

## SCHEDULE 4

Regulation 10(3)

### Civil sanctions

#### Modifications etc. (not altering text)

- C1** Sch. 4 applied (with modifications) (1.11.2022) by [The Energy Bill Relief Scheme Pass-through Requirement \(Heat Suppliers\) \(England and Wales and Scotland\) Regulations 2022 \(S.I. 2022/1101\)](#), regs. 1(2), **10** (as amended (7.12.2022) by [S.I. 2022/1280](#), **reg. 8**)
- C2** Sch. 4 applied (with modifications) (7.12.2022) by [The Energy Bill Relief Scheme Pass-through Requirement \(Heat Suppliers\) \(England and Wales and Scotland\) Regulations 2022 \(S.I. 2022/1101\)](#), **reg. 12** (as inserted by [S.I. 2022/1280](#), regs. 1(2), **9**)
- C3** Sch. 4 applied (with modifications) (7.12.2022) by [The Energy Bill Relief Scheme Pass-through Requirement \(Heat Suppliers\) \(Northern Ireland\) Regulations 2022 \(S.I. 2022/1124\)](#), **reg. 11** (as inserted by [S.I. 2022/1280](#), regs. 1(2), **16**)
- C4** Sch. 4 applied (with modifications) (E.W.S.) (26.4.2023) by [The Energy Bills Discount Scheme Regulations 2023 \(S.I. 2023/453\)](#), regs. 1(1), 73, **Sch. 1** (with regs. 3, 4, 66)
- C5** Sch. 4 applied (with modifications) (N.I.) (26.4.2023) by [The Energy Bills Discount Scheme \(Northern Ireland\) Regulations 2023 \(S.I. 2023/454\)](#), regs. 1(1), 78, **Sch. 1** (with regs. 3, 4, 71)
- C6** Sch. 4 applied (with modifications) (E.W.S.) (26.4.2023) by [The Energy Bills Discount Scheme Pass-through Requirement \(Heat Suppliers\) Regulations 2023 \(S.I. 2023/455\)](#), regs. 1(2), **10**

## PART 1

### Power to impose civil sanctions

#### Authorised person

1. An authorised person may impose a requirement upon a person to comply with a compliance notice, an enforcement undertaking or to pay a non-compliance penalty (a “civil sanction”) as set out in this Schedule.

## PART 2

### Compliance notices

#### Imposition of a compliance notice

2.—(1) This paragraph applies where an authorised person is satisfied beyond reasonable doubt that a person has committed an offence under regulation 11(1).

(2) The authorised person may by notice (“a compliance notice”) impose on that person a requirement to take such steps as the authorised person may specify, within such period as it may specify, to secure that the offence does not continue or recur.

(3) A compliance notice may not be imposed on more than one occasion in relation to the same act or omission.

#### Notice of intent

3.—(1) Where an authorised person proposes to impose a compliance notice on a person under paragraph (2), 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 grounds for the proposed compliance notice;
  - (b) the requirements of the notice;
  - (c) information as to—
    - (i) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;
    - (ii) the circumstances in which the authorised person may not impose the notice.

### **Making representations and objections**

4. 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 authorised person in relation to the proposed imposition of a compliance notice.

### **Compliance notice**

5.—(1) After the end of the period for making representations and objections, the authorised person must decide whether to impose the requirements set out in the notice of intent, with or without modifications.

(2) Where the authorised person decides to impose a requirement, the compliance notice must comply with paragraph 6.

### **Contents of compliance notice**

6. A compliance notice must include information as to—
- (a) the grounds for imposing the notice;
  - (b) what compliance is required and the period within which it must be completed;
  - (c) rights of appeal; and
  - (d) the consequences of failing to comply with the notice.

### **Appeals against a compliance notice**

7.—(1) The person on whom the compliance notice is imposed may appeal against it.

- (2) The grounds for appeal are—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the nature of the requirement is unreasonable;
  - (d) that the decision was unreasonable for any other reason;
  - (e) that the decision was wrong for any other reason.

