
STATUTORY INSTRUMENTS

2013 No. 1389

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

PART 6

Notices

Warning notices

Warning notices

- 35.**—(1) A warning notice must—
- (a) state the action which the Authority proposes to take;
 - (b) be in writing;
 - (c) give reasons for the proposed action; and
 - (d) describe the effect of regulation 41 and state whether any secondary material exists to which the person concerned must be allowed access under it.
- (2) A warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make representations to the Authority.
- (3) The Authority may extend the period specified in the notice.
- (4) The Authority must then decide, within a reasonable period, whether to give the person concerned a decision notice.

Decision notices

Decision notices

- 36.**—(1) A decision notice must—
- (a) be in writing;
 - (b) give the Authority's reasons for the decision to take the action to which the notice relates;
 - (c) describe the effect of regulation 41 and state whether any secondary material exists to which the person concerned must be allowed access under it; and
 - (d) give an indication of—
 - (i) any right to have the matter referred to the Tribunal which is given by these Regulations; and
 - (ii) the procedure on such a reference.
- (2) The action to which a decision notice relates must be action under the same regulation as the action proposed in the preceding warning notice.

(3) The Authority may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.

(4) The Authority may give a further decision notice as a result of paragraph (3) only if the person to whom the original notice was given consents.

(5) If the person to whom a decision notice is given under paragraph (3) had the right to refer the matter to which the original decision notice related to the Tribunal, the person has that right as respects the decision notice under paragraph (3).

Conclusion of proceedings

Notices of discontinuance

37.—(1) If the Authority decides not to take—

- (a) the action proposed in a warning notice, or
- (b) the action to which a decision notice relates,

it must give a notice of discontinuance to the person to whom the warning notice or decision notice was given.

(2) A notice of discontinuance must identify the proceedings which are being discontinued.

Final notices

38.—(1) If the Authority has given a person a decision notice and the matter was not referred to the Tribunal within the time required by the Tribunal Procedure Rules, the Authority must, on taking the action to which the decision notice relates, give the person concerned and any person to whom the decision notice was copied a final notice.

(2) If the Authority has given a person a decision notice and the matter was referred to the Tribunal, the Authority must, on taking action in accordance with any directions given by—

- (a) the Tribunal, or
- (b) a court on an appeal against the decision of the Tribunal,

give that person and any person to whom the decision notice was copied the notice required by paragraph (3).

(3) The notice required by this paragraph is—

- (a) in a case where the Authority is acting in accordance with a direction given by the Tribunal under regulation 44(4)(b), or by the court on an appeal from a decision by the Tribunal under regulation 44(4), a further decision notice, and
- (b) in any other case, a final notice.

(4) A final notice about a statement must—

- (a) set out the terms of the statement;
- (b) give details of the manner in which, and the date on which, the statement will be published.

(5) A final notice about a penalty must—

- (a) state the amount of the penalty;
- (b) state the manner in which, and the period within which, the penalty is to be paid;
- (c) give details of the way in which the penalty will be recovered if it is not paid by the date stated in the notice.

(6) A final notice about a requirement to make a payment or distribution in accordance with regulation 23(2) must state—

- (a) the persons to whom,
- (b) the manner in which, and
- (c) the period within which,

it must be made.

(7) The period stated under paragraph (5)(b) or (6)(c) may not be less than 14 days beginning with the date on which the final notice is given.

(8) If all or any of the amount of a penalty payable under a final notice is outstanding at the end of the period stated under paragraph (5)(b), the Authority may recover the outstanding amount as a debt due to it.

(9) If all or any of a required payment or distribution has not been made at the end of a period stated in a final notice under paragraph (6)(c), the obligation to make the payment is enforceable, on the application of the Authority, by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.

