

*Draft Regulations laid before Parliament under section 18(4) of the Automated and Electric Vehicles Act 2018, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2021 No.**

**ROAD TRAFFIC**

**The Electric Vehicles (Smart Charge Points) Regulations 2021**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

**CONTENTS**

**PART 1**

**Introduction**

1.	Citation, commencement and extent	2
2.	Interpretation	2
3.	Application	3
4.	Sale of charge points	4

**PART 2**

**Requirements in relation to charge points**

5.	Smart functionality	4
6.	Electricity supplier interoperability	4
7.	Loss of communications network access	5
8.	Safety	5
9.	Measuring system	5
10.	Off-peak charging	5
11.	Randomised delay	6
12.	Security	7
13.	Assurance	7
14.	Register of sales	7

**PART 3**

**General**

15.	Enforcement	7
16.	Service	8
17.	Review	8

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SCHEDULE 1 — Security	9
SCHEDULE 2 — Enforcement	12
Part 1 — Investigatory powers	12
PART 2 — Civil sanctions	15
PART 3 — Enforcement undertakings	19
PART 4 — Publication of enforcement action	20

The Secretary of State, in exercise of the powers conferred by sections 15, 16, 17 and 18 of the Automated and Electric Vehicles Act 2018 (a) (“the 2018 Act”), makes the following Regulations.

In accordance with section 18(4) of the 2018 Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State has consulted such persons as the Secretary of State considered appropriate in accordance with section 18(3) of the 2018 Act before making these Regulations.

## PART 1

### Introduction

#### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Electric Vehicles (Smart Charge Points) Regulations 2021 and come into force on [30 May 2022].

(2) These Regulations extend to England and Wales and Scotland.

#### **Interpretation**

2. In these Regulations—

“civil sanction” means a compliance notice or a civil penalty imposed pursuant to Schedule 2;

“communications network” means an electronic communications network, being a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description;

“cyber-attack” means exploitation of a relevant charge point’s smart functionality or of a communications network to cause harm or disruption;

“demand side response services” means—

(a) increasing or decreasing the rate of electricity flowing through a charge point; or

(b) changing the time at which electricity flows through the charge point

wholly or primarily for the benefit of the electricity system;

“DSR agreement” means an agreement pursuant to which the owner of a relevant charge point has agreed that the relevant charge point will provide demand side response services;

“electric vehicle” means a vehicle that is capable of being propelled by electrical power derived from a storage battery;

“enforcement authority” means the Secretary of State;

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(a) 2018 c. 18.

“owner” means—

- (a) in the case of a workplace charge point, the person to whom a relevant charge point is sold<sup>(a)</sup> and who makes the relevant charge point available for use as a workplace charge point;
- (b) in all other cases, the end-user to whom a relevant charge point is sold;

“personal data” has the meaning given in article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)<sup>(b)</sup> as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018<sup>(c)</sup>;

“relevant charge point” means a charge point to which these Regulations apply in accordance with regulation 3;

“relevant product” means a charge point or any charge point component or part;

“response DSR services” means demand side response services where the provision of such services is directly controlled by a person other than the owner, or another end-user, of the relevant charge point, and that control is effected by the person sending signals or other information to the charge point via a communications network;

“smart functionality” has the meaning given by regulation 5(2);

“statement of compliance” has the meaning given by regulation 13(2);

“workplace charge point” has the meaning given by regulation 3(3).

## Application

**3.**—(1) Subject to paragraph (2), these Regulations apply to charge points<sup>(d)</sup> which are intended to be used for charging cars, vans or both of them, other than—

- (a) non-smart cables;
- (b) public charge points;
- (c) rapid charge points.

(2) These Regulations do not apply to—

- (a) the sale of a charge point before [30 May 2022];
- (b) the sale of charge point which is to be exported outside of Great Britain and which is not intended for use within Great Britain at any time; or
- (c) the sale of a charge point by an individual acting for purposes that are wholly or primarily outside that individual’s trade, business, craft or profession.

(3) In this regulation—

- (a) “car” means a vehicle in category M<sub>1</sub> as defined in Regulation (EU) 2018/858;
- (b) “non-smart cable” means an electrical cable which is a charge point but which is not able to send and receive information;
- (c) “public charge point” means a charge point, other than a workplace charge point, which is intended for use primarily by members of the general public including charge points situated in public car parks, whether or not those car parks are available only to consumers of specific goods or services;
- (d) “rapid charge point” means a charge point that allows for a transfer of electricity to an electric vehicle with a power of not less than 50 kilowatts;

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(a) The meaning of “sell” is set out in the Automated and Electrical Vehicles Act 2018 c.18, section 15.

(b) OJ L 119 4.5.2016, p. 1

(c) 2018 c. 16. Section 3 was amended by section 25(2) of the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(d) The meaning of “charge point” is set out in the Automated and Electrical Vehicles Act 2018 c.18, section 9.

- (e) Regulation (EU) 2018/858 means Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC<sup>(a)</sup> as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018;
- (f) “van” means a vehicle in category N<sub>1</sub> as defined in Regulation (EU) 2018/858; and
- (g) “workplace charge point” means a charge point which is intended for use by persons engaged in specific occupations or by persons whilst at their place of employment (including visitors).

