

Status: Point in time view as at 24/05/2024.

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SCHEDULES

SCHEDULE 17

INVESTIGATORY POWERS

Penalties for non-compliance with information notices

- 2 (1) Paragraph 15 is amended in accordance with sub-paragraphs (2) and (3).
- (2) In sub-paragraph (3)—
 - (a) in the opening words for “may” substitute “must”;
 - (b) after paragraph (b) insert—
 - “(c) the circumstances in which a monetary penalty may be payable under this Part of this Schedule in relation to non-compliance with the notice.”
- (3) After paragraph 16 insert—

“Non-compliance with notice under paragraph 14: power of court to impose monetary penalties

- 16A (1) This paragraph applies where—
 - (a) an enforcer or an officer of an enforcer has given a notice to a person (“the respondent”) under paragraph 14, and
 - (b) the enforcer considers that the respondent has, without reasonable excuse, failed to comply with the notice.
- (2) The enforcer or an officer of the enforcer may make an application under this paragraph to the court.
- (3) If the court finds that the respondent has, without reasonable excuse, failed to comply with the notice, the court may make an order that requires the respondent to pay a monetary penalty to the enforcer.
- (4) The amount of the penalty must be—
 - (a) a fixed amount,
 - (b) an amount calculated by reference to a daily rate, or
 - (c) a combination of a fixed amount and an amount calculated by reference to a daily rate.
- (5) The penalty must not exceed—
 - (a) in the case of a fixed amount, £30,000 or, if higher, 1% of the total value of the turnover (if any) of the respondent;
 - (b) in the case of an amount calculated by reference to a daily rate, £15,000 per day or, if higher, 5% of the total value of the daily turnover (if any) of the respondent;

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- (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, such fixed amount and such amount per day.
- (6) In imposing a penalty by reference to a daily rate—
- (a) no account is to be taken of any days before the notification date, and
 - (b) unless the court determines an earlier date (whether before or after the order imposing the penalty is made), the amount payable ceases to accumulate on the day on which the requirements of the notice under paragraph 14 are complied with.
- (7) An order under this paragraph, or a notice accompanying service of the order, must state—
- (a) the amount of the penalty (including whether it is a fixed amount, an amount calculated by reference to a daily rate or both a fixed amount and an amount calculated by reference to a daily rate);
 - (b) the grounds on which the penalty is imposed together with any other factors that the court considers justify the giving of the penalty or its amount;
 - (c) in the case of an amount calculated by reference to a daily rate, the day on which the amount first starts to accumulate and the day or days on which it might cease to accumulate;
 - (d) how the penalty is to be paid to the enforcer;
 - (e) the date or dates, no earlier than the end of 28 days beginning with the date of service of the order on the respondent, by which the penalty or (as the case may be) different portions of it are required to be paid;
 - (f) that the penalty or (as the case may be) different portions of it may be paid earlier than the date or dates by which it or they are required to be paid;
 - (g) that the respondent has the right to apply under subparagraph (8), and the rights available to the respondent to appeal against the order, and the main details of those rights.
- (8) The respondent may, within 14 days of the date on which an order under this paragraph is served on the respondent, apply to the court for it to specify a different date or dates by which the penalty, or portions of it, are to be paid.
- (9) An application by an enforcer or officer of an enforcer under this paragraph—
- (a) may be made in addition to, or instead of, an application under paragraph 16, and
 - (b) where made in addition to an application under paragraph 16, may be combined with the application under that paragraph.
- (10) In addition to any right of appeal on a point of law, a person liable to pay a penalty by virtue of an order under this paragraph may appeal in respect of the amount of the penalty.

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- (11) Where an appeal is brought in respect of a penalty imposed by virtue of an order under this paragraph, the penalty is not payable until the appeal is determined or withdrawn, unless the court dealing with the appeal orders otherwise.
- (12) Sub-paragraphs (4) and (5) of paragraph 16 apply to an order under this paragraph as they apply to an order under that paragraph.
- (13) In the application of this paragraph to Scotland, the references in sub-paragraphs (7) and (8) to an order being served include service of an extract order in execution of or diligence on the order.
- (14) In this paragraph, other than in sub-paragraph (11)—
 - “the court” has the same meaning as in paragraph 16;
 - “the notification date”, in relation to an order under this paragraph, means the date on which notice of the application for the order is given to the respondent.

