

SCHEDULE 1

Regulation 5

Application to the Crown etc

Crown application

- 1.—(1) The Crown is not criminally liable as a result of any provision of these Regulations.
(2) Sub-paragraph (1) does not affect the application of any provision of these Regulations in relation to persons in the public service of the Crown.
2. The Crown is not liable for any penalty under any provision of these Regulations.
- 3.—(1) Nothing in these Regulations affects Her Majesty in her private capacity.
(2) Sub-paragraph (1) is to be interpreted as if section 38(3) of the Crown Proceedings Act 1947⁽¹⁾ (interpretation of references in that Act to Her Majesty in her private capacity) were contained in these Regulations.

Entry to Crown premises

- 4.—(1) Regulation 16 does not apply in relation to land which is occupied by a government department, or otherwise for purposes of the Crown, unless the matter being investigated is conducted by the Crown or a person in the public service of the Crown.
(2) In sub-paragraph (1) “conduct” includes suspected conduct.
- 5.—(1) If the Secretary of State for Northern Ireland considers that in the interests of national security the power of entry that may be conferred by a warrant under regulation 16 must not be used in relation to particular Crown premises, the Secretary of State for Northern Ireland may certify that those powers must not be used in relation to those premises.
(2) In sub-paragraph (1) “Crown premises” means premises held by or used by or on behalf of the Crown.

SCHEDULE 2

Regulation 6

Service of notices

Interpretation

- 1.—(1) In this Schedule—
“appropriate person” means an individual to whom a relevant document may be given, in accordance with paragraph 3, in order to give that document to a person who is not an individual;
“business day” means any day except Saturday, Sunday or a bank holiday, where “bank holiday” includes Christmas Day and Good Friday;
“document” means a notice or document (as defined in regulation 2) of any kind;
“nominee”, in relation to any person to whom a document is to be given (“A”), means a person (“B”) who is authorised for the time being to receive relevant documents on behalf of A, to

(1) 1947 c. 44 (10 & 11 Geo 6).

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whom relevant documents may be given if A has notified the Authority in writing that B is so authorised;

“relevant document” means—

- (a) a document in relation to which a provision of these Regulations requires a document of that kind to be given;
- (b) where a provision of these Regulations authorises the imposition of a requirement, a document by which such a requirement is imposed.

(2) For the purposes of this Schedule, writing includes any means of electronic communication which may be processed to produce a legible text.

Methods of service

2.—(1) This paragraph has effect in relation to any relevant document given by the Authority to any person (“the recipient”).

(2) Any such document must be given by one of the following methods—

- (a) by delivering it to the recipient, the recipient’s nominee or the appropriate person;
- (b) by leaving it at the proper address of the recipient, the recipient’s nominee or the appropriate person, determined in accordance with paragraph 4;
- (c) by posting it to that address; or
- (d) by transmitting it by fax or other means of electronic communication to the recipient, the recipient’s nominee or the appropriate person, in accordance with paragraph 5.

(3) For the purposes of this paragraph, “posting” a relevant document means sending that document pre-paid by a postal service which seeks to deliver documents by post within the United Kingdom no later than the next working day in all or the majority of cases, and to deliver by post outside the United Kingdom within such a period as is reasonable in all the circumstances.

Appropriate person to be served

3.—(1) A relevant document which is required to be given by the Authority to a person who is not an individual may—

- (a) where that person is a body corporate (other than a limited liability partnership), be given to the secretary or the clerk of that body, or to any person holding a senior position in that body;
- (b) where that person is a limited liability partnership, be given to any designated member, within the meaning given in section 8 of the Limited Liability Partnerships Act 2000⁽²⁾;
- (c) where that person is an unincorporated association other than a partnership, be given to any member of the governing body of the association.

(2) For the purposes of this paragraph, persons holding a senior position in a body corporate include—

- (a) a director, the treasurer, secretary or chief executive, and
- (b) a manager or other officer of that body who, in either case, has responsibility for the matter to which the relevant document relates.

(2) 2000 c. 12; section 8 was amended by paragraph 4 of Schedule 3 to the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (S.I. 2009/1804).

Proper address for service

4.—(1) The proper address is any current address provided by that person as an address for service of relevant documents.

(2) In the case of any person who has not provided an address as mentioned in sub-paragraph (1), the proper address is the last known address of that person (whether of that person’s residence, or of a place where that person carries on business or is employed), or any address under such of any of the following provisions as may be applicable—

- (a) in the case of a body corporate (other than a limited liability partnership), its secretary or its clerk, the address of its registered or principal office in the United Kingdom;
- (b) in the case of a limited liability partnership or any of its designated members, the address of its registered or principal office in the United Kingdom;
- (c) in the case of a partnership (other than a limited liability partnership) or any of its partners, the address of its principal office in the United Kingdom;
- (d) in the case of an unincorporated association other than a partnership, or its governing body, the address of its principal office in the United Kingdom.

(3) Where the address mentioned in sub-paragraph (1) is situated in a country or territory other than the United Kingdom, the Authority may give a relevant document by leaving it at, or posting it to, any applicable address of a place in the United Kingdom falling within paragraph (2).

Service by electronic means of communication

5.—(1) The Authority may give a relevant document by fax only if the person to whom it is to be given (“the recipient”) has indicated in writing to the Authority (and has not withdrawn the indication)—

- (a) that the recipient is willing to receive relevant documents by fax, and
- (b) the fax number to which such documents should be sent.

