

## SCHEDULE 5

### Fixed monetary penalties: amounts and procedure

## PART 2

### Fixed monetary penalties: procedure

#### Notice of intent

2.—(1) An administrator who proposes to impose a fixed monetary penalty on a seller must serve a notice of intent on that seller.

(2) But an administrator may not serve a notice of intent on a seller in relation to a breach where a discretionary requirement has been imposed on the seller in relation to the same breach.

(3) A notice of intent must—

- (a) state the amount of the penalty;
- (b) offer the seller the opportunity to discharge its liability by paying the amount specified in paragraph 3 within the period of 28 days beginning with the day on which the notice was received;
- (c) include information as to—
  - (i) the grounds for the proposal to impose the penalty;
  - (ii) the right to make representations and objections;
  - (iii) the 28-day period within which representations and objections may be made;
  - (iv) the circumstances in which the administrator may not impose the penalty;
  - (v) methods of payment.

#### Discharge of liability following notice of intent

3.—(1) A seller's liability to a fixed monetary penalty is discharged by paying the specified sum within the period of 28 days beginning with the day on which the notice of intent to which it relates is received.

(2) The specified sum is—

<i>Breach</i>	<i>Sum</i>
Fails to comply with the requirement to charge in accordance with article 3	£100
Otherwise	£50

#### Making representations and objections

4.—(1) This paragraph applies if a seller does not discharge its liability to a fixed monetary penalty by payment of the amount specified in paragraph 3(1).

(2) Within the period of 28 days beginning with the day on which the notice of intent is received, the seller may make written representations and objections to the administrator in relation to the proposed imposition of the penalty.

### **Decision whether to impose a fixed monetary penalty**

5.—(1) After the end of the 28-day period for making representations and objections under paragraph 4(2), the administrator must decide whether to impose the fixed monetary penalty.

(2) The administrator must take into consideration any representations or objections made by the seller under paragraph 4(2).

(3) An administrator may not impose the penalty if the administrator discovers that its proposal to impose the penalty was based on an error of fact, wrong in law or unreasonable.

(4) Where an administrator decides to impose the penalty it must do so by serving the final notice on the seller.

### **Contents of final notice**

6. The final notice must include information as to—

- (a) the grounds for imposing the fixed monetary penalty;
- (b) the administrator's response to any representation and objections made by the seller;
- (c) the amount of the penalty;
- (d) methods of payment;
- (e) the period of 56 days within which payment must be made;
- (f) the right to, and effect of, early payment under paragraph 8;
- (g) the right of appeal;
- (h) the consequences of non-payment, including the imposition of a late payment penalty in accordance with paragraph 9.

### **Payment**

7.—(1) A fixed monetary penalty must be paid by a seller within the period of 56 days beginning with the day on which the final notice imposing it is received.

(2) If a decision to impose a penalty is upheld on appeal, the seller must pay the penalty within the period of 28 days beginning with the day on which the appeal is determined.

### **Early payment discount**

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

### **Late payment penalty**

9. If a fixed monetary penalty is not paid within the period specified in paragraph 7(1) or (if applicable) (2), the amount of the penalty is increased by 50%.