

## SCHEDULE 3

Regulation 32

### Calculation of daily penalty

#### **Interpretation of Schedule 3**

1.—(1) In this Schedule, “net NHS sales income”, “qualifying Health Service chemist” and “qualifying NHS hospital purchaser” have the meanings given in paragraph 2 of Schedule 2.

(2) In this Schedule, “relevant financial year”

- (a) in relation to a UK producer who is liable to pay a penalty under regulation 32(4) for failing to comply with a compliance notice relating to an original request under regulation 23, means the producer’s last complete financial year ending before the day on which the producer was given the original request;
- (b) in relation to a UK producer who is liable to pay a penalty under regulation 32(4) for any other reason, means the last complete financial year ending before the day on which the producer is given the penalty demand.

#### **Daily penalty payable by UK producers who are small producers**

2. The daily penalty payable by a UK producer who is a small producer is—

- (a) £250 per day for—
  - (i) the day on which the contravention occurs, and
  - (ii) each of the next following 13 days on which the contravention continues;
- (b) £500 per day for the fifteenth day and each subsequent day on which the contravention continues.

#### **Daily penalty payable by UK producers who are not small producers**

3.—(1) The daily penalty payable by a UK producer who is not a small producer is—

- (a) the column 2 amount per day for—
  - (i) the day on which the contravention occurs, and
  - (ii) each of the next following 13 days on which the contravention continues;
- (b) the column 3 amount per day for the fifteenth and each subsequent day on which the contravention continues.

(2) In this paragraph—

“column 2 amount”, in relation to a producer, means the amount specified in column 2 of the Table which corresponds to the relevant financial threshold;

“column 3 amount”, in relation to a producer, means the amount specified in column 3 of the Table which corresponds to the relevant financial threshold;

“relevant financial threshold”, in relation to a producer, means the financial threshold specified in column 1 of the Table into which the producer’s relevant income falls.

(3) For the purposes of this paragraph, a producer’s relevant income is—

- (a) the producer’s net NHS wholesale income in the relevant financial year, if—
  - (i) the producer is a primary medical services provider,
  - (ii) the producer is a Health Service chemist and—
    - (aa) is also a medicines wholesaler or a medical supplies wholesaler, and

*Status: This is the original version (as it was originally made).*

- (bb) in the relevant financial year, is paid pharmaceutical services remuneration of an amount less than the producer's net NHS wholesale income in that year, or
    - (iii) the producer is an NHS hospital purchaser and—
      - (aa) is also a medicines wholesaler or a medical supplies wholesaler, and
      - (bb) in the relevant financial year, has net NHS expenditure of an amount less than the producer's net NHS wholesale income;
  - (b) the producer's pharmaceutical services remuneration in the relevant financial year, if the producer is a Health Service chemist and either—
    - (i) is not a medicines wholesaler or a medical supplies wholesaler, or
    - (ii) is a medicines wholesaler or a medical supplies wholesaler with net NHS wholesale income in the relevant financial year which is equal to or less than the amount the producer is paid as pharmaceutical service remuneration in that year;
  - (c) the producer's net NHS expenditure in the relevant financial year, if the producer is an NHS hospital purchaser and either—
    - (i) is not a medicines wholesaler or a medical supplies wholesaler, or
    - (ii) is a medicines wholesaler or a medical supplies wholesaler with net NHS wholesale income in the relevant financial year which is equal to or less than the producer's net NHS expenditure in that year;
  - (d) the producer's net NHS sales income in the relevant financial year, if the producer is not a UK primary medical services provider, a UK NHS chemist or an NHS hospital purchaser.
- (4) But where the Secretary of State cannot reasonably determine a producer's net NHS sales income for the relevant financial year, the producer's relevant income for that year is the producer's total UK sales for that year.
- (5) For the purposes of sub-paragraph (4), a producer's total UK sales are the total sales in the United Kingdom as shown in—
- (a) the producer's statutory audited accounts for the relevant financial year, or
  - (b) if the producer does not have those accounts, the producer's individual accounts for the most recent complete financial year.
- (6) In this paragraph—
- “individual accounts” means accounts prepared in accordance with section 394 of the Companies Act 2006;
- “statutory audited accounts”—
- (a) in relation to a producer whose individual accounts are required to be audited in accordance with Part 16 of the Companies Act 2006, means the producer's individual accounts audited in accordance with that Part;
  - (b) in relation to a producer whose individual accounts are exempt under section 477 of the Companies Act 2006 from audit under Part 16 of that Act, means the producer's individual accounts;
  - (c) in relation to a producer whose accounts individual accounts are exempt under section 479A of the Companies Act 2006 from audit under Part 16 of that Act, means the consolidated accounts of the parent undertaking on the same group as the producer (see section 479A(2)(a) of that Act).

<i>Column 1 – financial threshold</i>	<i>Column 2 – daily penalty: first 14 days</i>	<i>Column 3 – daily penalty: fifteenth and subsequent days</i>
more than £5,000,000 but less than £20,000,000	£500	£1,000
£20,000,000 or more but less than £50,000,000	£1,000	£2,000
£50,000,000 or more but less than £100,000,000	£2,500	£5,000
£100,000,000 or more	£5,000	£10,000