

SCHEDULES

SCHEDULE 11

Section 107

FURTHER PROVISION ABOUT MONITOR’S ENFORCEMENT POWERS

PART 1

DISCRETIONARY REQUIREMENTS

Procedure

- 1 (1) Where Monitor proposes to impose a discretionary requirement on a person, Monitor must give notice to that person (a “notice of intent”).
- (2) A notice of intent must—
 - (a) state that Monitor proposes to impose the discretionary requirement and set out its effect,
 - (b) set out the grounds for the proposal to impose the requirement,
 - (c) explain the effect of section 106 (enforcement undertakings),
 - (d) set out the circumstances (if any) in which Monitor may not impose the requirement, and
 - (e) specify the period (“the notice period”) within which representations with respect to the proposal may be made to Monitor.
- (3) The notice period must be not less than 28 days beginning with the day after that on which the notice of intent is received.
- (4) But where Monitor—
 - (a) proposes to impose a compliance requirement or restoration requirement, and
 - (b) considers that a shorter notice period is necessary to prevent or minimise further breaches of the kind referred to in section 105(1),the notice period is to be such shorter period as Monitor may determine, but not less than 5 days beginning with the day after that on which the notice of intent is received.
- 2 (1) After the end of the notice period Monitor must decide whether to—
 - (a) impose the discretionary requirement, with or without modifications, or
 - (b) impose any other discretionary requirement.
- (2) Where Monitor decides under sub-paragraph (1) to impose a discretionary requirement on a person Monitor must give notice to that person (a “final notice”).
- (3) A final notice must—
 - (a) state that Monitor has decided to impose the discretionary requirement and set out its effect,
 - (b) set out the grounds for imposing the requirement,

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- (c) in the case of a variable monetary penalty, state—
 - (i) how payment may be made,
 - (ii) the period (“the payment period”) within which payment must be made,
 - (iii) any discount applicable for early payment of the penalty, and
 - (iv) the rate of interest payable for late payment of the penalty,
 - (d) set out the consequences of failing to comply with the requirement, and
 - (e) explain the right of appeal conferred by paragraph 3.
- (4) The payment period must be not less than 28 days beginning with the day after that on which the final notice is received.
- (5) Monitor must not decide under sub-paragraph (1) to impose a variable monetary penalty unless the notice of intent was given before the end of the period of 5 years beginning with the day (or, in the case of a continuing breach, the last day) on which the breach giving rise to the imposition of the discretionary requirement occurred.
- 3 (1) A person may appeal to the First-tier Tribunal against a decision of Monitor to impose a discretionary requirement.
- (2) The grounds for an appeal under this paragraph 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 decision imposing a variable monetary penalty, that the amount of the penalty is unreasonable,
 - (d) in the case of a decision to impose a compliance requirement or a restoration requirement, that the nature of the requirement is unreasonable, or
 - (e) that the decision was unreasonable for any other reason.
- (3) The discretionary requirement is suspended pending determination of the appeal.
- (4) On an appeal under this paragraph, the Tribunal may—
- (a) confirm, vary or withdraw the discretionary requirement,
 - (b) take such steps as Monitor could take in relation to the breach giving rise to the imposition of the requirement, or
 - (c) remit the decision whether to confirm the requirement, or any matter relating to that decision, to Monitor.
- 4 Monitor may by notice to a person on whom a discretionary requirement has been imposed—
- (a) withdraw the discretionary requirement,
 - (b) in the case of a variable monetary penalty, reduce the amount of the penalty or extend the payment period, or
 - (c) in the case of a compliance requirement or a restoration requirement, extend the period specified for taking the steps specified in the requirement.

Non-compliance penalties

- 5 (1) If a person fails to comply with a compliance requirement or a restoration requirement Monitor may impose a monetary penalty on that person of such amount as Monitor may determine (a “non-compliance penalty”).

