

SCHEDULE 2

Regulation 3(2)

Civil sanctions

PART 1

Introduction

Interpretation

1. In this Schedule—

“completion certificate” has the meaning given in paragraph 14(1);

“compliance notice” has the meaning given in paragraph 2(2);

“discharge certificate” has the meaning given in paragraph 20(1);

“enforcement undertaking” has the meaning given in paragraph 17;

“final notice” has the meaning given in paragraph 7(2);

“non-compliance penalty” has the meaning given in paragraph 23(1);

“notice of intent” has the meaning given in paragraph 4(1);

“relevant regulation” means—

(a) regulation 6 of these Regulations;

(b) Article 64(2) of the Subsidiary Regulation;

(c) Article 66(6) and (7) of the Subsidiary Regulation;

“stop notice” has the meaning given in paragraph 11(1);

“third party undertaking” has the meaning given in paragraph 6(1);

“variable monetary penalty” has the meaning given in paragraph 3(1).

PART 2

Compliance notices etc.

Compliance notice

2.—(1) This paragraph applies where the management authority is satisfied on the balance of probabilities that a person has failed to comply with a relevant regulation.

(2) The management authority may by notice (“a compliance notice”) impose on that person a requirement to take such steps as the management authority may specify, within such period as it may specify, to secure that the failure to comply does not continue or recur.

(3) A compliance notice may not be served on more than one occasion in relation to the same act or omission.

Imposition of a variable monetary penalty

3.—(1) This paragraph applies where the management authority is satisfied on the balance of probabilities that a person has failed to comply with a relevant regulation.

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(2) The management authority may by notice impose on that person a requirement to pay a monetary penalty to the management authority in such amount as it may determine (“a variable monetary penalty”).

(3) A variable monetary penalty may not be imposed on more than one occasion in relation to the same act or omission.

(4) The amount of a variable monetary penalty may not be more than £5,000.

(5) Before serving a notice imposing a variable monetary penalty, the management authority may require the person on whom it is to be served to provide such information as is reasonable to establish the amount of any financial benefit arising as a result of the failure to comply.

(6) The management authority may recover any variable monetary penalty imposed under this paragraph as if payable under order of the court.

Notice of intent

4.—(1) If the management authority proposes to serve on a person a compliance notice or notice imposing a variable monetary penalty, it must serve on that person a notice of what is proposed (“a notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposed notice or penalty;
- (b) the requirements of the notice and, in the case of a penalty, the amount to be paid;
- (c) information as to—
 - (i) the right to make representations within 28 days beginning with the day on which the notice of intent is received;
 - (ii) the circumstances in which the management authority may not serve the notice.

Making representations

5. A person on whom a notice of intent is served may within 28 days beginning with the day on which the notice is received make written representations to the management authority in relation to the proposed service of a compliance notice or notice imposing a variable monetary penalty.

Third party undertakings

6.—(1) A person on whom a notice of intent is served may offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any third party affected by the offence (“a third party undertaking”).

(2) The management authority may accept or reject a third party undertaking.

(3) The management authority must take into account any third party undertaking that it accepts in its decision on whether or not to serve a final notice and, if it serves a notice imposing a variable monetary penalty, the amount of that penalty.

Final notice

7.—(1) After the end of the period for making representations, the management authority must decide whether to impose the requirements described in the notice of intent, with or without modifications.

(2) Where the management authority decides to impose a requirement, the notice imposing it (“a final notice”) must comply with paragraph 8 or 9, as the case may be.

Contents of final notice: compliance notice

8. A final notice relating to a compliance notice must include information as to—
- (a) the grounds for serving the notice;
 - (b) what compliance is required and the period within which it must be completed;
 - (c) the rights of appeal;
 - (d) the consequences of failing to comply with the notice.

Contents of final notice: variable monetary penalty

9. A final notice relating to a variable monetary penalty must include information as to—
- (a) the grounds for imposing the penalty;
 - (b) the amount to be paid;
 - (c) how payment may be made;
 - (d) the period within which payment must be made, which must be not less than 28 days;
 - (e) the rights of appeal;
 - (f) the consequences of failing to comply with the notice.

Appeals against a final notice

- 10.—(1) A person on whom a final notice is served may appeal against it.
- (2) The grounds of appeal are—
- (a) that the decision to serve the final notice was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;
 - (d) in the case of a non-monetary requirement, that the nature of the requirement is unreasonable;
 - (e) that the decision was unreasonable for any other reason;
 - (f) that the decision was wrong for any other reason.

PART 3

Stop notices

Stop notices

- 11.—(1) This paragraph applies where the management authority is satisfied on the balance of probabilities that a person is—
- (a) carrying on an activity, and
 - (b) the management authority reasonably believes that the activity as carried on by that person involves or is likely to involve a contravention of a relevant regulation.
- (2) The management authority may by notice (“a stop notice”) prohibit that person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.
- (3) The steps referred to in sub-paragraph (2) must be steps to eliminate the risk of the contravention being committed or occurring.

