

SCHEDULE 3

Civil sanctions

PART 4

Non-compliance penalties

Non-compliance penalties

30.—(1) If a person fails to comply with a compliance notice, restoration notice or third party undertaking, the regulator may, irrespective of whether a variable monetary penalty was also imposed, serve a notice on that person imposing a monetary penalty (“a non-compliance penalty”).

(2) The amount of the non-compliance penalty must be determined by the regulator, and must be a percentage of the costs of fulfilling the remaining requirements of the compliance notice, restoration notice or third party undertaking.

(3) The percentage must be determined by the regulator having regard to all the circumstances of the case and may, if appropriate, be 100%.

(4) The notice must include information as to—

- (a) the grounds for imposing the non-compliance penalty;
- (b) the amount to be paid;
- (c) how payment must be made;
- (d) the period in which payment must be made, which must not be less than 28 days;
- (e) rights of appeal;
- (f) the consequences of failure to comply with the notice; and
- (g) any circumstances in which the regulator may reduce the amount of the penalty.

(5) If the requirements of the compliance notice, restoration notice or third party undertaking are fulfilled before the time specified for payment of the non-compliance penalty, the penalty is not payable.

(6) Following expiry of the specified payment period, the regulator may recover the non-compliance penalty as if payable under an order of the court.

(7) A non-compliance penalty paid to the regulator under this paragraph must be paid into—

- (a) the Consolidated Fund, where the regulator is Natural England; and
- (b) the Welsh Consolidated Fund, where the regulator is the Natural Resources Body for Wales.

Appeals

31.—(1) The person on whom the notice imposing the non-compliance penalty is served may appeal against it.

(2) The grounds of appeal are—

- (a) that the decision to serve the notice was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unfair or unreasonable for any reason;
- (d) that the amount of the penalty is unreasonable;

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(e) that the decision was wrong for any other reason.