



2008 CHAPTER 4

PART 5

ENFORCEMENT

Enforcement notices

37.—(1) Where the Department considers that a licensed operator has failed to comply with any of the duties imposed by or under section 3(3), (4) or (6), the Department may serve on the person an enforcement notice.

(2) An enforcement notice shall—

- (a) state that the Department considers that the person on whom the notice is served has failed to comply with the duty specified in the notice;
- (b) specify why the Department considers that the person has failed to comply with the duty in question; and
- (c) require the person, before the expiry of the period specified in the notice (being a period of at least 21 days), to take the action so specified.

(3) A person who fails to comply with any requirement imposed by an enforcement notice shall be guilty of an offence.

(4) It is a defence in proceedings for an offence under subsection (3) for a person to show that the person exercised all due diligence to avoid committing such an offence.

(5) Where the Department has served an enforcement notice on a person, the Department may—

- (a) before the expiry of the period specified in the notice, by notice in writing to the person withdraw the enforcement notice; or

(b) if an appeal against the notice is not pending under subsection (6), extend, or further extend, the period specified in the notice.

(6) A person on whom an enforcement notice is served may, within 21 days from the date on which it is served, by notice appeal to the Department.

(7) On an appeal under this section, the Department may either cancel or affirm the notice, and if it affirms it, it may do so either in its original form or with such modifications as the Department may in the circumstances think fit.

(8) The Department shall, on making a decision under subsection (7), give notice of the decision to the appellant including particulars of the grounds of the decision.

(9) A person who is aggrieved by a decision of the Department under subsection (7) may, within 21 days of the notice being served under subsection (8), appeal to a court of summary jurisdiction.

(10) Any such appeal shall be made in accordance with Part 7 of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#).

(11) On an appeal under this section, the court may either cancel or affirm the notice, and, if it affirms it, may do so either in its original form, in its form as modified by the Department under subsection (7) or with such other modifications as the court may in the circumstances think fit.

(12) Where an appeal is brought under this section against an enforcement notice, the operation of the notice shall be suspended until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal.