

SCHEDULE

Civil sanctions

PART 3

Enforcement undertakings

Enforcement undertakings

17. The Secretary of State may accept a written undertaking (an “enforcement undertaking”) given by a person to the Secretary of State to take such action as may be specified in the undertaking within such period as may be specified, where the Secretary of State has reasonable grounds to suspect that the person has failed to comply with any provision referred to in regulation 8(1) or has committed an offence under regulation 13(c) or 14.

Contents of an enforcement undertaking

- 18.—(1) An enforcement undertaking must specify—
- (a) action to be taken by the person to secure that the non-compliance or commission of the offence does not continue or recur;
 - (b) action to secure that the position is, so far as possible, restored to what it would have been if the non-compliance had not occurred or the offence had not been committed; or
 - (c) action (including the payment of a sum of money) to be taken by the person to benefit any person affected by the non-compliance or commission of the offence.
- (2) It must specify the period within which the action must be completed.
- (3) It must include—
- (a) a statement that the undertaking is made in accordance with this Schedule;
 - (b) the terms of the undertaking;
 - (c) information as to how and when a person is considered to have discharged the undertaking.
- (4) The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if both parties agree in writing.

Acceptance of an enforcement undertaking

19. If the Secretary of State has accepted an enforcement undertaking then, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—
- (a) that person may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates; and
 - (b) the Secretary of State may not impose on that person a compliance notice, stop notice or variable monetary penalty in respect of that act or omission.

Discharge of an enforcement undertaking

- 20.—(1) If the Secretary of State is satisfied that an enforcement undertaking has been complied with, the Secretary of State must issue a certificate to that effect.
- (2) The Secretary of State may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.

- (3) The person who gave the undertaking may at any time apply for such a certificate.
- (4) The Secretary of State must decide whether to issue such a certificate, and give written notice of the decision to the applicant, within 14 days of such an application.
- (5) The person to whom the notice is given may appeal against a decision not to issue a certificate on the grounds that the decision was—
 - (a) based on an error of fact;
 - (b) wrong in law;
 - (c) unfair or unreasonable;
 - (d) wrong for any other reason.

Inaccurate, incomplete or misleading information

- 21.**—(1) A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is regarded as not having complied with it.
- (2) The Secretary of State may by notice in writing revoke a certificate issued under paragraph 20(1) if it was issued on the basis of inaccurate, incomplete or misleading information.

Non-compliance with an enforcement undertaking

- 22.**—(1) If a person does not comply with an enforcement undertaking, the Secretary of State may—
 - (a) in the case of failure to comply with any provision referred to in regulation 8(1), serve a compliance notice, stop notice or variable monetary penalty;
 - (b) in the case of an offence committed under regulation 13(c) or 14, bring criminal proceedings.
- (2) If a person has complied partly but not fully with an undertaking, that partial compliance must be taken into account in the imposition of any criminal or other sanction on the person.
- (3) Criminal proceedings for offences to which an enforcement undertaking relates may be instituted at any time up to six months from the date when the Secretary of State notifies the person that they have failed to comply with that undertaking.

Changes to legislation:

There are currently no known outstanding effects for the The Nagoya Protocol (Compliance) Regulations 2015, PART 3.