### **Sale of charge points**

4.—(1) Subject to paragraph (2), a person must not sell, or offer or advertise for sale, a relevant charge point unless—

- (a) the relevant charge point complies with the requirements in regulations 5 – 11 of, and paragraphs 1 – 10 of Schedule 1 to, these Regulations; and
- (b) the requirements in relation to the sale of a relevant charge point in regulations 13 and 14 of, and paragraph 11 of Schedule 1 to, these Regulations are complied with.

(2) The requirements in Schedule 1 to these Regulations do not need to be complied with in respect of a relevant charge point which is sold before [30 November 2022].

## **PART 2**

### **Requirements in relation to charge points**

#### **Smart functionality**

5.—(1) A relevant charge point must have smart functionality.

(2) A relevant charge point has smart functionality if—

- (a) it is able to send and receive information, including via a communications network;
- (b) it is able to respond to signals or other information received by it by—
  - (i) increasing or decreasing the rate of electricity flowing through the charge point;
  - (ii) changing the time at which electricity flows through the charge point;
- (c) it is capable of using the functionality referred to in sub-paragraphs (a) and (b) to provide demand side response services, including response DSR Services; and
- (d) at least one user interface, which enables the charge point to be operated in accordance with these Regulations, is incorporated in the charge point or otherwise made available to the owner.

#### **Electricity supplier interoperability**

6. A relevant charge point must not be configured so that it will cease to have smart functionality if the owner changes their electricity supplier.

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(a) OJ L 151, 14.6.2018, p. 1–218

## **Loss of communications network access**

7. A relevant charge point must be configured so that, in the event that it ceases to be connected to a communications network, it remains capable of charging an electric vehicle.

## **Safety**

8.—(1) A relevant charge point must be configured so that it will not allow a relevant person to carry out a specified operation where to do so would or may result in a risk to the safety and health of persons.

(2) In this regulation—

- (a) “relevant person” means the owner, or an end-user of the relevant charge point who is not the owner;
- (b) “specified operation” means—
  - (i) overriding, in accordance with regulation 10(3)(a), the default mode of charging during the default charging hours;
  - (ii) overriding, in accordance with regulation 10(3)(b), the provision of demand side response services;
  - (iii) overriding, in accordance with regulation 11(2)(a), the random delay referred to in regulation 11(1)(b).

## **Measuring system**

9.—(1) A relevant charge point must be configured so that on each occasion it is used, it measures or calculates—

- (a) the electricity it has imported or exported (as the case may be), such measurement or calculation to be in watt-hours or kilowatt-hours; and
- (b) the amount of time for which it is importing or exporting electricity.

(2) A relevant charge point must be configured in a way which enables the owner of the relevant charge point to view the information referred to in paragraph (1) by reference to—

- (a) any occasion on which it was used to import or export electricity within the preceding 12 months;
- (b) any month within the preceding 12 months;
- (c) the entirety of the preceding 12 month period.

(3) A relevant charge point must be configured so that it is able—

- (a) to measure or calculate, every one second, the electrical power it has imported or exported (as the case may be), such measurement or calculation to be in watts or kilowatts; and
- (b) to provide the information referred to in sub-paragraph (a) via a communications network.

(4) A relevant charge point must be configured so that—

- (a) a figure measured or calculated in accordance with paragraph (1) or (3) above is accurate to within 10% of the actual figure; and
- (b) any inaccuracies are not systematic.

## **Off-peak charging**

10.—(1) Subject to paragraph (2), a relevant charge point must be configured so that—

- (a) it incorporates pre-set default charging hours which are outside of peak hours;
- (b) when it is first used, the owner is given the opportunity to—
  - (i) accept the pre-set default charging hours;

- (ii) remove the pre-set default charging hours; or
  - (iii) set different default charging hours.
- (c) at any time after it is first used, the owner is able to—
  - (i) change or remove the default charging hours if these are in effect;
  - (ii) set default charging hours if none are in effect.
- (2) The requirements in paragraph (1) do not apply where—
  - (a) the relevant charge point is sold with a DSR agreement;
  - (b) the relevant charge point is configured to comply with the requirements of the DSR agreement; and
  - (c) details of the DSR agreement are included in the statement of compliance in accordance with the requirements of paragraph (2)(b) of regulation 13.
- (3) A relevant charge point must be configured—
  - (a) to charge a vehicle during the default charging hours (if any), save that the owner of the relevant charge point must be able to override the default mode of charging during the default charging hours; and
  - (b) so that the owner of the relevant charge point is able to override the provision of demand side response services.
- (4) In this regulation—
  - (a) “default charging hours” means a default period during which the relevant charge point charges a vehicle regardless of what time the vehicle is first connected to it;
  - (b) “peak hours” means 8am – 11am on weekdays and 4pm – 10pm on weekdays.