Non-compliance with notice under paragraph 14: powers of CMA to give provisional enforcement notice

- 16B
- (1) This paragraph applies where—
 - (a) the CMA has given a notice to a person (“the respondent”) under paragraph 14, and
 - (b) the CMA has reasonable grounds to believe that the respondent has failed to comply with the notice.
 - (2) The CMA may give to the respondent a notice under this paragraph (a “provisional enforcement notice”).
 - (3) A provisional enforcement notice must—
 - (a) set out the grounds on which it is given, including the respondent’s acts or omissions giving rise to the giving of the notice;
 - (b) specify such actions as the CMA considers appropriate to be taken by the respondent for the purposes of securing compliance with the notice under paragraph 14;
 - (c) invite the respondent to make representations to the CMA about the matters set out in the notice;
 - (d) specify the means by which, and the time by which, such representations must be made.
 - (4) The means specified under sub-paragraph (3)(d) for making representations must include arrangements for them to be made orally if the respondent chooses to make representations in that way.
 - (5) If the CMA is considering the imposition of a monetary penalty on the respondent (see paragraph 16C), the provisional enforcement notice must also state—
 - (a) that the CMA is considering imposing a monetary penalty;
 - (b) the proposed amount of the penalty (including whether the penalty would be a fixed amount, an amount calculated by

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reference to a daily rate or both a fixed amount and an amount calculated by reference to a daily rate);

- (c) any further factors (in addition to those provided under sub-paragraph (3)(a)) which the CMA considers justify the imposition of the proposed penalty and its amount or amounts.

Non-compliance with notice under paragraph 14: power of CMA to give final enforcement notice

16C (1) This paragraph applies where—

- (a) the CMA has given to the respondent a provisional enforcement notice under paragraph 16B in respect of a notice given to the respondent under paragraph 14,
- (b) the time for the respondent to make representations to the CMA in accordance with the provisional enforcement notice has expired, and
- (c) after considering such representations (if any), the CMA is satisfied that the respondent has failed to comply with the notice given under paragraph 14.

(2) The CMA may by notice (a “final enforcement notice”) impose on the respondent a requirement to do either or both of the following—

- (a) a requirement to pay a monetary penalty;
- (b) a requirement to comply with such directions as the CMA considers appropriate for the purpose of securing the respondent’s compliance with the notice under paragraph 14.

(3) A requirement under sub-paragraph (2)(a) to pay a monetary penalty may be imposed only if the CMA is satisfied that the respondent’s failure in question is without reasonable excuse.

(4) The amount of a monetary penalty must be—

- (a) a fixed amount,
- (b) an amount calculated by reference to a daily rate, or
- (c) a combination of a fixed amount and an amount calculated by reference to a daily rate.

(5) The penalty must not exceed—

- (a) in the case of a fixed amount, £30,000 or, if higher, 1% of the total value of the turnover (if any) of the respondent;
- (b) in the case of an amount calculated by reference to a daily rate, £15,000 per day or, if higher, 5% of the total value of the daily turnover (if any) of the respondent;
- (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, such fixed amount and such amount per day.

