

SCHEDULE 4

Regulation 15

Non-monetary Discretionary requirements: enforcement

1.—(1) In this Schedule—

“specified steps” means the steps specified in a final notice under paragraph 6(c)(i) of Schedule 3;

“specified period” means the period specified in a final notice under paragraph 6(c)(ii) of Schedule 3.

(2) A reference in this Schedule to a complete failure is a reference to a seller having taken none of the specified steps within the specified period.

(3) A reference in this Schedule to a partial failure is a reference to a seller having taken at least one, but not all, of the specified steps within the specified period.

Power to impose non-compliance penalties

2.—(1) If a seller fails to comply with a non-monetary discretionary requirement the Administrator may by notice impose a non-compliance penalty on the seller.

(2) A non-compliance penalty may be imposed in respect of a complete or partial failure to comply with a non-monetary discretionary requirement.

(3) A non-compliance penalty may be imposed irrespective of whether a variable monetary penalty was imposed in addition to the non-monetary discretionary requirement to which the non-compliance penalty relates.

(4) The amount of a non-compliance penalty is to be determined by the Administrator.

(5) The maximum penalty which may be imposed by the Administrator as a non-compliance penalty is the amount specified in sub-paragraph (6) by reference to the kind of failure concerned.

(6) The maximum penalties are—

- (a) £5,000 in relation to a partial failure;
- (b) £5,000 in relation to a complete failure.

Notice of intent

3.—(1) Where the Administrator proposes to impose a non-compliance penalty on a seller, the Administrator shall serve by post on that seller a notice of what is proposed (a “notice of intent”).

(2) A notice of intent shall include information as to—

- (a) the kind of failure in relation to which the Administrator proposes to impose the non-compliance penalty;
- (b) the specified steps which remain to be taken by the seller concerned;
- (c) the amount of the penalty proposed;
- (d) how payment may be made;
- (e) the date by which payment would be due;
- (f) the consequences of failure to make payment by the date it is due;
- (g) the right to make representations and objections conferred by paragraph 4;
- (h) the 28 day period within which representations and objections may be made;
- (i) the circumstances (if any) in which the Administrator may be inclined to reduce the amount of the penalty imposed.

Making representations and objections

4. Within 28 days beginning with the date of service of the notice of intent, the seller may make written representations and objections to the Administrator in relation to the proposed imposition of a non-compliance penalty.

Decision whether to impose a non-compliance penalty

5.—(1) After the end of the 28 day period for making representations and objections under paragraph 4, the Administrator shall decide whether to impose the non-compliance penalty with or without modifications.

(2) Without restricting the power under sub-paragraph (1), the Administrator may decide not to impose a non-compliance penalty if the Administrator considers that in all the circumstances of the case it would be inexpedient to do so.

(3) 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.

(4) Where the Administrator decides to impose a non-compliance penalty it shall do so by serving by post a notice on the seller.

(5) A non-compliance penalty notice shall comply with paragraph 6.

Contents of a non-compliance notice

6.—(1) A non-compliance penalty notice shall include information as to—

- (a) the grounds for imposing the non-compliance penalty;
- (b) the Administrator's response to any representations and objections made by the seller, including the effect (if any) on the amount of the penalty imposed;
- (c) the amount of the penalty;
- (d) how payment may be made;
- (e) the date by which payment shall be made;
- (f) the right of appeal; and
- (g) the consequences of failure to make payment by the date it is due.

(2) A non-compliance penalty shall be paid by a seller within 56 days beginning with the date of service of the non-compliance notice.

(3) But this is subject to sub-paragraph (4) and regulation 20(4) (suspension of requirements and notices pending determination of an appeal).

(4) If the requirements of the non-monetary discretionary requirement are complied with before the 56 days expire, the non-compliance penalty is not payable.

(5) A seller on whom a non-compliance penalty notice is served may appeal against it.

(6) 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 (including, in a case where the amount of the non-compliance penalty was determined by the Administrator, that the amount is unreasonable);
- (d) any other reason.

Payment of non-compliance penalties following appeal

7. If a non-compliance penalty notice is the subject of an appeal, then to the extent that the notice is upheld, the penalty shall be paid by the seller within 28 days beginning with the day on which the appeal is determined.

Non-compliance penalties: late payment penalty

8. If a non-compliance penalty is not paid within the period allowed by paragraph 6(2) or (as the case may be) by paragraph 7, the amount shall be increased by 50%.