

SCHEDULE

Regulation 11

STANDARDS OF PERFORMANCE – PRACTICE AND PROCEDURE FOR DETERMINATIONS

Determination of disputes

1.—(1) This Schedule applies where a dispute to which regulation 11 applies has arisen between a supplier and a customer.

(2) A dispute to which this Schedule applies—

(a) may be referred to the Authority by any party or, with the agreement of any party, by Citizens Advice or Citizens Advice Scotland; and

(b) on such reference, must be determined by order made by the Authority.

(3) In making an order under this Schedule, the Authority must include in the order the reasons for reaching its decision with respect to a dispute.

Timetable for the determination of individual disputes

2.—(1) The Authority must determine a dispute to which this Schedule applies before the end of 80 working days from the date when the dispute was referred to the Authority.

(2) If the Authority is satisfied that there are good reasons for departing from the requirements of sub-paragraph (1), the period in which a dispute may be determined may be extended with the consent of the referring party or parties.

Procedure for the determination of individual disputes

3.—(1) Where an individual dispute is referred to the Authority, the Authority must, at the outset, send to the parties a notice of procedure for the determination of the dispute.

(2) The notice under sub-paragraph (1) must—

(a) set out a timetable by which each part of the procedure for the determination of the dispute is to take place;

(b) provide a list of any documentation or other evidence that the Authority has received in connection with the dispute and inform the parties that such documentation or other evidence may be disclosed to other parties to the dispute unless it is specifically classed as confidential by the party to whom it belongs before the date stated in the notice;

(c) inform the parties of any specific information that the Authority is requesting as part of the written statement prepared in accordance with paragraph 7; and

(d) explain the manner in which the Authority intends to publish the determination decision.

(3) Upon receipt of a notice under sub-paragraph (1), the parties to the dispute must provide the Authority with—

(a) any information requested under sub-paragraph (2)(c);

(b) any other information that they consider relevant to the dispute.

(4) If the Authority decides it is necessary to obtain third-party advice in relation to technical issues or any other issues that may arise during the determination, it must request it and inform the parties of that request and indicate in writing how that request affects the timetable outlined in the notice issued under sub-paragraph (1).

(5) At any time after receiving a written statement the Authority may, if it considers it appropriate to do so, request an oral hearing in accordance with paragraph 9.

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(6) If the Authority is satisfied that it has sufficient information to determine a dispute, it must prepare a draft determination statement containing the submissions of the parties and then send that statement to the parties for comment.

(7) When the Authority has received comments from the parties, and is satisfied that it has sufficient information to make the determination decision, it must prepare and then issue to the parties a final determination statement.

(8) The parties must, within one week of receiving a final determination statement, notify the Authority of any issue or information within that statement that should be excluded because such issue or information is of a confidential nature.

(9) The Authority must, upon receipt of any notification under sub-paragraph (8), make the necessary adjustments to the final determination statement and then publish that statement on its website in accordance with sub-paragraph (2)(d).

Determination of multiple disputes

4.—(1) The Authority may, if it considers it appropriate to do so, consolidate into one or more categories (in each case a “consolidated group”) similar or related disputes for the purposes of determining those disputes.

(2) A determination made by the Authority in respect of a consolidated group applies to each individual dispute in that group.

Timetable for determination of multiple disputes

5.—(1) The Authority, when determining disputes falling within a consolidated group, must determine those disputes before the end of 6 months from the date when they were consolidated into that group under paragraph 4.

(2) If the Authority is satisfied that there are good reasons for departing from the requirements of sub-paragraph (1), the period in which disputes falling within a consolidated group may be determined may be extended by notice to the representatives of any such group nominated under paragraph 10.

Procedure for the determination of multiple disputes

6.—(1) Where the Authority considers it appropriate to consolidate disputes under paragraph 4, the Authority must send to the parties a notice of procedure for the determination of the dispute.

(2) The notices under sub paragraph (1) must—

- (a) set out a timetable by which each part of the procedure for the determination of multiple disputes under this Schedule is to take place;
- (b) provide a list of any documentation or other evidence that the Authority has received in connection with the dispute and inform the parties that such documentation or other evidence may be disclosed to other parties to the dispute unless it is specifically classed as confidential by the party to whom it belongs before the date stated in the notice;
- (c) inform the parties of any specific information that the Authority is requesting in accordance with paragraph 11;
- (d) explain the manner in which the Authority intends to publish the determination decision.

(3) Upon receipt of a notice under sub-paragraph (1), the parties to the dispute must provide the Authority with —

- (a) any information requested under sub-paragraph (2)(c);
- (b) any other information that they consider relevant to the dispute.

(4) Upon receipt of the information provided in accordance with sub-paragraph (3), the Authority may, if it considers it appropriate, prepare a list of consolidated groups and then consult as to whether those consolidated groups are appropriate.

(5) When consulting under sub-paragraph (4), the Authority must —

- (a) publish and explain its proposals in a manner that, in the opinion of the Authority, brings them to the attention of persons most likely to be affected; and
- (b) invite those persons to comment to the Authority within a period from the publication of the proposals that is specified therein.

