
DRAFT STATUTORY INSTRUMENTS

2006 No.

**The Water and Sewerage Services
(Northern Ireland) Order 2006**

PART III

APPOINTMENT AND REGULATION OF UNDERTAKERS

CHAPTER II

ENFORCEMENT AND INSOLVENCY

Enforcement orders

Orders for securing compliance with certain provisions

30.—(1) Subject to paragraph (2) and Articles 31 and 32, where in the case of any company holding an appointment under Chapter I an enforcing authority is satisfied—

(a) that that company is contravening—

(i) any condition of the company's appointment in relation to which it is the relevant enforcement authority; or

(ii) any statutory or other requirement which is enforceable under this Article and in relation to which it is the relevant enforcement authority; or

(b) that that company is likely to contravene any such condition or requirement,

it shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

(2) Subject to Article 31, where in the case of any company holding an appointment under Chapter I—

(a) it appears to an enforcement authority as mentioned in sub-paragraph (a) or (b) of paragraph (1); and

(b) it appears to that authority that it is requisite that a provisional enforcement order be made, the enforcement authority may (instead of taking steps towards the making of a final order) by a provisional enforcement order make such provision as appears to it requisite for the purpose of securing compliance with the condition or requirement in question.

(3) In determining for the purposes of paragraph (2)(b) whether it is requisite that a provisional enforcement order be made, an enforcement authority shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of any condition or of any statutory or other requirement enforceable under this Article, is likely to be done, or omitted to be done, before a final enforcement order may be made.

(4) Subject to Articles 31 and 32, where an enforcement authority has made a provisional enforcement order, it shall confirm the order, with or without modifications, if—

- (a) it is satisfied that the company to which the order relates—
 - (i) is contravening any condition or statutory or other requirement in relation to which it is the enforcement authority; or
 - (ii) is likely to contravene any such condition or requirement; and
 - (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.
- (5) An enforcement order—
- (a) shall require the company to which it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
 - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
 - (c) may be revoked at any time by the enforcement authority which made it.
- (6) For the purposes of this Article and the following provisions of this Order—
- (a) the statutory and other requirements which are enforceable under this Article in relation to a company holding an appointment under Chapter I are such of the requirements of any statutory provision as—
 - (i) are imposed in consequence of that appointment; and
 - (ii) are made so enforceable by that statutory provision;
 - (b) the Authority shall be the relevant enforcement authority in relation to the conditions of an appointment under Chapter I; and
 - (c) the relevant enforcement authority in relation to each of the statutory and other requirements enforceable under this Article shall be—
 - (i) the Department;
 - (ii) the Authority; or
 - (iii) either of the above,according to whatever provision is made by the statutory provision by which the requirement is made so enforceable.

“enforcement authority” means—

- (a) the Department; or
- (b) the Authority;

“enforcement order” means a final enforcement order or a provisional enforcement order;

“final enforcement order” means an order under this Article other than a provisional enforcement order;

“provisional enforcement order” means an order under this Article which, if not previously confirmed in accordance with paragraph (4), will cease to have effect at the end of such period (not exceeding 3 months) as is determined by or under the order.

In this Article and the following provisions of this Chapter—

(8) Where any act or omission constitutes a contravention of a condition of an appointment under Chapter I or of a statutory or other requirement enforceable under this Article, the only remedies for that contravention, apart from those available by virtue of this Article, shall be those for which express provision is made by or under any statutory provision and those that are available in respect of that act or omission otherwise than by virtue of its constituting such a contravention.

Exceptions to the duty to enforce

31.—(1) An enforcement authority shall not be required to make an enforcement order in relation to any company, or to confirm a provisional enforcement order so made, if it is satisfied—

- (a) that the contraventions were, or the apprehended contraventions are, of a trivial nature;
- (b) that, in such circumstance or subject to such conditions as may be prescribed, the company has given, and is complying with, an undertaking to take all such steps as it appears to the enforcement authority for the time being to be appropriate for the company to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
- (c) that the duties imposed on the enforcement authority by Part II preclude the making or, as the case may be, the confirmation of the order; or
- (d) that the most appropriate way of proceeding is under the Competition Act 1998 (c. 41).

