

SCHEDULES

SCHEDULE 2

Civil sanctions

PART 7

Administration and appeals

Withdrawing or amending a notice

- 24.** The regulator may at any time in writing—
- (a) withdraw a fixed monetary penalty;
 - (b) withdraw a variable monetary penalty, a non-compliance penalty or an enforcement cost recovery notice or reduce the amount specified in the penalty or notice.

Guidance as to use of civil sanctions

- 25.—**(1) Where these Regulations confer power on the regulator to impose a civil sanction—
- (a) the regulator must publish guidance about its use of the sanction;
 - (b) in the case of guidance relating to a fixed monetary penalty or variable monetary penalty, the guidance must contain the relevant information;
 - (c) the regulator must revise the guidance where appropriate;
 - (d) the regulator must have regard to the guidance or revised guidance in exercising its functions.
- (2) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in sub-paragraph (1)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed,
 - (b) the circumstances in which the penalty must not be imposed,
 - (c) the amount of the penalty,
 - (d) how liability for the penalty may be discharged and the effect of discharge, and
 - (e) rights to make representations and objections and rights of appeal.
- (3) In the case of guidance relating to a variable monetary penalty, the relevant information referred to in sub-paragraph (1)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed,
 - (b) the circumstances in which the penalty must not be imposed,
 - (c) the matters likely to be taken into account by the regulator in determining the amount of the penalty (including voluntary reporting by any person of their own non-compliance), and
 - (d) rights to make representations and objections and rights of appeal.

Status: This is the original version (as it was originally made).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

Additional guidance

26. The regulator must publish guidance relating to the use of non-compliance penalties and enforcement cost recovery notices specifying—

- (a) the circumstances in which they are likely to be imposed,
- (b) the circumstances in which they must not be imposed,
- (c) matters to be taken into account in establishing the amount involved, and
- (d) rights of appeal.

Consultation on guidance

27. The regulator must consult such persons as it considers appropriate before publishing any guidance or revised guidance under these Regulations.

Publication of enforcement action

28.—(1) Where a power is conferred on the regulator to impose a civil sanction under these Regulations, the regulator must from time to time publish reports specifying—

- (a) the cases in which the civil sanction has been imposed,
- (b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged by payment of the penalty following the notice of intent and without further action being taken, and
- (c) where the civil sanction is a variable monetary penalty, the cases in which a third party undertaking has been accepted.

(2) In sub-paragraph (1)(a) the reference to cases in which the civil sanction has been imposed does not include cases where the sanction has been imposed but overturned on appeal.

(3) This paragraph does not apply in cases where the Welsh Ministers consider that publication would be inappropriate.

Recovery of payments

29. The regulator may recover any fixed monetary penalty, variable monetary penalty or non-compliance penalty imposed under these Regulations and any financial penalty for late payment, on the order of a court, as if payable under a court order.

Appeals

30.—(1) An appeal under these Regulations is to the First-tier Tribunal (“the Tribunal”).

(2) In any appeal where the commission of an offence is an issue requiring determination, the regulator must prove that offence according to the same burden and standard of proof as in a criminal prosecution.

(3) In any other case the Tribunal must determine the standard of proof.

(4) All notices are suspended pending the determination or withdrawal of the appeal.

(5) The Tribunal may, in relation to the imposition of a penalty or service of a notice under these Regulations—

- (a) withdraw the penalty or notice,
- (b) confirm the penalty or notice,
- (c) vary the penalty or notice,

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

- (d) take such steps as the regulator could take in relation to the act or omission giving rise to the penalty or notice, or
- (e) remit the decision whether to confirm the penalty or notice, or any matter relating to that decision, to the regulator.