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STATUTORY INSTRUMENTS

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**2014 No. 3120**

**ENERGY**

**The Heat Network (Metering and Billing) Regulations 2014**

*Made - - - - 20th November 2014*

*Laid before Parliament 26th November 2014*

*Coming into force in accordance with regulation 1*

These Regulations are made by the Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(1)</sup> in relation to energy and energy sources<sup>(2)</sup> in exercise of the powers conferred by section 2(2) of that Act.

**PART 1**

**Introductory**

**Citation and commencement**

1. (1) These Regulations may be cited as the Heat Network (Metering and Billing) Regulations 2014.

(2) Except as provided in paragraphs (3) and (4), these Regulations come into force on 18th December 2014.

(3) Regulation 9 comes into force on 31st December 2014.

(4) Regulations 4(4) and 6 come into force on 31st December 2016.

**Interpretation**

2. In these Regulations—

“authorised person” means—

- (a) the Secretary of State,
- (b) the Scottish Ministers, or
- (c) a person authorised under regulation 10(2);

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(1) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a) and the European Union (Amendment) Act 2008, section 3(3), Schedule, Part 1.

(2) European Communities (Designation) Order 2010 (S.I. 2010/761).

“bill” means a demand for payment from a heat supplier to a final customer for the supply of heating, cooling or hot water by that heat supplier;

“billing” means the issuing of a bill;

“billing information” means the information specified in paragraph 4 of Schedule 2 provided by the heat supplier to a final customer in respect of the supply of heating, cooling or hot water from a district heat network or communal heating operated by that heat supplier;

“communal heating” means the distribution of thermal energy in the form of steam, hot water, or chilled liquids from a central source in a building which is occupied by more than one final customer, for the use of space or process heating, cooling or hot water;

“district heat network” means the distribution of thermal energy in the form of steam, hot water or chilled liquids from a central source of production through a network to multiple buildings or sites for the use of space or process heating, cooling or hot water;

“final customer” means a person who purchases heating, cooling or hot water for their own end consumption from a heat supplier;

“heat cost allocator” means an instrument for the measurement of energy consumption of a room heating radiator where that energy has been supplied from the district heat network or communal heating operated by a heat supplier;

“heat supplier” means a person who supplies and charges for the supply of heating, cooling or hot water to a final customer, through—

- (a) communal heating; or
- (b) a district heat network;

“meter” means an instrument designed to measure, memorise and display the consumption of heating, cooling or hot water by a final customer where that heating, cooling or hot water has been supplied from a district heat network or communal heating operated by a heat supplier; and

“Scottish network” means a district heat network or communal heating where the majority of final customers of the network or communal heating are located in Scotland.

## PART 2

### Duties in respect of metering and billing

#### **Duty to notify**

**3.** (1) Heat suppliers must, in relation to each district heat network or communal heating operated by them, submit a notification to the Secretary of State, or in relation to a Scottish network the Scottish Ministers, as to the following—

- (a) the location of that district heat network or communal heating;
- (b) the estimated total for that district heat network or communal heating, per calendar year, of—
  - (i) installed heating capacity,
  - (ii) heat generated, and
  - (iii) heat supplied;
- (c) the number and type of buildings supplied by that district heat network or communal heating;

- (d) the number and type of meters or heat cost allocators installed in any buildings supplied by that district heat network or communal heating;
  - (e) the number of final customers supplied by that district heat network or communal heating;
  - (f) the name and business address of the heat supplier;
  - (g) where any analysis as to cost effectiveness or technical feasibility has been carried out pursuant to these Regulations, the results of that analysis together with details of any meters or heat cost allocators which have been installed as a result;
  - (h) the expected frequency and content of billing information provided by the heat supplier to the final customers; and
  - (i) any other information reasonably required by an authorised person for the purpose of determining whether the heat supplier has complied with the duties in these regulations.
- (2) Heat suppliers must comply with the duty in paragraph (1)—
- (a) on or before the 30th April 2015; or
  - (b) in relation to a district heat network or communal heating that commences operation after 30th April 2015, on or before the first date of operation.
- (3) A heat supplier must submit an updated notification within four years of the date of the first notification submitted and within every four year period thereafter from the date of the previous notification.

#### **Duty to install meters**

4. (1) Where heating, cooling or hot water is supplied from a district heat network to a building occupied by more than one final customer, the heat supplier must ensure that meters are installed to measure that heating, cooling or hot water to that building.

(2) A meter installed in accordance with paragraph (1) must be situated at a heat exchanger in that building or at the point of entry of the district heat network pipes into the building.

