

SCHEDULE

Regulation 7

Civil sanctions

PART 1

Compliance notices and variable monetary penalties

Imposition of a compliance notice

1.—(1) The Secretary of State may by notice (“a compliance notice”) impose on any person, in relation to a failure to comply with any provision referred to in regulation 8(1), a requirement to take such steps as the Secretary of State may specify, within such periods as may be specified, to secure that the non-compliance does not continue or recur.

(2) Before doing so, the Secretary of State must be satisfied beyond reasonable doubt that a person has failed to comply with the provision.

(3) A compliance notice may not be imposed on more than one occasion in relation to the same act or omission.

Imposition of a variable monetary penalty

2.—(1) The Secretary of State may by notice impose on any person, in relation to a failure to comply with any provision referred to in regulation 8(1) or an offence committed under regulation 13(c) or 14, a requirement to pay a monetary penalty to the Secretary of State in such amount as the notice may determine (“a variable monetary penalty”).

(2) Before doing so, the Secretary of State must be satisfied beyond reasonable doubt that the person has failed to comply with the provision or committed the offence.

(3) A variable monetary penalty may not be imposed on more than one occasion in relation to the same act or omission.

(4) There is no limit to the amount of a variable monetary penalty.

(5) Before serving a notice relating to a variable monetary penalty, the Secretary of State may require the person on whom it is to be served to provide such information as is reasonable to establish the amount of any financial benefit arising as a result of the non-compliance or the offence.

(6) The Secretary of State may recover any variable monetary penalty imposed under this paragraph as if payable under order of the court.

Notice of intent

3.—(1) If the Secretary of State proposes to serve a compliance notice or a variable monetary penalty on a person under this Part, the Secretary of State 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 notice or penalty;

(b) the requirements of the notice and, in the case of a penalty, the amount to be paid;

(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 Secretary of State may not impose the notice.

Making representations and objections

4. 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 written representations and objections to the Secretary of State in relation to the proposed imposition of a compliance notice or variable monetary penalty.

Third party undertakings

5.—(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 payment of a sum of money) to benefit any third party affected by non-compliance or the offence (“a third party undertaking”).

(2) The Secretary of State may accept or reject such a third party undertaking.

(3) The Secretary of State must take into account any third party undertaking that is accepted in its decision whether or not to serve a final notice and, if a notice is served imposing a variable monetary penalty, the amount of the penalty.

Final notice

6.—(1) After the end of the period for making representations and objections, the Secretary of State must decide whether to impose the requirements in the notice of intent, with or without modifications.

(2) Where the Secretary of State decides to impose a requirement, the notice imposing it (“the final notice”) must comply with paragraph 7 or 8.

Contents of final notice – compliance notice

7. 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.

Contents of final notice – variable monetary penalty

8. A final notice relating to 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.

Appeals against a final notice

9.—(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 non-monetary penalty, that the nature of the requirement is unreasonable;
- (d) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;
- (e) that the decision was unreasonable for any other reason;
- (f) that the decision was wrong for any other reason.

Criminal proceedings

10. If, in relation to an offence under regulation 13(c) or 14—

- (a) a variable monetary penalty is imposed 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 or third party undertaking except in a case to which paragraph 11(1)(b) applies.

Non-compliance with a third party undertaking

11.—(1) If a person does not comply with a third party undertaking, the Secretary of State may—

- (a) in the case of failure to comply with any provision in regulation 8(1), serve a compliance notice or variable monetary penalty;
- (b) in the case of an offence committed under regulation 13(c) or 14, bring criminal proceedings.

(2) If a person has complied partly but not fully with an 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 offences to which a third party undertaking relates may be instituted at any time up to six months from the date when the Secretary of State notifies the person that they have failed to comply with that undertaking.

PART 2

Stop notices

Stop notice

12.—(1) The Secretary of State may serve a notice (“a stop notice”) on any person—

- (a) in relation to a failure to comply with any provision referred to in regulation 8(1), prohibiting that person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice;
- (b) where a person is likely to make available on the market a product developed by means of the utilisation of genetic resources or traditional knowledge associated with genetic resources for which the obligations under the EU Regulation have not been met, requiring that person to take such steps and, within such period as the notice may specify, to secure that its being made available on the market is prohibited or restricted.

