

SCHEDULE 3

Discretionary requirements

PART 1

Imposition of discretionary requirements and procedure

Power to impose discretionary requirements

1.—(1) An administrator may by notice impose one or more discretionary requirements on a seller who breaches these Regulations⁽¹⁾.

(2) An administrator may exercise the power conferred by sub-paragraph (1) in relation to a case if it is satisfied on the balance of probabilities that the breach has occurred.

Variable monetary penalties: maximum amounts

2. The maximum penalty which may be imposed by an administrator as a variable monetary penalty in respect of any particular kind of breach is the amount specified in the second column of the table in Part 2 by reference to the kind of breach concerned⁽²⁾.

Notice of intent

3.—(1) Where an administrator proposes to impose one or more discretionary requirements on a seller, the administrator must serve a notice of intent on that seller⁽³⁾.

(2) The notice of intent must—

- (a) if the administrator proposes to impose a non-monetary discretionary requirement⁽⁴⁾—
 - (i) specify the steps that the administrator proposes the seller be required to take;
 - (ii) specify the time period within which the administrator proposes that those steps are to be completed;
- (b) if the administrator proposes to impose a variable monetary penalty, specify the amount of penalty proposed;
- (c) include information as to—
 - (i) the grounds for the proposal to impose the one or more discretionary requirements;
 - (ii) the right to make representations and objections conferred by paragraph 4;
 - (iii) the circumstances in which the administrator may not impose the one or more discretionary requirements;
 - (iv) the 28 day period within which representations and objections may be made;
 - (v) in the case of a variable monetary penalty, how payment may be made.

(1) For the meaning of “discretionary requirement” see paragraph 12(3) of Schedule 6 to the Climate Change Act 2008.

(2) For the meaning of “variable monetary penalty” see paragraph 12(4) of schedule 6 to the Climate Change Act 2008.

(3) For the meaning of “notice of intent” see paragraph 13(1)(a) of Schedule 6 to that Act.

(4) For the meaning of “non-monetary discretionary requirement” see paragraph 12(4) of that Act.

Making representations and objections

4. Within 28 days beginning with the day on which the notice of intent is received by the seller, the seller may make written representations and objections to the administrator in relation to the proposed imposition of the one or more discretionary requirements.

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⁽⁵⁾.

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

Contents of a final notice

6. The final notice must include information as to—

- (a) the grounds for imposing the one or more discretionary requirements;
- (b) the administrator’s response to any representation and objections made by the seller, including the effect (if any) on the amount of any variable monetary penalty imposed;
- (c) where the discretionary requirement is a non-monetary discretionary requirement—
 - (i) the steps the seller is required to take;
 - (ii) the period within which those steps must be completed;
- (d) where the discretionary requirement is a variable monetary penalty—
 - (i) the amount of the penalty;
 - (ii) how payment may be made;
 - (iii) the period within which payment must be made;
 - (iv) the effect of paragraph 8 (early payment discount)

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

- (v) the effect of paragraph 9 (late payment penalty);
- (e) rights of appeal; and
- (f) the consequences of failing to comply with the notice.

Payment

7.—(1) A variable monetary penalty must be paid by a seller within 56 days beginning with the day on which the final notice imposing it was received.

But this is subject to regulation 21(4) (suspension of requirements and notices pending appeal).

(2) If the decision to impose a variable monetary penalty is the subject of an appeal then to the extent that that decision is upheld, the penalty must be paid by the seller within 28 days beginning with the day on which the appeal is determined.

Early payment discount

8. A seller may discharge its liability to a variable monetary penalty by paying 50% of the amount of the penalty within 28 days beginning with the day on which the final notice imposing it is received.

Late payment penalty

9. If a variable monetary penalty is not paid within the period allowed in accordance with paragraph 7 the amount payable is increased by 50%.

Grounds of appeal

10.—(1) A seller may appeal against an administrator's decision to impose a discretionary requirement.

(2) The grounds of appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) in case of a variable monetary penalty, that the amount of the penalty is unreasonable;
- (d) in the case of a non-monetary discretionary requirement, that the nature of the requirement is unreasonable;
- (e) that the decision was unreasonable for any other reason;
- (f) any other reason.