

THE SCHEDULE

Regulations 2, 7, 13(2) and 14(1)

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.

PART 2

Stop Notices

Stop notices

9.—(1) The regulator may serve a stop notice on any person in a case falling within sub-paragraph (3) or (4).

(2) A “stop notice” is a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(3) A case falling within this sub-paragraph is a case where the regulator reasonably believes that—

- (a) the person is carrying on the activity;
- (b) the activity as carried on by that person is causing, or presents a significant risk of causing, harm to the environment (including the health of animals); and
- (c) the activity as carried on by that person involves or is likely to involve the commission of an offence under regulation 3(1) or (2).

(4) A case falling within this sub-paragraph is a case where the regulator reasonably believes that—

- (a) the person is likely to carry on the activity;
- (b) the activity as likely to be carried on by that person will cause, or will present a significant risk of causing, harm to the environment (including the health of animals); and
- (c) the activity as likely to be carried on by that person will involve or will be likely to involve the commission of an offence under regulation 3(1) or (2).

(5) The steps referred to in sub-paragraph (2) must be steps to remove or reduce the harm or risk of harm to the environment (including the health of animals).

Contents of a stop notice

- 10.** A stop notice must include information as to—
- (a) the grounds for serving the notice;
 - (b) the steps the person must take to comply with the stop notice;
 - (c) rights of appeal; and
 - (d) the consequences of non-compliance.

Appeals against stop notices

- 11.**—(1) The person on whom a stop notice is served may appeal against the decision to serve 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) that the decision was unreasonable;
 - (d) that any step specified in the notice is unreasonable;
 - (e) that the person has not committed the offence and would not have committed it had the stop notice not been served;
 - (f) that the person would not, by reason of any defence, have been liable to be convicted of the offence had the stop notice not been served;
 - (g) any other reason.

Completion certificates

- 12.**—(1) Where, after service of a stop notice, the regulator is satisfied that the person has taken the steps specified in the notice, the regulator must issue a certificate to that effect (“a completion certificate”).
- (2) The stop notice ceases to have effect on the issue of a completion certificate.
- (3) The person on whom the stop notice is served may at any time apply for a completion certificate.
- (4) The regulator must make a decision as to whether to issue a completion certificate, and give written notice of the decision to the applicant, within 14 days of such an application.

Appeals against decision not to issue a completion certificate

- 13.** The person on whom the stop notice was served may appeal against a decision not to issue a completion certification on the grounds that the decision—
- (a) was based on an error of fact;
 - (b) was wrong in law;
 - (c) was unfair or unreasonable;
 - (d) was wrong for any other reason.

Compensation

- 14.** The regulator must compensate a person for loss suffered as the result of the service of a stop notice or the refusal of a completion certificate if—

- (a) a stop notice is subsequently withdrawn or amended by the regulator because the decision to serve it was unreasonable or any step specified in the notice was unreasonable;
- (b) the person successfully appeals against the stop notice and the First-tier Tribunal finds that the service of the notice was unreasonable; or
- (c) the person successfully appeals against the refusal of a completion certificate and the First-tier Tribunal finds that the refusal was unreasonable.

Appeal against compensation decision

15. A person may appeal against a decision not to award compensation or the amount of compensation—

- (a) on the grounds that the regulator’s decision was unreasonable;
- (b) on the grounds that the amount offered was based on incorrect facts;
- (c) for any other reason.

Offence

16.—(1) Where a person on whom a stop notice is served does not comply with it within the time limit specified in the notice, the person is guilty of an offence and liable—

- (a) on summary conviction, to a fine, or imprisonment for a term not exceeding twelve months, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

(2) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in sub-paragraph (1)(a) to twelve months is to be read as a reference to six months.

PART 3

Enforcement Undertakings

Enforcement undertakings

17.—(1) The regulator may accept a written undertaking (an “enforcement undertaking”) given by a person in a case where the regulator has reasonable grounds to suspect that the person has committed an offence under regulation 3(1) or (2).

(2) For the purposes of this Part an “enforcement undertaking” is a written undertaking to take such action as may be specified in the undertaking within such period as may be so specified.

Contents of an enforcement undertaking

18.—(1) An enforcement undertaking must specify—

- (a) action to secure the offence does not recur;
- (b) action (including the payment of a sum of money) to benefit any person affected by the offence; or
- (c) action that will secure benefit to the environment equivalent to restoration of what has been, or is likely to have been, damaged or destroyed by the commission of the offence.

(2) It must specify the period within which the action must be completed.

- (3) It must include—
- (a) a statement that the undertaking is made in accordance with this Schedule;
 - (b) the terms of the undertaking; and
 - (c) information as to how and when the person giving that undertaking is considered to have discharged the undertaking.
- (4) The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if both parties agree in writing.