(2) A stop notice may only be served where—

- (a) the person is carrying on the activity, and
- (b) the Secretary of State reasonably believes that—
 - (i) the activity carried on by that person involves or is likely to involve a failure to comply with any provision referred to in regulation 8(1); or

- (ii) that person is likely to make available on the market a product developed by means of the utilisation of genetic resources or traditional knowledge associated with genetic resources for which the obligations under the EU Regulation have not been met.

Contents of a stop notice

- 13.** A stop notice must include information as to—
- (a) the grounds for serving the stop notice and the activity which is prohibited;
 - (b) the steps the person must take to comply with the stop notice;
 - (c) the period within which the activity must stop;
 - (d) rights of appeal; and
 - (e) the consequences of failing to comply with the notice.

Appeals

- 14.—**(1) The person on whom a stop notice is served may appeal against the decision to serve it.
- (2) The grounds for the 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 failed to comply and would not have failed to comply had the stop notice not been served;
 - (f) that the person is not likely to make available on the market a product developed by means of the utilisation of genetic resources or traditional knowledge associated with genetic resources for which the obligations under the EU Regulation have not been met;
 - (g) 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;
 - (h) that the decision was wrong for any other reason.

Completion certificates

15.—(1) The Secretary of State must issue a certificate (a “completion certificate”) if, after service of a stop notice, the Secretary of State is satisfied that the person has taken the steps specified in the notice.

(2) A stop notice ceases to have effect on the issue of a completion certificate.

(3) A person on whom a stop notice is served may at any time apply for a completion certificate.

(4) The Secretary of State must decide whether to issue a completion certificate within 14 days of the application.

(5) A person on whom the stop notice was served may appeal against a decision not to issue a completion certificate on the grounds that—

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

Compensation

16.—(1) The Secretary of State 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 person has suffered loss as a result of the notice or refusal and—

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

(2) A person may appeal against a decision not to award compensation or the amount of compensation on the grounds that—

- (a) the Secretary of State’s decision was unreasonable;
- (b) the amount offered was based on incorrect facts;
- (c) the decision was wrong for any other reason.

PART 3

Enforcement undertakings

Enforcement undertakings

17. The Secretary of State may accept a written undertaking (an “enforcement undertaking”) given by a person to the Secretary of State to take such action as may be specified in the undertaking within such period as may be specified, where the Secretary of State has reasonable grounds to suspect that the person has failed to comply with any provision referred to in regulation 8(1) or has committed an offence under regulation 13(c) or 14.

Contents of an enforcement undertaking

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

- (a) action to be taken by the person to secure that the non-compliance or commission of the offence does not continue or recur;
- (b) action to secure that the position is, so far as possible, restored to what it would have been if the non-compliance had not occurred or the offence had not been committed; or
- (c) action (including the payment of a sum of money) to be taken by the person to benefit any person affected by the non-compliance or 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;
- (c) information as to how and when a person 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 Secretary of State 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 Secretary of State may not impose on that person a compliance notice, stop notice or variable monetary penalty in respect of that act or omission.

Discharge of an enforcement undertaking

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

(2) The Secretary of State 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 Secretary of State 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.

(5) The person to whom the notice is given may appeal against a decision not to issue a certificate on the grounds that the decision was—

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

Inaccurate, incomplete or misleading information

21.—(1) A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is regarded as not having complied with it.

(2) The Secretary of State may by notice in writing revoke a certificate issued under paragraph 20(1) if it was issued on the basis of inaccurate, incomplete or misleading information.

Non-compliance with an enforcement undertaking

22.—(1) If a person does not comply with an enforcement undertaking, the Secretary of State may—

- (a) in the case of failure to comply with any provision referred to in regulation 8(1), serve a compliance notice, stop notice or variable monetary penalty;
- (b) in the case of an offence committed under regulation 13(c) or 14, bring criminal proceedings.

(2) If a person has complied partly but not fully with an 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 offences to which an enforcement undertaking relates may be instituted at any time up to six months from the date when the Secretary of State notifies the person that they have failed to comply with that undertaking.