### **Randomised delay**

- 11.—**(1) A relevant charge point must be configured so that—
- (a) it is capable of operating, at each relevant time, with a random delay of up to 1800 seconds;
  - (b) subject to paragraph (2), at each relevant time it operates with a random delay of up to 600 seconds, determined to the nearest second;
  - (c) the maximum duration of the random delay referred to in sub-paragraph (b) above can be increased or decreased remotely via a communications network; and
  - (d) at each relevant time, the owner of the charge point is able to override the random delay referred to in sub-paragraph (b) above.
- (2) A relevant charge point must be configured so that the random delay referred to in paragraph (1)(b) above will not operate where—
- (a) the owner, or an end-user of the relevant charge point who is not the owner, has overridden it;
  - (b) an equivalent random delay has already been applied to the operation of the relevant charge point in respect of the relevant time; or
  - (c) it is providing response DSR services in respect of the relevant time.
- (3) In this regulation, “relevant time” means the point at which, but for the delay referred to in paragraph (1)(b)—
- (a) electricity would start flowing through the relevant charge point for the purpose of charging a vehicle; or
  - (b) the rate of electricity flowing through the relevant charge point would be increased or decreased.

## **Security**

12. Schedule 1 has effect.

## **Assurance**

13.—(1) When a relevant charge point is sold, it must be accompanied by a statement of compliance.

(2) A statement of compliance means a document which—

- (a) identifies the relevant charge point by reference to its model or type;
- (b) contains statements that the relevant charge point complies with these Regulations and that the seller is responsible for ensuring that the relevant charge point complies with these Regulations;
- (c) includes the name and address of the seller; and
- (d) is signed by or on behalf of the seller and dated.

(3) There must be a technical file in respect of a relevant charge point.

(4) Where a person to whom a relevant charge point is sold requests this, that person must be supplied with a copy of the technical file.

(5) In this regulation, a technical file means documentation which makes it possible to assess the relevant charge point's compliance with these Regulations and which meets the requirements set out in paragraph (6).

(6) The documentation in the technical file must—

- (a) address the design, manufacture and operation of the relevant charge point;
- (b) include a general description of the relevant charge point and a copy of the operating manual in respect of it;
- (c) include, subject to paragraph (7), written descriptions in plain English of the solutions adopted to meet the requirements of regulations 5-11 of, and paragraphs 1 – 10 of Schedule 1 to, these Regulations;
- (d) include written descriptions and explanations in plain English in respect of any diagrams or drawings used in the documentation;
- (e) include copies of any test reports that have been completed in respect of the relevant charge point and that are deemed relevant to proving compliance with these Regulations;
- (f) include details of the version of the software operating on the relevant charge point at the time of sale; and
- (g) be up-to-date at the time of sale.

(7) Where, by virtue of regulation 4(2), a relevant charge point does not comply with the requirements in paragraphs 1 – 10 of Schedule 1 to these Regulations, the written descriptions referred to in paragraph (6)(c) do not need to refer to those requirements.

## **Register of sales**

14. A person must keep a register of any relevant charge point which the person has sold within the past [five] years.

## **PART 3**

### **General**

## **Enforcement**

15.—(1) These Regulations must be enforced by the Secretary of State.

(2) Schedule 2 has effect.

## **Service**

**16.**—(1) Any document served under these Regulations must be in writing and will be validly served on a person if—

- (a) it is delivered to that person at their proper address;
- (b) it is sent to that person’s proper address by first class post, recorded delivery or prepaid registered post;
- (c) it is sent by electronic means to that person’s proper address.

(2) In the case of a body corporate, a document may be served on a director of that body.

(3) In the case of a partnership, a document may be served on a partner or a person having control or management of the partnership business.

(4) For the purposes of this regulation, “proper address” means

- (a) in the case of a body corporate or its director—
  - (i) the registered or principal office of that body; or
  - (ii) the email address of the secretary or clerk of that body;
- (b) in the case of a partnership or a partner or person having control or management of the partnership business—
  - (i) the principal office of the partnership; or
  - (ii) the email address of a partner or person having that control or management;
- (c) in any other case, a person’s last known address, which address may be an email address.

(5) In this regulation, “partnership” includes a Scottish partnership.

(6) Service shall be deemed to have been given—

- (a) in the case of notifications given under paragraph (1)(a), on the first working day after the day on which the document is delivered;
- (b) in the case of notifications given under paragraph (1)(b), on the second working day after the day on which the document is sent;
- (c) in the case of notifications given under paragraph (1)(c), on the first working day after the day on which the document is sent.

## **Review**

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

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before the end of the period of five years beginning with the date on which these Regulations come into force for any purpose.

(3) Subsequent reports must be published at intervals not exceeding five years.

Signed by authority of the Secretary of State

[Date]

*Name*  
Parliamentary Under Secretary of State  
Department for Transport

# SCHEDULE 1

Regulation 12

## Security

### General principles

1. A relevant charge point must be designed, manufactured and configured to provide appropriate protection—

- (a) against the risk of harm to, or disruption of, the electricity system;
- (b) against the risk of harm to, or disruption of, the relevant charge point;
- (c) for the personal data of the owner and any other end-user of the relevant charge point.

