
STATUTORY INSTRUMENTS

2013 No. 1389

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

PART 4

Injunctions and Restitution

Injunctions

Injunctions

21.—(1) Paragraphs (3) and (4) apply if, on the application of the Authority, the court is satisfied—

- (a) that there is a reasonable likelihood that any person will fail to comply with a REMIT requirement; or
- (b) that any person is failing or has failed to comply with a REMIT requirement and that there is a reasonable likelihood that the failure to comply will continue or be repeated.

(2) Paragraph (3) also applies if, on the application of the Authority, the court is satisfied—

- (a) that there is a reasonable likelihood that any person will fail to comply with a requirement imposed by or under regulation 8; or
- (b) that any person is failing or has failed to comply with a requirement imposed by or under regulation 8 and that there is a reasonable likelihood that the failure to comply will continue or be repeated.

(3) The court may make an order restraining (or in Scotland an interdict prohibiting) the failure to comply.

(4) The court may make an order imposing on that person a temporary prohibition of professional activity.

(5) If, on the application of the Authority, the court is satisfied—

- (a) that any person (“FP”) is failing or has failed to comply with—
 - (i) a REMIT requirement; or
 - (ii) a requirement imposed by or under regulation 8, and
- (b) that there are steps which could be taken for remedying the failure to comply;

the court may make an order requiring FP to take such steps as the court may direct to remedy it.

(6) Paragraph (7) applies if, on the application of the Authority, the court is satisfied that any person—

- (a) may be failing to comply with a REMIT requirement; or
- (b) may have failed to comply with a REMIT requirement.

(7) The court may make an order restraining (or in Scotland an interdict prohibiting) the person concerned (“FP”) from disposing of, or otherwise dealing with, any assets of FP which it is satisfied that FP is reasonably likely to dispose of, or otherwise deal with.

(8) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(9) In paragraph (5), references to remedying any failure to comply with a requirement include references to mitigating its effect.

Restitution

Restitution orders

22.—(1) The court may, on the application of the Authority, make an order under paragraph (2) if it is satisfied that a person (“FP”) has failed to comply with a REMIT requirement, and

- (a) that profits have accrued to FP as a result of the failure to comply; or
- (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the failure to comply.

(2) The court may order FP to pay to the Authority such sum as appears to the court to be just having regard—

- (a) in a case within paragraph (1)(a), to the profits appearing to the court to have accrued;
- (b) in a case within paragraph (1)(b), to the extent of the loss or other adverse effect;
- (c) in a case within both paragraph (1)(a) and (b), to the profit appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(3) Any amount paid to the Authority in pursuance of an order under paragraph (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.

(4) In paragraph (3), “qualifying person” means a person appearing to the court to be someone—

- (a) to whom the profits mentioned in paragraph (1)(a) are attributable; or
- (b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).

(5) On an application under paragraph (1) the court may require FP to supply it with such accounts or other information as it may require for any one or more of the following purposes—

- (a) establishing whether any and, if so, what profits have accrued to FP as mentioned in paragraph (1)(a);
- (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in paragraph (1)(b) and, if so, the extent of that loss or adverse effect; and
- (c) determining how any amounts are to be paid or distributed under paragraph (3).

(6) The court may require any accounts or other information supplied under paragraph (4) to be verified in such manner as it may direct.

(7) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(8) Nothing in this regulation affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this regulation applies.

Power of Authority to require restitution

23.—(1) The Authority may exercise the power in paragraph (2) if it is satisfied that a person (“FP”) has failed to comply with a REMIT requirement, and

- (a) that profits have accrued to FP as a result of the failure to comply; or
 - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the failure to comply.
- (2) The power referred to in paragraph (1) is a power to require FP, in accordance with such arrangements as the Authority considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the Authority to be just having regard—
- (a) in a case within paragraph (1)(a), to the profits appearing to the Authority to have accrued;
 - (b) in a case within paragraph (1)(b), to the extent of the loss or other adverse effect;
 - (c) in a case within both paragraph (1)(a) and (b), to the profits appearing to the Authority to have accrued and to the extent of the loss or other adverse effect.
- (3) In paragraph (2), “appropriate person” means a person appearing to the Authority to be someone—
- (a) to whom the profits mentioned in paragraph (1)(a) are attributable; or
 - (b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).

Warning notices

24.—(1) If the Authority proposes to exercise the power under regulation 23(2) in relation to a person, it must give the person concerned a warning notice.

(2) A warning notice under this regulation must specify the amount which the Authority proposes to require the person concerned to pay or distribute as mentioned in regulation 23(2).

Decision notices

25.—(1) If the Authority decides to exercise the power under regulation 23(2), it must give a decision notice to the person in relation to whom the power is exercised.

(2) The decision notice must—

- (a) state the amount that the person is to pay or distribute as mentioned in regulation 23(2);
- (b) identify the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and
- (c) state the arrangements in accordance with which the payment or distribution is to be made.

(3) If the Authority decides to exercise the power under regulation 23(2), the person in relation to whom it is exercised may refer the matter to the Tribunal.