

SCHEDULE 3

Discretionary requirements

PART 1

Imposition of discretionary requirements and procedure

Decision whether to impose discretionary requirements

5.—(1) After the end of the 28 day period for making representations and objections under paragraph 4, the administrator must decide whether to—

- (a) impose the one or more discretionary requirements with or without modifications; or
- (b) impose any other discretionary requirement that the administrator has the power to impose under this Schedule.

(2) In making a decision under this paragraph an administrator must take into consideration any representations or objections made by the seller in accordance with paragraph 4.

(3) An administrator may not decide to impose a discretionary requirement in any of the following circumstances—

- (a) if a discretionary requirement has previously been imposed in relation to the same act or omission;
- (b) if liability to a fixed monetary penalty in respect of the same breach has been discharged by payment of a specified sum;
- (c) if a fixed monetary penalty has been imposed in respect of the same breach.

(4) An administrator may not decide under this paragraph to impose a fixed monetary penalty in place of a discretionary requirement.

(5) Without restricting the power under sub-paragraph (1), an administrator may decide not to impose a discretionary requirement if the administrator considers that in all the circumstances of the case it would be inexpedient to do so.

(6) Where an administrator decides to impose a discretionary requirement it must do so by serving the final notice on the seller⁽¹⁾.

(7) The final notice must comply with paragraph 6.

(1) For the meaning of “the final notice” see paragraph 13(1)(d) of Schedule 6 to the Climate Change Act 2008.