

SCHEDULE 1

Article 3

Fixed monetary penalties

Power to impose a fixed monetary penalty

1.—(1) A regulator may by notice impose a fixed monetary penalty on a person in relation to an offence under a provision specified in Schedule 5 if the table in that Schedule indicates that such penalty is possible for that offence.

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

(3) The amount of penalty to be paid to the regulator as a fixed monetary penalty is £100 for an individual or £300 for a body corporate.

Notice of intent

2.—(1) Where a regulator proposes to impose a fixed monetary penalty 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 proposal to impose the fixed monetary penalty;
- (b) the amount of the penalty;
- (c) a statement that liability for the penalty can be discharged by paying 50% of the penalty within 28 days beginning with the day on which the notice was received;
- (d) information as to—
 - (i) the effect of that discharge payment;
 - (ii) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;
 - (iii) the circumstances in which the regulator may not impose the requirement (including any defences relating to the offence in relation to which the notice is served).

Discharge of liability

3. The penalty is discharged if a person who receives a notice of intent pays 50% of the amount of the penalty within 28 days beginning with the day on which the notice was received.

Making representations and objections

4. 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 regulator in relation to the proposed imposition of the fixed monetary penalty.

Service of final notice

5.—(1) If the person who has received a notice of intent does not discharge liability within 28 days the regulator may serve a final notice imposing a fixed monetary penalty.

(2) The regulator may not serve a final notice on a person where the regulator 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.

(3) A regulator who serves a final notice relating to a fixed monetary penalty may not serve any other notice under this Order in relation to the offence.

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Contents of final notice

6. A final notice must include information as to—
- (a) the amount of the penalty;
 - (b) the grounds for imposing the penalty;
 - (c) how payment may be made;
 - (d) the period of 56 days within which payment must be made;
 - (e) details of the early payment discounts and late payment penalties;
 - (f) rights of appeal; and
 - (g) the consequences of non-payment.

Discount for early payment

7. If a person who was served with a notice of intent made representations or objections concerning that notice within the time limit, that person may discharge the final notice by paying 50% of the penalty within 28 days beginning with the day on which the final notice was received.

Grounds of appeal

- 8.—(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) that the decision was unreasonable;
 - (d) any other similar reason.

Non-payment after 56 days

- 9.—(1) The penalty must be paid within 56 days of receipt of the final notice.
- (2) If the penalty is not paid within 56 days the amount payable is increased by 50%.
- (3) In the case of an appeal it is payable within 28 days of the determination of the appeal (if the appeal is unsuccessful), and if it is not paid within 28 days the amount of the penalty is increased by 50%.

Criminal proceedings

- 10.—(1) If a notice of intent for a fixed monetary penalty is served on any person—
- (a) no criminal proceedings for the offence may be instituted against that person in respect of the act or omission to which the notice relates before 28 days from the date the notice of intent is received, and
 - (b) if that person so discharges liability, that person may not at any time be convicted of the offence in relation to that act or omission.
- (2) If a fixed monetary penalty is imposed on any person, that person may not at any time be convicted of the offence in respect of the act or omission giving rise to the penalty.

SCHEDULE 2

Article 3

Variable monetary penalties, compliance notices, restoration notices and third party undertakings

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

1.—(1) A regulator may by notice impose—

- (a) a requirement to pay a monetary penalty to a regulator of such amount as the regulator may determine (“a variable monetary penalty”);
- (b) a requirement to take such steps as a regulator may specify, within such period as it may specify, to secure that the offence does not continue or recur (“a compliance notice”);
- (c) a requirement to take such steps as a regulator may specify, within such period as it 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”),

or any combination of these requirements, in relation to an offence under a provision specified in Schedule 5 if the table in that Schedule indicates that such penalty or notice is possible for that offence.

(2) Before doing so the regulator must be satisfied beyond reasonable doubt that the person has committed the 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.

(4) Where a variable monetary penalty is imposed in relation to an offence that is—

- (a) triable summarily only, and
- (b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment),

the amount of the variable monetary penalty may not exceed the maximum amount of that fine.

(5) Before serving a notice relating to a variable monetary penalty the regulator may require the person to provide such information as is reasonable to establish the amount of any financial benefit arising as a result of the offence.

Notice of intent

2.—(1) Where a regulator proposes to impose a requirement under this Schedule on a person, the regulator must serve on that person a notice of what is proposed (a “notice of intent”).