### **Criminal proceedings**

8.—(1) If a compliance notice is imposed on any person, that person may not at any time be convicted of the offence under regulation 11(1) in respect of the act or omission giving rise to the compliance notice except in a case to which sub-paragraph (2) applies.

- (2) This sub-paragraph applies to a case where in relation to an offence under regulation 11(1)—
- (a) a non-compliance penalty has been imposed on a person under paragraph 14(1), and

(b) the person fails to pay the penalty within the period specified in the notice under that paragraph.

(3) Criminal proceedings for offences triable summarily to which sub-paragraph (2) applies may be instituted at any time up to six months from the date when the authorised person notifies the person that they have failed to pay the non-compliance penalty.

## PART 3

### Enforcement undertakings

#### Enforcement undertakings

9. An authorised person may accept a written undertaking (an “enforcement undertaking”) given by a person to the authorised person to take such action as may be specified in the undertaking, within such period as may be specified, where the authorised person has reasonable grounds to suspect that the person has committed an offence under regulation 11(1).

#### Contents of an enforcement undertaking

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

- (a) action to be taken by the person to secure that the offence 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 offence 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 offence.

(2) It must specify the period within which the action must be completed.

(3) It must include—

- (a) a statement that the undertaking is made in accordance with this Schedule;
- (b) the terms of the undertaking;
- (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 both parties agree in writing.

#### Criminal proceedings and compliance notices

11.—(1) If an authorised person has accepted an enforcement undertaking from a person then, unless sub-paragraph (2) applies, that person may not at any time be convicted of the offence under regulation 11(1) in respect of the act or omission to which the enforcement undertaking relates.

(2) This sub-paragraph applies where—

- (a) a person fails to comply with the enforcement undertaking;
- (b) a non-compliance penalty has been imposed on that person under paragraph 14(1) in respect of that failure to comply;
- (c) that person fails to pay that penalty within the period specified in the notice under that paragraph and paragraph 14(5) does not apply; and
- (d) any appeal under paragraph 16 is not determined in favour of the person who failed to comply.

(3) If an authorised person has accepted an enforcement undertaking from a person then, unless sub-paragraph (4) applies, the authorised person may not impose on that person a compliance notice in respect of the act or omission to which the enforcement undertaking relates.

(4) This sub-paragraph applies where a person fails to comply with the enforcement undertaking.

(5) If a person has complied partly but not fully with an undertaking, that partial compliance must be taken into account in the imposition of any criminal or other sanction on the person.

(6) Criminal proceedings for offences triable summarily to which sub-paragraph (2) applies may be instituted at any time up to six months from the date when the authorised person notifies the person that they have failed to pay the non-compliance penalty or in the case of an appeal under paragraph 16 that appeal is determined.

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

**12.**—(1) If an authorised person is satisfied that an enforcement undertaking has been complied with, it must issue a certificate to that effect.

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

(3) The person who gave the undertaking may at any time apply for such a certificate.

(4) The authorised person must decide whether to issue such a certificate, and give written notice of the decision to the applicant, within 14 days of such an application.

(5) The person to whom the notice is given 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.

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

**13.**—(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 authorised person may by notice in writing revoke a certificate issued under paragraph 12 if it was issued on the basis of inaccurate, incomplete or misleading information.

## **PART 4**

### **Non-compliance penalties**

#### **Non-compliance penalties**

**14.**—(1) If a person fails to comply with a compliance notice or enforcement undertaking, the authorised person may serve a notice on that person imposing a monetary penalty (“a non-compliance penalty”).

(2) The amount of the non-compliance penalty must be determined by the authorised person and must be a percentage of the costs of fulfilling the remaining requirements of the notice or enforcement undertaking.

(3) The percentage must be determined by the authorised person having regard to all the circumstances of the case and may, if appropriate, be 100%.

