

## SCHEDULE

Regulation 12

### Enforcement

## PART 1

### Investigatory powers

#### Information notice

1.—(1) The enforcement authority may serve a notice (an “information notice”) on a person requesting such information or documents as the enforcement authority considers necessary to enable it to monitor that person’s, or another person’s, compliance with these Regulations.

(2) An information notice must—

- (a) be in writing,
- (b) set out the information or documents required,
- (c) specify the date by which the information or documents must be provided, and
- (d) specify the person, and the address, to which the information or documents must be provided.

(3) A person served with an information notice must comply with its requirements by the date referred to in sub-paragraph (2)(c).

#### Enforcement of information notice

2.—(1) If a person fails to comply with a notice served under paragraph 1, the enforcement authority may make an application under this paragraph to the court.

(2) If it appears to the court that the person has failed to comply with the notice, it may make an order under this paragraph.

(3) An order under this paragraph is an order requiring the person to do anything that the court thinks it is reasonable for the person to do, for any of the purposes for which the notice was given, to ensure that the notice is complied with.

(4) An order under this paragraph may require the person to meet the costs or expenses of the application.

(5) If the person is a company, partnership or unincorporated association, the court in acting under sub-paragraph (4) may require an official who is responsible for the failure to meet the costs or expenses.

(6) In this paragraph—

- (a) “official” means—
  - (i) in the case of a company, a director, manager, secretary or other similar officer;
  - (ii) in the case of a limited liability partnership, a member;
  - (iii) in the case of a partnership other than a limited liability partnership, a partner; and
  - (iv) in the case of an unincorporated association, a person who is concerned in the management or control of its affairs.
- (b) “the court” means—
  - (i) in relation to England and Wales, the High Court or the County Court;
  - (ii) in relation to Scotland, the Court of Session or the sheriff;

(iii) in relation to Northern Ireland, the County Court.

### **Power of entry without warrant**

3.—(1) The enforcement authority may enter premises (other than premises used wholly or mainly as a private dwelling) or land, at reasonable hours for the purposes of ascertaining whether there has been a breach of these Regulations.

(2) Before the enforcement authority exercises the power of entry in sub-paragraph (1) the enforcement authority must serve on the occupier of the premises or land a notice (an “inspection notice”).

(3) An inspection notice must—

- (a) be in writing;
- (b) be served on the occupier of the premises or land at least two working days before the proposed date of entry;
- (c) specify the proposed date of entry;
- (d) set out the reason for which entry is required;
- (e) summarise the enforcement authority’s powers of seizure and detention of any relevant equipment or records or other information under paragraph 5; and
- (f) explain that compensation may be payable for damage caused in seizing and removing any relevant equipment or records or other information and give the address to which an application for compensation should be directed.

(4) The requirement in sub-paragraph (2) does not apply where the enforcement authority—

- (a) reasonably suspects a breach of these Regulations; and
- (b) reasonably considers that to give notice in accordance with sub-paragraph (2) would defeat the purpose of the entry.

(5) If the enforcement authority enters premises or land in the circumstances referred to in sub-paragraph (4) and finds one or more occupiers on the premises or land, the enforcement authority must provide to the occupier, or if there is more than one occupier, to at least one of them, a document that—

- (a) is in writing;
- (b) meets the requirements of sub-paragraphs (3)(d) to (3)(f); and
- (c) where applicable, indicates the nature of the alleged breach of these Regulations.

(6) The enforcement authority must produce suitable identification to the occupier of the premises or land, or (if there is more than one) to at least one of them, when requested to do so by them.

(7) The enforcement authority, when entering any premises or land by virtue of this paragraph, may be accompanied by such persons and take such equipment as appear to the enforcement authority to be necessary.

### **Power of entry with warrant**

4.—(1) If a justice is satisfied by any written information on oath—

(a) that there are reasonable grounds for believing—

- (i) that any relevant equipment or records or other information, which the enforcement authority has power under paragraph 5 to inspect, copy, seize or require to be produced, is or are on any premises or land and that the inspection, copying, seizure

or production of that item is likely to disclose evidence of a breach of regulation 5, 6, 7, 8, 9, 10 or 11; or

(ii) that there has been or is about to be, a breach of regulation 5, 6, 7, 8, 9, 10 or 11; and

(b) either—

(i) that admission to the premises or land has been or is likely to be refused and that notice of intention to apply for a warrant under this paragraph has been given to the occupier;

(ii) that an application for admission or the giving of such notice, would defeat the object of the entry; or

(iii) that the premises or land are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await the occupier's return;

the justice may by warrant under the justice's hand, which continues in force for a period of one month, authorise the enforcement authority to enter the premises or land, if need be by force.