(3) Where only one final customer occupies a building supplied by a district heat network, the heat supplier must ensure that meters are installed to measure the consumption of heating, cooling or hot water by that final customer.

(4) Where there is more than one final customer in a building supplied by a district heat network, or by communal heating, the heat supplier must ensure that meters are installed to measure the consumption of heating, cooling or hot water by each final customer.

(5) A heat supplier need not comply with paragraphs (3) and (4) unless it is cost effective and technically feasible to do so.

(6) A determination of cost effectiveness and technical feasibility under paragraph (5) must be made by the heat supplier in accordance with Schedule 1.

(7) Where a heat supplier has determined that installation of meters is not cost effective or technically feasible, a further determination in accordance with Schedule 1 must be repeated by a heat supplier within four years of the date of the first determination and if meters have not been installed within every four year period thereafter from the date of the previous determination.

(8) Where a meter to which paragraph (3) or (4) applies is installed, the heat supplier must ensure that temperature control devices are installed to enable the control of the consumption of heating or cooling by a final customer from that district heat network or communal heating.

(9) Where a meter to which this regulation applies is installed the heat supplier must ensure that it satisfies the requirements of regulation 5.

5. Where a meter to which these regulations apply is installed it must accurately measure, memorise and display the consumption of heating, cooling or hot water by a final customer.

### **Duty to install heat cost allocators, thermostatic radiator valves and hot water meters**

6. (1) Where—
- (a) there is more than one final customer in a building supplied by a district heat network or communal heating,
  - (b) the heat supplier supplies both heating and hot water to that building, and
  - (c) the heat supplier has determined that it is not cost effective or technically feasible to install meters in accordance with regulation 4(4),
- the heat supplier must comply with paragraph (2).
- (2) A heat supplier must ensure that the following are installed—
- (a) heat cost allocators and thermostatic radiator valves at each room heating radiator in order to determine and enable the control of the consumption of heating by each final customer, and
  - (b) a hot water meter.
- (3) A heat supplier need not comply with paragraph (2) unless it is cost effective and technically feasible to install heat costs allocators, thermostatic radiator valves and a hot water meter.
- (4) A determination of cost effectiveness and technical feasibility under paragraph (3) must be made in accordance with Schedule 1.
- (5) Where the heat supplier has determined it is not cost effective and technically feasible to install heat cost allocators, thermostatic radiator valves and a hot water meter in accordance with paragraph (2)—
- (a) the heat supplier may employ alternative methods for determining charges for the supply of heating and hot water including using meters installed in accordance with regulation 4(1), and
  - (b) a further determination in accordance with Schedule 1 must be repeated by a heat supplier within four years of the date of the first determination and if heat cost allocators, thermostatic radiator valves and a hot water meter have not been installed, within every four year period thereafter.
- (6) Where a heat cost allocator to which this regulation applies is installed the heat supplier must ensure that it accurately measures, memorises and displays the consumption of heat by a room heating radiator.
- (7) Where a hot water meter to which this regulation applies is installed, the heat supplier must ensure that it satisfies the requirements of regulation 5.
- (8) A “hot water meter” is a meter to measure consumption of hot water by a final customer.

### **Replacement of existing meters, new buildings and major renovations**

7. (1) Where an existing meter which is part of a district heat network or communal heating is replaced the heat supplier must ensure that the replacement meter satisfies the requirements of regulation 5.
- (2) Where—
- (a) a connection is made in a newly constructed building supplied by a district heat network, or
  - (b) a building supplied by a district heat network undergoes major renovations which relate to the technical services of that building,
- the heat supplier must install sufficient meters to measure the consumption of heat, cooling or hot water by each final customer occupying that building.

(3) A heat supplier need not comply with paragraph (1) if it would be technically impossible to do so or the estimated cost would be unreasonable.

(4) In this regulation—

- (a) “building envelope” means the integrated elements of a building which separate its interior from the outdoor environment;
- (b) “major renovation” means the renovation of a building where the total cost of the renovation of the building envelope or the technical services is higher than 25% of the value of the building, excluding the value of the land upon which the building is situated;
- (c) “technical services” means technical equipment for the heating, cooling, ventilation, hot water or lighting (or any combination thereof) of a building; and
- (d) “value of the building” means the reinstatement costs of the building for insurance purposes.

### **On-going obligations in relation to meters and heat cost allocators**

8. Where meters or heat cost allocators to which these Regulations apply are installed the heat supplier must so far as possible ensure those meters and heat cost allocators are —

- (a) continuously operating, and
- (b) properly maintained and periodically checked for errors.