(2) In the case of a proposed restoration notice or compliance notice the notice of intent must include—

- (a) the grounds for the proposed notice;
- (b) the requirement of the notice;
- (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 regulator may not impose the notice (including any defences relating to the offence in relation to which the notice is served).

(3) In the case of a proposed variable monetary penalty the notice of intent must include—

- (a) the grounds for imposing the variable monetary penalty;
- (b) the amount of the penalty;

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(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 regulator may not impose the penalty (including any defences relating to the offence in relation to which the notice is served).

Making representations and objections

3. 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 regulator in relation to the proposed imposition of a variable monetary penalty, restoration notice or compliance notice.

Third party undertakings

4.—(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 person affected by the offence (“a third party undertaking”).

(2) The regulator may accept or reject such a third party undertaking.

Final notice

5.—(1) After the end of the period for making representations and objections, the regulator must decide whether to—

- (a) impose the requirements in the notice of intent, with or without modifications, or
- (b) impose any other requirement that the regulator has power to impose under this Schedule.

(2) In making its decision, the regulator must take into account any third party undertaking that it has accepted.

(3) Where the regulator decides to impose a requirement, the notice imposing it (the “final notice”) must comply with paragraph 6 or 7.

(4) The regulator may not impose a final notice on a person where the regulator 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 — variable monetary penalty

6. A final notice for 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.

Contents of final notice — compliance notice or restoration notice

7. A final notice relating to a compliance notice or restoration notice must include information as to—

- (a) the grounds for imposing the notice;

- (b) what compliance or restoration is required and the period within which it must be completed;
- (c) the rights of appeal; and
- (d) the consequences of failing to comply with the notice.

Appeals against a final notice

- 8.**—(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) any other similar reason.

Criminal proceedings

- 9.**—(1) If—
- (a) a variable monetary penalty, compliance notice or restoration notice 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 in respect of the act or omission giving rise to the variable monetary penalty, compliance notice, restoration notice or third party undertaking 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 a third party undertaking is accepted from a person,
 - (b) no variable monetary penalty is imposed on that person, and
 - (c) that person fails to comply with the restoration notice, compliance notice or third party undertaking.
- (3) Criminal proceedings for offences triable summarily to which a notice or undertaking 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.

SCHEDULE 3

Article 3

Stop notices

Stop notices

- 1.**—(1) The regulator may serve a stop notice on any person in accordance with this Schedule in relation to an offence under a provision specified in Schedule 5 if the table in that Schedule indicates that such notice is possible for that offence.

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- (2) A stop notice may only be served in a case falling within sub-paragraph (3) or (4).
- (3) A case falling within this sub-paragraph is a case where—
 - (a) the person is carrying on the activity,
 - (b) the regulator reasonably believes that the activity as carried on by that person is causing, or presents a significant risk of causing, serious harm to any of the matters referred to in sub-paragraph (5), and
 - (c) the regulator reasonably believes that the activity as carried on by that person involves or is likely to involve the commission of an offence under a provision specified in Schedule 5 by that person.
- (4) A case falling within this sub-paragraph is a case where the regulator reasonably believes that—
 - (a) the person is likely to carry on the activity,
 - (b) the activity as likely to be carried on by that person will cause, or will present a significant risk of causing, serious harm to any of the matters referred to in sub-paragraph (5), and
 - (c) the activity as likely to be carried on by that person will involve or will be likely to involve the commission of an offence under a provision specified in Schedule 5 by that person.
- (5) The matters referred to in sub-paragraphs (3)(b) and (4)(b) are—
 - (a) human health,
 - (b) the environment (including the health of animals and plants).

Contents of a stop notice

- 2. A stop notice must include information as to—
 - (a) the grounds for serving the stop notice;
 - (b) the steps the person must take to comply with the stop notice;
 - (c) rights of appeal; and
 - (d) the consequences of non-compliance.

Appeals

- 3.—(1) The person on whom a stop notice is served may appeal against the decision to serve 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) that the decision was unreasonable;
 - (d) that any step specified in the notice is unreasonable;
 - (e) that the person has not committed the offence and would not have committed it had the stop notice not been served;
 - (f) that the person would not, by reason of any defence, have been liable to be convicted of the offence had the stop notice not been served;
 - (g) any other similar reason.

Completion certificates

4.—(1) Where, after service of a stop notice, the regulator is satisfied that the person has taken the steps specified in the notice, the regulator must issue a certificate to that effect (a “completion certificate”).