Contents of a stop notice

12. A stop notice must include information as to—
- (a) the grounds for serving the notice;
 - (b) the activity which is prohibited;
 - (c) the steps which the person must take to comply with the notice and the period within which they must be completed;
 - (d) the rights of appeal;
 - (e) the consequences of failing to comply with the notice.

Appeals

- 13.—(1) A person on whom a stop notice is served may appeal against it.
- (2) The grounds of appeal are—
- (a) that the decision to serve the stop notice was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable;
 - (d) that any step specified in the notice is unreasonable;
 - (e) that the person has not contravened a relevant regulation or would not have contravened it had the stop notice not been served;
 - (f) that the decision was wrong for any other reason.

Completion certificates

- 14.—(1) The management authority must issue a certificate (“a completion certificate”) if, after service of a stop notice, it is satisfied on the balance of probabilities that the person on whom it was served has taken the steps specified in the notice.
- (2) A stop notice ceases to have effect on the issue of a completion certificate.
- (3) The management authority may require the person on whom the stop notice was served to provide sufficient information to determine that the steps specified in the notice have been taken.
- (4) A person on whom a stop notice is served may at any time apply for a completion certificate.
- (5) The management authority must decide whether to issue a completion certificate and give written notice of the decision to the applicant (including information as to the rights of appeal) within 14 days of the application.
- (6) The applicant may appeal against a decision not to issue a completion certificate on the grounds that the decision—
- (a) was based on an error of fact;
 - (b) was wrong in law;
 - (c) was unreasonable;
 - (d) was wrong for any other reason.

Compensation

- 15.—(1) The management authority must compensate a person for loss suffered as the result of the service of a stop notice or the decision not to issue a completion certificate if a person has suffered loss as a result of the notice or decision and—

- (a) the stop notice is subsequently withdrawn or amended by the management authority because the decision to serve it was made on the basis of any of the grounds mentioned in paragraph 13(2)(a) to (f);
 - (b) a person successfully appeals against the stop notice and the First-tier Tribunal allows the appeal on any of the grounds mentioned in paragraph 13(2)(a) to (f);
 - (c) a person successfully appeals against the decision not to issue a completion certificate and the First-tier Tribunal allows the appeal on any of the grounds mentioned in paragraph 14(5)(a) to (d).
- (2) The management authority must give written notice of a decision on whether or not to award compensation, which must include information as to—
- (a) the amount of any compensation to be awarded;
 - (b) the rights of appeal.
- (3) A person may appeal against a decision not to award compensation or the amount of compensation awarded on the grounds that—
- (a) the management authority’s decision was unreasonable;
 - (b) the amount of compensation awarded was based on incorrect facts;
 - (c) the decision was wrong for any other reason.

Offence

16. If a person on whom a stop notice is served does not comply with it within the time limit specified in the notice, the person is guilty of an offence and liable on summary conviction to a fine (not exceeding the statutory maximum in Scotland or Northern Ireland, as the case may be).

PART 4

Enforcement undertakings

Enforcement undertakings

17. The management authority may accept a written undertaking (“an enforcement undertaking”) given by a person to the management authority to take such action as may be specified in the undertaking within such period as may be specified where the management authority has reasonable grounds to suspect that the person has failed to comply with a relevant regulation.

Contents of an enforcement undertaking

- 18.—**(1) An enforcement undertaking must specify—
- (a) action to be taken by the person to secure that the failure to comply with a relevant regulation does not continue or recur;
 - (b) action to secure that the position is, so far as possible, restored to what it would have been if the failure to comply had not occurred;
 - (c) action (including the payment of a sum of money) to be taken by the person giving the undertaking to benefit any person affected by the failure to comply.
- (2) It must specify the period within which the action must be completed.
- (3) It must include—
- (a) a statement that the undertaking is made in accordance with this Schedule;

- (b) the terms of the undertaking;
- (c) information as to how and when a person is considered to have discharged the undertaking.

(4) An enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if the management authority and the person who gave the undertaking agree in writing.

Acceptance of an enforcement undertaking

19.—(1) If the management authority has accepted an enforcement undertaking from a person, it may not serve on that person a compliance notice or stop notice, or impose a non-compliance penalty or a variable monetary penalty, in respect of the act or omission that is the subject of the undertaking.

(2) Paragraph (1) does not apply if the person who gave the undertaking has failed to comply with it or any part of it.

Discharge of an enforcement undertaking

20.—(1) The management authority must issue a certificate (“a discharge certificate”) if it is satisfied on the balance of probabilities that an enforcement undertaking has been complied with.

(2) An enforcement undertaking ceases to have effect on the issue of a discharge certificate.

(3) The management authority may require the person who gave the undertaking to provide sufficient information to determine that the undertaking has been complied with.

(4) The person who gave the undertaking may at any time apply for a discharge certificate.

(5) The management authority must decide whether to issue a discharge certificate and give written notice of the decision to the applicant (including information as to the rights of appeal) within 14 days of the application.

(6) The applicant may appeal against a decision not to issue a discharge certificate on the grounds that the decision—

- (a) was based on an error of fact;
- (b) was wrong in law;
- (c) was unreasonable;
- (d) was wrong for any other reason.