(2) On entering any premises or land by authority of a warrant under sub-paragraph (1), the enforcement authority must give to the occupier, or if there is more than one occupier, to at least one of them, or, if the occupier is temporarily absent, leave in a prominent place on the premises or land, or an appropriate part of the premises or land, a notice in writing—

(a) summarising the enforcement authority's powers of seizure and detention of any relevant equipment or records or other information under paragraph 5; and

(b) explaining that compensation may be payable for damage caused in entering premises or land and seizing and removing any relevant equipment or records or other information and giving the address to which an application for compensation should be directed.

(3) The enforcement authority, when entering any premises or land by virtue of this paragraph may be accompanied by such persons and take such equipment as appear to the enforcement authority to be necessary.

(4) The enforcement authority, when leaving any premises or land which the enforcement authority entered by virtue of a warrant, must, if the premises or land are unoccupied or the occupier is temporarily absent, leave them in as secure a state as that in which they were found.

(5) In this paragraph, "justice" means—

(a) in England and Wales, a justice of the peace;

(b) in Scotland, a sheriff or summary sheriff; and

(c) in Northern Ireland, a lay magistrate.

### **Powers of inspection etc**

**5.—(1)** The enforcement authority exercising the power of entry under paragraph 3 or paragraph 4 may—

(a) inspect the premises and land;

(b) require any occupier of the premises or land to produce relevant equipment or records or any other information, in whatever form it is held, together with an explanation of such records or information within such period as the enforcement authority considers reasonable;

(c) inspect any relevant equipment or records or any other information, in whatever form it is held;

(d) if the enforcement authority has reasonable grounds for believing that there has been a breach of these Regulations, seize and detain relevant equipment or records or any other

information, in whatever form it is held, for the purposes of ascertaining whether there has been such a breach;

- (e) take photographs, copies or measurements;
- (f) require any person on the premises or land to provide such other assistance as the enforcement authority reasonably considers necessary.

(2) The enforcement authority must—

- (a) provide to the occupier of the premises or land or, if there is more than one occupier, to at least one of them, a written record of any items which are seized and removed; and
- (b) retain seized items for no longer than absolutely necessary.

(3) Any object or document which is inspected or seized should, so far as possible, be retained in its original condition.

6. The enforcement authority may, for the purposes of assessing compliance with these Regulations, require a person to provide access to embedded software in a public charge point insofar as the enforcement authority considers that such access is necessary for the purpose of assessing such compliance.

#### **Compensation for seizure and detention**

7.—(1) Where the enforcement authority exercises any power under paragraph 5(1)(d) to seize and detain any relevant equipment, records or other information, the enforcement authority is liable to pay compensation to any person having an interest in the item seized and detained in respect of any loss or damage caused by the exercise of the power if—

- (a) there has been no breach of any provision of these Regulations by that person; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(2) Any disputed question as to the right to, or the amount of, any compensation payable under this paragraph must be determined by arbitration—

- (a) in England and Wales, in accordance with the Arbitration Act 1996(1);
- (b) in Scotland, in accordance with the Arbitration (Scotland) Act 2010(2); and
- (c) in Northern Ireland, in accordance with the Arbitration Act 1996.

#### **Obstruction of the enforcement authority and false statements**

8.—(1) A person must not—

- (a) intentionally obstruct the enforcement authority when it is acting in pursuance of any provision of these Regulations;
- (b) intentionally fail to comply with any requirement properly imposed by the enforcement authority under any provision of these Regulations; or
- (c) without reasonable cause, fail to give the enforcement authority any other assistance or information which the enforcement authority may reasonably require of that person for the purposes of the exercise of the enforcement authority's functions under any provision of these Regulations.

