

## SCHEDULE

### Civil sanctions

## PART 1

### Compliance notices and variable monetary penalties

#### Imposition of a compliance notice

1.—(1) The Secretary of State may by notice (“a compliance notice”) impose on any person, in relation to a failure to comply with any provision referred to in regulation 8(1), a requirement to take such steps as the Secretary of State may specify, within such periods as may be specified, to secure that the non-compliance does not continue or recur.

(2) Before doing so, the Secretary of State must be satisfied beyond reasonable doubt that a person has failed to comply with the provision.

(3) A compliance notice may not be imposed on more than one occasion in relation to the same act or omission.

#### Imposition of a variable monetary penalty

2.—(1) The Secretary of State may by notice impose on any person, in relation to a failure to comply with any provision referred to in regulation 8(1) or an offence committed under regulation 13(c) or 14, a requirement to pay a monetary penalty to the Secretary of State in such amount as the notice may determine (“a variable monetary penalty”).

(2) Before doing so, the Secretary of State must be satisfied beyond reasonable doubt that the person has failed to comply with the provision or committed the offence.

(3) A variable monetary penalty may not be imposed on more than one occasion in relation to the same act or omission.

(4) There is no limit to the amount of a variable monetary penalty.

(5) Before serving a notice relating to a variable monetary penalty, the Secretary of State may require the person on whom it is to be served to provide such information as is reasonable to establish the amount of any financial benefit arising as a result of the non-compliance or the offence.

(6) The Secretary of State may recover any variable monetary penalty imposed under this paragraph as if payable under order of the court.

#### Notice of intent

3.—(1) If the Secretary of State proposes to serve a compliance notice or a variable monetary penalty on a person under this Part, the Secretary of State 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 proposed notice or penalty;

(b) the requirements of the notice and, in the case of a penalty, the amount to be paid;

(c) information as to—

(i) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;

(ii) the circumstances in which the Secretary of State may not impose the notice.

### **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 Secretary of State in relation to the proposed imposition of a compliance notice or variable monetary penalty.

### **Third party undertakings**

5.—(1) A person on whom a notice of intent is served may offer an undertaking as to action to be taken by that person (including payment of a sum of money) to benefit any third party affected by non-compliance or the offence (“a third party undertaking”).

(2) The Secretary of State may accept or reject such a third party undertaking.

(3) The Secretary of State must take into account any third party undertaking that is accepted in its decision whether or not to serve a final notice and, if a notice is served imposing a variable monetary penalty, the amount of the penalty.

### **Final notice**

6.—(1) After the end of the period for making representations and objections, the Secretary of State must decide whether to impose the requirements in the notice of intent, with or without modifications.

(2) Where the Secretary of State decides to impose a requirement, the notice imposing it (“the final notice”) must comply with paragraph 7 or 8.

### **Contents of final notice – compliance notice**

7. A final notice relating to a compliance notice must include information as to—

- (a) the grounds for imposing the notice;
- (b) what compliance is required and the period within which it must be completed;
- (c) rights of appeal; and
- (d) the consequences of failing to comply with the notice.

### **Contents of final notice – variable monetary penalty**

8. A final notice relating to a variable monetary penalty must include information as to—

- (a) the grounds for imposing the penalty;
- (b) the amount to be paid;
- (c) how payment may be made;
- (d) the period within which payment must be made, which must be not less than 28 days;
- (e) rights of appeal; and
- (f) the consequences of failing to comply with the notice.

### **Appeals against a final notice**

9.—(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) in the case of a non-monetary penalty, that the nature of the requirement is unreasonable;
- (d) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;
- (e) that the decision was unreasonable for any other reason;
- (f) that the decision was wrong for any other reason.

### **Criminal proceedings**

**10.** If, in relation to an offence under regulation 13(c) or 14—

- (a) a variable monetary penalty is imposed on any person, or
- (b) a third party undertaking is accepted from 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 variable monetary penalty or third party undertaking except in a case to which paragraph 11(1)(b) applies.

### **Non-compliance with a third party undertaking**

**11.—**(1) If a person does not comply with a third party undertaking, the Secretary of State may—

- (a) in the case of failure to comply with any provision in regulation 8(1), serve a compliance notice or variable monetary penalty;
- (b) in the case of an offence committed under regulation 13(c) or 14, bring criminal proceedings.

(2) If a person has complied partly but not fully with an undertaking, that partial compliance must be taken into account in the imposition of any criminal or other sanction on the person.

(3) Criminal proceedings for offences to which a third party undertaking relates may be instituted at any time up to six months from the date when the Secretary of State notifies the person that they have failed to comply with that undertaking.

**Changes to legislation:**

There are currently no known outstanding effects for the The Nagoya Protocol (Compliance) Regulations 2015, PART 1.