

*Status: Point in time view as at 26/12/2023.*

*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Schedule 3. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 3

Section 32

#### ENFORCEMENT OF OBLIGATIONS OF LICENCE HOLDERS

##### *Orders for securing compliance with certain provisions*

- 1 (1) Where the economic regulator is satisfied that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement, the economic regulator must make an order (a “final order”) containing such provision as appears to the economic regulator to be necessary for the purpose of securing compliance with that condition or requirement (but this sub-paragraph does not apply if the economic regulator is required by [sub-paragraph \(2\)](#) to make a provisional order in respect of the contravention or likely contravention).
- (2) Where it appears to the economic regulator—
  - (a) that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement, and
  - (b) that it is appropriate to make an order under this sub-paragraph,the economic regulator must (instead of taking steps towards the making of a final order) make an order (a “provisional order”) containing such provision as appears to the economic regulator to be necessary for the purpose of securing compliance with that condition or requirement.
- (3) In determining for the purposes of [sub-paragraph \(2\)\(b\)](#) whether it is appropriate to make a provisional order, the economic regulator must have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything that is likely to be done (or omitted to be done) in contravention of the relevant condition or requirement before a final order may be made.
- (4) The economic regulator must confirm a provisional order, with or without modifications, if—
  - (a) the economic regulator is satisfied that the licence holder is contravening, or is likely to contravene, any relevant condition or requirement, and
  - (b) the provision made by the order (with any modifications) is necessary for the purpose of securing compliance with that condition or requirement.
- (5) If a provisional order is not previously confirmed under [sub-paragraph \(4\)](#), it is to cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.
- (6) [Sub-paragraphs \(1\) to \(4\)](#) are subject to [sub-paragraphs \(7\) to \(9\)](#) and [paragraph 2](#).
- (7) The economic regulator—
  - (a) must, before making a final order or making or confirming a provisional order, consider whether it would be more appropriate to proceed under the Competition Act 1998 (see [section 37](#));

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- (b) must not make a final order, or make or confirm a provisional order, if the economic regulator considers that it would be more appropriate to proceed under that Act.
- (8) The economic regulator may not make a final order or make or confirm a provisional order if the economic regulator is satisfied that the duties imposed on the economic regulator by [section 1](#) preclude the making or, as the case may be, the confirmation of the order.
- (9) The economic regulator is not required to make a final order or make or confirm a provisional order if it is satisfied—
- (a) that the licence holder has agreed to take and is taking all such steps as appear to the economic regulator to be for the time being appropriate for the purpose of securing or facilitating compliance with the condition or requirement in question, or
  - (b) that the contraventions were, or the apprehended contraventions are, of a trivial nature.
- (10) Where the economic regulator decides that it would be more appropriate to proceed under the Competition Act 1998 or is satisfied as mentioned in sub-paragraphs (8) and (9), the economic regulator must—
- (a) give notice to the licence holder that the economic regulator has so decided or is so satisfied, and
  - (b) publish a copy of the notice in such manner as the economic regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (11) A final or provisional order—
- (a) must require the licence holder (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified,
  - (b) must take effect at such time as is determined by or under the order, which must be the earliest practicable time, and
  - (c) may be revoked at any time by the economic regulator.
- (12) In this Schedule—
- “final order” means an order under [sub-paragraph \(1\)](#);
- “provisional order” means an order under [sub-paragraph \(2\)](#);
- “relevant condition”, in relation to a licence holder, means any condition of any licence (as defined in [section 7](#)) held by that person;
- “relevant requirement”, in relation to a licence holder, means any requirement imposed on the licence holder by or under this Part.

**Commencement Information**

**II** Sch. 3 para. 1 in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

*Procedural requirements*

- 2 (1) Before making a final order or confirming a provisional order, the economic regulator must give notice—

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- (a) stating that the economic regulator proposes to make or confirm the order and setting out its effect,
- (b) stating—
  - (i) the relevant condition or requirement,
  - (ii) the acts or omissions which, in the economic regulator’s opinion, constitute or would constitute contraventions of it, and
  - (iii) the other facts which, in the economic regulator’s opinion, justify the making or confirmation of the order, and
- (c) specifying the time (which must not be less than 21 days from the date of publication of the notice) within which representations or objections to the proposed order or confirmation of the order may be made,

and must consider any representations or objections which are duly made and not withdrawn.

- (2) A notice under [sub-paragraph \(1\)](#) is given—
  - (a) by publishing the notice in such manner as the economic regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them, and
  - (b) by sending a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, to the licence holder.
- (3) The economic regulator must not make a final order with modifications, or confirm a provisional order with modifications, except with the consent of the licence holder or after complying with the requirements of [sub-paragraph \(4\)](#).
- (4) The requirements are that the economic regulator must—
  - (a) give to the licence holder such notice as the economic regulator considers necessary of the economic regulator’s proposal to make or confirm the order with modifications,
  - (b) specify the time (which must not be less than 21 days from the date of the service of the notice) within which representations or objections to the proposed modifications may be made, and
  - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) Where the economic regulator decides to proceed under the Competition Act 1998 in a case falling within [paragraph 1\(7\)\(b\)](#), the economic regulator must—
  - (a) inform the licence holder concerned of that decision, and
  - (b) publish the notice in a manner that the economic regulator thinks appropriate for bringing the notice to the attention of persons likely to be affected by the decision.
- (6) Before revoking a final order or a provisional order which has been confirmed, the economic regulator must give notice—
  - (a) stating that the economic regulator proposes to revoke the order and setting out its effect, and
  - (b) specifying the time (which must not be less than 28 days) from the date of publication of the notice within which representations or objections to the proposed revocation may be made,

and must consider any representations or objections which are duly made and not withdrawn.