(6) Upon receipt of responses to the consultation under sub-paragraph (5), the Authority must have regard to those responses before finalising the consolidated groups.

(7) When the Authority has decided on the consolidated groups for the purposes of determining multiple disputes, it must appoint customer representatives as required by paragraph 10.

(8) Following the appointment of the customer representatives for the consolidated groups, those customer representatives and the suppliers must prepare a written statement.

(9) Upon receipt of the written statements, the Authority may decide that it is necessary to obtain third-party advice in relation to technical issues or any other issues that may arise during the determination. If third-party advice is requested, then the Authority must inform the customer representatives and the suppliers of that request and indicate in writing how that request affects the timetable outlined in the notice issued under sub-paragraph (1).

(10) At any time after receiving the written statement the Authority may request an oral hearing in accordance with paragraph 9.

(11) If the Authority is satisfied that it has the necessary information, it must prepare a draft determination statement containing the submissions of the customer representatives and the suppliers and then send that statement to the customer representatives and the suppliers for comment.

(12) When the Authority has received comments from the customer representatives and the suppliers, and is satisfied that it has sufficient information to make the determination decision, it must issue a final determination statement for a consolidated group or each consolidated group where there is more than one.

(13) The customer representatives and the suppliers must within one week of receiving a final determination statement notify the Authority of any issue or information within that statement that should be excluded because such issue or information is of a confidential nature.

(14) The Authority must, upon receipt of any notification under sub-paragraph (13), make the necessary adjustments to the final determination statement and then publish that statement on its website in accordance with sub-paragraph (2)(d).

Written statements

7.—(1) The Authority may, by notice, ask any party to a dispute to produce a written statement with respect to a matter specified in the notice.

(2) The power to ask for the production of a written statement includes power to specify the time and place at which it is to be produced.

(3) No person is to be compelled under this paragraph to produce a written statement with respect to any matter about which they could not be compelled to give evidence in civil proceedings in the High Court or Court of Session.

(4) The Authority may make copies of a document produced to it under this paragraph.

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Production of documents and other evidence

8.—(1) The Authority may, by notice, ask a party to a dispute to produce such documentation (including other evidence), in such form and at such time as it directs, as the Authority may reasonably require to enable it to make the determination decision.

(2) The power to ask for the production of a document is a power to ask for its production—

- (a) at the time and place specified in the notice; and
- (b) in a legible form.

(3) No person is to be compelled under this paragraph to produce a document that they could not be compelled to produce in civil proceedings in the High Court or Court of Session.

(4) The Authority may make copies of a document produced to it under this paragraph.

Oral hearings

9.—(1) For the purposes of this Schedule, an oral hearing may be held, and evidence may be heard at such a hearing from any party to a dispute.

(2) The Authority may, by notice, request any party to a dispute—

- (a) to attend at a time and place specified in the notice; and
- (b) at that time and place, to give evidence to any person appointed by the Authority to conduct the oral hearing.

(3) At any oral hearing, the Authority may request the customer or a person attending the hearing as a representative of the supplier to give evidence or make representations or observations.

(4) If any party fails to attend a hearing to be subjected to a requirement under sub-paragraph (3), the Authority may determine the dispute without hearing their evidence, representations, or observations.

(5) No person is to be compelled under this paragraph to give evidence that they could not be compelled to give in civil proceedings in the High Court or Court of Session.

Customer representatives for multiple disputes

10.—(1) Where disputes are consolidated into categories under paragraph 4, the Authority must nominate one or more customers to be representatives of each consolidated group.

(2) A customer nominated to be a representative of a consolidated group under this paragraph may only become a representative if they consent to do so.

Collection of information in multiple disputes

11.—(1) The Authority may by notice ask any customer who is a party to a dispute falling within a consolidated group to produce such information with respect to a matter specified in the notice as the Authority may reasonably require to enable it to make the determination decision.

(2) The power to require the production of information under this paragraph includes the power to specify the time and place at which it is to be produced.

(3) No person is to be compelled under this paragraph to produce information with respect to any matter about which they could not be compelled to give evidence in civil proceedings in the High Court or Court of Session.

Payments to customers

12. An order determining a dispute does not (where there is more than one customer at the premises) determine who is beneficially entitled to any payment required to be made by the order.

Set-off

13. Where a dispute is determined by an order requiring a supplier to make a payment to the customer and the supplier fails to make that payment, the customer may set off the amount so ordered to be paid against any charges that are owed by the customer to the supplier.

Costs

14.—(1) An order determining a dispute may include a provision requiring the supplier or the customer to pay a sum in respect of the costs or expenses incurred by the Authority.

(2) In including in an order under sub-paragraph (1) any such provision as to costs, the Authority must have regard to the conduct and means of the parties and any other relevant circumstances.

Interpretation

15. In the application of this Schedule to a dispute, “customer” has the same meaning that it has in relation to the provision of these Regulations to which the dispute relates.