### Passwords

2.—(1) A relevant charge point must be configured so that where passwords are used on it—

- (a) the password is unique to that relevant charge point and not derived from, or based on, publicly-available information, or is set by the owner; and
- (b) the password cannot be reset to a default password applying to both that relevant charge point and other charge points.

### Software

3.—(1) A relevant charge point must incorporate software which is able to be securely updated.

(2) In sub-paragraph (1), securely updated means updated using adequate cryptographic measures to protect against a cyber-attack.

(3) A relevant charge point must be configured so that—

- (a) it checks, when it is first set-up by the owner, and periodically thereafter, whether there are security updates available for it;
- (b) it verifies the authenticity and integrity of each prospective software update by reference to both the data's origin and its contents and only applies the update if the authenticity and integrity of the software have been validated;
- (c) by default, it provides notifications to the owner about prospective software updates;
- (d) the owner can implement software updates without undue difficulty.

(4) A relevant charge point must be configured so that—

- (a) it verifies, via secure boot mechanisms, that its software has not been altered other than in accordance with a software update which has been validated in accordance with sub-paragraph (3)(b) above;
- (b) if an unauthorised change to the software is detected, it notifies the owner and does not connect to a communications network other than for the purposes of this notification.

### Sensitive security parameters

4.—(1) A relevant charge point must be configured so that—

- (a) where security credentials are stored on the relevant charge point, these are protected using robust security measures;
- (b) its software does not use hard-coded security credentials.

(2) In this paragraph—

- (a) "hard-coded" means data forming part of the relevant charge point's source code and which is unalterable except by means of modification of the source code;

- (b) “security credentials” means ways of verifying that the relevant charge point is being used or accessed by a person properly authorised to do so.

### **Secure communication**

5. A relevant charge point must be configured so that communications sent from it are encrypted.

### **Data inputs**

- 6.—(1) A relevant charge point must be configured so that—
- (a) data inputs are verified so that the type and format of the data is consistent with that expected for the function to which the data relates;
  - (b) if such data cannot be verified, it is discarded or ignored by the relevant charge point in a safe manner.
- (2) The data inputs referred to in sub-paragraph (1) include data that is inputted via a user interface, an application programming interface or a communications network.

### **Ease of use**

- 7.—(1) A relevant charge point must be configured so as to minimise the inputs required from the owner in connection with the set-up and operation of the charge point.
- (2) A relevant charge point must be configured so that any personal data can be deleted from it by the owner without undue difficulty.

### **Protection against attack**

- 8.—(1) A relevant charge point must be designed and manufactured to provide an adequate level of protection against physical damage to the charge point.
- (2) In particular, a relevant charge point must incorporate a tamper-protection boundary to protect the internal components of the charge point.
- (3) A relevant charge point must be designed and manufactured to provide an adequate level of protection—
- (a) for its user interfaces; and
  - (b) against use or attempted use of the relevant charge point other than through the user interfaces.
9. A relevant charge point must be configured so that—
- (a) if there is an attempt (whether or not successful) to breach the tamper-protection boundary, it notifies the owner;
  - (b) its software runs with only the minimum level of access privileges required for it to deliver its functionality;
  - (c) any logical or network interfaces that are not required for the normal operation of the relevant charge point, or otherwise to comply with the requirements in these Regulations, are disabled;
  - (d) software services are not available to the owner unless necessary for the relevant charge point to operate;
  - (e) any hardware interfaces that are used for the purposes of testing or development, but not otherwise during the operation of the relevant charge point, are not exposed.

### **Security log**

- 10.—(1) A relevant charge point must incorporate a security log.

(2) In this paragraph, “security log” means an electronic record on the relevant charge point of events relevant to the security of the relevant charge point including attempts (whether or not successful) to—

- (a) breach the tamper-protection boundary;
- (b) tamper with the relevant charge point; or
- (c) gain unauthorised access to the relevant charge point.

(3) Entries in the security log must record, by reference to Coordinated Universal Time, the time and date on which the event occurred.

### **Provision of information**

**11.**—(1) The information specified by sub-paragraphs (2) – (4) must be supplied with a relevant charge point when it is sold.

(2) The information must specify how the owner can report concerns or problems identified regarding the security of the relevant charge point, including regarding its vulnerability to a cyber-attack. In particular, the information must provide contact details to which such concerns or problems can be reported.

(3) The information must specify the period, if any, for which software updates will be provided by or on behalf of the relevant charge point manufacturer.

(4) The information must—

- (a) provide guidance on how to set up the relevant charge point with adequate security protection;
- (b) include instructions on how to delete personal data from the relevant charge point.

## SCHEDULE 2

Regulation 15

### Enforcement

#### Part 1

##### Investigatory powers

###### **Information notice**

**1.**—(1) The enforcement authority may serve a notice (an “information notice”) on a person requesting such information or documents as the enforcement authority considers necessary to enable it to monitor that person’s, or another person’s, compliance with these Regulations.

(2) An information notice must—

- (a) be in writing,
- (b) set out the information or documents required,
- (c) specify the date by which the information or documents must be provided,
- (d) specify the person, and the address, to which the information or documents must be provided.

(3) A person served with an information notice must comply with its requirements by the date referred to in paragraph (2)(c).

