

SCHEDULE 6

Discretionary requirements: amounts and procedure

PART 2

Discretionary requirements: procedure

Notice of intent

2.—(1) Where an administrator proposes to impose a discretionary requirement on a seller, the administrator 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) a fixed monetary penalty has been imposed on the seller in relation to the same breach; or
- (b) the seller has discharged liability to a fixed monetary penalty in relation that breach pursuant to paragraph 3(1) of Schedule 5.

(3) The notice of intent must—

- (a) if the administrator proposes to impose a non-monetary discretionary requirement—
 - (i) specify the steps that the administrator proposes the seller be required to take;
 - (ii) specify the time period within which the administrator proposes that those steps are to be taken;
- (b) if the administrator proposes to impose a variable monetary penalty, specify the amount of penalty proposed;
- (c) include information as to—
 - (i) the grounds for the proposal to impose the discretionary requirement;
 - (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 discretionary requirements;
 - (v) in the case of a variable monetary penalty, methods of payment.

Making representations and objections

3. 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 discretionary requirement.

Decision whether to impose discretionary requirements

4.—(1) After the end of the 28-day period for making representations and objections under paragraph 3, the administrator must decide whether to impose—

- (a) the discretionary requirement with or without modifications; or
- (b) any other discretionary requirement that the administrator has power to impose under this Schedule.

(2) The administrator must take into consideration any representations or objections made by the seller under paragraph 3.

(3) An administrator may not impose a discretionary requirement if the administrator discovers that its proposal to impose the requirement was—

- (a) based on an error of fact;
- (b) wrong in law;
- (c) in relation to the amount of any variable monetary penalty, unreasonable;
- (d) in relation to the nature of any non-monetary discretionary requirement, unreasonable;
- (e) unreasonable for any other reason.

(4) An administrator may not impose a fixed monetary penalty in place of a discretionary requirement.

(5) Where an administrator decides to impose a discretionary requirement it must do so by serving the final notice on the seller.

Contents of a final notice

5. The final notice must include information as to—

- (a) the grounds for imposing the discretionary requirement;
- (b) the administrator's response to any representation and objections made by the seller, including any effect 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 must be taken;
- (d) where the discretionary requirement is a variable monetary penalty—
 - (i) the amount of the penalty;
 - (ii) methods of payment;
 - (iii) the period within which payment must be made;
 - (iv) the right to, and effect of, early payment under paragraph 7;
- (e) the right of appeal;
- (f) the consequences of failing to comply with the notice, including the imposition of a late payment penalty in accordance with paragraph 8.

Payment

6.—(1) A variable 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) To the extent that 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

7. A seller may discharge its liability to a variable 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

8. If a variable monetary penalty is not paid within the period specified in paragraph 6(1) or (if applicable) (2), the amount of the penalty is increased by 50%.