

SCHEDULE 4

Article 3

Enforcement undertakings

Enforcement undertakings

1. A regulator may accept an enforcement undertaking from a person in a case where the regulator has reasonable grounds to suspect that the person has committed an offence under a provision specified in Schedule 5 and the table in that Schedule indicates that an enforcement undertaking may be accepted in relation to that offence.

Form and content of an enforcement undertaking

2.—(1) An enforcement undertaking must be in writing and must specify—

- (a) action to secure that the offence does not continue or recur,
- (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,
- (c) action (including the payment of a sum of money) to benefit any person affected by the offence, or
- (d) where restoration of the harm arising from the offence is not possible, action that will secure equivalent benefit or improvement to the environment.

(2) It must specify the period within which the action must be completed.

(3) It must include—

- (a) a statement that the undertaking is made in accordance with this Schedule;
- (b) the terms of the undertaking;
- (c) how and when a person is considered to have discharged the undertaking.

(4) The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if both parties agree in writing.

Acceptance of an enforcement undertaking

3. If a regulator has accepted an enforcement undertaking then, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—

- (a) that person may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates;
- (b) the regulator may not impose on that person any fixed monetary penalty, variable monetary penalty, compliance notice or restoration notice in respect of that act or omission.

General provisions on enforcement undertakings

4.—(1) A regulator must establish and publish the procedure for entering into an enforcement undertaking.

(2) The regulator must consult such persons as it considers appropriate before doing so.

(3) When it accepts an undertaking the regulator may publish it in whatever manner it sees fit.

Discharge of an enforcement undertaking

5.—(1) A regulator who is satisfied that an enforcement undertaking has been complied with must issue a certificate to that effect.

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

(2) A regulator may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.

(3) The person who gave the undertaking may at any time apply for such a certificate.

(4) The regulator must make a decision as to whether to issue such a certificate, and give written notice of the decision to the applicant, within 14 days of such an application.

(5) The person to whom the notice is given may appeal against a decision not to issue a certificate on the grounds that the decision—

- (a) was based on an error of fact;
- (b) was wrong in law;
- (c) was unfair or unreasonable;
- (d) was wrong for any other similar reason.

Inaccurate, incomplete or misleading information

6.—(1) A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is regarded as not having complied with it.

(2) A regulator may by notice in writing revoke a certificate issued under paragraph 5 if it was issued on the basis of inaccurate, incomplete or misleading information.

Non-compliance with an enforcement undertaking

7.—(1) If an enforcement undertaking is not complied with the regulator may either—

- (a) serve a variable monetary penalty notice, compliance notice or restoration notice, or
- (b) bring criminal proceedings

in respect of the relevant offence.

(2) If a person has complied partly but not fully with an undertaking, that part-compliance must be taken into account in the imposition of any criminal or other sanction on the person.

(3) Criminal proceedings for offences triable summarily to which an enforcement undertaking 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 undertaking.