###### **Enforcement of information notice**

**2.**—(1) If a person fails to comply with a notice served under paragraph 1, the enforcement authority may make an application under this paragraph to the court.

(2) If it appears to the court that the person has failed to comply with the notice, it may make an order under this paragraph.

(3) An order under this paragraph is an order requiring the person to do anything that the court thinks it is reasonable for the person to do, for any of the purposes for which the notice was given, to ensure that the notice is complied with.

(4) An order under this paragraph may require the person to meet the costs or expenses of the application.

(5) If the person is a company, partnership or unincorporated association, the court in acting under sub-paragraph (4) may require an official who is responsible for the failure to meet the costs or expenses.

(6) In this paragraph—

(a) “official” means—

- (i) in the case of a company, a director, manager, secretary or other similar officer;
- (ii) in the case of a limited liability partnership, a member;
- (iii) in the case of a partnership other than a limited liability partnership, a partner; and
- (iv) in the case of an unincorporated association, a person who is concerned in the management or control of its affairs.

(b) “the court” means—

- (i) in relation to England and Wales, the High Court or the county court;
- (ii) in relation to Scotland, the Court of Session or the sheriff.

### **Power of entry without warrant**

3.—(1) The enforcement authority may enter premises (other than premises used wholly or mainly as a private dwelling) or land, at reasonable hours for the purposes of ascertaining whether there has been a breach of these Regulations.

(2) Before the enforcement authority exercises the power of entry in sub-paragraph (1) the enforcement authority must serve on the occupier of the premises or land a notice (an “inspection notice”).

(3) An inspection notice must—

- (a) be in writing,
- (b) be served on the occupier of the premises or land at least two working days before the proposed date of entry;
- (c) specify the proposed date of entry;
- (d) set out the reason for which entry is required;
- (e) summarise the enforcement authority’s powers of seizure and detention of any relevant products or records or other information under paragraph 5; and
- (f) explain that compensation may be payable for damage caused in seizing and removing any relevant products or records or other information and must give the address to which an application for compensation should be directed.

(4) The requirement in sub-paragraph (2) does not apply where—

- (a) the enforcement authority reasonably suspects a breach of these Regulations; or
- (b) reasonably considers that to give notice in accordance with sub-paragraph (2) would defeat the purpose of the entry.

(5) If the enforcement authority enters premises in the circumstances referred to in sub-paragraph (4) and finds one or more occupiers on the premises, the enforcement authority must provide to the occupier, or (if there is more than one) to at least one of them, a document that—

- (a) is in writing;
- (b) meets the requirements of sub-paragraphs (3)(d) – (3)(f); and
- (c) where applicable, indicates the nature of the alleged breach of these Regulations.

(6) The enforcement authority must produce suitable identification to the occupier of the premises or land, or (if there is more than one) to at least one of them, when requested to do so by them.

(7) The enforcement authority, when entering any premises by virtue of this paragraph, may be accompanied by such persons and take such equipment as appear to the enforcement authority to be necessary.

### **Power of entry with warrant**

4.—(1) If a justice is satisfied by any written information on oath—

(a) that there are reasonable grounds for believing either—

- (i) that any relevant products or records or other information, which the enforcement authority has power under paragraph 5 to inspect, copy, seize or require to be produced, is or are on any premises and that the inspection, copying, seizure or production of that item is likely to disclose evidence of a breach of regulation 4; or
- (ii) that there has been, or is about to be, a breach of regulation 4; and

(b) either—

- (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this paragraph has been given to the occupier; or

- (ii) that an application for admission or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await the occupier's return,

the justice may by warrant under the justice's hand, which continues in force for a period of one month, authorise the enforcement authority to enter the premises, if need be by force.

(2) On entering any premises by authority of a warrant under sub-paragraph (1), the enforcement authority must give to the occupier or (if there is more than one) to at least one of them, or, if the occupier is temporarily absent, leave in a prominent place on the premises, or an appropriate part of the premises, a notice in writing—

- (a) summarising the enforcement authority's powers of seizure and detention of any relevant products or records or other information under paragraph 5;
- (b) explaining that compensation may be payable for damage caused in entering premises and seizing and removing any relevant products or records or other information and giving the address to which an application for compensation should be directed.

(3) The enforcement authority, when entering any premises by virtue of this paragraph, may be accompanied by such persons and take such equipment as appear to the enforcement authority to be necessary.

(4) The enforcement authority, when leaving any premises which the enforcement authority entered by virtue of a warrant, must, if the premises are unoccupied or the occupier is temporarily absent, leave them in as secure a state as that in which they were found.

(5) In this paragraph, "justice" means—

- (a) in England and Wales, a justice of the peace; and
- (b) in Scotland, a sheriff or summary sheriff.

### **Powers of inspection etc**

**5.**—(1) The enforcement authority exercising the power of entry under paragraph 3 or paragraph 4 may—

- (a) inspect the premises and land;
- (b) require any occupier of the premises or land, to produce relevant products or records or any other information, in whatever form it is held, together with an explanation of such records or information within such period as the enforcement authority considers reasonable;
- (c) inspect any relevant products or records or any other information, in whatever form it is held;
- (d) if the enforcement authority has reasonable grounds for believing that there has been a breach of these Regulations, seize and detain relevant products or records or any other information, in whatever form it is held, for the purposes of ascertaining whether there has been such a breach;
- (e) take photographs, copies or measurements;
- (f) require any person on the premises to provide such other assistance as the enforcement authority reasonably considers necessary.

(2) The enforcement authority must—

- (a) provide the occupier of the premises or land with a written record of any items which are seized and removed; and
- (b) retain seized items for no longer than absolutely necessary.

(3) Any object or document which is inspected or seized should, so far as possible, be retained in its original condition.

6. The enforcement authority may, for the purposes of ascertaining compliance with these regulations—

- (a) make a purchase of a charge point;
- (b) enter into an agreement to secure the provision of a charge point;
- (c) require a person to provide access to embedded software in a charge point insofar as the enforcement authority considers that such access is necessary for the purpose of assessing such compliance.

#### **Compensation for seizure and detention**

7.—(1) Where the enforcement authority exercises any power under paragraph 5(1)(d) to seize and detain any relevant products or records or other information, the enforcement authority is liable to pay compensation to any person having an interest in the item seized and detained in respect of any loss or damage caused by the exercise of the power if—

- (a) there has been no breach of any provision of these Regulations; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(2) Any disputed question as to the right to, or the amount of, any compensation payable under this paragraph must be determined by arbitration—

- (a) in England and Wales, in accordance with the Arbitration Act 1996(a);
- (b) in Scotland, in accordance with the Arbitration (Scotland) Act 2010(b).

#### **Obstruction of the enforcement authority and false statements**

8.—(1) A person must not—

- (a) intentionally obstruct the enforcement authority when acting in pursuance of any provision of these Regulations;
- (b) intentionally fail to comply with any requirement properly made by the enforcement authority under any provision of these Regulations; or
- (c) without reasonable cause, fail to give the enforcement authority any other assistance or information which the enforcement authority may reasonably require of that person for the purposes of the exercise of the enforcement authority's functions under any provision of these Regulations.

(2) A person must not, in giving any information which is required of that person by virtue of paragraph (1)(c)—

- (a) make any statement which the person knows is false in a material particular; or
- (b) recklessly make a statement which is false in a material particular.

## **PART 2**

### **Civil sanctions**

#### **Compliance notice**

9.—(1) Where the enforcement authority considers that a person has breached regulation 4, the enforcement authority may serve a compliance notice on the person considered to be in breach requiring the person to take such steps as the enforcement authority considers appropriate in relation to the breach.

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(a) 1996 c. 23.  
(b) 2010 asp 1.

(2) Without limiting the generality of sub-paragraph (1) above, the requirements that may be imposed in a compliance notice include those referred to in sub-paragraphs (3) and (4).

(3) Where the enforcement authority considers that a person has sold one or more relevant charge points which do not comply with the requirements of these Regulations, a compliance notice may include a requirement to take such steps as the enforcement authority may specify to secure that such relevant charge points are recalled from end-users.

(4) Where the enforcement authority considers that a person is offering or advertising for sale one or more relevant charge points which do not comply with the requirements of these Regulations, a compliance notice may include a requirement to secure that such relevant charge points are withdrawn from the market.

### **Civil penalties**

**10.**—(1) Where a person does not comply with a compliance notice served under paragraph 9, the enforcement authority may require that person to pay a civil penalty.

(2) Where the enforcement authority considers that there has been a breach of—

- (a) regulation 4; or
- (b) paragraph 8 of this Schedule 2,

the enforcement authority may require the person in breach to pay a civil penalty.

(3) The enforcement authority may not require a person to pay a civil penalty pursuant to sub-paragraph (1) or (2) if the authority is satisfied on the balance of probabilities that there was a reasonable excuse for the non-compliance or the breach.

(4) The enforcement authority may require a person to pay a civil penalty pursuant to paragraph (2)(a) without first serving a compliance notice under paragraph 9 if it considers it appropriate to do so.

**11.**—(1) The maximum amount of a civil penalty is—

- (a) £10,000 for each relevant charge point in respect of which there has been a breach of Regulation 4;
- (b) £250,000 for a breach of paragraph 8 of this Schedule 2.

(2) Before requiring a person to pay a civil penalty pursuant to paragraph 10, the enforcement authority may require the person to provide such information as is reasonable in connection with determining the appropriate amount of the civil penalty within such period as is reasonable.

(3) The civil penalty is payable into the Consolidated Fund.

### **Notice of intent**

**12.**—(1) Subject to sub-paragraph (3), where the enforcement authority proposes to impose a civil sanction on a person, 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 civil sanction;
- (b) the requirements of the notice and, in the case of a civil penalty, the amount to be paid; and
- (c) information as to the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received.

(3) The requirement to serve a notice of intent does not apply where—

- (a) the proposed civil sanction is a compliance notice; and
- (b) the enforcement authority reasonably considers that, in consequence of one or both of the matters referred to in sub-paragraph (4), it is appropriate to serve a final notice pursuant to paragraph 14(5) without first serving a notice of intent.

