

## SCHEDULE 5

Regulation 32

### Administrative penalties

#### Penalties

1.—(1) A penalty imposed under regulation 32 must be of an amount that the CMA considers appropriate.

(2) The amount may—

- (a) in the case of a penalty imposed under regulation 32(1)(a), be a fixed amount.
- (b) in the case of a penalty imposed under regulation 32(1)(b) or (c), be a fixed amount, an amount calculated by reference to a daily rate or a combination of a fixed amount and an amount calculated by reference to a daily rate.

(3) A penalty must not—

- (a) in the case of a fixed amount, exceed £30,000;
- (b) in the case of an amount calculated by reference to a daily rate, exceed £15,000 per day; and
- (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed £30,000 for the fixed amount and £15,000 for the daily rate.

(4) If a penalty is imposed by reference to a daily rate—

- (a) the day on which the penalty first starts to accumulate must be no earlier than the day on which the notice under paragraph 3 is served on the person; and
- (b) the day on which the penalty ceases to accumulate must be no later than the beginning of—
  - (i) the day on which the person complies with the market information order; or
  - (ii) if earlier, the day that is 4 weeks after the day on which the CMA published the decision on the investigation concerned.

#### Secretary of State power to amend maximum amount of penalty

2.—(1) The Secretary of State may, by regulations, amend an amount specified in paragraph 1(3).

(2) Regulations made under sub-paragraph (1) must not specify—

- (a) in the case of a fixed amount, an amount exceeding £30,000;
- (b) in the case of an amount calculated by reference to a daily rate, an amount per day exceeding £15,000; and
- (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, a fixed amount exceeding £30,000 and an amount per day exceeding £15,000.

(3) Before making regulations under sub-paragraph (1), the Secretary of State must consult the CMA, the devolved authorities and such other persons as the Secretary of State considers appropriate.

(4) Regulations under sub-paragraph (1) are to be made by statutory instrument.

(5) A statutory instrument made under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.

#### Main procedural requirements

3.—(1) The CMA must give notice to the person concerned as soon as practicable after imposing a penalty under regulation 32.

- (2) The notice must specify—
- (a) that the CMA has imposed a penalty on the person;
  - (b) whether the penalty is of a fixed amount, of an amount calculated by reference to a daily rate or of both a fixed amount and an amount calculated by reference to a daily rate;
  - (c) the amount or amounts concerned and, in the case of an amount calculated by reference to a daily rate, the day on which the amount first starts to accumulate and the day or days on which it might cease to accumulate;
  - (d) the failure or conduct which the CMA considers gave it the power to impose the penalty;
  - (e) any other facts which the CMA considers justify the imposition of a penalty and the amount or amounts of the penalty;
  - (f) the manner in which, and place at which, the penalty is required to be paid to the CMA;
  - (g) the date or dates by which the penalty or (as the case may be) different portions of it are required to be paid;
  - (h) that the penalty or (as the case may be) different portions of it may be paid earlier than the date or dates by which it or they are required to be paid; and
  - (i) that the person has the right to apply to the CMA under sub-paragraph (4) or to appeal under paragraph 5 and the main details of those rights.

(3) The date or dates specified in a notice under sub-paragraph (2)(g) must be no earlier than the end of the period of 28 days beginning with the date of service of the notice on the person concerned.

(4) The person concerned may, within 14 days of the date of service of the notice on the person under sub-paragraph (1), apply to the CMA for it to specify a different date or (as the case may be) different dates by which the penalty or (as the case may be) different portions of it are to be paid.

(5) The CMA must notify the person concerned of the CMA's decision following an application under sub-paragraph (4).

- (6) The CMA must give notice under sub-paragraph (1) by—
- (a) serving a copy of the notice on the person on whom the penalty was imposed; and
  - (b) publishing the notice.

(7) However, before publishing the notice, the CMA must give the person an opportunity to indicate whether the person considers that the CMA should treat any information in the notice as confidential information.

#### **Payments and interest by instalments**

4.—(1) If the whole or any portion of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838.

(2) If an application has been made under paragraph 3(4), the penalty is not required to be paid until the application has been determined, withdrawn or otherwise dealt with.

(3) If a portion of a penalty has not been paid by the date required for that portion, the CMA may, where it considers it appropriate to do so, require so much of the penalty as has not already been paid (and is capable of being paid immediately) to be paid immediately.

(4) Any sums received by the CMA in or towards the payment of a penalty, or interest on a penalty, must be paid into the Consolidated Fund.

#### **Grounds for appeal**

- 5.—(1) A person on whom a penalty is imposed may appeal to the court against—

- (a) the imposition or nature of the penalty;
  - (b) the amount or amounts of the penalty; or
  - (c) the date by which the penalty is required to be paid or (as the case may be) the different dates by which portions of the penalty are required to be paid.
- (2) An appeal must be brought within the period of 28 days starting with the day on which the notice under paragraph 3 was served on the person concerned.
- (3) However, if the appeal relates to a decision of the CMA following an application under paragraph 3(4), the appeal must be brought within the period of 28 days starting with the day on which the person concerned is notified of the CMA's decision under paragraph 3(5).
- (4) If an appeal is brought under sub-paragraph (1)—
- (a) the penalty is not required to be paid until the appeal has been determined, withdrawn or otherwise dealt with; and
  - (b) the CMA may agree to reduce the amount or amounts of the penalty in settlement of the appeal.
- (5) In paragraph (4), a reference to an appeal brought under sub-paragraph (1) also includes any relevant subsequent appeal of a court decision in relation to the penalty.

### **Recovery of penalties**

- 6.—(1) This paragraph applies if a penalty, or any portion of such a penalty, has not been paid by the date on which it is required to be paid.
- (2) The CMA may recover from the person on whom the penalty was imposed any of the penalty and any interest which has not been paid.
- (3) Amounts payable under sub-paragraph (2) are recoverable summarily (or, in Scotland, recoverable) as a civil debt by the CMA.

### **Statement of policy**

- 7.—(1) The CMA must publish a statement of policy in relation to its use of penalties under this Schedule.
- (2) The statement must, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed.
- (3) The CMA may revise its statement of policy and, if it does so, it must publish the revised statement.
- (4) The CMA must consult such persons as it considers appropriate before publishing or revising its statement of policy.
- (5) Any consultation carried out by the CMA before exit day may be treated by the CMA as consultation carried out under this paragraph for the purposes of sub-paragraph (4).