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- (7) A notice under [sub-paragraph \(6\)](#) is given—
- (a) by publishing the notice in such manner as the economic regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them, and
  - (b) by sending a copy of the notice to the licence holder.
- (8) As soon as practicable after a final order is made or a provisional order is made or confirmed, the economic regulator must—
- (a) serve a copy of the order on the licence holder, and
  - (b) publish such a copy in such manner as the economic regulator considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it.

#### Commencement Information

**I2** Sch. 3 para. 2 in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

#### Validity and effect of orders

- 3 (1) If the licence holder is aggrieved by a final or provisional order and wishes to question its validity on the ground that the making or confirmation of it was not within the powers of [paragraph 1](#), or that any of the requirements of [paragraph 2](#) have not been complied with in relation to it, the licence holder may within 42 days from the date of service on the licence holder of a copy of the order make an application to the court under this paragraph.
- (2) On any such application the court, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the licence holder have been substantially prejudiced by a failure to comply with those requirements, may quash the order or any provision of the order.
- (3) Except as provided by this paragraph, the validity of a final or provisional order may not be questioned by any legal proceedings whatever.
- (4) The obligation to comply with a final or provisional order is a duty owed to any person who may be affected by a contravention of it.
- (5) Where a duty is owed by virtue of [sub-paragraph \(4\)](#) to any person any breach of the duty which causes that person to sustain loss or damage is to be actionable at the suit or instance of that person.
- (6) In any proceedings brought against any person in pursuance of [sub-paragraph \(5\)](#), it is a defence for the person to prove that they took all reasonable steps and exercised all due diligence to avoid contravening the order.
- (7) Without prejudice to any right which any person may have by virtue of [sub-paragraph \(5\)](#) to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order is to be enforceable by civil proceedings by the economic regulator for an injunction or interdict or for any other appropriate relief.
- (8) In this paragraph “the court” means—
- (a) in relation to England and Wales and Northern Ireland, the High Court;

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(b) in relation to Scotland, the Court of Session.

#### Commencement Information

**I3** Sch. 3 para. 3 in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

#### Penalties

- 4 (1) Where the economic regulator is satisfied that a licence holder has contravened or is contravening any relevant condition or requirement, the economic regulator may, subject to [paragraph 6](#), impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case.
- (2) Before imposing a penalty on a licence holder under [sub-paragraph \(1\)](#), the economic regulator must consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (3) The economic regulator must not impose a penalty on a licence holder under [sub-paragraph \(1\)](#) if it considers that it would be more appropriate to proceed under the Competition Act 1998.
- (4) Before imposing a penalty on a licence holder under [sub-paragraph \(1\)](#) the economic regulator must give notice—
- (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed,
  - (b) setting out the relevant condition or requirement,
  - (c) specifying the acts or omissions which, in the opinion of the economic regulator, constitute the contravention in question and the other facts which, in the opinion of the economic regulator, justify the imposition of a penalty and the amount of the penalty proposed, and
  - (d) specifying the period (which must not be less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,
- and must consider any representations or objections which are duly made and not withdrawn.
- (5) Before varying any proposal stated in a notice under [sub-paragraph \(4\)\(a\)](#) the economic regulator must give notice—
- (a) setting out the proposed variation and the reasons for it, and
  - (b) specifying the period (which must be at least 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,
- and must consider any representations or objections which are duly made and not withdrawn.
- (6) As soon as practicable after imposing a penalty, the economic regulator must give notice—
- (a) stating that it has imposed a penalty on the licence holder and its amount,
  - (b) setting out the relevant condition or requirement in question,
  - (c) specifying the acts or omissions which, in the opinion of the economic regulator, constitute the contravention in question and the other facts which,

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- in the opinion of the economic regulator, justify the imposition of the penalty and its amount, and
- (d) specifying a date, no earlier than the end of the period of 42 days from the date of service of the notice on the licence holder, by which the penalty is required to be paid.
- (7) The licence holder may, within 21 days of the date of service on the licence holder of a notice under [sub-paragraph \(6\)](#), make an application to the economic regulator for it to specify different dates by which different portions of the penalty are to be paid.
- (8) Any notice required to be given under this paragraph must be given—
- (a) by publishing the notice in such manner as the economic regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them, and
- (b) by serving a copy of the notice on the licence holder.
- (9) This paragraph is subject to [paragraph 10](#) (maximum amount of penalty that may be imposed).
- (10) Any sums received by the economic regulator by way of penalty under this paragraph must be paid into the Consolidated Fund.

