

SCHEDULE 7

Article 11(4)

Non-compliance penalties: procedure

Notice of intent

1.—(1) Where an administrator proposes to impose a non-compliance penalty on a seller, the administrator must serve a notice of intent on that seller.

(2) The notice of intent must include information as to—

- (a) the grounds for the proposal to impose the penalty;
- (b) the amount of the penalty proposed;
- (c) methods of payment;
- (d) the date by which payment would be due;
- (e) the consequences of failure to make payment by the due date;
- (f) the right to make representations and objections;
- (g) the 28-day period within which representations and objections may be made;
- (h) the circumstances (if any) in which the administrator may reduce the amount of the penalty proposed.

Making representations and objections

2. Within the period of 28 days beginning with the day on which the notice of intent is received, the seller may make written representations and objections to the administrator in relation to the proposed imposition of a non-compliance penalty.

Decision whether to impose a non-compliance penalty

3.—(1) After the end of the 28-day period for making representations and objections under paragraph 2, the administrator must decide whether to impose the non-compliance penalty with or without modifications.

(2) An administrator may decide not to impose a non-compliance penalty if the administrator considers that in all the circumstances of the case it would be inexpedient to do so.

(3) The administrator must take into consideration any representations or objections made by the seller under paragraph 2.

(4) Where an administrator decides to impose a non-compliance penalty it must do so by serving a notice (a “non-compliance penalty notice”) on the seller.

Contents of a non-compliance penalty notice

4.—(1) A non-compliance penalty notice must include information as to—

- (a) the grounds for imposing the non-compliance penalty;
- (b) the administrator’s response to any representations and objections made by the seller, including any effect on the amount of the penalty imposed;
- (c) the amount of the penalty;
- (d) methods of payment;
- (e) the date by which payment must be made;
- (f) the right of appeal;

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(g) the consequences of failure to make payment by the due date.

(2) A non-compliance penalty must be paid by a seller within the period of 56 days beginning with the date on which the notice imposing it was received.

(3) If the requirements of the non-monetary discretionary requirement are complied with before the 56-day period expires, the liability to pay the non-compliance penalty is discharged.

(4) If a non-compliance penalty notice is the subject of an appeal, then to the extent that the notice is upheld, the penalty must be paid by the seller within the period of 28 days beginning with the day on which the appeal is determined.

Late payment penalty

5. If a fixed monetary penalty is not paid within the period specified in paragraph 4(2) or (if applicable) (4) the amount of the penalty is increased by 50%.