THE SCHEDULE

Civil Sanctions

PART 3

Enforcement Undertakings

Enforcement undertakings

17.—(1) The regulator may accept a written undertaking (an "enforcement undertaking") given by a person in a case where the regulator has reasonable grounds to suspect that the person has committed an offence under regulation 3(1) or (2).

(2) For the purposes of this Part an "enforcement undertaking" is a written undertaking to take such action as may be specified in the undertaking within such period as may be so specified.

Contents of an enforcement undertaking

18.—(1) An enforcement undertaking must specify—

(a) action to secure the offence does not recur;

(b) action (including the payment of a sum of money) to benefit any person affected by the offence; or

(c) action that will secure benefit to the environment equivalent to restoration of what has been, or is likely to have been, damaged or destroyed by the 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; and

(c) information as to how and when the person giving that undertaking 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 regulator 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 regulator may not impose on that person a variable monetary penalty, a compliance notice or a stop notice in respect of that act or omission.

Discharge of an enforcement undertaking

20.—(1) If the regulator is satisfied that an enforcement undertaking has been complied with, it must issue a certificate to that effect.

(2) The regulator 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 regulator 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.

Appeals against decision not to issue a certificate

21. The person to whom the notice is given may appeal against a decision not to issue a certificate on the grounds that the decision—

    (a) was based on an error of fact;

    (b) was wrong in law;

    (c) was unfair or unreasonable;

    (d) was wrong for any other reason.

Inaccurate, misleading or incomplete information

22.—(1) A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is to be taken not to have complied with it.

(2) The regulator may by notice in writing revoke a certificate issued under paragraph 20 if it was issued on the basis of inaccurate, misleading or incomplete information.

Non-compliance with an enforcement undertaking

23.—(1) If an enforcement undertaking is not complied with, the regulator may either—

    (a) serve a variable monetary penalty notice, compliance notice, non-compliance penalty or stop notice; or

    (b) bring criminal proceedings.

(2) If a person has complied partly but not fully with an enforcement 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 an offence triable summarily to which an enforcement undertaking relates may be instituted at any time up to six months from the date on which the regulator notifies the person required to comply with that undertaking of that person's failure to do so.