Publication

Publication

39.—(1) In the case of a warning notice given under regulation 30—

- (a) neither the Authority nor a person to whom it is given or copied may publish the notice,
- (b) a person to whom the notice is given or copied may not publish any details concerning the notice unless the Authority has published those details, and
- (c) after consulting the persons to whom the notice is given or copied, the Authority may publish such information about the matter to which the notice relates as it considers appropriate.

(2) In the case of a warning notice given under regulation 24, neither the Authority nor a person to whom it is given or copied may publish the notice or any details concerning it.

(3) A person to whom a decision notice is given or copied may not publish the notice or any details concerning it unless the Authority has published the notice or those details.

(4) A notice of discontinuance must state that, if the person to whom the notice is given consents, the Authority may publish such information as it considers appropriate about the matter to which the discontinued proceedings related.

(5) A copy of a notice of discontinuance must be accompanied by a statement that, if the person to whom the notice is copied consents, the Authority may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.

(6) The Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate.

(7) But the Authority may not publish information under this regulation if publication of it would, in its opinion, be—

- (a) unfair to the person with respect to whom the action was taken (or was proposed to be taken),
- (b) prejudicial to the interests of consumers, or
- (c) detrimental to the stability of the wholesale energy market.

(8) Information is to be published under this regulation in such manner as the Authority considers appropriate.

(9) “Notice of discontinuance” means a notice given under regulation 37.

Third party rights and access to evidence

Third party rights

40.—(1) If any of the reasons contained in a warning notice given under these Regulations relates to a matter which—

- (a) identifies a person (“TP”) other than the person to whom the notice is given, and
- (b) in the opinion of the Authority, is prejudicial to TP,

a copy of the notice must be given to TP.

(2) Paragraph (1) does not require a copy to be given to TP if the Authority—

- (a) has given TP a separate warning notice in relation to the same matter; or
- (b) gives TP such a notice at the same time as it gives the warning notice which identifies TP.

(3) The notice copied to TP under paragraph (1) must specify a reasonable period (which may not be less than 14 days) within which TP may make representations to the Authority.

(4) If any of the reasons contained in a decision notice given under these Regulations relates to a matter which—

- (a) identifies a person (“TP”) other than the person to whom the decision notice is given, and
- (b) in the opinion of the Authority, is prejudicial to TP,

a copy of the notice must be given to TP.

(5) If the decision notice was preceded by a warning notice, a copy of the decision notice must (unless it has been given under paragraph (4)) be given to each person to whom the warning notice was copied.

(6) Paragraph (4) does not require a copy to be given to TP if the Authority—

- (a) has given TP a separate decision notice in relation to the same matter; or
- (b) gives TP such a notice at the same time as it gives the decision notice which identifies TP.

(7) Neither paragraph (1) nor paragraph (4) requires a copy of a notice to be given to TP if the Authority considers it impracticable to do so.

(8) Paragraphs (9) to (11) apply if the person to whom a decision notice is given has a right to refer the matter to the Tribunal.

(9) A person (“TP”) to whom a copy of the notice is given under this regulation may refer to the Tribunal—

- (a) the decision in question, so far as it is based on a reason of the kind mentioned in paragraph (4); or
- (b) any opinion expressed by the Authority in relation to TP.

(10) The copy must be accompanied by an indication of TP’s right to make a reference under paragraph (9) and of the procedure on such a reference.

(11) A person (“TP”) who alleges that a copy of the notice should have been given to TP, but was not, may refer to the Tribunal the alleged failure and—

- (a) the decision in question, so far as it is based on a reason of the kind mentioned in paragraph (4); or
- (b) any opinion expressed by the Authority in relation to TP.

(12) Regulation 41 applies to TP as it applies to the person to whom the notice to which this regulation applies was given, in so far as the material to which access must be given under that regulation relates to the matter which identifies TP.

(13) A copy of a notice given to TP under this regulation must be accompanied by a description of the effect of regulation 41 as it applies to TP.

(14) Any person to whom a warning notice or decision notice was copied under this regulation must be given a copy of a notice of discontinuance applicable to the proceedings to which the warning notice or decision notice related.