(6) In imposing a penalty by reference to a daily rate—

- (a) no account is to be taken of any days before the date on which the provisional enforcement notice mentioned in sub-paragraph (1)(a) was given to the respondent, and

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- (b) unless the CMA determines an earlier date, the amount payable ceases to accumulate on the day on which the requirements of the notice under paragraph 14 are complied with.
- (7) A final enforcement notice that imposes a penalty on the respondent must state—
- (a) the amount of the penalty (including whether it is a fixed amount, an amount calculated by reference to a daily rate or both a fixed amount and an amount calculated by reference to a daily rate);
 - (b) the grounds on which the penalty is imposed together with any other factors that the CMA considers justify the giving of the penalty or its amount;
 - (c) in the case of an amount calculated by reference to a daily rate, the day on which the amount first starts to accumulate and the day or days on which it might cease to accumulate;
 - (d) how the penalty is to be paid to the CMA;
 - (e) the date or dates, no earlier than the end of 28 days beginning with the date of service of the notice on the respondent, by which the penalty or (as the case may be) different portions of it are required to be paid;
 - (f) that the penalty or (as the case may be) different portions of it may be paid earlier than the date or dates by which it or they are required to be paid;
 - (g) that the respondent has the right to apply under subparagraph (8), or to appeal under paragraph 16D, and the main details of those rights.
- (8) The respondent may, within 14 days of the date of service of the notice, apply to the CMA for it to specify a different date or dates by which the penalty, or different portions of it, are to be paid.
- (9) In deciding whether, and if so how, to proceed under this paragraph the CMA must have regard to the statement of policy most recently published under paragraph 16F at the time of the act or omission giving rise to the penalty.
- (10) The CMA may publish a notice given under this paragraph in such manner as it considers appropriate.
- (11) Sections 191 to 196 of the Digital Markets, Competition and Consumers Act 2024 apply to a direction given in a notice under this paragraph as if the direction were an enforcement direction for the purposes of those sections.

Appeals against final enforcement notice

- 16D (1) A person to whom a final enforcement notice is given may appeal to the appropriate court against—
- (a) a decision to impose a monetary penalty by virtue of the notice,
 - (b) the nature or amount of any such penalty, or
 - (c) the giving of directions by virtue of the notice.

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- (2) The grounds for an appeal under sub-paragraph (1)(a) or (b) are that—
 - (a) the decision to impose a monetary penalty was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the amount of the penalty is unreasonable, or
 - (d) the decision was unreasonable or wrong for any other reason.
- (3) The grounds for an appeal under sub-paragraph (1)(c) are that—
 - (a) the decision to give the directions was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the nature of the directions is unreasonable, or
 - (d) the decision was unreasonable or wrong for any other reason.
- (4) On an appeal under this paragraph the appropriate court may quash, confirm or vary the final enforcement notice.
- (5) An appeal under this paragraph must be brought before the end of the period of 28 days beginning with the day on which the final enforcement notice was given to the person seeking to bring the appeal.
- (6) The appropriate court may extend the period mentioned in sub-paragraph (5) for bringing an appeal.
- (7) Where an appeal is brought under this paragraph, the penalty is not payable until the appeal is determined or withdrawn, unless the appropriate court orders otherwise.
- (8) In this paragraph “the appropriate court” means—
 - (a) in relation to England and Wales or Northern Ireland, the High Court, and
 - (b) in relation to Scotland, the Outer House of the Court of Session.

Recovery of penalties imposed under paragraph 16C

- 16E (1) This paragraph applies where a penalty imposed by a final enforcement notice given under paragraph 16C, or any part of such a penalty, has not been paid by the date on which it is required to be paid and—
- (a) an appeal under paragraph 16D has not been brought before the end of the period mentioned in sub-paragraph (5) of that paragraph, or
 - (b) any such appeal that was brought has been determined, withdrawn or otherwise disposed of.
- (2) The CMA may recover from the person on whom the penalty was imposed any of the penalty and any interest which has not been paid.
- (3) Any such penalty and interest may be recovered summarily (or, in Scotland, recovered) as a civil debt by the CMA.

Statement of policy in relation to penalties under paragraph 16C

- 16F (1) The CMA must prepare and publish a statement of policy in relation to the use of its power to impose penalties under paragraph 16C.

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- (2) The statement must include a statement about the considerations relevant to the determination of—
 - (a) whether to impose a penalty under that paragraph, and
 - (b) the nature and amount of any such penalty.
- (3) The CMA may revise its statement of policy and, where it does so, must publish the revised statement.
- (4) In preparing or revising its statement of policy the CMA must consult—
 - (a) the Secretary of State, and
 - (b) such other persons as the CMA considers appropriate.
- (5) A statement of policy, or revised statement, may not be published under this paragraph without the approval of the Secretary of State.