### **Billing**

9. (1) Subject to paragraphs (2) and (4), where meters or heat cost allocators to which these Regulations apply are installed, the heat supplier must ensure that bills and billing information for the consumption of heating, cooling or hot water by a final customer are—

- (a) accurate;
- (b) based on actual consumption; and
- (c) compliant with the requirements in Schedule 2.

(2) A heat supplier need not comply with paragraph (1) unless it is technically possible and economically justified to do so.

(3) A determination of what is technically possible and economically justified under paragraph (2) must be made by the heat supplier in accordance with Schedule 2.

(4) Where bills or billing information are based on meter readings to be provided by a final customer but that customer has not provided a meter reading, a bill may be based on an estimate of consumption.

(5) The heat supplier must not make a specific charge to a final customer for the provision of a bill or billing information other than in respect of the supply of additional copies of that bill or that billing information.

(6) Where bills and billing information relate to the consumption of heating, cooling or hot water by final customers in a building occupied by more than one final customer—

- (a) the heat supplier’s costs of providing such bills and billing information may be passed on to those final customers provided that no profit is made from such charges, or
- (b) where the heat supplier has assigned the task of providing bills or billing information to a third party the reasonable costs of providing them may be passed on to those final customers.

(7) Heat suppliers must—

- (a) supply a final customer's billing information to an energy services provider at the request of that final customer;
  - (b) provide electronic billing and billing information at the request of a final customer;
  - (c) provide a clear explanation of the information contained in a bill, including how the bill was calculated and specifying fixed and variable charges; and
  - (d) ensure that information and estimates of energy costs are provided to a final customer promptly where requested, and in a format which enables customers to compare the charges of different energy suppliers.
- (8) In paragraph (7)(a), "energy services provider" means a person who supplies energy efficiency services.

## PART 3

### Enforcement

#### **Enforcement authority**

**10.** (1) These Regulations shall be enforced by the Secretary of State or in relation to a Scottish network by the Scottish Ministers.

(2) The Secretary of State, or the Scottish Ministers in relation to a Scottish network, may authorise in writing any person who appears suitable to act on the Secretary of State's or the Scottish Ministers' behalf to carry out any functions and to exercise any power conferred by these Regulations other than those in regulation 15.

(3) Schedule 3 (powers of entry and warrants) and Schedule 4 (civil sanctions) have effect.

#### **Offences**

**11.** (1) It is an offence for any heat supplier to fail to comply with—

- (a) regulation 3 (duty to notify);
- (b) regulation 4 (duty to install meters);
- (c) regulation 6 (heat cost allocators and hot water meters);
- (d) regulation 7 (replacement of meters, new buildings and major renovations);
- (e) regulation 8 (on-going obligations); or
- (f) regulation 9 (billing).

(2) No person may be prosecuted for an offence under paragraph (1) in respect of any failure to comply which occurred before 30th April 2015.

(3) It is an offence to obstruct an authorised person acting in the pursuance of their powers or duties under these Regulations.

(4) In this regulation, "powers or duties" include powers or duties exercisable by virtue of a warrant under paragraph 3(1) of Schedule 3.

#### **Bodies corporate in Scotland**

**12.** (1) Where in relation to a Scottish network—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association; and

- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant individual; or
  - (ii) an individual purporting to act in the capacity of a relevant individual,the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.
- (2) In paragraph (1), “relevant individual” means—
  - (a) in relation to a body corporate—
    - (i) a director, manager, secretary or other similar officer of the body;
    - (ii) where the affairs of the body are managed by its members, a member;
  - (b) in relation to a Scottish partnership, a partner;
  - (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

### **Penalties**

- 13.** (1) Any person found guilty of an offence under regulation 11(1)(a), (e) or (f) or (3) shall be liable on summary conviction to a fine not exceeding the statutory maximum, or in Scotland a fine not exceeding level 5 on the standard scale.
- (2) Any person found guilty of an offence under regulation 11(1)(b) to (d) shall be liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment to a fine.

### **Time limit for prosecution of offences**

- 14.** (1) An offence under these Regulations may be tried by summary proceedings if—
  - (a) in England and Wales, the information is laid;
  - (b) in Northern Ireland, the complaint is made; or
  - (c) in Scotland, the proceedings are begun,before the end of the period of 12 months beginning on the day after the date on which evidence which the authorised person, or in Scotland the Procurator Fiscal, thinks is sufficient to justify the proceedings comes to that authorised person’s or Procurator Fiscal’s knowledge.
- (2) For the purposes of paragraph (1)—
  - (a) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to the authorised person’s or Procurator Fiscal’s knowledge is to be conclusive evidence of that fact; and
  - (b) a certificate stating that matter and purporting to be so signed is to be treated as so signed unless the contrary is proved.