- (4) The matters referred to in paragraph (3) are—
  - (a) a risk of harm to, or disruption of, the electricity system;
  - (b) a risk to public health or safety.

**13.** 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 enforcement authority in relation to the proposed imposition of a civil sanction.

#### **Final notice**

**14.—**(1) The provisions of sub-paragraphs (2) – (4) apply where a notice of intent has been served pursuant to paragraph 12.

(2) After the end of the period for making representations and objections, the enforcement authority must decide whether to impose the requirements in the notice of intent, with or without modifications.

(3) Where the enforcement authority decides to impose a requirement, it must serve a notice on the person (the “final notice”).

(4) The final notice must—

- (a) be in writing;
- (b) be dated;
- (c) include information as to whether the requirements in the notice of intent are being imposed with or without modifications;
- (d) if the requirements in the notice of intent are being imposed with modifications, include the grounds for this;
- (e) comply with paragraph 15 or 16.

(5) Where, pursuant to paragraph 12(3), the enforcement authority decides to impose a civil sanction on a person without serving a notice of intent on that person, it must serve a final notice which—

- (a) is in writing;
- (b) is dated;
- (c) complies with paragraph 15 or 16.

**15.—**(1) A final notice relating to a compliance notice must include information as to—

- (a) the grounds for imposing the notice;
- (b) the steps required to be taken in relation to the breach;
- (c) the date by which the steps must be taken, which must be not less than 28 days from the date of the final notice;
- (d) rights of appeal; and
- (e) the consequences of failing to comply with the notice.

**16.—**(1) A final notice relating to a civil penalty must include information as to—

- (a) the grounds for imposing the penalty;
- (b) the amount to be paid;
- (c) how payment may be made;
- (d) the period within which payment must be made which must be not less than 28 days from the date of the final notice;
- (e) rights of appeal; and
- (f) the consequences of failing to comply with the notice.

## **Appeals**

- 17.**—(1) The person receiving the final notice 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) in the case of a civil penalty, that the amount of the civil penalty is unreasonable;
  - (d) in the case of a non-monetary requirement, that the nature of the requirement is unreasonable;
  - (e) that the decision was unreasonable for any other reason;
  - (f) that the decision was wrong for any other reason.
- 18.**—(1) Any appeal under paragraph 17 must be made to the First-tier Tribunal.
- (2) An appeal must be brought within 28 days of the date on which the final notice is received.
- (3) Any compliance notices are suspended pending the appeal.
- (4) The Tribunal may, in relation to the imposition of a compliance notice—
- (a) withdraw the compliance notice;
  - (b) confirm the compliance notice;
  - (c) vary the compliance notice;
  - (d) take such steps as the enforcement authority could take in relation to the act or omission giving rise to the compliance notice;
  - (e) remit the decision whether to confirm the compliance notice, or any matter relating to that decision, to the enforcement authority.
- (5) The Tribunal may, in relation to the imposition of a civil penalty—
- (a) allow the appeal and cancel the civil penalty;
  - (b) allow the appeal and reduce the civil penalty; or
  - (c) dismiss the appeal.
- (6) An appeal—
- (a) is to be a re-hearing of the enforcement authority’s decision to impose a civil sanction; and
  - (b) may be determined having regard to matters of which the enforcement authority was unaware.
- (7) Paragraph (6)(a) has effect despite any provision of rules of court.

## **Enforcement of penalty decision**

- 19.**—(1) This paragraph applies where a sum is payable to the enforcement authority as a civil penalty pursuant to these Regulations.
- (2) In England and Wales, the civil penalty is recoverable as if it were payable under an order of the county court in England and Wales.
- (3) In Scotland, the civil penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant of execution issued by the sheriff court of any sheriffdom in Scotland.
- (4) Where action is taken under this paragraph for the recovery of a sum payable as a civil penalty pursuant to these Regulations, the civil penalty is, in relation to England and Wales, to be

treated for the purposes of section 98 of the Courts Act 2003<sup>(a)</sup> (register of judgments and orders etc.) as if it were a judgement entered in the county court.

## PART 3

### Enforcement undertakings

#### Enforcement undertakings

**20.** The enforcement authority may accept a written undertaking (an “enforcement undertaking”) given by a person to the enforcement authority to take such action as may be specified in the undertaking within such period as may be specified where the enforcement authority has reasonable grounds to suspect that the person has breached regulation 4.

#### Contents of an enforcement undertaking

**21.—**(1) An enforcement undertaking must specify—

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

(2) An enforcement undertaking must specify the period within which the action must be completed.

(3) An enforcement undertaking must include—

- (a) a statement that the undertaking is made in accordance with this Schedule 2;
- (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.

#### Acceptance of an enforcement undertaking

**22.** If the enforcement authority has accepted an enforcement undertaking then, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it, the enforcement authority may not impose on that person a civil sanction in respect of the act or omission to which the undertaking relates.

#### Discharge of an enforcement undertaking

**23.—**(1) If the enforcement authority is satisfied that an enforcement undertaking has been complied with it must issue a certificate to that effect.