(2) A person must not, in giving any information which is required of that person by virtue of sub-paragraph (1)(c)—

- (a) make any statement which the person knows is false in a material particular; or

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(1) 1996 c. 23.

(2) 2010 asp 1.

- (b) recklessly make a statement which is false in a material particular.

## PART 2

### Civil sanctions

#### Interpretation

9. In Parts 2, 3 and 4 of this Schedule, “civil sanction” means a compliance notice issued in accordance with paragraph 10 or a civil penalty imposed in accordance with paragraph 11.

#### Compliance notice

10.—(1) Subject to sub-paragraph (2), where the enforcement authority considers that a person has breached regulation 5, 6, 7, 8, 9, 10 or 11, 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) The enforcement authority may not serve a compliance notice on a person unless it has first complied with paragraphs 13 to 15.

(3) The notice must be in writing and dated, and must—

- (a) set out the reasons for which the notice has been served;
- (b) describe the steps required to remedy the breach;
- (c) specify the date, which must not be less than 28 days from the date of the notice, by which the breach must be remedied;
- (d) set out the consequences of failing to comply with the notice; and
- (e) set out the rights of appeal in accordance with paragraphs 16 and 17.

(4) Without limiting the generality of sub-paragraph (1) above, where the enforcement authority considers that a person has breached regulation 5, 6, 7, 8, 9, 10 or 11, a compliance notice may prohibit the person from installing further public charge points until that person has remedied any breach set out in the compliance notice.

#### Civil penalties

11.—(1) Subject to sub-paragraph (2), where—

- (a) a person does not comply with a compliance notice under paragraph 10, or
- (b) the enforcement authority considers that there has been a breach of paragraph 8 by a person,

the enforcement authority may serve a notice (a “penalty notice”) on the person requiring them to pay a civil penalty.

(2) The enforcement authority may not serve a penalty notice on a person unless it has first complied with paragraphs 13 to 15.

(3) The enforcement authority may not require a person to pay a civil penalty 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 without first serving a compliance notice under paragraph 10 if it considers it appropriate to do so.

(5) A penalty notice must be in writing, dated and include—

- (a) the reasons for imposing the civil penalty;
- (b) the amount to be paid;
- (c) how payment is to 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 decision;
- (e) the rights of appeal in accordance with paragraphs 16 and 17; and
- (f) the consequences of failing to comply with the notice.

### **Amount of civil penalty**

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

- (a) £10,000 for each public charge point in respect of which there has been a breach of regulation 5, 6, 8, 9, 10 or 11;
- (b) £10,000 for a network of rapid charge points in respect of which there has been a breach of regulation 7;
- (c) £250,000 for a breach of paragraph 8 of this Schedule.

(2) Before requiring a person to pay a civil penalty pursuant to paragraph 11, 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.

### **Notice of intent**

**13.**—(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 reasons for the proposed civil sanction;
- (b) the requirements of the proposed compliance notice and, in the case of a proposed 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 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 impose a civil sanction without first serving a notice of intent.

(4) The matters referred to in sub-paragraph (3) are—

- (a) a risk of harm to, or disruption of, the electricity system;
- (b) a risk to public health or safety.

### **Representations and objections**

**14.** 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 civil sanction.

### **Final decision**

**15.**—(1) Sub-paragraph (2) applies where a notice of intent has been served pursuant to paragraph 13.

(2) After the end of the period for making representations and objections, the enforcement authority must, taking into account any representations or objections made in accordance with paragraph 14, decide whether to impose the proposed civil sanction, with or without modifications to the matters set out in the notice of intent.

## Appeals

**16.**—(1) A person on whom a civil sanction is imposed may appeal against it.

(2) The grounds for appeal are—

- (a) that the decision to impose a civil sanction was based on an error of fact;
- (b) that the decision to impose a civil sanction 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 compliance notice, that any steps required to remedy the breach are unreasonable;
- (e) that the decision to impose a civil sanction was unreasonable for any other reason;
- (f) that the decision to impose a civil sanction was wrong for any other reason.

**17.**—(1) Any appeal under paragraph 16 must be made to the First-tier Tribunal.

(2) An appeal must be brought within 28 days of the date on which the final decision is received.

(3) Any compliance notice relating to the subject matter of the appeal is suspended pending an appeal.

