



GUIDELINES FOR THE ELECTRICITY SECTOR ON THE ASSESSMENT OF FINES FOR BREACHES

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Part 1: Introduction

In exercise of the powers and duties conferred upon it by Section 38 (3) of the Electricity Act, 2015, (the EA) URCA hereby issues the following Guidelines. These Guidelines may be cited as the “Guidelines for The Electricity Sector on The Assessment for Fines for Breaches” (“the Guidelines”).

Part 2: Purpose

The purpose of the Guidelines is to establish a fair, transparent, and non-discriminatory approach for URCA to apply when imposing fines for the contravention of the EA, regulatory or other measures issued by URCA or a licence condition.

Part 3: Definitions

In these Guidelines, unless the context requires otherwise, the following shall have the meanings ascribed below.

Aggravating Factors: means any conduct, relevant fact or information that increases the seriousness or severity of a breach.

Avoided Costs: means costs that would ordinarily be incurred during the course of doing business but have not been incurred due to the breach in question.

Basic Amount: means the sum of gain to the Licensee and detriment to the consumer.

Maximum Penalty: means ten percent (10%) of the Licensee’s relevant turnover as prescribed by section 72(1) of the EA.

Mitigating Factors: means any circumstance that lessens the seriousness or severity of the breach.

Relevant Turnover: means gross annual turnover attributable to the provision of a generation, transmission, distribution or supply service, or use of any generation,

transmission, distribution or supply system, under the licence or exemption determination¹.

Total Penalty: means the total amount calculated for the Licensee to pay as the penalty for a breach. The Total Penalty enforced must be less than or equal to the maximum penalty determined by this framework.

Part 4: Application

These Guidelines shall apply to all classes of licences issued by URCA pursuant to the EA.

Part 5: Publishing obligation

These Guidelines shall come into effect upon publication in accordance with section 43 of the EA.

Part 6: Method for determining financial penalty

The following sets out the general five-step methodology for the setting of a financial penalty:

Step1 - Calculate the Maximum penalty,

Step 2 - Determine the basic amount of the fine,

Step 3 - Calculation of penal element,

Step 4 - Adjustments for aggravating and/or mitigating circumstances, and

Step 5 - Apply settlement adjustment.

STEP 1 - Maximum Penalty

The maximum financial penalty that can be imposed on a licensee is prescribed by Section 72(1) of the EA which states that such a penalty cannot exceed ten per cent of that licensee's relevant turnover. Therefore, URCA will at the onset of a financial penalty setting exercise establish the

¹ Section 2 of the EA

parameters for the maximum penalty allowable. After establishing the maximum financial penalty, URCA will then systematically traverse the other 4 steps outlined in order to calculate the reasonable financial penalty for a breach.

STEP 2 - Basic amount of fine

URCA will consider the harm experienced by consumers through loss, damage, inconvenience, or any other reasonable impact resulting from the breach.

URCA will also consider any gain to a Licensee as a result of a breach where it is reasonable and practicable to assess. Gain may be determined by increased profits, avoided costs or some other undue advantage to the Licensee.

In circumstances, where URCA is unable to empirically determine the level of consumer harm or Licensee gain for the purpose of establishing the basic amount; the basic amount will be calculated as a percentage of the maximum penalty having regard to the seriousness of the breach, as follows:

Level of seriousness Basic Fine Alternative Calculation:

- Low 0-10%
- Medium 11-20%
- High 21-100%

Having completed the first step of establishing the basic amount, URCA will next consider the seriousness of the breach in Step 3.

STEP 3 - Calculation of penal element

Adjustment for gravity of breach

When gauging the gravity of the breach, URCA will consider several factors including the nature and scope of the breach. Gravity is a calculation of the seriousness of the breach and will be

determined on a case-by-case basis considering all relevant circumstances. In assessing the gravity of the breach, URCA will consider various factors, including;

- the nature of the breach,
- the conduct of the Licensee,
- impact of the breach, and
- duration of the breach.

STEP 4 - Adjustments for aggravating and/or mitigating factors

Adjustment to the Basic Amount

In setting the fine, URCA may consider circumstances that result in an upward or downward adjustment to the basic amount. Adjustments will be made based on an overall assessment, taking into account all the relevant circumstances and factors.

Adjustment Aggravating circumstances

The basic amount may be adjusted upward, up to the maximum limit specified in Step 1 and prescribed by the EA, where URCA finds that there are aggravating circumstances. Aggravating circumstances are material factors that make the circumstances of the breach more egregious.

Adjustment for mitigating circumstances

URCA may make a downward adjustment to the basic amount of a fine where it finds mitigating circumstances exist. Mitigating circumstances will arise where a licensee takes all reasonable steps to remedy, rectify, or prevent any future breach and makes a formal submission to URCA of such steps and request for adjustment by URCA.

The following list sets out potential mitigating and aggravating factors that URCA may consider when calculating a fine. The list is not intended to be exhaustive, nor does it provide figures for the percentage increase or decrease as these will be decided on the merits of every case.

Potential Mitigating Factors	Potential Aggravating Factors
<ul style="list-style-type: none"> • First time breach 	<ul style="list-style-type: none"> • Repeat conduct resulting in the same or similar breaches
<ul style="list-style-type: none"> • Early admittance of breach when informed by URCA 	<ul style="list-style-type: none"> • Denial and avoidance of accountability when advised by URCA of the breach
<ul style="list-style-type: none"> • Licensee self identifies a breach and brings the breach to URCA’s attention 	<ul style="list-style-type: none"> • The licensee failed to self-identify the breach
<ul style="list-style-type: none"> • Whether in the round the Licensee took appropriate steps to prevent the breach 	<ul style="list-style-type: none"> • No or inadequate steps taken by the licensee to prevent the breach
<ul style="list-style-type: none"> • Breach was not intentional or due to reckless conduct • Compliance history of the Licensee 	<ul style="list-style-type: none"> • Breach was intentional or due to reckless behaviour, or negligence; consideration was also be given to the whether senior management was aware of the breach or ought to have been aware of the breach
<ul style="list-style-type: none"> • Evidence that timely and reasonable steps were taken to resolve the breach, once the Licensee became aware of it. 	<ul style="list-style-type: none"> • Breach continued or the Licensee made insubstantial efforts to resolve the breach after becoming aware of it.
<ul style="list-style-type: none"> • Effective steps taken to mitigate against the effects of the breach 	<ul style="list-style-type: none"> • Lack of or insufficient steps taken to mitigate against the effects of the breach.
<ul style="list-style-type: none"> • Co-operation by the Licensee with the investigation into the breach. 	<ul style="list-style-type: none"> • Refusal to co-operate, providing false or misleading information or obstruction of the investigation into the breach.

Potential Mitigating Factors	Potential Aggravating Factors
<ul style="list-style-type: none">• Efforts made to compensate anyone adversely impacted.	<ul style="list-style-type: none">• Compliance history of the Licensee.

STEP 5 - Apply settlement adjustment

This factor allows for the total penalty to be reduced where the Licensee accepts responsibility for the breach. Notably, this factor will not impact the basic amount as the basic amount is the minimum value which represents the harm and/or gain. This settlement adjustment factor provides an incentive to Licensees to accept responsibility for the breach in a timely manner.