

## SCHEDULE 1

Article 3

### Fixed monetary penalties

#### **Power to impose a fixed monetary penalty**

1.—(1) A regulator may by notice impose a fixed monetary penalty on a person in relation to an offence under a provision specified in Schedule 5 if the table in that Schedule indicates that such penalty is possible for that offence.

(2) Before doing so the regulator must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) “Fixed monetary penalty” means a requirement to pay to a regulator a penalty of £100 for an individual or £300 for a body corporate.

#### **Notice of intent**

2.—(1) Where a regulator proposes to impose a fixed monetary penalty on a person, the regulator 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 proposal to impose the fixed monetary penalty;
- (b) the amount of the penalty;
- (c) a statement that liability for the penalty can be discharged by paying 50% of the penalty within 28 days beginning with the day on which the notice was received;
- (d) information as to—
  - (i) the effect of that discharge payment;
  - (ii) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received.
  - (iii) the circumstances in which the regulator may not impose the requirement (including any defences relating to the offence in relation to which the notice is served).

#### **Discharge of liability**

3. The penalty is discharged if a person who receives a notice of intent pays 50% of the amount of the penalty within 28 days beginning with the day on which the notice was received.

#### **Making representations and objections**

4. A person on whom a notice of intent is served may within 28 days beginning with the day on which the notice was received make written representations and objections to the regulator in relation to the proposed imposition of the fixed monetary penalty.

#### **Service of final notice**

5.—(1) If the person who has received a notice of intent does not discharge liability within 28 days the regulator may serve a final notice imposing a fixed monetary penalty.

(2) The regulator may not serve a final notice on a person where the regulator is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates.

(3) A regulator who serves a final notice relating to a fixed monetary penalty may not serve any other notice under this Order in relation to the offence.

### **Contents of final notice**

6. A final notice must include information as to—
- (a) the amount of the penalty;
  - (b) the grounds for imposing the penalty;
  - (c) how payment may be made;
  - (d) the period of 56 days within which payment must be made;
  - (e) details of the early payment discounts and late payment penalties;
  - (f) rights of appeal; and
  - (g) the consequences of non-payment.

### **Discount for early payment**

7. If a person who was served with a notice of intent made representations or objections concerning that notice within the time limit, that person may discharge the final notice by paying 50% of the penalty within 28 days beginning with the day on which the final notice was received.

### **Grounds of appeal**

- 8.—(1) The person receiving the final notice may appeal against it.
- (2) The grounds for appeal are—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable;
  - (d) any other reason.

### **Non-payment after 56 days**

- 9.—(1) The penalty must be paid within 56 days of receipt of the final notice.
- (2) If the penalty is not paid within 56 days the amount payable is increased by 50%.
- (3) In the case of an appeal it is payable within 28 days of the determination of the appeal (if the appeal is unsuccessful) , and if it is not paid within 28 days the amount of the penalty is increased by 50%.

### **Criminal proceedings**

- 10.—(1) If a notice of intent for a fixed monetary penalty is served on any person—
- (a) no criminal proceedings for the offence may be instituted against that person in respect of the act or omission to which the notice relates before 28 days from the date the notice of intent is received, and
  - (b) if that person so discharges liability, that person may not at any time be convicted of the offence in relation to that act or omission.
- (2) If a fixed monetary penalty is imposed on any person, that person may not at any time be convicted of the offence in respect of the act or omission giving rise to the penalty.