

SCHEDULE 4

Regulation 34(2)

FACTORS TO BE TAKEN INTO ACCOUNT IN
DETERMINING THE AMOUNT OF A PENALTY

PART 1

Aggravating factors

1. Seriousness of the non-compliance.
2. Financial harm to consumers.
3. Financial harm to competitors.
4. Duration of non-compliance.
5. Evidence of intention behind the non-compliance.
6. History of non-compliance of the person (“P”) to whom the penalty notice is to be given.
7. Financial gain made by P as a result of the non-compliance.
8. Financial resources of P.
9. Size of P’s business.
10. Availability of the non-compliant product, including the number of retail shops in which it has been marketed.
11. Where P is a retailer with a number of retail shops, the number of retail shops operated by them (whether or not there is evidence that the non-compliant product has been, or may have been, marketed in all of those shops).
12. The conduct of P after the non-compliance is drawn to their attention by an enforcement authority.
13. Previous action taken by the enforcement authority to help P comply with the Regulations.

PART 2

Mitigating factors

1. Action taken to eliminate or reduce the risk of harm resulting from the non-compliance.
2. Action taken by P to repair the harm done by the non-compliance.
3. Any co-operation given to the enforcement authority by P in responding to the non-compliance.
4. Whether P reported the non-compliance to the enforcement authority.
5. Financial resources of P.
6. Size of P’s business.
7. Availability of the non-compliant product, including the number of retail shops in which it has been marketed.
8. The conduct of P after the non-compliance is drawn to their attention by an enforcement authority.

Status: *This is the original version (as it was originally made).*

9. Where the non-compliance was committed by an employee of P, the extent to which the employee was acting outside of their authority.