PART 4

Non-compliance penalties

Non-compliance penalties

23.—(1) If a person fails to comply with a compliance notice, stop notice, third party undertaking or enforcement undertaking, irrespective of whether a variable monetary penalty was also imposed, the Secretary of State may serve a notice on that person imposing a monetary penalty (“a non-compliance penalty”).

(2) The amount of the non-compliance penalty must be determined by the Secretary of State, and must be a percentage of the costs of fulfilling the remaining requirements of the notice, third party undertaking or enforcement undertaking.

(3) The percentage must be determined by the Secretary of State having regard to all the circumstances of the case and may, if appropriate, be 100%.

(4) The notice must 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 within which payment must be made, which must not be less than 28 days;
- (e) rights of appeal;
- (f) the consequences of failure to make payment in the specified period;
- (g) any circumstances in which the Secretary of State may reduce the amount of the penalty.

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

(6) The person on whom the notice imposing the non-compliance penalty is served may appeal against it.

(7) 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) that the decision was wrong for any other reason.

(8) The Secretary of State may recover any non-compliance penalty imposed under this paragraph as if payable under order of the court.

PART 5

Withdrawal and amendment of notices

Withdrawing or amending a notice

24. The Secretary of State may at any time in writing—

Status: This is the original version (as it was originally made).

- (a) withdraw a notice imposing a variable monetary penalty or a notice imposing a non-compliance penalty notice or reduce the amount specified in the notice;
- (b) withdraw a compliance notice or stop notice or amend the steps in order to reduce the amount of work necessary to comply with the notice.

PART 6

Appeals

Appeals

25.—(1) Any appeal under this Schedule must be made to the First-tier Tribunal⁽¹⁾.

(2) In any appeal where the commission of an offence is an issue requiring determination, the Secretary of State must prove that offence according to the same burden and standard of proof as in a criminal prosecution.

(3) In any other case the Tribunal must determine the standard of proof.

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

(5) The Tribunal may suspend or vary a stop notice.

(6) The Tribunal may, in relation to the imposition of a requirement or service of a notice—

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

PART 7

Guidance and publicity

Guidance as to use of civil sanctions

26.—(1) The Secretary of State must publish guidance about the use of civil sanctions under these Regulations.

(2) The Secretary of State must revise and update the guidance where appropriate.

(3) The Secretary of State must have regard to the guidance or revised and updated guidance in exercising functions under these Regulations.

(4) In the case of guidance about compliance notices, stop notices, variable monetary penalties and non-compliance penalties, the guidance must contain information as to—

- (a) the circumstances in which the civil sanction is likely to be imposed; and
- (b) the circumstances in which it is not likely to be imposed.

(1) The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) govern the practice and procedure to be followed by the First-tier Tribunal in proceedings allocated to the Tribunal's General Regulatory Chamber.

(5) In the case of guidance about variable monetary penalties and non-compliance penalties, the guidance must contain information about—

- (a) the matters likely to be taken into account by the Secretary of State in determining the amount of penalty (including voluntary reporting by a person of their own non-compliance); and
- (b) rights to make representations and objections and rights of appeal.

(6) In the case of guidance about enforcement undertakings, the guidance must contain information as to—

- (a) the circumstances in which the Secretary of State is likely to accept an enforcement undertaking; and
- (b) the circumstances in which the Secretary of State is not likely to accept an enforcement undertaking.

Consultation on guidance

27. The Secretary of State must consult such persons as the Secretary of State considers appropriate before publishing any guidance or revised guidance.

Publication of enforcement action

28.—(1) The Secretary of State must from time to time publish—

- (a) the cases in which civil sanctions have been imposed;
- (b) where the civil sanction is a compliance notice, stop notice or variable monetary penalty, the cases in which a third party undertaking has been accepted;
- (c) cases in which an enforcement undertaking has been accepted.

(2) In sub-paragraph (1)(a), the reference to cases in which civil sanctions have been imposed does not include cases where a sanction has been imposed but overturned on appeal.

(3) This paragraph does not apply in cases where the Secretary of State considers publication would be inappropriate.