(2) If the Authority gives a relevant document by fax it must, by the end of the business day following the day on which it did so, send a copy of that document to the recipient by any method specified in paragraph 2 other than fax.

(3) The Authority may give a relevant document by any other electronic means of communication only if the recipient—

- (a) has indicated in writing to the Authority (and has not withdrawn the indication) that the recipient is willing to receive relevant documents by those means, and
- (b) has provided, in writing to the Authority for this purpose, an email address, or other electronic identification such as an ISDN or other telephonic link number.

Deemed service

6.—(1) A relevant document which is given by the Authority to any person in accordance with this Schedule is to be treated as having been received on the day shown in the table below.

<i>Method of giving</i>	<i>Deemed day of receipt</i>
Leaving the document at the proper address	The business day after the day on which it is left at the proper address
Post to an address in the United Kingdom	The second business day after posting
Post to an address in any EEA State (other than the United Kingdom)	The fifth business day after posting

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<i>Method of giving</i>	<i>Deemed day of receipt</i>
Fax	The business day after the day on which the document is transmitted
Other electronic means of communication	The business day after the day on which the document is transmitted

(2) Where a relevant document is given by fax, that document is to be treated as having been received on the deemed day of receipt of the fax, determined in accordance with sub-paragraph (1), regardless of whether the Authority has sent a copy of that document in accordance with sub-paragraph (2) of paragraph 5.

Service on the Authority

7.—(1) For the purposes of any provision under these Regulations which requires a person (“the sender”) to give a document to the Authority before the end of a specified period, the sender is to be regarded as having complied with that requirement (irrespective of the day on which the document is in fact received by the Authority if it is sent by post, fax or other electronic means) if the sender sends the document to the Authority in accordance with any applicable directions before the end of the specified period or, where no such directions apply, if the sender—

- (a) delivers the document to an employee of the Authority with responsibility for the matter to which the document relates before the end of the specified period;
- (b) leaves the document at the Authority’s published address before the end of the specified period, and obtains a time stamped receipt;
- (c) posts the document to the Authority’s published address before the final day of the specified period;
- (d) sends the document to the Authority by fax before the end of the specified period, provided that the sender has also sent or subsequently sends a copy of that document in accordance with sub-paragraph (2); or
- (e) sends the document to the Authority by other electronic means of communication before the end of the specified period, and obtains electronic confirmation of receipt.

(2) The sender may give a relevant document to the Authority by fax only if by the end of the business day following the day on which the sender did so, the sender sends a copy of that document to the Authority by any method other than fax.

(3) For the purposes of this paragraph—

- (a) “post” means—
 - (i) where the sender is located in the United Kingdom, sending that document pre-paid by a postal service which seeks to deliver documents by post within the United Kingdom no later than the next working day in all or the majority of cases, and
 - (ii) where the sender is located outside the United Kingdom, sending that document pre-paid by a postal service which seeks to deliver documents by post in the fastest time which is reasonable in the circumstances;
- (b) “applicable direction” means any direction given by the Authority under these Regulations which specifies the manner in which the relevant document in question is to be given.

Electronic service on the Authority

8. Where a relevant document which is to be given to the Authority is given by fax or other electronic means it must be sent to a fax number, email address or other electronic identification—

- (a) which has been notified to the sender by the Authority as the appropriate number, address or other electronic identification for the purpose of receiving relevant documents of the kind in question, or
- (b) in all other cases, which has been published by the Authority for the purpose of receiving relevant documents.

SCHEDULE 3

Regulation 28

Transitory provision

1. This Schedule has effect until the Authority has issued a statement under regulation 27.
2. In exercising, or deciding whether to exercise, its power under regulation 26 in the case of any particular behaviour, paragraphs 3 to 5 apply.
3. The Authority must have regard to—
 - (a) the seriousness of the failure in question in relation to the nature of the requirement not complied with;
 - (b) the behaviour of the person, including—
 - (i) the extent to which the behaviour was deliberate or reckless;
 - (ii) whether the person believed, on reasonable grounds, that the behaviour did not fall within regulation 26(1)(a) or (b);
 - (iii) whether the person took all reasonable precautions and exercised due diligence to avoid behaving in a way which fell within regulation 26(1)(a) or (b); and
 - (c) whether the person on whom the penalty is to be imposed is an individual.
4. The Authority must have regard to paragraph 3.1 to 7.2 of the statement of policy published by the Authority under section 46 of the Energy (Northern Ireland) Order 2003⁽³⁾ in April 2008 titled ‘Statement of Policy with respect to Financial Penalties’ read with the modifications set out in paragraph 5.
 - 5.—(1) For references to “licence holder” or “licensee” read “person concerned”.
 - (2) In Paragraph 3.1—
 - (i) after the word “Order” insert “[or the Electricity and Gas (Market Transparency and Integrity) (Enforcement etc) Regulations (Northern Ireland) 2013]”;
 - (ii) in the first sentence, after the word “requirement” insert “[or a REMIT requirement or requirement imposed by or under regulation 8]” and,
 - (iii) in the second sentence after the second and third reference to “or requirement” insert “[or a REMIT requirement or requirement imposed by or under regulation 8]”.
 - (3) In paragraph 4.1 after the word “requirement” insert “[or a REMIT requirement or requirement imposed by or under regulation 8]”.
 - (4) Reference to the Authority’s principal objective and duties in Paragraph 4.3 is to be disregarded.
 - (5) Paragraph 3.2, the second sentence in Paragraph 7.2 and Paragraph 7.3 are to be disregarded.

(3) 2003 No.419 (N.I.6)

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