## **PART 4**

### **Review**

#### **Review**

- 15.** (1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
  - (b) set out the conclusions of the review in a report; and
  - (c) publish the report.
- (2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive is implemented in other Member States.
- (3) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
  - (b) assess the extent to which those objectives are achieved; and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

20th November 2014

*Amber Rudd*  
Parliamentary Under Secretary of State  
Department of Energy and Climate Change



## SCHEDULE 1

Regulations 4(6) and 6(4)

### Determination of cost effectiveness and technical feasibility

1. (1) Where sub-paragraph (2) applies it will be considered cost effective for the purposes of regulations 4(6) and 6(4) for the heat supplier to install meters in a building in accordance with regulations 4(3) to (4) and 6(2).

(2) This sub-paragraph applies where the net present value of projected energy savings to all the final customers in the building supplied with heating cooling or hot water by the heat supplier, over the 10 year period subsequent to installation, is greater than the net present value of the estimated reasonable costs of installing the meters in that building.

2. The matters to be taken into account in estimating the costs of installation are the capital, installation, operation and maintenance costs of the meters, taking into account—

- (a) the building type, age and number of individual private dwellings or non-domestic premises in the building;
- (b) the number of storeys in the building;
- (c) the geographical location of the building;
- (d) in the case of a building not containing private dwellings, the type of use of the building;
- (e) whether the costs could be reduced if another building supplied from the same district heat network is also to have meters installed in accordance with these regulations;
- (f) any costs of access to private dwelling or non-domestic premises including legal costs;
- (g) any costs of access to or isolation of pipework;
- (h) any costs of repair to decoration or building fabric as a consequence of the installation;
- (i) any costs of installation of temperature control devices;
- (j) the cost of equipment and software to collect data from the meters to be used for billing;
- (k) the cost of issuing bills and billing information; and
- (l) the cost of re-calibrating the meters periodically to ensure accuracy of performance.

3. The projected energy savings over the 10 year period subsequent to installation for the purpose of paragraph 1 is—

- (a) 20% of the benchmark heat demand rate in the case of a building consisting mainly of private dwellings, except for the one year period subsequent to installation when the projected value to be applied is 10% of the benchmark heat demand rate; and
- (b) 10% of the benchmark heat demand rate in the case of any other building except for the one year period subsequent to installation where the projected value to be applied is 5% of the benchmark heat demand rate.

4. It will be considered technically feasible to install meters in a building consisting mainly of private dwellings unless—

- (a) there is more than one entry point for the pipes of the district heat network or communal heating into each private dwelling within that building or the entry point for the pipes is unknown; or
- (b) the heat distributed from the district heat network or communal heating is by means of water with a temperature above 90 degrees Celsius.

5. It will be considered technically feasible to install meters in a building not consisting mainly of private dwellings unless—

- (a) the heat distributed in the building from the district heat network or communal heating is by means of a system other than hot water;
- (b) there is more than one entry point for the pipes of the district heat network heating or communal heating into each private dwelling or non-domestic premises in a building or the entry point of the pipes is unknown; or
- (c) the district heat network or communal heating supplies cooling and the cooling distribution system uses a transfer fluid other than water.

**6.** (1) Where sub-paragraph (2) applies it will be considered cost effective for the purpose of regulation 6(4) to install heat cost allocators and thermostatic radiator valves in accordance with regulation 6(2).

(2) This paragraph applies where the net present value of the projected energy savings to the final customers in the building over the 10 year period subsequent to installation is greater than the net present value of the estimated reasonable costs of installing a heat cost allocator and thermostatic radiator valve for every radiator in that building.

**7.** The matters to be taken into account in estimating the costs of installation of heat cost allocators and thermostatic radiator valves are the capital, installation, operation and maintenance costs of the heat cost allocators and thermostatic radiator valves taking into account—

- (a) any cost of access to private dwelling or non-domestic premises including legal costs;
- (b) the cost of equipment and software to collect data from the heat cost allocators to be used for billing;
- (c) the cost of re-calibrating the heat cost allocators periodically to ensure accuracy of performance; and
- (d) the cost of issuing bills and billing information.

