

SCHEDULE

Regulation 14(2)

Civil sanctions

PART 1

Compliance notices

Imposition of a compliance notice

1.—(1) The Secretary of State may by notice (a “compliance notice”) impose on any Union importer in relation to any conduct falling within regulation 15(a)-(g), requirements to ensure that the conduct does not continue or recur.

(2) Before issuing a compliance notice under paragraph (1), the Secretary of State must be satisfied on the balance of probabilities that a Union importer has engaged in conduct falling within regulation 15(a)-(g).

(3) A compliance notice may specify the period or periods within which the requirements referred to in paragraph (1) must be met.

(4) The Secretary of State may at any time in writing—

- (a) withdraw a compliance notice; or
- (b) amend the requirements contained in a compliance notice.

Provisional notices

2.—(1) Where the Secretary of State considers that it is appropriate to issue a compliance notice under paragraph 1(1), the Secretary of State must first by notice (a “provisional notice”) inform the relevant Union importer of the—

- (a) grounds for the proposed compliance notice;
- (b) requirements that the compliance notice would contain; and the
- (c) Union importer’s right to make representations to the Secretary of State under paragraph (2).

(2) A Union importer may within 28 days beginning on the day a provisional notice issued under paragraph (1) is served make written representations to the Secretary of State in relation to the proposed imposition of a compliance notice.

Compliance notices

3.—(1) Where the Secretary of State has—

- (a) issued a provisional notice under paragraph 2(1); and
- (b) the period referred to in paragraph 2(2) has expired,

the Secretary of State may issue a compliance notice to the relevant Union importer.

(2) A compliance notice issued under paragraph (1) must inform the relevant Union importer of—

- (a) the Secretary of State’s position in respect of any written representations made by the Union importer under paragraph 2(2);
- (b) the grounds for the compliance notice, which must have been contained in the provisional notice issued under paragraph 2(1);
- (c) the requirements of the compliance notice;

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- (d) the period or periods within which the requirements specified in the compliance notice must be met;
 - (e) the Union importer's right to appeal under paragraph (3); and
 - (f) the consequences of failing to comply with a compliance notice.
- (3) A Union importer which has been issued a compliance notice under paragraph (1) may, within 28 days beginning on the day that that compliance notice is served, apply to the Secretary of State for a review of the compliance notice on the following grounds—
- (a) the issuing of a compliance notice was based on a material error of fact;
 - (b) the issuing of a compliance notice is wrong in law; or
 - (c) the requirements that are specified in the compliance notice are unreasonable.
- (4) On an application for a review of the compliance notice under paragraph (3), the Secretary of State must decide whether to vary, revoke or uphold the compliance notice.

PART 2

Non-compliance penalties

- 4.—(1) Where the Secretary of State has—
- (a) issued a compliance notice under paragraph 3(1); and
 - (b) within the period specified at paragraph 3(2)(d) the Union importer has failed to comply with the requirements specified in the compliance notice; and—
 - (i) the period referred to in paragraph 3(3) has expired and no application for review under that paragraph has been made; or
 - (ii) an application for review has been made under paragraph 3(3) and the Secretary of State has upheld the compliance notice,
- the Secretary of State may serve a notice on the Union importer imposing a monetary penalty (a “non-compliance penalty”).
- (2) The amount of any individual non-compliance penalty may not exceed £25,000.
 - (3) The Secretary of State shall publish guidance concerning the basis on which the amount of a non-compliance penalty will be determined.
 - (4) The Secretary of State must have regard to the guidance published under paragraph (3) when determining the amount of a non-compliance penalty.
 - (5) A notice served under paragraph (1) must include the following information—
 - (a) the grounds for imposing the non-compliance penalty;
 - (b) the amount to be paid;
 - (c) how payment must be made;
 - (d) the period, which shall be no less than 28 days, within which payment must be made;
 - (e) the Union importer's rights of appeal;
 - (f) the consequences of failure to make payment in the specified period;
 - (g) any actions which the Union importer might take which the Secretary of State may consider appropriate to reduce the amount of the penalty.
 - (6) If the requirements of the compliance notice with which the Union importer has failed to comply are fulfilled before the end of the period specified within which payment of the non-compliance penalty must be made, the penalty is not payable.

- (7) The Secretary of State may at any time in writing—
 - (a) withdraw a non-compliance penalty; or
 - (b) reduce the amount of a non-compliance penalty.
- (8) Where the Secretary of State has—
 - (a) imposed a non-compliance penalty under paragraph 4(1);
 - (b) the period specified in paragraph (5)(d) has expired; and
 - (c) payment has not been made,

the Secretary of State may impose an additional non-compliance penalty in respect of the same failure to comply with a compliance notice.

(9) There is no limit to the number of non-compliance penalties that the Secretary of State may impose.

(10) The Secretary of State may recover a non-compliance penalty imposed under paragraph (1) as if payable under order of the court.

PART 3

Appeals

5.—(1) A Union importer served with a notice imposing a non-compliance penalty may appeal the non-compliance penalty, on the grounds that—

- (a) the decision to serve the notice was based on a material error of fact;
- (b) the decision was wrong in law;
- (c) the decision was unfair or unreasonable; or
- (d) the amount of the penalty was unreasonable.

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

(3) The Tribunal shall determine the standard of proof.

(4) Any notice which is subject to an appeal is suspended pending the determination or withdrawal of the appeal.

(5) On determination of an appeal, the Tribunal may withdraw, confirm, suspend or vary a notice imposing a non-compliance penalty, or otherwise—

- (a) take such action as the Secretary of State may take in relation to an act or omission giving rise to a notice; or
- (b) remit the decision to impose the non-compliance penalty, or any matter relating to that decision, to the Secretary of State.

(6) The Tribunal may (in addition to any other order it may make as to costs or expenses) order the Union importer to reimburse the Secretary of State for any expenditure the Secretary of State has reasonably incurred in relation to the imposition of civil sanctions under regulation 15, including expenditure incurred in the exercise of any powers under regulations 8, 10 or 11.

(1) The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) govern the practice and procedure to be followed by the First-tier Tribunal in proceedings allocated to the Tribunal's General Regulatory Chamber.

PART 4

Guidance and publicity

Guidance on the use of civil sanctions

6.—(1) The Secretary of State must publish guidance on the use of civil sanctions under these Regulations.

(2) Guidance published under paragraph (1) must contain the following information—

- (a) the circumstances in which the Secretary of State is likely to impose civil sanctions; and
- (b) the matters to be taken into account by the Secretary of State in determining what actions might be required to ensure that non-compliance does not continue or recur.

(3) The Secretary of State must consult such persons as the Secretary of State considers appropriate before publishing any guidance.

(4) The Secretary of State must have regard to the guidance published under paragraph 6(1) in carrying out the Secretary of State's functions under these Regulations.

Publication of enforcement action

7. The Secretary of State may publish, as the Secretary of State considers appropriate, information concerning the exercise of the Secretary of State's functions under these Regulations.