

---

STATUTORY INSTRUMENTS

---

**2013 No. 1389**

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

PART 7

Hearings and appeals

**Proceedings before Tribunal: general provisions**

**44.**—(1) This regulation applies in the case of a reference to the Tribunal under regulation 25 (restitution), 31 (penalty) or 40 (third party).

(2) Tribunal Procedure Rules may make provision for the suspension of a decision of the Authority which has taken effect, pending determination of the reference.

(3) The Tribunal may consider any evidence relating to the subject-matter of the reference, whether or not it was available to the Authority at the material time.

(4) In the case of a reference under regulation 25 or a reference under regulation 40(9), the Tribunal must determine the reference by either—

- (a) dismissing it; or
- (b) remitting the matter to the Authority with a direction to reconsider it and reach a decision in accordance with the findings of the Tribunal.

(5) The findings mentioned in paragraph (4)(b) are limited to findings as to—

- (a) issues of fact or law;
- (b) the matters to be, or not to be, taken into account in making the decision; and
- (c) the procedural or other steps to be taken in connection with the making of the decision.

(6) In the case of a reference under regulation 31 or a reference under regulation 40(11), the Tribunal—

- (a) must determine what (if any) is the appropriate action for the Authority to take in relation to the matter; and
- (b) on determining the reference, must remit the matter to the Authority with such directions (if any) as the Tribunal considers appropriate for giving effect to the determination.

(7) The Authority must act in accordance with the determination of, and any direction given by, the Tribunal.

(8) An order of the Tribunal may be enforced—

- (a) as if it were an order of a county court; or
- (b) in Scotland, as if it were an order of the Court of Session.

**Proceedings before Tribunal: decision notices etc**

**45.**—(1) In determining in accordance with regulation 44(6) a reference made as a result of a decision notice given by the Authority, the Tribunal may not direct the Authority to take action which it would not, as a result of regulation 36(2), have had the power to take when giving the notice.

- (2) The Authority must not take the action specified in a decision notice—
- (a) during the period within which the matter to which the notice relates may be referred to the Tribunal; and
  - (b) if the matter is so referred, until the reference, and any appeal against the Tribunal’s determination, has been finally disposed of.

(3) The Tribunal may, on determining a reference in respect of a decision of the Authority, make recommendations as to the Authority’s regulating provisions or its procedures.

**Offences**

**46.**—(1) This regulation applies in the case of proceedings before the Tribunal under these Regulations.

- (2) A person (“OP”) is guilty of an offence if OP, without reasonable excuse—

- (a) refuses or fails—
  - (i) to attend following the issue of a summons by the Tribunal; or
  - (ii) to give evidence; or
- (b) alters, suppresses, conceals or destroys, or refuses to produce a document which OP may be required to produce for the purposes of proceedings before the Tribunal.

(3) A person guilty of an offence under paragraph (2)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- (4) A person guilty of an offence under paragraph (2)(b) is liable—

- (a) on summary conviction—
  - (i) in England and Wales, to a fine not exceeding the statutory maximum; and
  - (ii) in Scotland, to a fine not exceeding £5,000; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

## Legal assistance before the Tribunal

**Assistance by way of representation: Scotland**

**47.** Regulation 5A(d) of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003(1) (which applies Part II of the Legal Aid (Scotland) Act 1986 (c. 47) to assistance by way of representation in relation to proceedings before the Upper Tribunal) is amended as follows—

- (a) omit “or” at the end of paragraph (ix);
- (b) omit “and” and insert “or” at the end of paragraph (x);
- (c) after paragraph (x) insert the following paragraph—

(1) S.S.I. 2003/179; regulation 5A was inserted by regulation 4(4) of the Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No. 2) (Scotland) Regulations 2010 (S.S.I. 2010/239).

“(xi) regulation 31 of the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013(2); and”.