**8.** The projected energy savings over the 10 year period subsequent to installation for the purpose of paragraph 6 is—

- (a) 20% of the benchmark heat demand rate in the case of a building consisting mainly of private dwellings, except for the one year period subsequent to installation when the projected value to be applied is 10% of the benchmark heat demand rate; and
- (b) 10% of the benchmark heat demand rate in the case of any other building except for the one year period subsequent to installation when the projected value to be applied is 5% of the benchmark heat demand rate.

**9.** For the purpose of this Schedule, the one year period and 10 year period subsequent to installation begin the day after completion of the installation of—

- (a) all the meters in a building, or
- (b) all the heat cost allocators, thermostatic radiator valves and hot water meters in a building.

**10.** In this Schedule “benchmark heat demand rate” means the benchmark heat demand rate for the type of building in question set out in the Department of Energy and Climate Change paper titled “Assessing the cost effectiveness of individual metering: Energy Demand Benchmarks” and dated 14th November 2014<sup>(3)</sup>.

**11.** A real discount rate of 9% is to be applied to calculate net present value under this Schedule.

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(3) Published on the DECC website at [www.gov.uk/government/consultations/implementing-the-energy-efficiency-directive-metering-and-billing-of-heating-and-cooling](http://www.gov.uk/government/consultations/implementing-the-energy-efficiency-directive-metering-and-billing-of-heating-and-cooling).

## SCHEDULE 2

Regulations 2, 9(1) and (3)

### Minimum requirements for billing and billing information

1. At least once a year a bill must be issued to the final customer on the basis of actual rather than estimated consumption provided that—
  - (a) the final customer has provided a meter reading, or
  - (b) the heat supplier has taken a meter reading.
2. Where the final customer has opted to receive electronic billing or where the final customer so requests, billing information must be issued by the heat supplier at least quarterly.
3. Where billing information is not issued by the heat supplier at least quarterly in accordance with paragraph (2), billing information must be issued by the heat supplier at least twice a year and with every bill issued.
4. Billing information means the following information—
  - (a) current energy prices charged to the final customer by the heat supplier;
  - (b) information about the final customer's energy consumption from the heat supplier;
  - (c) where available, comparisons of the final customer's current energy consumption from the heat supplier with consumption for the same period in the previous year, if possible displayed in a graph; and
  - (d) contact information, including website addresses, for organisations from which information may be obtained on available energy efficiency improvement measures and technical specifications for products which use energy.
5. The information specified in sub-paragraph 4(d) must also be supplied to the final customer by the heat supplier when—
  - (a) a contract for the supply of heating, cooling or hot water is sent to the final customer by the heat supplier, or
  - (b) any changes to such a contract are sent to the final customer by the heat supplier.
6. It will be considered technically possible and economically justified to issue bills and billing information to final customers in accordance with regulation 9(1) where the estimated reasonable costs of issuing them does not exceed £70 per final customer per calendar year.
7. The matters to be taken into account in estimating the cost of issuing bills and billing information are the costs of—
  - (a) collecting, storing and processing meter readings;
  - (b) preparation and issuing of the bill and billing information;
  - (c) processing of payments; and
  - (d) issuing of demands for payment if a bill is not paid.

## SCHEDULE 3

Regulation 10(3)

### Powers of entry and warrants

#### **Power to enter premises**

1. (1) An authorised person may, with the consent of the occupier, enter premises, except any premises used wholly or mainly as a private dwelling, at any reasonable hour for the purpose of enforcing these Regulations.

(2) An authorised person must, if requested to do so, produce a duly authenticated authorisation document.

(3) An authorised person may—

- (a) be accompanied by such other persons as the authorised person considers necessary, and
- (b) bring on to the premises such equipment as the authorised person considers necessary.

#### **Power to inspect, seize and detain products etc.**

2. (1) An authorised person may—

- (a) in order to ascertain if there has been a breach of these Regulations, inspect any meter, heat cost allocator, record, document or information;
- (b) in order to ascertain if there has been a breach of these Regulations require any person carrying on as or employed by a heat supplier to produce any meter, heat cost allocator, record, document or information and take copies of—
  - (i) any document or record; or
  - (ii) any entry in any document or record;
- (c) in order to ascertain by testing or otherwise if there has been a breach of these Regulations and reasonably suspecting such breach, seize and detain any meter, heat cost allocator, record, document or information;
- (d) seize and detain any meter, heat cost allocator, record, document or information which may be required as evidence in any proceedings under these Regulations.

(2) An authorised person may require information stored electronically to be made available in printed form.

