

## SCHEDULE 4

Regulation 13(a)

### Warrants and testing costs

#### PART 1

##### Warrants

1. If a justice of the peace, on sworn information in writing, is satisfied—
  - (a) that there are reasonable grounds to enter any premises; and
  - (b) that any of the conditions in paragraph 2 is met,

a justice of the peace may by warrant signed by that justice of the peace authorise an authorised person and any other person in the performance of the powers and duties under Article 19 of RAMS to enter the premises, if need be by reasonable force.

2. The conditions referred to in paragraph 1 are that—
  - (a) admission to the premises has been refused, or a refusal is expected;
  - (b) asking for admission, or the giving of such a notice, would defeat the object of the entry;
  - (c) entry is required urgently;
  - (d) the premises are unoccupied or the occupier is temporarily absent.
3. A warrant continues in force for one month.
4. Reference to a justice of the peace—
  - (a) in Scotland includes a sheriff;
  - (b) in Northern Ireland is a reference to a lay magistrate.

#### PART 2

##### Testing costs

###### Costs recovery

- 5.—(1) If an article or substance tested under Article 19 of RAMS fails to comply with an applicable implementing measure, the market surveillance authority may recover its testing costs.
  - (2) Costs include in particular—
    - (a) all the costs of purchasing and disposing of the articles or substances;
    - (b) all the administration and labour costs throughout the testing period.
  - (3) The market surveillance authority is not entitled to recover any costs proven to have been incurred unnecessarily.

###### Notice of intent

- 6.—(1) Where the market surveillance authority proposes to recover its testing costs it must serve a notice of what is proposed (a “notice of intent”) within 20 days of obtaining proof that the article or substance has failed to comply with an applicable implementing measure.
  - (2) The notice of intent must include—

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- (a) a statement that the article or substance has been tested and has failed to comply with the applicable implementing measure;
- (b) details of the tests carried out;
- (c) the amount to be paid;
- (d) a detailed breakdown of the testing costs incurred; and
- (e) information as to—
  - (i) the right to make representations and objections within 28 days beginning on the day on which the notice of intent was received;
  - (ii) the circumstances in which the market surveillance authority may not recover its costs.

### **Making representations and objections**

7. A person upon whom a notice of intent has been served may, within 28 days beginning on the day on which the notice was received, make written representations and objections to the market surveillance authority in relation to the proposed recovery of costs.

### **Final notice**

8.—(1) Within 20 days following the end of the period for making representations and objections the market surveillance authority must decide whether to impose the requirements of the notice of intent with or without modifications.

(2) Where the market surveillance authority decides to impose a requirement, the notice imposing it (the “final notice”) must comply with paragraph 9.

### **Contents of final notice**

- 9.—(1) A final notice must include—
- (a) a statement that the article or substance has been tested and has failed to comply with the applicable implementing measure;
  - (b) details of the tests carried out;
  - (c) the amount to be paid and the period within which the payment must be made which must not be less than 28 days;
  - (d) a detailed breakdown of the testing costs incurred;
  - (e) how payment must be made;
  - (f) the consequences of failing to comply with the notice within the specified period;
  - (g) rights of appeal.

### **Appeal**

- 10.—(1) Any appeal under this Part must be made to the First-tier Tribunal.
- (2) The tribunal must determine the standard of proof.
  - (3) A notice under this Part is suspended pending appeal.
  - (4) The Tribunal may, in relation to the imposition of a requirement or service of a notice—
    - (a) withdraw the notice;
    - (b) confirm the notice;
    - (c) vary the notice; and

- (d) remit the decision whether to confirm the notice, or any matter relating to that decision, to the market surveillance authority.

### **Mode of recovery**

**11.** The market surveillance authority may recover the amount due under a final notice as if payable under a court order.

### **Guidance**

**12.**—(1) The market surveillance authority must publish guidance about the recovery of costs under this Part.

(2) The guidance must contain the relevant information and the market surveillance authority must update and revise the guidance where appropriate.

(3) The market surveillance authority must have regard to the guidance in exercising its functions.

(4) The relevant information in sub-paragraph (2) is information about—

- (a) the circumstances in which a final notice under this Part is likely to be imposed and when it is not likely to be imposed;
- (b) how the costs of the test will be calculated;
- (c) the matters likely to be taken into account by the market surveillance authority in determining the amount to be recovered; and
- (d) the rights to make representations and objections and the rights of appeal.

**13.** The market surveillance authority must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this Schedule.