Penalties imposed under paragraphs 16A and 16C: further provision

- 16G
- (1) If the whole or any portion of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time carries interest at the statutory rate.
 - (2) Where an application has been made under paragraph 16A(8) or 16C(8), the penalty is not required to be paid until the application has been determined, withdrawn or otherwise disposed of.
 - (3) If a portion of a penalty has not been paid by the date required for it, the enforcer to whom it is payable may, where it considers it appropriate to do so, require so much of the penalty as has not already been paid (and is capable of being paid immediately) to be paid immediately.
 - (4) Where on an appeal under paragraph 16D the appropriate court substitutes a penalty of a different nature or of a lesser amount, the court may require the payment of interest at the statutory rate on the substituted penalty from whatever date it considers appropriate (which may include a date before the determination of the appeal).
 - (5) In the case of a monetary penalty imposed on a firm, the penalty is to be paid out of the assets or funds of the firm.
 - (6) Sums received from a person towards payment of a monetary penalty must be paid—
 - (a) in the case of a penalty imposed by an order of the Court of Session or the Sheriff, into the Scottish Consolidated Fund;
 - (b) in the case of a penalty imposed by an order of a court in Northern Ireland, into the Consolidated Fund of Northern Ireland;
 - (c) in any other case, into the Consolidated Fund of the United Kingdom.
 - (7) In this paragraph—
 - “penalty” means a penalty imposed under paragraph 16A or 16C;
 - “statutory rate” means the rate for the time being specified in section 17 of the Judgments Act 1838.

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Meaning of “turnover” for purposes of paragraphs 16A and 16C

- 16H (1) References to “turnover” of a person in paragraphs 16A and 16C include—
- (a) turnover both in and outside the United Kingdom;
 - (b) where the person controls another person, the turnover of that other person;
 - (c) where the person is controlled by another person, the turnover of that other person.
- (2) The Secretary of State may by regulations—
- (a) make provision for determining when a person is to be treated as controlled by another person for the purposes of sub-paragraph (1);
 - (b) make provision for determining the turnover of a person for those purposes.
- (3) Regulations under this paragraph may, in particular, make provision as to—
- (a) the amounts which are, or which are not, to be treated as comprising a person’s turnover or daily turnover;
 - (b) the date or dates by references to which a person’s turnover or daily turnover is to be determined.
- (4) Regulations under this paragraph may include provision enabling the court (within the meaning of paragraph 16A) or the CMA to determine matters of a description specified in the regulations (including any of the matters mentioned in paragraphs (a) and (b) of sub-paragraph(3)).
- (5) Regulations under this paragraph are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.

Power to amend amounts

- 16I (1) The Secretary of State may by regulations amend the following provisions of this Schedule for the purpose of substituting a different monetary amount for an amount of fixed or daily penalty for the time being specified—
- (a) paragraph 16A(5)(a) and (b);
 - (b) paragraph 16C(5)(a) and (b).
- (2) Before making regulations under this paragraph the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (3) Regulations under this paragraph are to be made by statutory instrument.
- (4) Regulations under this paragraph may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

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Miscellaneous

- 16J (1) The CMA may not make an application under paragraph 16A in respect of a person's failure to comply with a notice under paragraph 14 if the CMA has given to the person a final enforcement notice under paragraph 16C in respect of that failure.
- (2) The CMA may not give a person a final enforcement notice under paragraph 16C in respect of a failure to comply with a notice under paragraph 14 if—
- (a) the CMA has made an application under paragraph 16A against the person in respect of that failure, and
 - (b) the application has been determined by the court (within the meaning of that paragraph)."

Commencement Information

- II** Sch. 17 para. 2 in force at Royal Assent for specified purposes, see [s. 339\(2\)\(c\)](#)

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