Inaccurate, incomplete or misleading information

21.—(1) A person who gives inaccurate, misleading or incomplete information in relation to an enforcement undertaking is regarded as not having complied with it.

(2) The management authority may by notice in writing revoke a discharge certificate if it was issued on the basis of inaccurate, incomplete or misleading information.

Non-compliance with an enforcement undertaking

22.—(1) If a person does not comply with an enforcement undertaking, the management authority may serve a compliance notice or stop notice, or impose a non-compliance penalty or variable monetary penalty, in respect of the act or omission that was the subject of the undertaking.

(2) If a person has only complied partly with an undertaking, that partial compliance must be taken into account in the imposition of any sanction.

PART 5

Non-compliance penalties

Non-compliance penalties

23.—(1) If a person fails to comply with a compliance notice, stop notice, third party undertaking or enforcement undertaking, irrespective of whether a variable monetary penalty is also imposed, the management authority may serve a notice on that person imposing a monetary penalty (“a non-compliance penalty”).

(2) The amount of the non-compliance penalty must be determined by the management authority as a percentage of the costs of fulfilling the remaining requirements of the notice, third party undertaking or enforcement undertaking.

(3) The percentage must be determined by the management authority having regard to all the circumstances of the case and may, if appropriate, be 100%.

(4) A notice served under paragraph (1) must include information as to—

- (a) the grounds for imposing the penalty;
- (b) the amount to be paid;
- (c) how payment may be made;
- (d) the period within which payment must be made, which must not be less than 28 days;
- (e) the rights of appeal;
- (f) the consequences of failure to comply with the notice;
- (g) any circumstances in which the management authority may reduce the amount of the penalty.

(5) If the requirements of the compliance notice, stop notice, third party undertaking or enforcement undertaking are fulfilled before the time specified for payment of the non-compliance penalty, the penalty is not payable.

Appeals

24.—(1) A person on whom the notice imposing the non-compliance penalty is served may appeal against it.

(2) The grounds of appeal are—

- (a) that the decision to serve the notice was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the amount of the penalty is unreasonable;
- (d) that the decision was unreasonable for any reason;
- (e) that the decision was wrong for any other reason.

PART 6

Withdrawal and amendment of notices

Withdrawing or amending a notice

25. The management authority may at any time in writing—

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- (a) withdraw a compliance notice or stop notice, or amend the steps specified in such a notice in order to reduce the amount of work necessary to comply with the notice;
- (b) withdraw a notice imposing a variable monetary penalty or a non-compliance penalty notice, or reduce the amount of the penalty specified in such a notice.

PART 7

Appeals

Appeals

- 26.**—(1) Any appeal under this Schedule must be made to the First-tier Tribunal.
- (2) In any appeal the Tribunal must determine the standard of proof.
- (3) All notices (other than stop notices) are suspended until determination or withdrawal of the appeal.
- (4) The Tribunal may, in relation to the imposition of a requirement or service of a notice—
- (a) withdraw the requirement or notice;
 - (b) confirm the requirement or notice;
 - (c) vary the requirement or notice;
 - (d) take such steps as the management authority could take in relation to the act or omission giving rise to the requirement or notice;
 - (e) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the management authority.

PART 8

Guidance and publicity

Guidance as to use of civil sanctions

- 27.**—(1) The management authority must publish guidance about its use of civil sanctions.
- (2) The management authority must revise and update the guidance where appropriate.
- (3) The management authority must have regard to the guidance or revised and updated guidance in exercising its functions.
- (4) In the case of guidance about compliance notices, stop notices, variable monetary penalties and non-compliance penalties, the guidance must contain information as to—
- (a) the circumstances in which the civil sanction is likely to be imposed;
 - (b) the circumstances in which it is not likely to be imposed.
- (5) In the case of guidance about variable monetary penalties and non-compliance penalties, the guidance must contain information as to—
- (a) the matters likely to be taken into account by the management authority in determining the amount of the penalty (including voluntary reporting by a person of their own non-compliance);
 - (b) the rights to make representations and the rights of appeal.

(6) In the case of guidance about enforcement undertakings, the guidance must contain information as to—

- (a) the circumstances in which the management authority is likely to accept an enforcement undertaking;
- (b) the circumstances in which the management authority is not likely to accept an enforcement undertaking.

Consultation on guidance

28. The management authority must consult such persons as it considers appropriate before publishing any guidance or revised or updated guidance.

Publication of enforcement action

29.—(1) The management authority must from time to time publish—

- (a) the cases in which civil sanctions have been imposed;
- (b) where the civil sanction is a compliance notice, stop notice or variable monetary penalty, the cases in which a third party undertaking has been accepted;
- (c) the cases in which an enforcement undertaking has been given.

(2) In sub-paragraph (1)(a), the reference to cases in which civil sanctions have been imposed does not include cases where the sanction has been imposed but overturned on appeal.

(3) This paragraph does not apply in cases where the management authority considers that publication would be inappropriate.