

SCHEDULES

SCHEDULE 2

Regulation 10

Variable monetary penalties, compliance notices and restoration notices

Imposition of a variable monetary penalty, compliance notice or restoration notice

1.—(1) The Regulator may by notice impose—

- (a) a requirement to pay a monetary penalty of such amount as the Regulator may determine (“a variable monetary penalty”);
- (b) a requirement to take such steps as the Regulator may specify, before the end of such period as the Regulator may specify, to secure that the offence does not continue or recur (“a compliance notice”);
- (c) a requirement to take such steps as the Regulator may specify, before the end of such period as the Regulator may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed (“a restoration notice”).

(2) Before exercising the power in sub-paragraph (1) the Regulator must be satisfied beyond reasonable doubt that—

- (a) the person on whom the notice is to be served has committed an offence under these Regulations; and
- (b) notwithstanding any defence raised, the person would be liable to be convicted of that offence.

(3) A requirement under this paragraph may not be imposed on a person on more than one occasion in relation to the same act or omission but requirements under paragraph (a), (b) or (c) of sub-paragraph (1) may be imposed on a person in relation to the same act or omission.

(4) Where a variable monetary penalty is issued, the amount must not exceed £250,000.

Notice of intent

2.—(1) Where the Regulator proposes to serve a notice under this Schedule on a person, the Regulator 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;
- (b) as regards a proposed restoration notice or compliance notice, the requirement of the notice;
- (c) as regards a proposed variable monetary penalty, the amount of the penalty;
- (d) information as to—
 - (i) the right to make representations and objections before the end of the period of 28 days beginning with the day on which the notice of intent was received;
 - (ii) the circumstances in which the Regulator may not impose the proposed notice (including any defences relating to the offence in relation to which the notice is served).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Notice of intent: representations, objections and undertakings

3. A person on whom a notice of intent is served may, before the end of the period of 28 days beginning with the day on which the notice was received—

- (a) make written representations and objections to the Regulator in relation to the proposed imposition of a variable monetary penalty, restoration notice or compliance notice; and
- (b) offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any person affected by the offence.

Final notice

4.—(1) After the end of the period referred to in paragraph 3, the Regulator must decide whether to—

- (a) impose the requirements proposed in the notice of intent, with or without modifications; or
- (b) impose any other requirement that the Regulator has power to impose.

(2) The Regulator must—

- (a) decide whether to accept any undertaking offered under paragraph 3(b); and
- (b) take any accepted undertaking into account in making a decision under paragraph (1).

(3) Where the Regulator decides to impose a requirement proposed in the notice of intent, the notice imposing it (the “final notice”) must comply with paragraph 5.

Content of final notice

5. A final notice must include information as to—

- (a) the grounds for imposing the requirement;
- (b) as regards a variable monetary penalty—
 - (i) the amount to be paid;
 - (ii) how payment may be made;
 - (iii) the period within which payment must be made which must be not less than 28 days;
 - (iv) any early payment discounts or late payment penalties;
- (c) as regards a compliance notice or restoration notice—
 - (i) what action is required;
 - (ii) the period within which that action must be taken;
- (d) rights of appeal;
- (e) the consequences of failing to comply with the notice.

Appeals against a final notice

6.—(1) The person receiving a final notice may appeal to the First-tier Tribunal against it in writing before the end of the period specified by the Regulator in the notice which must not be less than 28 days.

(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 compliance notice or restoration notice, that the nature of the requirement is unreasonable;
- (e) that the decision was unreasonable for any other reason;
- (f) any other reason.

Criminal proceedings

7.—(1) If a variable monetary penalty, compliance notice or restoration notice is imposed on any person, or an undertaking offered by a person is accepted by the Regulator under paragraph 4(2), that person may not at any time be convicted of the offence under regulation 7(1) or (2) in respect of the act or omission giving rise to the variable monetary penalty, compliance notice, restoration notice except in a case referred to in sub-paragraph (2).

(2) The case referred to in sub-paragraph (1) is a case where—

- (a) a restoration notice or compliance notice is imposed on a person or an undertaking is accepted by the Regulator under paragraph 4(2);
- (b) no variable monetary penalty is imposed on that person; and
- (c) that person fails to comply with the restoration notice, compliance notice or undertaking.

(3) Criminal proceedings for offences triable summarily in connection with a case to which a notice in sub-paragraph (2) relates may be instituted at any time up to six months from the date when the Regulator notifies the person that such person has failed to comply with that notice or undertaking.