
STATUTORY RULES OF NORTHERN IRELAND

2013 No. 208

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

PART 5

Penalties

Power of Authority to impose penalty

26.—(1) If the Authority is satisfied that a person (“FP”)—
(a) has failed to comply with a REMIT requirement; or
(b) has failed to comply with a requirement imposed by or under regulation 8,
it may impose on FP a penalty of such amount as it considers appropriate.

(2) If the Authority is entitled to impose a penalty on FP under this regulation it may, instead of imposing a penalty of FP, publish a statement to the effect that FP has failed to comply with a REMIT requirement or a requirement imposed by or under regulation 8 (as the case may be).

Statement of policy

27.—(1) The Authority must prepare and issue a statement of its policy with respect to the imposition of penalties under regulation 26 and the determination of their amount.

(2) The Authority’s policy in determining what the amount of the penalty should be must include, having 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.

(3) A statement issued under this regulation must include an indication of the circumstances in which the Authority is expected to regard a person (“FP”) as—

- (a) having a reasonable belief that FP’s behaviour did not amount to a failure to comply with a REMIT requirement or a requirement imposed by or under regulation 8; or
- (b) having taken reasonable precautions and exercised due diligence to avoid failing to comply with a REMIT requirement or a requirement imposed by or under regulation 8.

(4) The Authority may at any time alter or replace a statement issued under this regulation.

(5) If a statement issued under this regulation is altered or replaced, the Authority must issue the altered or replacement statement.

(6) In exercising, or deciding whether to exercise, its power under regulation 26 in the case of any particular behaviour, the Authority must have regard to any statement published under this regulation and in force at the time when the behaviour concerned occurred.

(7) A statement issued under this regulation must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(8) The Authority must, without delay, give the Department a copy of any statement which it publishes under this regulation.

Statement of policy: transitory provision

28. Schedule 3 (transitory provision) has effect.

Statement of policy: procedure

29.—(1) Before issuing a statement of policy under regulation 27, the Authority must publish a draft of the proposed statement in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(2) Paragraph (1) may be satisfied by publication of a draft statement before, as well as by publication after, this regulation comes into operation.

(3) The draft must be accompanied by notice that representations about the proposal may be made to the Authority within a specified time.

(4) Before issuing the proposed statement, the Authority must have regard to any representations made in accordance with paragraph (3).

(5) If the Authority issues the proposed statement, the Authority must publish an account, in general terms, of—

- (a) the representations made to it in accordance with paragraph (3); and
- (b) its response to them.

(6) If the statement differs from the draft published under paragraph (1) in a way which is, in the opinion of the Authority, significant, the Authority must (in addition to complying with paragraph (5)) publish details of the difference.

(7) This regulation also applies to a proposal to alter or replace a statement.

Warning notices

30.—(1) If the Authority proposes to take action against a person under regulation 26, it must give the person concerned a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.

Decision notice and right to refer to Tribunal

31.—(1) If the Authority decides to take action against a person under regulation 26, it must give the person concerned a decision notice.

(2) A decision notice about the imposition of a penalty must state the amount of the penalty.

(3) A decision notice about the publication of a statement must set out the terms of the statement.

(4) If the Authority decides to take action against a person under regulation 26, that person may refer the matter to the Tribunal.

Power of court to impose penalty

32.—(1) The Authority may on an application to the court under regulation 21 or 22 request the court to consider whether the circumstances are such that a penalty should be imposed on the person to whom the application relates.

(2) The court may, if it considers it appropriate, make an order requiring the person concerned to pay to the Authority a penalty of such amount as it considers appropriate.

Effect on transactions

33. The imposition of a penalty under these Regulations does not make any transaction void or unenforceable.

Penalties

34. Any sums received by the Authority by way of a penalty under these Regulations shall be paid into the Consolidated Fund.