(2) The stop notice ceases to have effect on the issue of a completion certificate.

(3) The person on whom the stop notice is served may at any time apply for a completion certificate.

(4) The regulator must make a decision as to whether to issue a completion certificate within 14 days of such an application.

(5) The person on whom the stop notice was served may appeal against a decision not to issue a completion certificate on the grounds that—

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

Compensation

5.—(1) A regulator must compensate a person for loss suffered as the result of the service of a stop notice or a refusal to issue a completion certificate if that person has suffered loss as a result of the notice or refusal and—

- (a) the stop notice is subsequently withdrawn or amended by the regulator because the decision to serve it was unreasonable or any step specified in the notice was unreasonable;
- (b) the person successfully appeals against the stop notice and the First-tier Tribunal finds that the service of the notice was unreasonable; or
- (c) the person successfully appeals against the refusal to issue a completion certificate and the Tribunal finds that the refusal was unreasonable.

(2) A person may appeal against a decision not to award compensation or a decision as to the amount of compensation—

- (a) on the grounds that the regulator’s decision was unreasonable;
- (b) on the grounds that the amount offered was based on incorrect facts;
- (c) for any other similar reason.

Offences

6.—(1) Where a person to whom a stop notice is issued does not comply with it within the time limit specified in the notice, the person is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding £20,000, or imprisonment for a term not exceeding twelve months, or both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

(2) In the application of this paragraph in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003⁽¹⁾ the reference in subparagraph (1)(a) to twelve months is to be read as a reference to six months.

(1) 2003 c. 44.

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.

(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.

SCHEDULE 5

Article 4

Offences

In the following table—

- “FMP” is a fixed monetary penalty;
- “VMP” is a variable monetary penalty;
- “CN” is a compliance notice;
- “RN” is a restoration notice;
- “SN” is a stop notice;
- “EU” is an enforcement undertaking.

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<i>Provision</i>	<i>FMP</i>	<i>VMP</i>	<i>CN</i>	<i>RN</i>	<i>SN</i>	<i>EU</i>
<i>creating an offence</i>						
Salmon and Freshwater Fisheries Act 1975(2)						
section 2(1)	No	Yes	No	No	No	No
section 2(2)	No	Yes	No	No	No	No
section 2(4)	No	Yes	No	Yes	Yes	Yes
section 4(1)	No	Yes	No	Yes	Yes	Yes
section 5(4)	No	Yes	No	Yes	Yes	Yes
section 9(2)	No	Yes	No	Yes	No	Yes
section 12(1)	No	Yes	No	Yes	Yes	Yes
section 12(3)	No	Yes	No	Yes	Yes	Yes
section 13(2)	No	Yes	No	Yes	Yes	Yes
section 14(8)	No	Yes	No	Yes	Yes	Yes
section 15(2)	No	Yes	No	Yes	Yes	Yes
section 18(1)	No	Yes	No	No	No	No
section 27	No	Yes	No	No	No	No
section 31(2)	No	Yes	No	No	No	No
Salmon Act 1986(3)						
section 32	No	Yes	No	No	No	No
Environmental Protection Act 1990(4)						
section 33(6)	No	No	No	No	Yes	No
section 71(3)	No	Yes	No	No	No	No

- (2) [1975 c. 51](#); section 2(1) was amended by the Marine and Coastal Access Act [2009 \(c. 23\)](#), section 216(1), (2)(a) and (b); section 2(2) was amended by the Marine and Coastal Access Act 2009, section 216(1), (3)(a) and (b); section 4(1) was amended by the Marine and Coastal Access Act 2009, section 321, Schedule 22, Part 5 (B); section 14(8) was substituted by the Environment Act [1995 \(c. 25\)](#), section 105, Schedule 15, paragraph 13; section 15(2) was amended by the Environment Act 1995, section 105, Schedule 15, paragraph 14(2); section 27 was amended by the Marine and Coastal Access Act 2009, section 233(1), Schedule 16, paragraphs 1 and 11.
- (3) [1986 c. 62](#); section 32 was amended by the Marine and Coastal Access Act 2009, sections 229 and 321, Schedule 22, Part 5(B).
- (4) [1990 c. 43](#); section 33(6) was amended by the Environmental Permitting (England and Wales) Regulations 2007 (S.I.2007/3538), regulations 73, 74(2), Schedule 21, Part 1, paragraphs 2, 4(1), (5) and Schedule 23; section 71(3) was amended by the Clean Neighbourhoods and Environment Act [2005 \(c. 16\)](#), section 46(2)(b) and by the Environment Act 1995, sections 112, 120, Schedule 19, paragraph 4(2) and Schedule 24.