Acceptance of an enforcement undertaking

19. If the regulator has accepted an enforcement undertaking, then, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—

- (a) that person may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates; and
- (b) the regulator may not impose on that person a variable monetary penalty, a compliance notice or a stop notice in respect of that act or omission.

Discharge of an enforcement undertaking

20.—(1) If the regulator is satisfied that an enforcement undertaking has been complied with, it must issue a certificate to that effect.

(2) The regulator may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.

(3) The person who gave the undertaking may at any time apply for such a certificate.

(4) The regulator must decide whether to issue such a certificate, and give written notice of the decision to the applicant, within 14 days of such an application.

Appeals against decision not to issue a certificate

21. The person to whom the notice is given may appeal against a decision not to issue a certificate on the grounds that the decision—

- (a) was based on an error of fact;
- (b) was wrong in law;
- (c) was unfair or unreasonable;
- (d) was wrong for any other reason.

Inaccurate, misleading or incomplete information

22.—(1) A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is to be taken not to have complied with it.

(2) The regulator may by notice in writing revoke a certificate issued under paragraph 20 if it was issued on the basis of inaccurate, misleading or incomplete information.

Non-compliance with an enforcement undertaking

23.—(1) If an enforcement undertaking is not complied with, the regulator may either—

- (a) serve a variable monetary penalty notice, compliance notice, non-compliance penalty or stop notice; or

(b) bring criminal proceedings.

(2) If a person has complied partly but not fully with an enforcement undertaking, that partial compliance must be taken into account in the imposition of any criminal or other sanction on the person.

(3) Criminal proceedings for an offence triable summarily to which an enforcement undertaking relates may be instituted at any time up to six months from the date on which the regulator notifies the person required to comply with that undertaking of that person's failure to do so.

PART 4

Non-compliance penalties

Non-compliance penalties

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

(2) The amount of the penalty must be determined by the regulator, and must be a percentage of the costs of fulfilling the remaining requirements of the compliance 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 also 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) the right of appeal;
- (f) the consequences of failure to make payment in the specified period; and
- (g) any circumstances in which the regulator may reduce the amount of the penalty.

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

Appeals against non-compliance penalties

25.—(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 was unreasonable;
- (e) any other reason.

PART 5

Administration and Appeals

Withdrawing or amending a notice

- 26.** The regulator may at any time in writing—
- (a) withdraw a notice imposing a variable monetary penalty or a notice imposing a non-compliance penalty, or reduce the amount specified in the notice; or
 - (b) withdraw a compliance notice or stop notice, or amend the steps specified, in order to reduce the amount of work necessary to comply with the notice.

Enforcement cost recovery notices

27.—(1) The regulator may serve a notice (an “enforcement cost recovery notice”) on a person on whom a relevant notice has been served requiring that person to pay the costs incurred by the regulator in relation to the imposition of the requirement imposed by the relevant notice up to the time of its imposition.

(2) In sub-paragraph (1), a “relevant notice” means a variable monetary penalty notice, compliance notice or stop notice.

(3) “Costs” include in particular—

- (a) investigation costs;
- (b) administration costs;
- (c) costs of obtaining expert advice (including legal advice).

(4) The enforcement cost recovery notice must specify—

- (a) how payment must be made;
- (b) the amount required to be paid and the period in which payment must be made, which must not be less than 28 days;
- (c) the grounds for imposing the notice;
- (d) the right of appeal; and
- (e) the consequences of a failure to comply with the notice in the specified period.

(5) The person on whom the notice is served may require the regulator to provide a detailed breakdown of the amount.

(6) The person required to pay costs is not liable to pay any costs shown by that person to have been unnecessarily incurred.

Appeals against enforcement cost recovery notices

28. The person required to pay costs may appeal—

- (a) against the decision of the regulator to impose the requirement to pay costs;
- (b) against the decision of the regulator as to the amount of those costs;
- (c) for any other reason.

Power to recover payments

29. The regulator may recover any variable monetary penalty or non-compliance penalty imposed under this Schedule as if payable under a court order.

Appeals: general provisions

30.—(1) An appeal under paragraph 7, 11, 13, 15, 21, 25 or 28 of this Schedule is to the First-tier Tribunal.

(2) All notices (other than stop notices) are suspended pending the determination or withdrawal of the appeal.

(3) The First-tier Tribunal may, in relation to the imposition of a requirement or service of a notice under this Schedule—

- (a) withdraw the requirement or notice;
- (b) confirm the requirement or notice;
- (c) vary the requirement or notice;
- (d) take such steps as the regulator could have taken in relation to the act or omission giving rise to the requirement or notice; or
- (e) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the regulator.