

SCHEDULE 3

Discretionary requirements

PART 1

Imposition of discretionary requirements and procedure

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 shall 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 these regulations.

(2) In making a decision under this paragraph the Administrator shall take into consideration any representations or objections made by the seller in accordance with paragraph 4.

(3) The Administrator may not decide to impose a discretionary requirement if—

- (a) a discretionary requirement has previously been imposed in relation to the same act or omission;
- (b) liability to a fixed monetary penalty in respect of the same breach has been discharged by payment of a specified sum;
- (c) a fixed monetary penalty has been imposed in respect of the same breach.

(4) The Administrator may not decide to impose a fixed monetary penalty in place of a discretionary requirement.

(5) Without restricting the power under sub-paragraph (1), the Administrator may decide not to impose a discretionary requirement if it considers that in all the circumstances of the case it would be expedient to do so.

(6) Where the Administrator decides to impose a discretionary requirement it shall do so by serving the final notice on the seller.

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