
STATUTORY RULES OF NORTHERN IRELAND

2013 No. 208

The Electricity and Gas (Market Integrity and Transparency)
(Enforcement etc.) Regulations (Northern Ireland) 2013

PART 6

Notices

Third party rights and access to evidence

Third party rights

40.—(1) If any of the reasons contained in a warning notice given under these Regulations relates to a matter which—

- (a) identifies a person (“TP”) other than the person to whom the notice is given, and
- (b) in the opinion of the Authority, is prejudicial to TP,

a copy of the notice must be given to TP.

(2) Paragraph (1) does not require a copy to be given to TP if the Authority—

- (a) has given TP a separate warning notice in relation to the same matter; or
- (b) gives TP such a notice at the same time as it gives the warning notice which identifies TP.

(3) The notice copied to TP under paragraph (1) must specify a reasonable period (which may not be less than 14 days) within which TP may make representations to the Authority.

(4) If any of the reasons contained in a decision notice given under these Regulations relates to a matter which—

- (a) identifies a person (“TP”) other than the person to whom the decision notice is given, and
- (b) in the opinion of the Authority, is prejudicial to TP,

a copy of the notice must be given to TP.

(5) If the decision notice was preceded by a warning notice, a copy of the decision notice must (unless it has been given under paragraph (4)) be given to each person to whom the warning notice was copied.

(6) Paragraph (4) does not require a copy to be given to TP if the Authority—

- (a) has given TP a separate decision notice in relation to the same matter; or
- (b) gives TP such a notice at the same time as it gives the decision notice which identifies TP.

(7) Neither paragraph (1) nor paragraph (4) requires a copy of a notice to be given to TP if the Authority considers it impracticable to do so.

(8) Paragraphs (9) to (11) apply if the person to whom a decision notice is given has a right to refer the matter to the Tribunal.

(9) A person (“TP”) to whom a copy of the notice is given, under this regulation may refer to the Tribunal—

- (a) the decision in question, so far as it is based on a reason of the kind mentioned in paragraph (4); or
- (b) any opinion expressed by the Authority in relation to TP.

(10) The copy must be accompanied by an indication of TP’s right to make a reference under paragraph (9) and of the procedure on such a reference.

(11) A person (“TP”) who alleges that a copy of the notice should have been given to TP, but was not, may refer to the Tribunal the alleged failure and—

- (a) the decision in question, so far as it is based on a reason of the kind mentioned in paragraph (4); or
- (b) any opinion expressed by the Authority in relation to TP.

(12) Regulation 41 applies to TP as it applies to the person to whom the notice to which this regulation applies was given, in so far as the material to which access must be given under that regulation relates to the matter which identifies TP.

(13) A copy of a notice given to TP under this regulation must be accompanied by a description of the effect of regulation 41 as it applies to TP.

(14) Any person to whom a warning notice or decision notice was copied under this regulation must be given a copy of a notice of discontinuance applicable to the proceedings to which the warning notice or decision notice related.

Access to Authority material

41.—(1) If the Authority gives a person (“NP”) a warning notice or a decision notice under these Regulations, it must—

- (a) allow NP access to the material on which it relied in taking the decision which gave rise to the obligation to give the notice;
- (b) allow NP access to any secondary material which, in the opinion of the Authority, might undermine that decision.

(2) The Authority does not have to allow NP access to material under paragraph (1) if the material is a protected item (as defined in regulation 52(2)) or it—

- (a) relates to a case involving a person other than NP; and
- (b) was taken into account by the Authority in NP’s case only for the purposes of comparison with other cases.

(3) The Authority may refuse NP access to particular material which it would otherwise have to allow NP access to if, in its opinion, allowing NP access to the material—

- (a) would not be in the public interest; or
- (b) would not be fair, having regard to—
 - (i) the likely significance of the material to NP, in relation to the matter in respect of which NP has been given a warning notice or decision notice; and
 - (ii) the potential prejudice to the commercial interests of a person other than NP which would be caused by the material’s disclosure.

(4) If the Authority does not allow NP access to material because it is a protected item, it must give NP written notice of—

- (a) the existence of the protected item; and
- (b) the Authority’s decision not to allow NP access to it.

(5) If the Authority refuses under paragraph (3) to allow NP access to material, it must give NP written notice of—

- (a) the refusal; and
- (b) the reasons for it.

(6) “Secondary material” means material, other than material falling within paragraph (1)(a), which—

- (a) was considered by the Authority in reaching the decision mentioned in that paragraph; or
- (b) was obtained by the Authority in connection with the matter to which the warning notice or decision notice relates but which was not considered by it in reaching that decision.