(4) The Tribunal may, in relation to 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 a civil penalty—

- (a) allow the appeal and cancel the civil penalty;
- (b) allow the appeal and reduce the amount of the civil penalty; or
- (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) Sub-paragraph (6)(a) has effect despite any provision of rules of court.

## Enforcement of penalty decision

**18.**—(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.

(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.

(4) In Northern Ireland, the civil penalty is recoverable as if it were payable under an order of the County Court.

(5) 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(3) (register of judgments and orders etc.) as if it were a judgement entered in the county court.

## PART 3

### Enforcement undertakings

#### Enforcement undertakings

19. The enforcement authority may accept a written undertaking (an “enforcement undertaking”) given by a person to the enforcement authority to take such action as may be specified in the undertaking within such period as may be specified where the enforcement authority has reasonable grounds to suspect that the person has breached regulation 5, 6, 7, 8, 9, 10 or 11.

#### Contents of an enforcement undertaking

20.—(1) An enforcement undertaking must specify—

- (a) action to be taken by the person to secure that the breach does not continue or recur;
- (b) action to secure that the position is, so far as possible, restored to what it would have been if the breach had not been committed; or
- (c) action (including the payment of a sum of money) to be taken by the person to benefit any person affected by the breach.

(2) An enforcement undertaking must specify the period within which the action must be completed.

(3) An enforcement undertaking must include—

- (a) a statement that the undertaking is made in accordance with this Schedule;
- (b) the terms of the undertaking; and
- (c) information as to how and when a person is considered to have discharged the undertaking.

(4) The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if the person and the enforcement authority agree in writing.

#### Acceptance of an enforcement undertaking

21. If the enforcement authority has accepted an enforcement undertaking then, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it, the enforcement authority may not impose on that person a civil sanction in respect of the act or omission to which the undertaking relates.

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(3) [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.



### **Discharge of an enforcement undertaking**

**22.**—(1) A person who has given an enforcement undertaking may at any time apply for a certificate that it has been complied with.

(2) If the enforcement authority is satisfied that the enforcement undertaking has been complied with it must issue a certificate to that effect.

(3) The enforcement authority may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.

(4) The enforcement authority must decide whether to issue such a certificate, and give written notice of the decision to the applicant, within—

- (a) 14 days of the application, or
- (b) where sufficient information is provided following a request under sub-paragraph (3), 14 days of receipt of that information.

### **Appeals**

**23.**—(1) A person to whom a notice is given pursuant to paragraph 22(4) may appeal against a decision not to issue a certificate on the grounds that the decision—

- (a) was based on an error of fact;
- (b) was wrong in law;
- (c) was unfair or unreasonable;
- (d) was wrong for any other reason.

(2) An appeal under sub-paragraph (1) must be made to the First-tier Tribunal.

(3) An appeal must be brought within two months of the date on which written notice of the decision is received.

(4) The Tribunal may, in relation to the decision referred to in sub-paragraph (1)—

- (a) confirm the decision;
- (b) vary the decision; or
- (c) remit the decision, or any matter relating to it, to the enforcement authority.

### **Inaccurate, incomplete or misleading information**

**24.**—(1) A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is regarded as not having complied with it.

(2) The enforcement authority may by notice in writing revoke a certificate issued under paragraph 22 if it was issued on the basis of inaccurate, misleading or incomplete information.

### **Non-compliance with an enforcement undertaking**

**25.**—(1) If a person does not comply with an enforcement undertaking the enforcement authority may in the case of a breach of regulation 5, 6, 7, 8, 9, 10 or 11 impose a civil sanction.

(2) If a person has complied partly but not fully with an enforcement undertaking, that partial compliance must be taken into account in connection with the imposition of a civil sanction on the person.

## PART 4

### Publication of enforcement action

**26.**—(1) Subject to sub-paragraph (3), the enforcement authority must from time to time publish information on—

- (a) civil sanctions that have been imposed; and
- (b) enforcement undertakings that have been agreed.

(2) In sub-paragraph (1)(a), the reference to information on civil sanctions that have been imposed does not include information about cases where the sanction has been imposed but overturned on appeal.

(3) This paragraph does not apply to cases where the enforcement authority considers that publication would be inappropriate.