SCHEDULE 3

Civil sanctions

PART 1

Power to impose civil sanctions

The regulator

1. In this Schedule, "the regulator" means—

(a) Natural England in relation to—

(i) England;

(ii) the offshore marine area;

(iii) offences relating to imports into or exports from the United Kingdom;

(b) the Natural Resources Body for Wales in relation to Wales unless sub-paragraph (a)(iii) applies.

Commencement Information

I1 Sch. 3 para. 1 in force at 1.12.2019, see art. 1(1)

Compliance notice

2.—(1) This paragraph applies where the regulator is satisfied on the balance of probabilities that a person has committed an offence under Part 2 of this Order.

(2) The regulator may by notice ("a compliance notice") impose on that person a requirement to take such steps as the regulator may specify, within such period as it may specify, to secure that the offence does not continue or recur.

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

Commencement Information

I2 Sch. 3 para. 2 in force at 1.12.2019, see art. 1(1)

Restoration notice

3.—(1) This paragraph applies where the regulator is satisfied on the balance of probabilities that a person has committed an offence under Part 2 of this Order.

(2) The regulator may by notice ("a restoration notice") impose on that person a requirement to take such steps as the regulator may specify, within such period as it may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed.

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

Commencement Information
I3 Sch. 3 para. 3 in force at 1.12.2019, see art. 1(1)

Imposition of a fixed monetary penalty

4.—(1) This paragraph applies where the regulator is satisfied on the balance of probabilities that a person has committed an offence under Part 2 of this Order.

(2) The regulator may by notice impose on that person a requirement to pay a monetary penalty to the regulator of £1000 where the person is an individual and £3000 where the person is a body corporate, partnership or unincorporated association ("a fixed monetary penalty").

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

(4) The regulator may recover any fixed monetary penalty imposed under this paragraph as if payable under an order of the court.

(5) A fixed monetary penalty paid to the regulator under this paragraph must be paid into—

(a) the Consolidated Fund, where the regulator is Natural England; and

(b) the Welsh Consolidated Fund, where the regulator is the Natural Resources Body for Wales.

Commencement Information
I4 Sch. 3 para. 4 in force at 1.12.2019, see art. 1(1)

Imposition of a variable monetary penalty

5.—(1) This paragraph applies where the regulator is satisfied on the balance of probabilities that a person has committed an offence under Part 2 of this Order.

(2) The regulator may by notice impose on that person a requirement to pay a monetary penalty to the regulator in such amount as it may determine ("a variable monetary penalty").

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

(4) The amount of a variable monetary penalty must not exceed £250,000.

(5) Before serving a notice relating to a variable monetary penalty, the regulator 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 regulator may recover any variable monetary penalty imposed under this paragraph as if payable under an order of the court.

(7) A variable monetary penalty paid to the regulator under this paragraph must be paid into—

(a) the Consolidated Fund, where the regulator is Natural England; and

(b) the Welsh Consolidated Fund, where the regulator is the Natural Resources Body for Wales.

Commencement Information
I5 Sch. 3 para. 5 in force at 1.12.2019, see art. 1(1)

Notice of intent

6.—(1) If the regulator proposes to serve on a person a compliance notice, a restoration notice or a notice imposing a fixed or 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 serving the proposed notice;

(b) the requirements of the proposed notice and, in the case of a penalty, the amount to be paid;

(c) in the case of a fixed monetary penalty, a statement that liability for the penalty can be discharged by paying 50% of the penalty within 28 days beginning with the day on which the notice was received and information on the effect of such a discharge payment; and

(d) 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; and

(ii) the circumstances in which the regulator may not serve the proposed notice.

Commencement Information

I6 Sch. 3 para. 6 in force at 1.12.2019, see art. 1(1)

Combination of penalties

7.—(1) The regulator may not serve a notice of intent relating to a fixed monetary penalty if, in relation to the same offence—

(a) a compliance notice, restoration notice or stop notice has been served on that person (see paragraphs 2, 3, and 18);

(b) a variable monetary penalty has been imposed on that person (see paragraph 5); or

(c) a third party or enforcement undertaking has been accepted from that person (see paragraphs 10 and 24).

(2) The regulator may not serve a notice of intent relating to a compliance notice, a restoration notice, or a variable monetary penalty, or serve a stop notice, on any person if, in relation to the same offence—

(a) a fixed monetary penalty has been imposed on that person; or

(b) that person has discharged liability for a fixed monetary penalty following service of a notice of intent to impose that penalty.

Commencement Information

I7 Sch. 3 para. 7 in force at 1.12.2019, see art. 1(1)

Discharge of liability – fixed monetary penalties

8. A fixed monetary penalty is discharged if a person who receives a notice of intent pays 50% of the amount of the penalty within 28 days beginning with the day on which the notice was received.

