

## SCHEDULE 2

Regulation 12

### Fixed monetary penalties

## PART 1

### Imposition of fixed monetary penalties and procedure

#### **Power to impose fixed monetary penalty**

1.—(1) The Administrator may by notice impose a fixed monetary penalty on a seller who breaches these Regulations in the circumstances specified in regulation 11(1).

(2) The Administrator may exercise the power conferred by sub-paragraph (1) in relation to a case if it is satisfied on the balance of probabilities that a breach has occurred.

#### **Fixed monetary penalties**

2. The amount of penalty that can be imposed by the Administrator as a fixed monetary penalty in any case is the amount listed in the second column of the table in Part 2 by reference to the kind of breach concerned.

#### **Notice of intent**

3.—(1) Where the Administrator proposes to impose a fixed monetary penalty on a seller, the Administrator shall serve by post a notice of intent on that seller.

(2) A notice of intent shall—

- (a) state the amount of the penalty;
- (b) offer the seller the opportunity to discharge its liability to the penalty by paying the specified sum within 28 days beginning with the day on which the notice is served;
- (c) include information as to—
  - (i) the grounds for the proposal to impose the fixed monetary penalty;
  - (ii) the effect of payment of the specified sum;
  - (iii) the right to make representations and objections conferred by paragraph 5;
  - (iv) the circumstances in which the Administrator may not impose the fixed monetary penalty;
  - (v) the 28 day period within which liability to the fixed monetary penalty may be discharged by virtue of paragraph 4;
  - (vi) the 28 day period within which representations and objections may be made;
  - (vii) how payment may be made.

#### **Discharge of liability following notice of intent**

4.—(1) A seller's liability to a fixed monetary penalty is discharged if the specified sum is paid within 28 days beginning with the date of service of the notice of intent.

(2) The specified sum is the amount specified in the third column of the table in Part 2 by reference to the kind of breach concerned.

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### **Making representations and objections**

5.—(1) This paragraph applies if a seller does not discharge liability to a fixed monetary penalty by payment of the specified sum.

(2) Within 28 days of the date of the service of the notice of intent, the seller may make written representations and objections to the Administrator in relation to the proposed imposition of the fixed monetary penalty.

### **Decision whether to impose a fixed monetary penalty**

6.—(1) At the end of the 28 day period for making representations and objections under paragraph 5, the Administrator shall decide whether to impose the fixed monetary penalty.

(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 5.

(3) The Administrator may not decide to impose a fixed monetary penalty in any of the following circumstances—

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

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

(5) Where the Administrator decides to impose the fixed monetary penalty it shall do so by serving by post a final notice on the seller.

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

### **Contents of final notice**

7. The final notice shall include information as to—

- (a) the grounds for imposing the fixed monetary penalty;
- (b) the Administrator's response to any representation and objections made by the seller;
- (c) the amount of the penalty;
- (d) how payment may be made;
- (e) the period of 56 days within which payment shall be made;
- (f) the effect of paragraph 9 (early payment discount);
- (g) the effect of paragraph 10 (late payment penalty);
- (h) rights of appeal; and
- (i) the consequences of non-payment.

### **Payment**

8.—(1) Subject to regulation 20(4) (suspension of requirements and notices pending appeal) and sub-paragraph (2), a fixed monetary penalty shall be paid by a seller within 56 days beginning with the date of service of the final notice.

(2) If a decision to impose a fixed monetary penalty is the subject of an appeal which upholds the imposition of a penalty, that penalty shall be paid by the seller within 28 days beginning with the date upon which the appeal is determined.

**Early payment discount**

9. A seller may discharge liability to a fixed monetary penalty by paying 50% of the amount of the penalty within 28 days beginning with the date of service of the final notice.

**Late payment penalty**

10. If a fixed monetary penalty is not paid within the period allowed in paragraph 8 the amount of the penalty shall be increased by 50%.

**Grounds of appeal**

11.—(1) A seller may appeal against the Administrator’s decision to impose a fixed monetary penalty.

- (2) The grounds of appeal are—
  - (a) that the decision was based on a error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable;
  - (d) any other reason.

**PART 2**

**Fixed monetary penalty amounts and specified sums**

<i>Breach</i>	<i>Amount of penalty which can be imposed as a fixed monetary penalty</i>	<i>Specified sums</i>
Failure to comply with the requirement to charge in accordance with regulation 6 (regulation 11(1) and (2))	£200	£100
Failure to comply with the requirement to pay the net proceeds of the charge to the Department in accordance with regulation 8 (regulation 11(1) and (2))	£200	£100
Failure to keep records in accordance with regulation 9 (regulation 11(1) and (2))	£100	£50
Failure to retain records in accordance with regulation 9 (regulation 11(1) and (2))	£100	£50

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<i>Breach</i>	<i>Amount of penalty which can be imposed as a fixed monetary penalty</i>	<i>Specified sums</i>
Failure to supply records in accordance with regulation 10 (regulation 11(1) and (2))	£100	£50