

SCHEDULE 4

Regulation 32(2)

FACTORS TO BE TAKEN INTO ACCOUNT IN
DETERMINING THE AMOUNT OF A PENALTY

PART 1

Aggravating factors

1. Seriousness of the non-compliance.
2. Harm or potential harm to human health.
3. Financial harm to consumers.
4. Financial harm to competitors.
5. Duration of non-compliance.
6. Evidence of intention behind the non-compliance.
7. History of non-compliance of the person (“P”) to whom the penalty notice is to be given.
8. Financial gain made by P as a result of non-compliance.
9. Financial resources of P.
10. Size of P’s business.
11. Availability of non-compliant item, including the number of retail shops in which it has been marketed.
12. The conduct of P after the non-compliance is drawn to their attention by an enforcement authority.
13. Previous action taken by the enforcement authority to help P comply with the Regulations.

PART 2

Mitigating factors

1. Action taken to eliminate or reduce the risk of damage resulting from the non-compliance.
2. Action taken by P to repair the harm done by the non-compliance.
3. Any co-operation given to the enforcement authority by P in responding to the non-compliance.
4. Whether P reported the non-compliance to the enforcement authority.
5. Financial resources of P.
6. Size of P’s business.
7. Availability of non-compliant item, including the number of retail shops in which it has been marketed.
8. The conduct of P after the non-compliance is drawn to their attention by an enforcement authority.
9. Where the non-compliance was committed by an employee of P, the extent to which the employee was acting outside of their authority.