

SCHEDULE 2

Enforcement

PART 2

Civil sanctions

Compliance notice

9.—(1) Where the enforcement authority considers that a person has breached regulation 4, the enforcement authority may serve a compliance notice on the person considered to be in breach requiring the person to take such steps as the enforcement authority considers appropriate in relation to the breach.

(2) Without limiting the generality of sub-paragraph (1) above, the requirements that may be imposed in a compliance notice include those referred to in sub-paragraphs (3) and (4).

(3) Where the enforcement authority considers that a person has sold one or more relevant charge points which do not comply with the requirements of these Regulations, a compliance notice may include a requirement to take such steps as the enforcement authority may specify to secure that such relevant charge points are recalled from end-users.

(4) Where the enforcement authority considers that a person is offering or advertising for sale one or more relevant charge points which do not comply with the requirements of these Regulations, a compliance notice may include a requirement to secure that such relevant charge points are withdrawn from the market.

Civil penalties

10.—(1) Where a person does not comply with a compliance notice served under paragraph 9, the enforcement authority may require that person to pay a civil penalty.

(2) Where the enforcement authority considers that there has been a breach of—

- (a) regulation 4; or
- (b) paragraph 8 of this Schedule 2,

the enforcement authority may require the person in breach to pay a civil penalty.

(3) The enforcement authority may not require a person to pay a civil penalty pursuant to sub-paragraph (1) or (2) if the authority is satisfied on the balance of probabilities that there was a reasonable excuse for the non-compliance or the breach.

(4) The enforcement authority may require a person to pay a civil penalty pursuant to paragraph (2)(a) without first serving a compliance notice under paragraph 9 if it considers it appropriate to do so.

11.—(1) The maximum amount of a civil penalty is—

- (a) £10,000 for each relevant charge point in respect of which there has been a breach of regulation 4;
- (b) £250,000 for a breach of paragraph 8 of this Schedule 2.

(2) Before requiring a person to pay a civil penalty pursuant to paragraph 10, the enforcement authority may require the person to provide such information as is reasonable in connection with determining the appropriate amount of the civil penalty within such period as is reasonable.

(3) The civil penalty is payable into the Consolidated Fund.

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Notice of intent

12.—(1) Subject to sub-paragraph (3), where the enforcement authority proposes to impose a civil sanction on a person, it must serve on that person a notice of what is proposed (a “notice of intent”).

- (2) The notice of intent must include—
 - (a) the grounds for the proposed civil sanction;
 - (b) the requirements of the notice and, in the case of a civil penalty, the amount to be paid; and
 - (c) information as to the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received.
- (3) The requirement to serve a notice of intent does not apply where—
 - (a) the proposed civil sanction is a compliance notice; and
 - (b) the enforcement authority reasonably considers that, in consequence of one or both of the matters referred to in sub-paragraph (4), it is appropriate to serve a final notice pursuant to paragraph 14(5) without first serving a notice of intent.
- (4) The matters referred to in paragraph (3) are—
 - (a) a risk of harm to, or disruption of, the electricity system;
 - (b) a risk to public health or safety.

13. A person on whom a notice of intent is served may within 28 days beginning with the day on which the notice was received make written representations and objections to the enforcement authority in relation to the proposed imposition of a civil sanction.

Final notice

14.—(1) The provisions of sub-paragraphs (2) to (4) apply where a notice of intent has been served pursuant to paragraph 12.

(2) After the end of the period for making representations and objections, the enforcement authority must decide whether to impose the requirements in the notice of intent, with or without modifications.

(3) Where the enforcement authority decides to impose a requirement, it must serve a notice on the person (the “final notice”).

- (4) The final notice must—
 - (a) be in writing;
 - (b) be dated;
 - (c) include information as to whether the requirements in the notice of intent are being imposed with or without modifications;
 - (d) if the requirements in the notice of intent are being imposed with modifications, include the grounds for this;
 - (e) comply with paragraph 15 or 16.

(5) Where, pursuant to paragraph 12(3), the enforcement authority decides to impose a civil sanction on a person without serving a notice of intent on that person, it must serve a final notice which—

- (a) is in writing;
- (b) is dated;
- (c) complies with paragraph 15 or 16.

- 15.** A final notice relating to a compliance notice must include information as to—
- (a) the grounds for imposing the notice;
 - (b) the steps required to be taken in relation to the breach;
 - (c) the date by which the steps must be taken, which must be not less than 28 days from the date of the final notice;
 - (d) rights of appeal; and
 - (e) the consequences of failing to comply with the notice.
- 16.** A final notice relating to a civil penalty must include information as to—
- (a) the grounds for imposing the penalty;
 - (b) the amount to be paid;
 - (c) how payment may be made;
 - (d) the period within which payment must be made which must be not less than 28 days from the date of the final notice;
 - (e) rights of appeal; and
 - (f) the consequences of failing to comply with the notice.

Appeals

- 17.—**(1) The person receiving the final notice may appeal against it.
- (2) The grounds for appeal 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 civil penalty, that the amount of the civil penalty is unreasonable;
 - (d) in the case of a non-monetary requirement, that the nature of the requirement is unreasonable;
 - (e) that the decision was unreasonable for any other reason;
 - (f) that the decision was wrong for any other reason.
- 18.—**(1) Any appeal under paragraph 17 must be made to the First-tier Tribunal.
- (2) An appeal must be brought within 28 days of the date on which the final notice is received.
- (3) Any compliance notices are suspended pending the appeal.
- (4) The Tribunal may, in relation to the imposition of a compliance notice—
- (a) withdraw the compliance notice;
 - (b) confirm the compliance notice;
 - (c) vary the compliance notice;
 - (d) take such steps as the enforcement authority could take in relation to the act or omission giving rise to the compliance notice;
 - (e) remit the decision whether to confirm the compliance notice, or any matter relating to that decision, to the enforcement authority.
- (5) The Tribunal may, in relation to the imposition of a civil penalty—
- (a) allow the appeal and cancel the civil penalty;
 - (b) allow the appeal and reduce the civil penalty; or

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- (c) dismiss the appeal.
- (6) An appeal—
 - (a) is to be a re-hearing of the enforcement authority’s decision to impose a civil sanction; and
 - (b) may be determined having regard to matters of which the enforcement authority was unaware.
- (7) Paragraph (6)(a) has effect despite any provision of rules of court.

Enforcement of penalty decision

19.—(1) This paragraph applies where a sum is payable to the enforcement authority as a civil penalty pursuant to these Regulations.

(2) In England and Wales, the civil penalty is recoverable as if it were payable under an order of the county court in England and Wales.

(3) In Scotland, the civil penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant of execution issued by the sheriff court of any sheriffdom in Scotland.

(4) Where action is taken under this paragraph for the recovery of a sum payable as a civil penalty pursuant to these Regulations, the civil penalty is, in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003(1) (register of judgments and orders etc.) as if it were a judgement entered in the county court.

(1) 2003 c. 39; section 98 has been amended by sections 48(1) and 106(2) of, and paragraph 55(1), (2), (3)(a) and (b) of Schedule 8 and paragraph 15 of Schedule 16 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15) and section 17(5) of, and paragraph 40(a) and (c) of Part 2 of Schedule 9 to, the Crime and Courts Act 2013 (c. 22). Further amendments made by the Tribunals, Courts and Enforcement Act 2007 have yet to be brought into force.