Access to Authority material

41.—(1) If the Authority gives a person (“NP”) a warning notice or a decision notice under these Regulations, it must—

- (a) allow NP access to the material on which it relied in taking the decision which gave rise to the obligation to give the notice;
- (b) allow NP access to any secondary material which, in the opinion of the Authority, might undermine that decision.

(2) But the Authority does not have to allow NP access to material under paragraph (1) if the material is a protected item (as defined in regulation 52(2)) or it—

- (a) relates to a case involving a person other than NP; and
- (b) was taken into account by the Authority in NP’s case only for the purposes of comparison with other cases.

(3) The Authority may refuse NP access to particular material which it would otherwise have to allow NP access to if, in its opinion, allowing NP access to the material—

- (a) would not be in the public interest; or
- (b) would not be fair, having regard to—
 - (i) the likely significance of the material to NP in relation to the matter in respect of which NP has been given a warning notice or decision notice; and
 - (ii) the potential prejudice to the commercial interests of a person other than NP which would be caused by the material’s disclosure.

(4) If the Authority does not allow NP access to material because it is a protected item, it must give NP written notice of—

- (a) the existence of the protected item; and
- (b) the Authority’s decision not to allow NP access to it.

(5) If the Authority refuses under paragraph (3) to allow NP access to material, it must give NP written notice of—

- (a) the refusal; and
- (b) the reasons for it.

(6) “Secondary material” means material, other than material falling within paragraph (1)(a), which—

- (a) was considered by the Authority in reaching the decision mentioned in that paragraph; or
- (b) was obtained by the Authority in connection with the matter to which the warning notice or decision notice relates but which was not considered by it in reaching that decision.

The Authority’s procedures

The Authority’s procedures

42.—(1) The Authority must determine the procedure that it proposes to follow in relation to the following—

- (a) a decision which gives rise to an obligation for it to give a warning notice or decision notice, and
 - (b) a decision under regulation 39(1)(c) to publish information about the matter to which a warning notice relates.
- (2) That procedure must be designed to secure, amongst other things, that—
- (a) a decision falling within paragraph (1)(a) is taken—
 - (i) by a person not directly involved in establishing the evidence on which the decision is based, or
 - (ii) by 2 or more persons who include a person not directly involved in establishing that evidence,
 - (b) a decision falling within paragraph (1)(b) is taken—
 - (i) by a person other than the person by whom the decision was first proposed, or
 - (ii) by 2 or more persons not including the person by whom the decision was first proposed, and
 - (c) a decision falling within paragraph (1)(b) is taken in accordance with a procedure which is, as far as possible, the same as that applicable to a decision which gives rise to an obligation to give a warning notice and which falls within paragraph (1)(a).
- (3) The Authority must issue a statement of the procedure.
- (4) The statement must be published in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (5) The Authority must, without delay, give the Secretary of State a copy of the statement.
- (6) When giving a warning notice or a decision notice, the Authority must follow its stated procedure.
- (7) If the Authority changes the procedure in a material way, it must publish a revised statement.
- (8) The Authority's failure in a particular case to follow its procedure as set out in the latest published statement does not affect the validity of a notice given in that case.
- (9) But paragraph (8) does not prevent the Tribunal from taking into account any such failure in considering a matter referred to it.

Statements under regulation 42: consultation

- 43.**—(1) Before issuing a statement of procedure under regulation 42, 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) The draft must be accompanied by notice that representations about the proposal may be made to the Authority within a specified time.
- (3) Before issuing the proposed statement of procedure, the Authority must have regard to any representations made to it in accordance with paragraph (2).
- (4) If the Authority issues the proposed statement of procedure, it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with paragraph (2); and
 - (b) its response to them.
- (5) If the statement of procedure 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 (4)) publish details of the difference.

(6) This regulation also applies to a proposal to revise a statement of policy.