Commencement Information
I8 Sch. 3 para. 8 in force at 1.12.2019, see art. 1(1)

Making representations and objections

9. A person on whom a notice of intent is served may within 28 days beginning with the day on which the notice is received make written representations and objections to the regulator in relation to the proposed service of a compliance notice, restoration notice or notice imposing a fixed or variable monetary penalty.

Commencement Information
I9 Sch. 3 para. 9 in force at 1.12.2019, see art. 1(1)

Third party undertakings

10.—(1) A person on whom a notice of intent relating to a compliance notice, a restoration notice or a variable monetary penalty 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 ("a third party undertaking").

(2) The regulator may accept or reject a third party undertaking.

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

Commencement Information
I10 Sch. 3 para. 10 in force at 1.12.2019, see art. 1(1)

Final notice

11.—(1) After the end of the period for making representations and objections, the regulator must decide whether to impose the requirements described in the notice of intent, with or without modifications.

(2) Where the regulator decides to impose a requirement, the notice imposing it (the "final notice") must comply with paragraph 12 (for compliance or restoration notices) or 13 (for fixed or variable monetary penalties).

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

(4) Where the regulator serves a final notice relating to a fixed monetary penalty in respect of any offence, the regulator may not in relation to that offence serve—

(a) a compliance notice;

(b) a restoration notice;

(c) a notice imposing a variable monetary penalty; or

(d) a stop notice.

(5) This paragraph does not apply to a person who has discharged a fixed monetary penalty in accordance with paragraph 8.

Commencement Information
I11 Sch. 3 para. 11 in force at 1.12.2019, see art. 1(1)

Contents of final notice: compliance and restoration notices

12. A final notice relating to a compliance notice or a restoration notice must include information as to—

(a) the grounds for serving the notice;

(b) what compliance or restoration 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.

Commencement Information
I12 Sch. 3 para. 12 in force at 1.12.2019, see art. 1(1)

Contents of final notice: fixed and variable monetary penalties

13. A final notice relating to a fixed or 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 ("the payment period"), which must be not less than 56 days;

(e) in the case of a fixed monetary penalty, details of the early payment discount (see paragraph 14) and late payment penalties (see paragraph 16(2) and (3));

(f) rights of appeal; and

(g) the consequences of failing to comply with the notice.

Commencement Information
I13 Sch. 3 para. 13 in force at 1.12.2019, see art. 1(1)

Fixed monetary penalty: discount for early payment

14. If a person who was served with a notice of intent relating to a proposed fixed monetary penalty made representations or objections concerning that notice within the time limit specified in paragraph 9, that person may discharge the final notice by paying 50% of the final penalty within 28 days beginning with the day on which the final notice was received.

Commencement Information
I14 Sch. 3 para. 14 in force at 1.12.2019, see art. 1(1)

Appeals against a final notice

15.—(1) The person on whom a final notice is served 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.

Commencement Information
I15 Sch. 3 para. 15 in force at 1.12.2019, see art. 1(1)

Fixed monetary penalty: non-payment within the stated payment period

16.—(1) This paragraph applies to a final notice relating to a fixed monetary penalty.

(2) If the final penalty is not paid within the stated payment period, the amount payable is increased by 50%.

(3) In the case of an appeal which is unsuccessful, the penalty is payable within 28 days of the determination of the appeal, and if it is not paid within 28 days, the amount of the penalty is increased by 50%.

Commencement Information
I16 Sch. 3 para. 16 in force at 1.12.2019, see art. 1(1)

Criminal proceedings

17.—(1) If—

(a) a compliance notice or restoration notice is served on any person,

(b) a third party undertaking is accepted from any person,

(c) a notice imposing a variable monetary penalty is served on any person, or

(d) a fixed monetary penalty is served on any person,

that person may not at any time be convicted of an offence under Part 2 of this Order in respect of the act or omission giving rise to the compliance notice, restoration notice, third party undertaking, variable monetary penalty or fixed monetary penalty, except in a case falling within paragraph (1)(a) or (b) (and not also falling within paragraph (1)(c)) where the person fails to comply with the compliance notice, restoration notice or third party undertaking (as the case may be).

(2) Criminal proceedings for offences to which a notice or third party undertaking in sub-paragraph (1) relates may be instituted at any time up to 6 months from the date when the regulator notifies the person against whom the proceedings are to be taken that the person has failed to comply with that notice or undertaking.

Commencement Information

I17 Sch. 3 para. 17 in force at 1.12.2019, see art. 1(1)

Changes to legislation:
There are currently no known outstanding effects for the The Invasive Alien Species (Enforcement and Permitting) Order 2019, PART 1.