(2) The requirement to comply with an undertaking given for the purposes of paragraph (1)(b) shall be treated as a statutory requirement enforceable under Article 30—

- (a) by the Department; or
- (b) with the consent of or in accordance with a general authorisation given by the Department, by the Authority.

(3) Where an enforcement authority, having notified a company that it is considering the making in relation to the company of an enforcement order or the confirmation of a provisional enforcement order so made, is satisfied as mentioned in sub-paragraph (a), (b), (c) or (d) of paragraph (1), it shall—

- (a) serve notice that it is so satisfied on the company;
- (b) publish a copy of the notice in such manner as it considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
- (c) in a case where the enforcement authority is satisfied as mentioned in the said sub-paragraph (b), serve a copy of the notice and of the undertaking given for the purposes of that sub-paragraph on the other enforcement authority.

(4) The requirements of paragraph (3) shall not apply, in the case of any proposed order or confirmation in respect of a direction under Article 294, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

Procedure for enforcement orders

32.—(1) Before making a final order or confirming a provisional order, an enforcement authority shall give notice—

- (a) stating that it proposes to make or confirm the order and setting out its effect;
- (b) setting out—
 - (i) the relevant condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;
 - (ii) the acts or omissions which, in the enforcement authority's opinion, constitute or would constitute contraventions of that condition or requirement; and
 - (iii) the other facts which, in its opinion, justify the making or confirmation of the order; and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(2) A notice under paragraph (1) shall be given—

- (a) by publishing the notice in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
- (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the company to which the order relates and on the other enforcement authority.

(3) An enforcement authority shall not make a final order with modifications, or confirm a provisional order with modifications, except—

- (a) with the consent to the modifications of the company to which the order relates; or
- (b) after complying with the requirements of paragraph (4).

(4) The requirements mentioned in paragraph (3) are that the enforcement authority shall—

- (a) serve on the company to which the order relates such notice as appears to it to be requisite of its proposal to make or confirm the order with modifications;
- (b) in that notice specify the period (not being less than 28 days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
- (c) consider any representations or objections which are duly made and not withdrawn.

(5) As soon as practicable after making an enforcement order or confirming a provisional order, the enforcement authority shall—

- (a) serve a copy of the order on the company to which the order relates and on the other enforcement authority; and
- (b) publish such a copy in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

(6) Before revoking a final enforcement order or a provisional order which has been confirmed, the enforcement authority shall give notice—

- (a) stating that it proposes to revoke the order and setting out its effect; and
- (b) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(7) If, after giving a notice under paragraph (6), the enforcement authority decides not to revoke the order to which the notice relates, it shall give notice of that decision.

(8) A notice under paragraph (6) or (7) shall be given—

- (a) by publishing the notice in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
- (b) by serving a copy of the notice on the company to which the order relates and on the other enforcement authority.

(9) The requirements of the preceding provisions of the Article shall not apply, in the case of any order in respect of contravention of a direction under Article 294, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

Validity and effect of enforcement orders

33.—(1) If the company to which an enforcement order relates is aggrieved by the order and desires to question its validity on the ground—

- (a) that its making or confirmation was not within the powers of Article 30; or
- (b) that any of the requirements of Article 32 have not been complied with in relation to it,

the company may, within 42 days from the date of service on it of a copy of the order, make an application to the High Court under this Article.

(2) On any such application the High Court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the company have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.

(3) Except as provided by this Article, the validity of a final or provisional order shall not be questioned by any legal proceedings whatsoever.

Effect of enforcement order

34.—(1) The obligation to comply with an enforcement order shall be a duty owed to any person who may be affected by a contravention of the order.

(2) Where a duty is owed under paragraph (1) to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.

(3) In any proceedings brought against a company in pursuance of paragraph (2), other than proceedings in respect of so much of a contravention of any order as consists in a breach of the duty imposed by virtue of Article 108(1)(a), it shall be a defence for the company to prove that it took all reasonable steps and exercised all due diligence to avoid contravening the order.

(4) Without prejudice to any right which any person may have by virtue of paragraph (1) to bring civil proceedings in respect of any contravention or apprehended contravention of an enforcement order, compliance with any such order shall be enforceable by civil proceedings for an injunction or for any other appropriate relief at the suit of the body which is the relevant enforcement authority in relation to the condition or requirement compliance with which was to be secured by the order.