

SCHEDULE 4

Civil sanctions

PART 1

Power to impose civil sanctions

Market surveillance authority

1. The market surveillance authority may impose a requirement upon a person to comply with a compliance notice, a stop notice, an enforcement undertaking or to pay a variable monetary penalty or non-compliance penalty (a “civil sanction”) as set out in this Schedule.

Non-compliant products

^{F1}2.

Textual Amendments

F1 Sch. 4 para. 2 omitted (29.3.2018) by virtue of [The Energy Information \(Amendment\) Regulations 2018 \(S.I. 2018/255\)](#), regs. 1, 13

Compliance notice

3.—(1) This paragraph applies where the market surveillance authority is satisfied beyond reasonable doubt that a person has committed an offence under regulation 11(1).

(2) The market surveillance authority may by notice (“a compliance notice”) impose on that person a requirement to take such steps as the market surveillance authority 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 offence.

Imposition of a variable monetary penalty

4.—(1) The market surveillance authority may by notice impose on any person in relation to an offence committed under regulation 11(1) a requirement to pay a monetary penalty to the market surveillance authority in such amount as it may determine (“a variable monetary penalty”).

(2) Before doing so the market surveillance authority must be satisfied beyond reasonable doubt that the person has committed the offence.

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

(4) There is no limit to the amount of a variable monetary penalty.

(5) Before serving a notice relating to a variable monetary penalty the market surveillance authority 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 market surveillance authority may recover any variable monetary penalty imposed under this Schedule as if payable under order of the court.

Notice of intent

5.—(1) If the market surveillance authority proposes to serve a compliance notice or a 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 the proposed notice or penalty;
- (b) the requirements of the notice and in the case of a penalty the amount to be paid;
- (c) 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;
 - (ii) the circumstances in which the market surveillance authority may not impose the notice.

Making representations and objections

6. A person on whom a notice of intent is served may within 28 days beginning with the day on which the notice was received make written representations and objections to the market surveillance authority in relation to the proposed imposition of a compliance notice or variable monetary penalty.

Third party undertakings **E+W+S**

7.—(1) A person on whom a notice of intent 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 or non-compliance with [^{F2}a product-specific measure] (“a third party undertaking”).

(2) The market surveillance authority may accept or reject such a third party undertaking.

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

Extent Information

E1 This version of this provision extends to England and Wales and Scotland only; a separate version has been created for Northern Ireland only

Textual Amendments

F2 Words in Sch. 4 para. 7(1) substituted (E.W.S.) (31.12.2020) by The Ecodesign for Energy-Related Products and Energy Information (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/539), reg. 1(3), Sch. 3 para. 9(a); 2020 c. 1, Sch. 5 para. 1(1)

Third party undertakings **N.I.**

7.—(1) A person on whom a notice of intent 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 or non-compliance with an EU measure (“a third party undertaking”).

(2) The market surveillance authority may accept or reject such a third party undertaking.

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

Extent Information

- E2** This version of this provision extends to Northern Ireland only; a separate version has been created for England and Wales and Scotland only

Final notice

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

(2) Where the market surveillance authority decides to impose a requirement, the notice imposing it (the “final notice”) must comply with paragraph 9 or 10.

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

Contents of final notice – compliance notice

9. A final notice relating to a compliance notice must include information as to—

- (a) the grounds for imposing the notice;
- (b) what compliance 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.

Contents of final notice - variable monetary penalty

10. A final notice relating to a 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 which must be not less than 28 days;
- (e) rights of appeal; and
- (f) the consequences of failing to comply with the notice.

Appeals against a final notice

11.—(1) The person receiving the final notice 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.

Criminal proceedings

12.—(1) If—

- (a) a compliance notice or variable monetary penalty is imposed on any person, or
- (b) a third party undertaking is accepted from any person,

that person may not at any time be convicted of the offence under regulation 11(1) in respect of the act or omission giving rise to the compliance notice, variable monetary penalty or third party undertaking except in a case to which sub-paragraph (2) applies.

(2) This sub-paragraph applies to a case where in relation to an offence under regulation 11(1)—

- (a) a compliance notice is imposed on a person or a third party undertaking is accepted from a person;
- (b) no variable monetary penalty is imposed upon that person, and
- (c) the person fails to comply with the compliance notice or third party undertaking.

(3) Criminal proceedings for offences triable summarily to which a compliance notice or third party undertaking in sub-paragraph (2) relate may be instituted at any time up to 6 months from the date when the market surveillance authority notifies the person that they have failed to comply with that compliance notice or third party undertaking.

Changes to legislation:

There are currently no known outstanding effects for the The Energy Information Regulations 2011, PART 1.