

SCHEDULE 10

COMMISSIONER'S INVESTIGATION OF FAILURE TO COMPLY WITH STANDARDS ETC

PART 1

GENERAL

Introduction

- 1 This Schedule applies to investigations under section 71.

Terms of reference

- 2 (1) Before conducting an investigation, the Commissioner must prepare the terms of reference of the investigation.
- (2) The terms of reference must specify—
- (a) the person who is being investigated (“D”),
 - (b) the suspected failure to comply with a relevant requirement.
- (3) Before settling the terms of reference, the Commissioner must—
- (a) give notice of the proposed terms to—
 - (i) D, and
 - (ii) any other interested person,
 - (b) give each person who is given notice of the proposed terms an opportunity to make representations about the proposed terms, and
 - (c) consider any representations made.
- (4) After settling the terms of reference (having complied with sub-paragraph (3)), the Commissioner must—
- (a) publish the terms of reference of the investigation in a manner that the Commissioner thinks is likely to bring the investigation to the attention of persons whom it concerns or who are likely to be interested in it, and
 - (b) give notice of the terms of reference to—
 - (i) D, and
 - (ii) any other interested person.
- (5) This paragraph applies to any change in the terms of reference as the paragraph would apply if the change in the terms were the preparation of those terms.

Representations

- 3 (1) The Commissioner must make arrangements for giving persons an opportunity to make representations in relation to investigations.
- (2) The arrangements must give the following persons an opportunity to make representations in the course of an investigation—
- (a) D, and
 - (b) any other interested person.

- (3) Arrangements under this paragraph may, amongst other things, include arrangements for oral representations.
- 4 (1) The Commissioner must consider representations made in relation to an investigation by—
- (a) D, or
 - (b) a legal adviser who is acting on behalf of D.
- (2) The Commissioner must consider representations made in relation to an investigation by any other person, unless the Commissioner thinks it is appropriate to refuse to do so.
- (3) If the Commissioner refuses to consider representations made in relation to an investigation, he or she must give the person who made the representations written notice of—
- (a) the decision to refuse to consider the representations, and
 - (b) the reasons for the decision.
- (4) In this paragraph “legal adviser” means—
- (a) a person who, for the purposes of the Legal Services Act 2007, is an authorised person, or a European lawyer who is an exempt person by virtue of paragraph 7 of Schedule 3 to that Act, in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act), or
 - (b) an advocate or solicitor in Scotland.