- (4) The notice must include information as to—
  - (a) the grounds for imposing the non-compliance penalty;
  - (b) the amount to be paid;
  - (c) how payment must be made;
  - (d) the period in which payment must be made, which must not be less than 28 days;
  - (e) rights of appeal;
  - (f) the consequences of failure to make payment in the specified period;
  - (g) any circumstances in which the authorised person may reduce the amount of the penalty.
- (5) If the requirements of the compliance notice or enforcement undertaking are fulfilled before the time set for payment of the non-compliance penalty, the penalty is not payable.
- (6) The person on whom the notice imposing the non-compliance penalty is served may appeal against it.
- (7) The grounds of appeal are—
  - (a) that the decision to serve the notice was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unfair or unreasonable for any reason;
  - (d) that the amount of the penalty was unreasonable;
  - (e) that the decision was wrong for any other reason.

## **PART 5**

### Withdrawing or amending a notice

- 15. The authorised person may at any time in writing—
  - (a) withdraw a notice imposing a non-compliance penalty notice or reduce the amount specified in the notice;
  - (b) withdraw a compliance notice or amend the requirements imposed by the notice in order to reduce the amount of work necessary to comply with the notice.

## **PART 6**

### Appeals

#### **Appeals**

- 16.—(1) Any appeal under this Schedule must be made to the First-tier Tribunal.
- (2) An appeal must be brought within 28 days of the date on which the notice or decision is received.
- (3) In any appeal where the commission of an offence is an issue requiring determination, the authorised person must prove that offence according to the same burden and standard of proof as in a criminal prosecution.
- (4) All notices are suspended pending determination or withdrawal of the appeal.
- (5) The Tribunal may, in relation to the imposition of a requirement or service of a notice—
  - (a) withdraw the requirement or notice;

**Changes to legislation:** There are currently no known outstanding effects for the The Heat Network (Metering and Billing) Regulations 2014, SCHEDULE 4. (See end of Document for details)

- (b) confirm the requirement or notice;
- (c) vary the requirement or notice;
- (d) take such steps as the authorised person could take in relation to the act or omission giving rise to the requirement or notice;
- (e) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the authorised person.

## PART 7

### Guidance and publicity

#### Guidance as to use of civil sanctions

- 17.—(1) The authorised person must publish guidance about its use of civil sanctions.
- (2) The authorised person must revise and update the guidance where appropriate.
- (3) In the case of guidance about compliance notices and non-compliance penalties, the guidance must contain information as to—
- (a) the circumstances in which the civil sanction is likely to be imposed; and
  - (b) the circumstances in which it is not likely to be imposed.
- (4) In the case of guidance about non-compliance penalties, the guidance must contain information about—
- (a) the matters likely to be taken into account by the authorised person in determining the amount of the penalty (including voluntary reporting by a person of their own non-compliance); and
  - (b) rights to make representations and objections and rights of appeal.
- (5) In the case of guidance about enforcement undertakings, the guidance must contain information as to—
- (a) the circumstances in which the authorised person is likely to accept an enforcement undertaking; and
  - (b) the circumstances in which the authorised person is not likely to accept an enforcement undertaking.

#### Consultation on guidance

18. The authorised person must consult such persons as it considers appropriate before publishing any guidance or revised guidance.

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**Modifications etc. (not altering text)**

C7 [Sch. 4 para. 18](#) excluded (26.4.2023) by [The Energy Bills Discount Scheme Pass-through Requirement \(Heat Suppliers\) Regulations 2023 \(S.I. 2023/455\)](#), regs. 1(2), 12

#### Publication of enforcement action

- 19.—(1) The authorised person must from time to time publish—
- (a) the cases in which civil sanctions have been imposed; and

**Changes to legislation:** *There are currently no known outstanding effects for the The Heat Network (Metering and Billing) Regulations 2014, SCHEDULE 4. (See end of Document for details)*

- (b) cases in which an enforcement undertaking has been entered into.
- (2) In sub-paragraph (1)(a) the reference to cases in which civil sanctions have been imposed does not include cases where the sanction has been imposed but overturned on appeal.
- (3) This paragraph does not apply in cases where the authorised person considers that publication would be inappropriate.

**Changes to legislation:**

There are currently no known outstanding effects for the The Heat Network (Metering and Billing) Regulations 2014, SCHEDULE 4.