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<i>Provision creating an offence</i>	<i>FMP</i>	<i>VMP</i>	<i>CN</i>	<i>RN</i>	<i>SN</i>	<i>EU</i>
Water Resources Act 1991(5)						
section 24(4)(a)		Yes	Yes	Yes	Yes	Yes
section 24(4)(b)		Yes	Yes	Yes	Yes	Yes
section 25(2)(a)		Yes	Yes	Yes	Yes	Yes
section 25(2)(b)		Yes	Yes	Yes	Yes	Yes
section 25C	No	Yes	No	No	No	No
section 80(1)	Yes	Yes	Yes	Yes	Yes	Yes
section 80(2)	Yes	Yes	Yes	Yes	Yes	Yes
section 161D	No	Yes	No	No	No	No
section 199(4)	No	Yes	No	No	No	No
section 201(3)	No	Yes	No	No	No	No
section 202(4)	No	Yes	No	No	No	No
section 206(1)	No	Yes	No	No	No	No
section 206(3)	No	Yes	No	No	No	No
section 206(3A)	No	Yes	No	No	No	No
section 206(4)	No	Yes	No	No	No	No
Schedule 20, paragraph 7	No	Yes	No	No	No	No
Water Industry Act 1991(6)						

- (5) **1991 c. 57**; section 25(2)(b) was amended by the Water Act 2003 (c. 37), sections 2(1), (3), 101(2) and Schedule 9, Part 1; section 25C was inserted by the Water Act 2003, section 30; section 80(1) was amended by the Environment Act 1995, section 120, Schedule 22, paragraph 141(a); section 80(2) was amended by the Environment Act 1995, section 120, Schedule 22, paragraphs 141(b) and (c); section 161D was inserted by the Environment Act 1995, section 120, Schedule 22, paragraph 162; section 199(4) was amended by the Water Act 2003, sections 8(1) and (5)(b); section 201(3) was substituted by the Water Act 2003, section 70; section 202(4) was amended by the Environment Act 1995, section 120, Schedule 22, paragraphs 128 and 172(1); section 206(1) was substituted by the Environment Act 1995, section 112, Schedule 19, paragraph 5(2) and was amended by the Water Act 2003, section 101(1), Schedule 7, Part 1, paragraphs 1 and 11; section 206(3A) was inserted by the Environment Act 1995, section 112, Schedule 19, paragraph 5(4); Schedule 20, paragraph 7 was amended by the Environment Act 1995, section 120, Schedule 22, paragraph 188.
- (6) **1991 c. 56**; section 120(9) was substituted by the Environment Act 1995, section 120, Schedule 22, paragraph 105(4); section 130(7) was substituted by the Environment Act 1995, section 120, Schedule 22, paragraph 108(3); section 133(5) was substituted by the Environment Act 1995, section 120, Schedule 22, paragraph 111; section 135A(2)(a) was inserted by the Environment Act 1995, section 120, Schedule 22, paragraph 113.

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<i>Provision creating an offence</i>	<i>FMP</i>	<i>VMP</i>	<i>CN</i>	<i>RN</i>	<i>SN</i>	<i>EU</i>
section 120(9)	Yes	Yes	Yes	Yes	No	Yes
section 130(7)	Yes	Yes	Yes	Yes	No	Yes
section 133(5)	No	Yes	No	Yes	No	No
section 135A(2)(a)	No	Yes	No	No	No	No
Land Drainage Act 1991(7)						
section 53(2)	No	Yes	No	No	No	No
section 64(6)	No	Yes	No	No	No	No
section 69(4)	No	Yes	No	No	No	No
Environment Act 1995(8)						
section 110(1)	No	Yes	No	No	No	No
section 110(2)(a)	No	Yes	No	No	No	No
section 110(2)(b)	No	Yes	No	No	No	No
section 110(2)(c)	No	Yes	No	No	No	No
section 110(3)	No	Yes	No	No	No	No
Water Act 2003(9)						
section 4(4)	No	Yes	No	No	No	No

(7) [1991 c. 59.](#)
(8) [1995 c. 25.](#)
(9) [2003 c. 37.](#)