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- (2) Where Monitor proposes to impose a non-compliance penalty on a person Monitor must give notice to that person (a “non-compliance notice”).
- (3) A non-compliance notice must—
 - (a) specify the amount of the non-compliance penalty,
 - (b) set out the grounds for imposing the penalty,
 - (c) state how payment of the penalty may be made,
 - (d) state the period (“the payment period”) within which payment must be made,
 - (e) state any discount applicable for early payment of the penalty,
 - (f) set out the consequences of a failure to pay within the payment period (including any increase in the amount payable), and
 - (g) explain the right of appeal conferred by paragraph 6.
- (4) The payment period must be not less than 28 days beginning with the day after that on which the non-compliance notice is received.
- (5) If the whole or any part of a non-compliance penalty is not paid by the time it is required to be paid Monitor may increase the amount payable by no more than 50% of the amount of the penalty.
- (6) Monitor may by notice to a person on whom a non-compliance penalty has been imposed reduce the amount of the penalty or extend the payment period.
- 6 (1) A person may appeal to the First-tier Tribunal against a decision of Monitor to impose a non-compliance penalty.
- (2) The grounds for such an appeal are—
 - (a) that the decision was based on an error of fact,
 - (b) that the decision was wrong in law, or
 - (c) that the decision was, or the amount of the penalty is, unfair or unreasonable.
- (3) The non-compliance penalty is suspended pending determination of the appeal.
- (4) On an appeal, the Tribunal may—
 - (a) confirm, vary or withdraw the non-compliance penalty, or
 - (b) remit the decision whether to confirm the penalty, or any matter relating to that decision, to Monitor.

Recovery of financial penalties

- 7 (1) Amounts payable to Monitor of the kind mentioned in sub-paragraph (2) are recoverable summarily as a civil debt (but this does not affect any other method of recovery).
- (2) The amounts are—
 - (a) a variable monetary penalty and any interest payable on it, or
 - (b) a non-compliance penalty.

Payments of penalties etc. into Consolidated Fund

- 8 Monitor must pay any sums it receives in respect of any of the following into the Consolidated Fund—
 - (a) a variable monetary penalty and any interest payable on it, or

- (b) a non-compliance penalty.

PART 2

ENFORCEMENT UNDERTAKINGS

Procedure

- 9 (1) Monitor must publish a procedure for entering into enforcement undertakings.
- (2) Monitor may revise the procedure and if it does so, Monitor must publish the procedure as revised.
- (3) Monitor must consult such persons as it considers appropriate before publishing or revising the procedure.
- 10 (1) Where Monitor accepts an enforcement undertaking, Monitor must publish the undertaking.
- (2) But Monitor must not under sub-paragraph (1) publish any part of an enforcement undertaking which contains information which it is satisfied is—
- (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of the person to whom it relates;
- (b) information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm that person’s interests.

Variation of terms

- 11 The terms of an enforcement undertaking (including, in particular, the action specified under it and the period so specified within which the action must be taken) may be varied if both the person giving the undertaking and Monitor agree.

Compliance certificates

- 12 (1) Where Monitor is satisfied that an enforcement undertaking has been complied with, Monitor must issue a certificate to that effect (referred to in this Schedule as a “compliance certificate”).
- (2) A person who has given an enforcement undertaking may at any time make an application to Monitor for a compliance certificate.
- (3) The application must be made in such form, and accompanied by such information, as Monitor requires.
- (4) Monitor must decide whether or not to issue a compliance certificate, and give notice to the applicant of its decision, before the end of the period of 14 days beginning with the day after that on which the application is received.
- 13 (1) An appeal lies to the First-tier Tribunal against a decision of Monitor to refuse an application for a certificate of compliance.
- (2) The grounds for an appeal under this paragraph are that the decision was—
- (a) based on an error of fact,

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- (b) wrong in law, or
 - (c) unfair or unreasonable.
- (3) On an appeal under this paragraph, the Tribunal may confirm Monitor’s decision or direct that it is not to have effect.

Inaccurate, incomplete or misleading information

- 14 Where Monitor is satisfied that a person who has given an enforcement undertaking has supplied Monitor with inaccurate, misleading or incomplete information in relation to the undertaking—
- (a) Monitor may treat the person as having failed to comply with the undertaking, and
 - (b) if Monitor decides so to treat the person, Monitor must by notice revoke any compliance certificate given to that person.