(2) The enforcement authority 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.

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(a) 2003 c. 39; section 98 has been amended by sections 48(1) and 106(2) of, and paragraph 55(1), (2), (3)(a) and (b) of Schedule 8 and paragraph 15 of Schedule 16 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15) and section 17(5) of, and paragraph 40(a) and (c) of Part 2 of Schedule 9 to, the Crime and Courts Act 2013 (c. 22). Further amendments made by the Tribunals, Courts and Enforcement Act 2007 have yet to be brought into force.

(4) The enforcement authority 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.

### **Appeals**

**24.**—(1) A person to whom a notice is given pursuant to paragraph 23(4) 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.

(2) An appeal under sub-paragraph (1) must be made to the First-tier Tribunal.

(3) An appeal must be brought within two months of the date on which written notice of the decision is received.

(4) The Tribunal may, in relation to the decision referred to in sub-paragraph (1)—

- (a) confirm the decision;
- (b) vary the decision; or
- (c) remit the decision, or any matter relating to it, to the enforcement authority.

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

**25.**—(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 enforcement authority may by notice in writing revoke a certificate issued under paragraph 23 if it was issued on the basis of inaccurate, incomplete or misleading information.

### **Non-compliance with an enforcement undertaking**

**26.**—(1) If a person does not comply with an enforcement undertaking the enforcement authority may in the case of a breach of regulation 4 impose a civil sanction.

(2) If a person has complied partly but not fully with an enforcement undertaking, that partial compliance must be taken into account in connection with the imposition of a civil sanction on the person.

## **PART 4**

### **Publication of enforcement action**

**27.**—(1) The enforcement authority 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 enforcement authority considers that publication would be inappropriate.

## **EXPLANATORY NOTE**

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

These Regulations are made using powers in the Automated and Electric Vehicles Act 2018. They prohibit certain types of electric vehicle charge point from being sold or offered for sale unless certain requirements set out in the Regulations are complied with.

Regulation 3 sets out which charge points the Regulations apply to. They apply to most charge points which are sold after [30 May 2022], although not to certain public charge points or to rapid charge points (charge points with a power of at least 50 kilowatts). The charge points which the regulations apply to are called relevant charge points.

Regulations 5 – 12, and Schedule 1, set out certain requirements that relevant charge points must meet.

Regulation 5 requires relevant charge points to have smart functionality. This includes a requirement that the charge point is capable of communicating via an electronic communications network.

Regulation 6 requires that a relevant charge point must not be designed so that it loses its smart functionality if the owner changes their electricity supplier.

Regulation 7 requires that a relevant charge point must remain capable of charging a vehicle even if it is not connected to an electronic communications network.

Regulation 8 requires that a relevant charge point must not follow certain user inputs where this would create a safety risk.

Regulation 9 requires that a relevant charge point measures or calculates certain information about its electricity usage and requires that this information is viewable by the relevant charge point owner. It also requires that the relevant charge point is able to measure or calculate certain information about the rate of its electricity usage and to provide this information via an electronic communications network.

Regulation 10 requires that a relevant charge point incorporate default charging hours and that in most circumstances the charge point will only charge a vehicle during those hours.

Regulation 11 requires that, in most circumstances, a relevant charge point operates with a random delay of up to 10 minutes when it first starts charging. It also requires that a relevant charge point is capable of operating with a random delay of up to 30 minutes.

Regulation 12 refers to Schedule 1 which contains various security-related requirements. Relevant charge points which are sold before [30 November 2022] are not required to comply with these requirements.

Regulations 13 and 14 set out other requirements that must be met when a charge point is sold.

Regulation 13 requires that a relevant charge point is sold with a statement of compliance confirming that the charge point complies with the regulations. It also requires there to be a technical file, available to the buyer on request, which provides certain information about the design, manufacture and operation of the charge point.

Regulation 14 requires a seller to keep a register of the relevant charge points they have sold within the past [five] years.

Regulation 15 provides for the Secretary of State to enforce the Regulations. For these purposes, the Secretary of State is referred to in the Regulations as the enforcement authority.

Regulation 15 also refers to Schedule 2 which makes further provision about enforcement. Part 1 of Schedule 2 provides the enforcement authority with various investigatory powers. These includes powers to require the provision of information, powers of entry and powers to inspect certain items and information. Part 2 of Schedule 2 specifies the civil sanctions that can be

imposed if a person sells a relevant charge point in breach of the Regulations. These consist of compliance notices requiring the person who has breached the Regulations to take certain steps and civil penalties. A civil penalty can also be imposed in certain circumstances if a person obstructs the enforcement authority when it is carrying out its duties. Part 3 of Schedule 2 allows the enforcement authority to accept undertakings from a person it believes has breached the regulations. Part 4 of Schedule 2 requires the enforcement authority to publish information about action it has taken.

Regulation 17 provides for the Secretary of State to undertake a review of the regulatory provisions contained in these Regulations on a five-yearly basis.

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 from the Department for Transport, 33 Horseferry Road, London, SW1P 4DR and is published with an Explanatory Memorandum alongside this instrument on <https://www.legislation.gov.uk/>.