(3) An authorised person entering any premises whether under a power of entry under paragraph 1 or under a warrant under paragraph 3 must, if the occupier is present, give to the occupier or, if the occupier is absent, leave in a prominent place a notice—

- (a) summarising the authorised person's powers of seizure and detention of meters, heat cost allocators, records, documents and information;
- (b) disclosing at which office of the authorised person and within which hours a copy of these Regulations is available to be consulted.

(4) An authorised person entering any premises which are unoccupied or from which the occupier is temporarily absent must leave them as effectively secured against unauthorised entry as they were before entry.

(5) An authorised person exercising any power of seizure and detention must—

- (a) give to the person against whom the power has been exercised a written notice stating what has been seized and detained;

- (b) detain those things only for as long as is necessary for the authorised person to ascertain whether a breach of these Regulations has occurred and if required present the evidence at court.

### **Warrants**

3. (1) A justice of the peace may by signed warrant permit an authorised person or any other person to enter any premises in the exercise of the powers and duties under these Regulations, if necessary by reasonable force, if the justice in England and Wales on sworn information in writing, in Northern Ireland on a complaint on oath, or in Scotland by evidence on oath is satisfied—

- (a) that there are reasonable grounds to enter those premises for the purposes of enforcing these Regulations; and
  - (b) that any of the conditions in paragraph 4 is met.
- (2) Reference to a justice of the peace—
- (a) in Scotland includes a sheriff;
  - (b) in Northern Ireland is a reference to a lay magistrate.

### **Conditions for warrants**

4. The conditions are—
- (a) entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant has been given to the occupier;
  - (b) asking for admission to the premises, or giving such a notice, would defeat the object of the entry;
  - (c) entry is required urgently;
  - (d) the premises are unoccupied or the occupier is temporarily absent.

### **Duration of warrant**

5. A warrant under paragraph 3 is valid for one month.

## SCHEDULE 4

Regulation 10(3)

### Civil sanctions

## 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;
  - (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.

### **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
- (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.

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations implement Articles 9(1) and (3), 10 and 11 of Directive 2012/27/EU of the European Parliament and of the Council on energy efficiency (OJNo. L315, 14.11.2012, p.1), amending Directives [2009/125/EC](#) and [2010/30/EU](#) and repealing Directives [2004/8/EC](#) and [2006/32/EC](#).

Regulation 3 imposes a duty on heat suppliers, in relation to the operation of communal heating or a district heat network, to notify the Secretary of State or in relation to a Scottish network the Scottish Ministers about the operation of such heating or networks.

Regulation 4 imposes a duty on heat suppliers to ensure meters are installed in specified circumstances. Schedule 1 sets out how cost effectiveness and technical feasibility are to be determined.

Regulation 5 sets out requirements in relation to meters installed in accordance with these Regulations.

Regulation 6 imposes a duty on heat suppliers to ensure individual heat cost allocators, thermostatic radiator valves and a hot water meter are installed in specified circumstances.

Regulation 7 imposes a duty on heat suppliers to install meters when an existing meter is replaced, a new connection is made in a new building or a building undergoes a major renovation.

Regulation 8 imposes on-going requirements in relation to meters and heat cost allocators installed in accordance with these Regulations.

Regulation 9 stipulates that where meters or heat cost allocators to which these Regulations apply are installed, bills and billing information for heat, cooling or hot water provided to final customers must comply with the requirements set out in the regulation and Schedule 2.

Regulation 10 provides that the Regulations will be enforced by the Secretary of State or in relation to a Scottish network the Scottish Ministers or such person as may be authorised in writing to act on their behalf. Schedule 3 provides for powers of entry, search and seizure and the procedure for

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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obtaining a warrant. Schedule 4 provides for civil sanctions which the authorised person may impose in relation to an offence committed under regulation 11.

Regulation 11 provides for offences for failing to comply with specified duties under the Regulations. Regulation 12 makes provision for offences committed by bodies corporate and relevant individuals in Scotland. Regulation 13 sets out penalties following criminal conviction for an offence under regulation 11. Regulation 14 specifies time limits for prosecution of criminal offences.

Regulation 15 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years of them coming into force.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available at the Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW and is published with the Explanatory Memorandum alongside the instrument on [www.gov.uk/government/consultations/implementing-the-energy-efficiency-directive-metering-and-billing-of-heating-and-cooling](http://www.gov.uk/government/consultations/implementing-the-energy-efficiency-directive-metering-and-billing-of-heating-and-cooling).