidays Act 1989;
- (d) a day declared by Treasury order, which has effect in the Isle of Man by virtue of the provisions of section 1(1) of the Banking and Financial Dealings (Isle of Man) Act 1973, to be a non-business day;

¹ Section 50(4) requires the Regulations be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the Regulations are laid, or at the next following sitting, resolves that they shall be annulled, the Regulations shall cease to have effect.

“**commission**” means remuneration paid by an authorised insurer to an external intermediary, broker or introducer, either at the commencement of a policy or on an ongoing basis and excludes intragroup commissions;

“**customers**” includes policyholders;

“**fee income**” means all fees received by an authorised insurer for services provided on investment contracts;

“**insurance contracts**” means contracts issued by the insurer that are identified to be insurance contracts under Financial Reporting Standards or International Financial Reporting Standards;

“**investment contracts**” means contracts issued by the insurer that are identified to be investment contracts under either Financial Reporting Standards or International Financial Reporting Standards;

“**regulated entity**” means a current or former authorised insurer, registered insurance manager or registered insurance intermediary;

“**serious regulatory failing**” means a serious contravention of a requirement imposed under the Act; and

“**relevant income**” means —

- (a) for an authorised insurer, fee income received on investment contracts (gross of reinsurance and net of commission) plus written premiums received on insurance contracts (gross of reinsurance and net of commission) less the movement in unearned premium reserve (if applicable);
- (b) for an authorised insurer who reports zero fee income and zero written premiums in its financial statements, where the insurer’s movement in reserves is a positive movement, the movement in reserves (gross of reinsurance) less claims paid (gross of reinsurance), or else an amount determined by the Authority; or
- (c) for a registered insurance manager or registered insurance intermediary, annual turnover.

Relevant income will be based on the regulated entity’s financial statements for the financial year-end immediately prior to the regulated entity’s notification of, or the Authority’s identification of, a serious regulatory failing. Earned premiums or premiums received may be used in place of written premiums if this is the premium measure reported in the regulated entity’s financial statements.

In order for commission to be netted from relevant income, any commission item(s) must be paid from the associated fee income or written premium and be clearly identifiable in the authorised insurer’s financial statements.

4 Application

These Regulations apply to all current and former regulated entities.

5 Discretionary civil penalties

- (1) The Authority may require a regulated entity to pay a penalty in respect of a serious regulatory failing in accordance with the Table in the Schedule.
- (2) But, the Authority may reduce a penalty by 30% of the calculated amount if the regulated entity has —
 - (a) cooperated with the Authority in respect of any proceedings or investigation into the serious regulatory failing; and
 - (b) taken appropriate steps to remedy the serious regulatory failing to the Authority's satisfaction.
- (3) In determining whether to impose a penalty under paragraph (1) the Authority will have regard to factors such as —
 - (a) whether or not the regulated entity reported the serious regulatory failing to the Authority;
 - (b) whether or not the regulated entity was aware, or should have been aware, of the serious regulatory failing;
 - (c) the potential financial consequences to the regulated entity, and to any third parties including customers and creditors of the regulated entity, of imposing such a penalty; and
 - (d) penalties imposed by the Authority in other cases.
- (4) Any penalty calculated under this regulation must be rounded up to the nearest pound sterling.
- (5) The Authority shall give written notice to the regulated entity concerned of the intention to impose a penalty giving particulars of the alleged contravention, the amount of the penalty and the reasons for the decision.
- (6) Where a notice has been given under paragraph (5), the penalty must be paid to the Treasury within 90 business days of —
 - (a) if no appeal under section 45 of the Act is made within the period prescribed for the purposes of such an appeal, the expiry of that period; or
 - (b) if there is an appeal under section 45 of the Act —
 - (i) where the appellant abandons the appeal, the date of abandonment; or
 - (ii) where the decision of the Authority is confirmed, the date of confirmation; or

- (iii) where the decision of the Authority is varied, such date as the Tribunal constituted under section 32 of the Financial Services Act 2008 directs,
or by a later date as specified by the Authority in writing.

MADE 16 FEBRUARY 2023

SCHEDULE

DISCRETIONARY CIVIL PENALTIES

Regulation 5

Table

DISCRETIONARY CIVIL PENALTY	Percentage
<p>Level 1</p> <p>A penalty may be imposed at this level in cases where there has been a serious regulatory failing where any of the following factors are present but none of the factors in Level 2 are present –</p> <p>(a) the serious regulatory failing has resulted in a risk of significant loss to any of the regulated entity’s customers;</p> <p>(b) the serious regulatory failing has resulted in a significant risk of financial crime; or</p> <p>(c) the serious regulatory failing is attributable to serious negligence by any of the regulated entity’s directors, controllers, principal control officers, managers or the chief executive.</p>	Up to 5% of relevant income
<p>Level 2</p> <p>A penalty may be imposed at this level in cases where there has been a serious regulatory failing where the following factors are present –</p> <p>(a) the serious regulatory failing has resulted in a significant loss to any of the regulated entity’s customers;</p> <p>(b) the serious regulatory failing has resulted in financial crime;</p> <p>(c) the serious regulatory failing was incurred deliberately by any of the regulated entity’s directors, controllers, principal control officers, managers or the chief executive in order to obtain a benefit or mitigate a loss;</p> <p>(d) any of the regulated entity’s directors, controllers, principal control officers, managers or the chief executive have attempted to conceal the serious regulatory failing from the Authority; or</p> <p>(e) the serious regulatory failing is attributable to serious deficiencies in any of –</p> <p>(i) the regulated entity’s corporate governance;</p> <p>(ii) the regulated entity’s systems and internal controls; or</p> <p>(iii) the fitness and propriety of any of the regulated entity’s directors, controllers, principal control officers, managers or the chief executive.</p>	Up to 8% of relevant income

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.