

SCHEDULE

Enforcement

PART 3

Enforcement undertakings

Enforcement undertakings

19. The enforcement authority may accept a written undertaking (an “enforcement undertaking”) given by a person to the enforcement authority to take such action as may be specified in the undertaking within such period as may be specified where the enforcement authority has reasonable grounds to suspect that the person has breached regulation 5, 6, 7, 8, 9, 10 or 11.

Contents of an enforcement undertaking

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

- (a) action to be taken by the person to secure that the breach 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 breach 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 breach.

(2) An enforcement undertaking must specify the period within which the action must be completed.

(3) An enforcement undertaking 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 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 the person and the enforcement authority agree in writing.

Acceptance of an enforcement undertaking

21. If the enforcement authority 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, the enforcement authority may not impose on that person a civil sanction in respect of the act or omission to which the undertaking relates.

Discharge of an enforcement undertaking

22.—(1) A person who has given an enforcement undertaking may at any time apply for a certificate that it has been complied with.

(2) If the enforcement authority is satisfied that the enforcement undertaking has been complied with it must issue a certificate to that effect.

(3) The enforcement authority may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.

(4) The enforcement authority must decide whether to issue such a certificate, and give written notice of the decision to the applicant, within—

- (a) 14 days of the application, or
- (b) where sufficient information is provided following a request under sub-paragraph (3), 14 days of receipt of that information.

Appeals

23.—(1) A person to whom a notice is given pursuant to paragraph 22(4) 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.

(2) An appeal under sub-paragraph (1) must be made to the First-tier Tribunal.

(3) An appeal must be brought within two months of the date on which written notice of the decision is received.

(4) The Tribunal may, in relation to the decision referred to in sub-paragraph (1)—

- (a) confirm the decision;
- (b) vary the decision; or
- (c) remit the decision, or any matter relating to it, to the enforcement authority.

Inaccurate, incomplete or misleading information

24.—(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 enforcement authority may by notice in writing revoke a certificate issued under paragraph 22 if it was issued on the basis of inaccurate, misleading or incomplete information.

Non-compliance with an enforcement undertaking

25.—(1) If a person does not comply with an enforcement undertaking the enforcement authority may in the case of a breach of regulation 5, 6, 7, 8, 9, 10 or 11 impose a civil sanction.

(2) If a person has complied partly but not fully with an enforcement undertaking, that partial compliance must be taken into account in connection with the imposition of a civil sanction on the person.