

## THE SCHEDULE

### Civil Sanctions

## PART 1

### Variable Monetary Penalties and Compliance Notices

#### **Imposition of a variable monetary penalty or compliance notice**

1.—(1) In relation to an offence under regulation 3(1), 3(2) or 10(1) the regulator may by notice impose—

- (a) a requirement to pay a monetary penalty to the regulator of such amount as the regulator may determine (“a variable monetary penalty”); or
- (b) a requirement to take such steps as the regulator may specify, within such period as it may specify, to secure that the offence does not continue or recur (“a compliance notice”).

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

(3) A requirement under sub-paragraph (1)(a) or (b) may not be imposed on a person on more than one occasion in relation to the same act or omission.

(4) For the offences contained in regulation 3 or 10(1)(a) a variable monetary penalty must not exceed the lesser of 10% of the annual turnover of the business or £5000.

(5) For the offences contained in regulation 10(1)(b) or 10(1)(c) a variable monetary penalty must not exceed the lesser of 10% of the annual turnover of the business or £20,000.

(6) Before serving a notice relating to a variable monetary penalty on a person, the regulator may require the person to provide such information as is reasonable for the purpose of establishing the amount of any financial benefit arising as a result of that offence.

#### **Notice of intent**

2.—(1) Where the regulator proposes to serve a variable monetary penalty or a compliance notice on a person, the regulator must serve on that person a notice of what is proposed (a “notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposed compliance notice or variable monetary penalty;
- (b) the requirements of the proposed compliance notice and, in the case of a penalty, the amount to be paid; and
- (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 variable monetary penalty or compliance notice.

(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 representations and objections to the regulator in relation to the proposed imposition of a variable monetary penalty or compliance notice.

### **Third party undertakings**

3.—(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 third party affected by the offence (a “third party undertaking”).

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

### **Final notice**

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

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

(2) Where the regulator decides to impose a requirement, the notice imposing it (the “final notice”) must comply with paragraph 5, in the case of a variable monetary penalty, or paragraph 6, in the case of a compliance notice.

(3) 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.

(4) The regulator must take into account any third party undertaking that it accepts in deciding—

- (a) whether or not to serve a final notice; and
- (b) the amount of any variable monetary penalty it imposes.

### **Contents of final notice: variable monetary penalty**

5. 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**

6. A final notice relating to a compliance notice must include information as to—

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

### **Appeals against final notice**

7.—(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 is unreasonable;
- (d) in the case of a compliance notice, that the nature of the requirement is unreasonable;
- (e) that the decision is unreasonable for any other reason;
- (f) any other reason.

### **Criminal proceedings**

#### **8.—(1) If—**

- (a) a variable monetary penalty or compliance notice is served 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 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 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 compliance notice or third party undertaking.