

SCHEDULE 3

Regulation 28

Transitory provision

1. This Schedule has effect until the Authority has issued a statement under regulation 27.
2. In exercising, or deciding whether to exercise, its power under regulation 26 in the case of any particular behaviour, paragraphs 3 to 5 apply.
3. The Authority must have regard to—
 - (a) the seriousness of the failure in question in relation to the nature of the requirement not complied with;
 - (b) the behaviour of the person, including—
 - (i) the extent to which the behaviour was deliberate or reckless;
 - (ii) whether the person believed, on reasonable grounds, that the behaviour did not fall within regulation 26(1)(a) or (b);
 - (iii) whether the person took all reasonable precautions and exercised due diligence to avoid behaving in a way which fell within regulation 26(1)(a) or (b); and
 - (c) whether the person on whom the penalty is to be imposed is an individual.
4. The Authority must have regard to paragraphs 4.1 to 5.5 of the statement of policy published by the Authority under section 30B of the Gas Act 1986(1) and section 27B of the Electricity Act 1989(2) in October 2003 titled ‘Utilities Act Statement of policy with respect to financial penalties’ read with the modifications set out in paragraph 5.
- 5.—(1) For references to “licence holder” or “licensee” read “person concerned”.
(2) For references to “relevant condition or requirement” or “standard of performance” read “REMIT requirement or requirement imposed by or under regulation 8”.
(3) References to the Authority’s principal objective and general statutory duties are to be disregarded.
(4) In the second sentence of paragraph 4.1 the words “The Acts make it clear that” are to be disregarded.
(5) The second sentence of paragraph 5.5 is to be disregarded.

(1) 1986 c. 44; section 30B was inserted by section 95(1) of the Utilities Act 2000 (c. 27).

(2) 1989 c. 29; section 27B was inserted by section 59(1) of the Utilities Act 2000 (c. 27).