

SCHEDULE 2

Article 3

Variable monetary penalties, compliance notices, restoration notices and third party undertakings

Imposition of a variable monetary penalty, compliance notice or restoration notice

1.—(1) A regulator may by notice impose—

- (a) a requirement to pay a monetary penalty to a regulator of such amount as the regulator may determine (“a variable monetary penalty”);
- (b) a requirement to take such steps as a regulator may specify, within such period as it may specify, to secure that the offence does not continue or recur (“a compliance notice”);
- (c) a requirement to take such steps as a regulator may specify, within such period as it may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed (“a restoration notice”),

or any combination of these requirements, in relation to an offence under a provision specified in Schedule 5 if the table in that Schedule indicates that such penalty or notice is possible for that offence.

(2) Before doing so the regulator must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) A requirement under this paragraph may not be imposed on a person on more than one occasion in relation to the same act or omission.

(4) Where a variable monetary penalty is imposed in relation to an offence that is—

- (a) triable summarily only, and
- (b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment),

the amount of the variable monetary penalty may not exceed the maximum amount of that fine.

(5) Before serving a notice relating to a variable monetary penalty the regulator may require the person to provide such information as is reasonable to establish the amount of any financial benefit arising as a result of the offence.

Notice of intent

2.—(1) Where a regulator proposes to impose a requirement under this Schedule on a person, the regulator must serve on that person a notice of what is proposed (a “notice of intent”).

(2) In the case of a proposed restoration notice or compliance notice the notice of intent must include—

- (a) the grounds for the proposed notice;
- (b) the requirement of the notice;
- (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 regulator may not impose the notice (including any defences relating to the offence in relation to which the notice is served).

(3) In the case of a proposed variable monetary penalty the notice of intent must include—

- (a) the grounds for imposing the variable monetary penalty;
- (b) the amount of the penalty;

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(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 regulator may not impose the penalty (including any defences relating to the offence in relation to which the notice is served).

Making representations and objections

3. 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 regulator in relation to the proposed imposition of a variable monetary penalty, restoration notice or compliance notice.

Third party undertakings

4.—(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 the payment of a sum of money) to benefit any person affected by the offence (“a third party undertaking”).

(2) The regulator may accept or reject such a third party undertaking.

Final notice

5.—(1) After the end of the period for making representations and objections, the regulator must decide whether to—

- (a) impose the requirements in the notice of intent, with or without modifications, or
- (b) impose any other requirement that the regulator has power to impose under this Schedule.

(2) In making its decision, the regulator must take into account any third party undertaking that it has accepted.

(3) Where the regulator decides to impose a requirement, the notice imposing it (the “final notice”) must comply with paragraph 6 or 7.

(4) The regulator may not impose a final notice on a person where the regulator is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates.

Contents of final notice — variable monetary penalty

6. A final notice for 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.

Contents of final notice — compliance notice or restoration notice

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

- (a) the grounds for imposing the notice;

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

Appeals against a final notice

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

Criminal proceedings

- 9.—**(1) If—
- (a) a variable monetary penalty, compliance notice or restoration notice 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, compliance notice, restoration notice or third party undertaking except in a case referred to in sub-paragraph (2).
- (2) The case referred to in sub-paragraph (1) is a case where—
- (a) a restoration notice or compliance notice is imposed on a person or a third party undertaking is accepted from a person,
 - (b) no variable monetary penalty is imposed on that person, and
 - (c) that person fails to comply with the restoration notice, compliance notice or third party undertaking.
- (3) Criminal proceedings for offences triable summarily to which a notice or undertaking in sub-paragraph (2) relates may be instituted at any time up to six months from the date when the regulator notifies the person that such person has failed to comply with that notice or undertaking.