**Commencement Information**

**I4** Sch. 3 para. 4 in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

*Statement of policy with respect to penalties*

- 5 (1) The economic regulator must prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention the economic regulator must have regard to its statement of policy most recently published at the time when the contravention occurred.
- (3) The economic regulator may revise its statement of policy and where it does so must publish the revised statement.
- (4) Publication under this paragraph must be in such manner as the economic regulator considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) The economic regulator must undertake such consultation as it considers appropriate when preparing or revising its statement of policy.

**Commencement Information**

**I5** Sch. 3 para. 5 in force at 26.12.2023 see [s. 334\(3\)\(a\)](#)

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### *Time limits on the imposition of penalties*

- 6 (1) Where no final or provisional order has been made in relation to a contravention, the economic regulator may not impose a penalty in respect of the contravention later than the end of the period of five years from the time of the contravention, unless before the end of that period—
- (a) the notice under [paragraph 4\(4\)](#) relating to the penalty is served on the licence holder under [paragraph 4\(8\)](#), or
  - (b) a notice under [section 29\(2\)\(b\)](#) is served on the licence holder which specifies that the notice is served in connection with a concern on the part of the economic regulator that the licence holder may be contravening, or may have contravened, a relevant condition or requirement.
- (2) Where a final or provisional order has been made in relation to a contravention, the economic regulator may not impose a penalty in respect of the contravention unless the notice relating to the penalty under [paragraph 4\(4\)](#) was served on the licence holder under [paragraph 4\(8\)](#)—
- (a) within three months from the confirmation of the provisional order or the making of the final order, or
  - (b) where the provisional order is not confirmed, within six months from the making of the provisional order.

#### **Commencement Information**

**I6** Sch. 3 para. 6 in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

### *Interest and payment of instalments*

- 7 (1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time is to carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (2) If an application is made under [paragraph 4\(7\)](#) in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (3) If the economic regulator grants an application under that sub-paragraph in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the economic regulator under that sub-paragraph, the economic regulator may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

#### **Commencement Information**

**I7** Sch. 3 para. 7 in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

### *Appeals against penalties*

- 8 (1) If the licence holder on whom a penalty is imposed is aggrieved by—
- (a) the imposition of the penalty,
  - (b) the amount of the penalty, or

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- (c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,  
the licence holder may make an application to the court under this paragraph.
- (2) An application under [sub-paragraph \(1\)](#) must be made—
- (a) within 42 days from the date of service on the licence holder of a notice under [paragraph 4\(6\)](#), or
- (b) where the application relates to a decision of the economic regulator on an application by the licence holder under [paragraph 4\(7\)](#), within 42 days from the date the licence holder is notified of the decision.
- (3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within [sub-paragraph \(4\)](#), the court—
- (a) may quash the penalty,
- (b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case, or
- (c) in the case of an application under [sub-paragraph \(1\)\(c\)](#), may substitute for the date or dates imposed by the economic regulator an alternative date or dates.
- (4) The grounds falling within this sub-paragraph are—
- (a) that the imposition of the penalty was not within the power of the economic regulator under [paragraph 4](#),
- (b) that any of the requirements of [sub-paragraphs \(4\) to \(6\)](#) or [\(8\)](#) of [paragraph 4](#) have not been complied with in relation to the imposition of the penalty and the interests of the licence holder have been substantially prejudiced by the non-compliance, or
- (c) that it was unreasonable of the economic regulator to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.
- (5) If an application is made under this paragraph in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies, as a date by which the penalty or a portion of the penalty is to be paid, a date before the determination of the application under this paragraph it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.
- (8) Except as provided by this paragraph, the validity of a penalty is not to be questioned by any legal proceedings whatever.
- (9) In this paragraph “the court” means—
- (a) in relation to England and Wales or Northern Ireland, the High Court, and
- (b) in relation to Scotland, the Court of Session.



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**I18** Sch. 3 para. 8 in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

*Recovery of penalties*

- 9 Where a penalty imposed under [paragraph 4\(1\)](#), or any portion of it, has not been paid by the date on which it is required to be paid and—
- (a) no application relating to the penalty has been made under [paragraph 8](#) during the period within which such an application can be made, or
  - (b) an application has been made under that paragraph and determined, the economic regulator may recover from the licence holder, as a civil debt due to it, any of the penalty and any interest which has not been paid.

**Commencement Information**

**I19** Sch. 3 para. 9 in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

*Maximum amount of penalty*

- 10 (1) The maximum amount of penalty that may be imposed on a licence holder in respect of a contravention may not exceed 10 per cent of the licence holder's turnover.
- (2) The Secretary of State may by regulations provide for how a person's turnover is to be determined for the purposes of this paragraph.
- (3) Regulations under [sub-paragraph \(2\)](#) are subject to the affirmative procedure.
- (4) In this paragraph "penalty" means a penalty imposed on a licence holder under [paragraph 4](#).

**Commencement Information**

**I10** Sch. 3 para. 10 in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

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