

SCHEDULE 5

Civil sanctions

PART 2

Compliance notices and variable monetary penalties

Imposition of a compliance notice

2.—(1) The market surveillance authority may by notice (“a compliance notice”) impose on any person—

- (a) in relation to an offence committed under regulation 14(1) a requirement to take such steps as the market surveillance authority may specify, within such period as it may specify, to secure that the offence does not continue or recur;
- (b) where the market surveillance authority is of the opinion that a person is making available on the market an energy-related product which does not comply with an applicable implementing measure, a requirement to take such steps as the market surveillance authority may specify within such period as it may specify, to secure that the product is withdrawn from the market or that its being made available on the market is prohibited or restricted.

(2) Before imposing a requirement under sub-paragraph (1)(a) the market surveillance authority must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) Before imposing a requirement under sub-paragraph (1)(b) the market surveillance authority must be satisfied beyond reasonable doubt that the energy-related product does not comply with the applicable implementing measure.

(4) A compliance notice may not be imposed on more than one occasion in relation to the same act or omission.

Imposition of a variable monetary penalty

3.—(1) The market surveillance authority may by notice impose on any person in relation to an offence committed under regulation 14(1) a requirement to pay a monetary penalty to the market surveillance authority in such amount as it may determine (“a variable monetary penalty”).

(2) Before doing so the market surveillance authority must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) A variable monetary penalty may not be imposed on more than one occasion in relation to the same act or omission.

(4) There is no limit to the amount of a variable monetary penalty.

(5) Before serving a notice relating to a variable monetary penalty the market surveillance authority may require the person on whom it is to be served to provide such information as is reasonable to establish the amount of any financial benefit arising as a result of the offence.

(6) The market surveillance authority may recover any variable monetary penalty imposed under this Schedule as if payable under order of the court.

Notice of intent

4.—(1) Where the market surveillance authority proposes to serve a compliance notice or a variable monetary penalty under this Part, it must serve on that person a notice of what is proposed (a “notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposed notice or penalty;
- (b) the requirements of the notice and in the case of a penalty the amount to be paid;
- (c) information as to—
 - (i) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;
 - (ii) the circumstances in which the market surveillance authority may not impose the notice.

Making representations and objections

5. A person on whom a notice of intent is served may within 28 days beginning with the day on which the notice was received make written representations and objections to the market surveillance authority in relation to the proposed imposition of a compliance notice or variable monetary penalty.

Third party undertakings

6.—(1) A person on whom a notice of intent is served may offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any third party affected by the offence or non-compliance with an applicable implementing measure (“a third party undertaking”).

(2) The market surveillance authority may accept or reject such a third party undertaking.

(3) The market surveillance authority must take into account any third party undertaking that it accepts in its decision whether or not to serve a final notice and, if it serves a notice imposing a variable monetary penalty, the amount of the penalty.

Final notice

7.—(1) After the end of the period for making representations and objections, the market surveillance authority must decide whether to impose the requirements in 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 8 or 9.

(3) The market surveillance authority may not impose a final notice on a person where the market surveillance authority is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates.

Contents of final notice – compliance notice

8. A final notice relating to a compliance notice must include information as to—

- (a) the grounds for imposing the notice;
- (b) what compliance is required and the period within which it must be completed;
- (c) rights of appeal; and
- (d) the consequences of failing to comply with the notice.

Contents of final notice - variable monetary penalty

9. A final notice relating to a variable monetary penalty must include information as to—
- (a) the grounds for imposing the penalty;
 - (b) the amount to be paid;
 - (c) how payment may be made;
 - (d) the period within which payment must be made which must be not less than 28 days;
 - (e) rights of appeal; and
 - (f) the consequences of failing to comply with the notice.

Appeals against a final notice

- 10.—(1) The person receiving the final notice may appeal against it.
- (2) The grounds for appeal are—
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;
 - (d) in the case of a non-monetary requirement, that the nature of the requirement is unreasonable;
 - (e) that the decision was unreasonable for any other reason;
 - (f) that the decision was wrong for any other reason.

Criminal proceedings

- 11.—(1) If—
- (a) a compliance notice or variable monetary penalty is imposed on any person, or
 - (b) a third party undertaking is accepted from any person,

that person may not at any time be convicted of the offence under regulation 14(1) in respect of the act or omission giving rise to the compliance notice, variable monetary penalty or third party undertaking except in a case referred to in sub-paragraph (2).

(2) The case referred to in sub-paragraph (1) is a case where in relation to an offence under regulation 14(1)—

- (a) a compliance notice is imposed on a person or a third party undertaking is accepted from a person,
- (b) no variable monetary penalty is imposed upon that person, and
- (c) the person fails to comply with the compliance notice or third party undertaking.

(3) Criminal proceedings for offences triable summarily to which a compliance notice or third party undertaking in sub-paragraph (2) relate may be instituted at any time up to six months from the date when the market surveillance authority notifies the person that they have failed to comply with that compliance notice or third party undertaking.

Other offences and penalties

12. Where a person upon whom a compliance notice is served under paragraph 2(1)(b) does not comply with it within the time limit specified in the notice or fails to comply with a third party undertaking, the person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.