

SCHEDULES

SCHEDULE 1

MONETARY PENALTY NOTICES

PART 2

INFORMATION PROVISIONS

Information notices

- 13 (1) The Commissioner may by notice (an “information notice”) request any person on whom the Commissioner is considering whether to serve a Part 1 notice of intent or a Part 1 monetary penalty notice to provide such information as the Commissioner reasonably requires for the purpose of deciding whether to serve it.
- (2) Where the Commissioner requests that documents be produced, the Commissioner may take copies of, or extracts from, any document so produced.
- (3) An information notice must—
- (a) specify or describe the information to be provided,
 - (b) specify the manner in which, and the period within which, the information is to be provided,
 - (c) state that the Commissioner considers that the information is information which the Commissioner reasonably requires for the purpose of deciding whether to serve a Part 1 notice of intent or (as the case may be) a Part 1 monetary penalty notice,
 - (d) state the Commissioner’s grounds for this view, and
 - (e) provide details of the rights of appeal under paragraph 15 in respect of the information notice.
- (4) For the purposes of sub-paragraph (3)(b)—
- (a) specifying the manner in which the information is to be provided may include specifying the form in which it is to be provided, and
 - (b) the specified period within which the information is to be provided must not be less than 28 days beginning with the day after the day on which the information notice is served.
- 14 (1) The Commissioner may not vary an information notice except as set out in sub-paragraph (2).
- (2) The Commissioner may vary an information notice by extending the period within which the information is to be provided if the person on whom the notice is served appeals under paragraph 15 in relation to the notice.
- (3) Sub-paragraph (1) does not prevent the Commissioner from serving a new information notice instead of varying such a notice.

- (4) The Commissioner may cancel an information notice.
- (5) A variation or cancellation of an information notice is effected by serving on the person on whom the notice was served a notice setting out the variation or cancellation.

Appeals in relation to information notices

- 15 (1) A person on whom an information notice is served may appeal to the First-tier Tribunal against—
- (a) the information notice or any provision of it, or
 - (b) any refusal of a request by the person to serve a notice of variation or cancellation in relation to the information notice.
- (2) Subject to paragraph 14(2), an appeal under this paragraph does not affect the need to comply with the information notice while the appeal has not been withdrawn or finally determined.
- (3) Sub-paragraphs (4) to (6) apply in relation to an appeal under sub-paragraph (1)(a).
- (4) The First-tier Tribunal must allow the appeal or substitute such other information notice as could have been served by the Commissioner if the Tribunal considers—
- (a) that the notice to which the appeal relates is not in accordance with the law, or
 - (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that the Commissioner ought to have exercised the discretion differently.
- (5) In any other case, the First-tier Tribunal must dismiss the appeal.
- (6) The First-tier Tribunal may review any determination of fact on which the notice was based.
- (7) Sub-paragraphs (8) to (10) apply in relation to an appeal under sub-paragraph (1)(b).
- (8) The First-tier Tribunal must direct the Commissioner to issue, on such terms as the Tribunal considers appropriate, a notice of variation or cancellation in relation to the information notice if the Tribunal considers that the information notice ought to be varied or cancelled on those terms.
- (9) In any other case, the First-tier Tribunal must dismiss the appeal.
- (10) The First-tier Tribunal may review any determination of fact on which the refusal to serve the notice of variation or cancellation was based.

Enforcement of information notices

- 16 (1) The Commissioner may serve a Part 2 monetary penalty notice on a person if the person—
- (a) without reasonable excuse fails to comply with an information notice, or
 - (b) knowingly or recklessly gives any information which is false in a material particular in response to an information notice.
- (2) A Part 2 monetary penalty notice is a notice requiring the person on whom it is served to pay to the Commissioner a monetary penalty of an amount determined by the Commissioner and specified in the notice.

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

- (3) The amount of a monetary penalty determined by the Commissioner under this paragraph may be—
 - (a) a fixed amount,
 - (b) an amount calculated by reference to a daily rate, or
 - (c) a fixed amount and an amount calculated by reference to a daily rate.
- (4) But the total amount payable must not exceed £10,000.
- (5) In the case of an amount calculated by reference to a daily rate—
 - (a) no account is to be taken of the day on which the Part 2 monetary penalty notice is served or any day before that day, and
 - (b) the Part 2 monetary penalty notice must specify—
 - (i) the day on which the amount first starts to accumulate and the circumstances in which it is to cease to accumulate, and
 - (ii) the period or periods within which the amount, or any part or parts so far accumulated, must be paid to the Commissioner.

Any period falling within paragraph (b)(ii) must not be less than 28 days beginning with the day after the day on which the notice is served.

- 17 (1) Part 1 of this Schedule applies in relation to a Part 2 monetary penalty notice and the penalty that relates to that notice as it applies in relation to a Part 1 monetary penalty notice and the penalty that relates to that notice.
- (2) The provisions in Part 1 of this Schedule so far as relating to enforcement obligations do not apply in relation to a Part 2 monetary penalty notice.
- (3) Paragraph 4 has effect in relation to a Part 2 monetary penalty notice as if in sub-paragraph (6)(b) the reference to making representations about matters falling within sub-paragraph (6)(b)(i) or (ii) were a reference to making representations about matters falling within sub-paragraph (6)(b)(ii) only.
- (4) Paragraph 6 has effect in relation to a Part 2 monetary penalty notice as if the references in sub-paragraph (1) to an interception were references to conduct falling within paragraph 16(1)(a) or (b).
- (5) Paragraph 7(5) has effect in relation to a Part 2 monetary penalty notice as if the references to an interception were references to conduct falling within paragraph 16(1)(a) or (b).

Technical assistance for the Commissioner

- 18 (1) OFCOM must comply with any reasonable request made by the Commissioner, in connection with the Commissioner's functions under section 7 and this Schedule, for advice on technical and similar matters relating to electronic communications.
- (2) For this purpose, the Commissioner may disclose to OFCOM any information obtained by the Commissioner under this Schedule.
- (3) In this paragraph "OFCOM" means the Office of Communications established by section 1 of the Office of Communications Act 2002.

Interpretation of Part 2

19 In this Part of this Schedule—

“the Commissioner” means the Investigatory Powers Commissioner;

“enforcement obligation” has the meaning given by paragraph 3(2);

“information” includes documents; and any reference to providing or giving information includes a reference to producing a document;

“information notice” has the meaning given by paragraph 13(1);

“notice” means notice in writing;

“Part 1 monetary penalty notice” means a monetary penalty notice under section 7;

“Part 1 notice of intent” means a notice of intent (within the meaning of paragraph 4(3)) relating to a Part 1 monetary penalty notice;

“Part 2 monetary penalty notice” means a monetary penalty notice under paragraph 16.