SCHEDULE 3

Discretionary requirements

PART 1

Imposition of discretionary requirements and procedure

Power to impose discretionary requirements

1.—(1) The Administrator may by notice impose one or more discretionary requirements on a seller who breaches these Regulations.

(2) The Administrator may exercise the power conferred by sub-paragraph (1) in relation to a case if it is satisfied on the balance of probabilities that the breach occurred.

Variable monetary penalties: maximum amounts

2. The maximum penalty which may be imposed by the Administrator as a variable monetary penalty in respect of any particular kind of breach is the amount listed in the second column of the table in Part 2 by reference to the kind of breach specified in the first column.

Notice of intent

3.—(1) Where the Administrator proposes to impose one or more discretionary requirements on a seller, the Administrator shall serve by post a notice of intent on that seller.

(2) If the Administrator proposes to impose a non-monetary discretionary requirement, the notice of intent shall—

(a) specify the steps that the Administrator requires the seller to take;

(b) include information as to—

(i) the grounds for the proposal to require those steps to be taken;

(ii) the time period within which the Administrator requires those steps to be completed;

(iii) the right to make representations and objections conferred by paragraph 4;

(iv) the 28 day period within which representations and objections may be made.

(3) If the Administrator proposes to impose a variable monetary penalty, the notice of intent shall—

(a) specify the amount of the penalty proposed;

(b) include information as to—

(i) the grounds for the proposal to impose a variable monetary penalty;

(ii) the right to make representations and objections conferred by paragraph 4;

(iii) the circumstances in which the Administrator may not impose a variable monetary penalty;

(iv) the 28 day period within which representations and objections may be made.

Making representations and objections

4. Within 28 days beginning with the date of service of the notice of intent, the seller may make written representations and objections to the Administrator in relation to the proposed imposition of the one or more discretionary requirements.

Decision whether to impose discretionary requirements

5.—(1) After the end of the 28 day period for making representations and objections under paragraph 4, the Administrator shall decide whether to—

(a) impose the one or more discretionary requirements with or without modifications; or

(b) impose any other discretionary requirement that the Administrator has the power to impose under these regulations.

(2) In making a decision under this paragraph the Administrator shall take into consideration any representations or objections made by the seller in accordance with paragraph 4.

(3) The Administrator may not decide to impose a discretionary requirement if—

(a) a discretionary requirement has previously been imposed in relation to the same act or omission;

(b) liability to a fixed monetary penalty in respect of the same breach has been discharged by payment of a specified sum;

(c) a fixed monetary penalty has been imposed in respect of the same breach.

(4) The Administrator may not decide to impose a fixed monetary penalty in place of a discretionary requirement.

(5) Without restricting the power under sub-paragraph (1), the Administrator may decide not to impose a discretionary requirement if it considers that in all the circumstances of the case it would be expedient to do so.

(6) Where the Administrator decides to impose a discretionary requirement it shall do so by serving the final notice on the seller.

(7) The final notice shall comply with paragraph 6.

Contents of a final notice

6. The final notice shall include information as to—

(a) the grounds for imposing the one or more discretionary requirements;

(b) the Administrator's response to any representations and objections made by the seller, including the effect (if any) on the amount of any variable monetary penalty imposed;

(c) where the discretionary requirement is a non-monetary discretionary requirement—

(i) the steps the seller is required to take;

(ii) the period within which those steps shall be completed;

(d) where the discretionary requirement is a variable monetary penalty—

(i) the amount of the penalty;

(ii) how payment may be made;

(iii) the period within which the penalty shall be made;

(iv) the effect of paragraph 8 (early payment discount);

(v) the effect of paragraph 9 (late payment penalty);

(e) rights of appeal; and

(f) the consequences of failing to comply with the notice.

Payment

7.—(1) Subject to regulation 20(4) (suspension of requirements and notices pending appeal) and sub-paragraph (2), a variable monetary penalty shall be paid by a seller within 56 days beginning with the date of service of the final notice.

(2) If the decision to impose a variable monetary penalty is the subject of an appeal then to the extent that that decision is upheld, the penalty shall be paid by the seller within 28 days beginning with the date upon which the appeal is determined.

Early payment discount

8. A seller may discharge liability to a variable monetary penalty by paying 50% of the amount of the penalty within 28 days beginning with the day on which the final notice imposing it is received.

Late payment penalty

9. If a variable monetary penalty is not paid within the period specified in paragraph 7 the amount payable shall be increased by 50%.

Grounds of appeal

10.—(1) A seller may appeal against the Administrator's decision to impose a discretionary requirement.

(2) The grounds of appeal are—

(a) that the decision was based on an error of fact;

(b) that the decision was wrong in law;

(c) in case of a variable monetary penalty, that the amount of the penalty is unreasonable;

(d) in the case of a non-monetary discretionary requirement, that the nature of the requirement is unreasonable;

(e) that the decision was unreasonable for any other reason;

(f) any other reason.

Changes to legislation:
There are currently no known outstanding effects for the The Single Use Carrier Bags Charge Regulations (Northern Ireland) 2013, PART 1.