
DRAFT STATUTORY INSTRUMENTS

2003 No.

The Energy (Northern Ireland) Order 2003

PART VI

ENFORCEMENT

Financial penalties

Financial penalties

45.—(1) Where the Authority is satisfied that a licence holder has contravened or is contravening any relevant condition or requirement, the Authority may, subject to Article 47, impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case.

(2) Where the Authority is satisfied that an electricity licence holder who is a public electricity supplier has failed or is failing to achieve any standard of performance prescribed under Article 42 of the Electricity Order, the Authority may, subject to Article 47, impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case.

(3) The Authority shall not impose a penalty on a licence holder under paragraph (1) or (2) where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998 (c. 41).

(4) Before imposing a penalty on a licence holder under paragraph (1) or (2) the Authority shall give notice—

- (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
- (b) setting out the relevant condition or requirement or the standard of performance in question;
- (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed; and
- (d) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) Before varying any proposal stated in a notice under paragraph (4)(a) the Authority shall give notice—

- (a) setting out the proposed variation and the reasons for it; and
- (b) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(6) As soon as practicable after imposing a penalty, the Authority shall give notice—

- (a) stating that it has imposed a penalty on the licence holder and its amount;
 - (b) setting out the relevant condition or requirement or the standard of performance in question;
 - (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of the penalty and its amount; and
 - (d) specifying a date, no earlier than the end of the period of 42 days from the date of service of the notice on the licence holder, by which the penalty is required to be paid.
- (7) The licence holder may, within 21 days of the date of service on him of a notice under paragraph (6), make an application to the Authority for it to specify different dates by which different portions of the penalty are to be paid.
- (8) Any notice required to be given under this Article shall be given—
- (a) by publishing the notice in such manner as the 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;
 - (b) by serving a copy of the notice on the licence holder; and
 - (c) by serving a copy of the notice on the Council.
- (9) No penalty imposed by the Authority under this Article may exceed 10 per cent. of the turnover of the licence holder (determined in accordance with provisions specified in an order made by the Department).
- (10) Any sums received by the Authority by way of penalty under this Article shall be paid into the Consolidated Fund.

Statement of policy with respect to penalties

46.—(1) The Authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.

(2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure the Authority shall have regard to its statement of policy most recently published at the time when the contravention or failure occurred.

(3) The Authority may revise its statement of policy and where it does so shall publish the revised statement.

(4) Publication under this Article shall be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.

(5) The Authority shall undertake such consultation as it considers appropriate when preparing or revising its statement of policy.

Time limits on the imposition of financial penalties

47.—(1) Where no final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure later than the end of the period of 12 months from the time of the contravention or failure, unless before the end of that period—

- (a) the notice under Article 45(4) relating to the penalty is served on the licence holder under Article 45(8), or
- (b) a notice relating to the contravention or failure is served on the licence holder under Article 51(2).

(2) Where a final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under Article 45(4) was served on the licence holder under Article 45(8)—

- (a) within three months from the confirmation of the provisional order or the making of the final order, or
- (b) where the provisional order is not confirmed, within six months from the making of the provisional order.

Interest and payment of instalments

48.—(1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being prescribed under Article 127 of the [Judgments Enforcement \(Northern Ireland\) Order 1981 \(NI 6\)](#).

(2) If an application is made under paragraph (7) of Article 45 in relation to a penalty, the penalty is not required to be paid until the application has been determined.

(3) If the Authority grants an application under that paragraph in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the Authority under that paragraph, the Authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

Appeals

49.—(1) If the licence holder on whom a penalty is imposed is aggrieved by—

- (a) the imposition of the penalty;
- (b) the amount of the penalty; or
- (c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,

the licence holder may make an application to the High Court under this Article.

(2) An application under paragraph (1) must be made—

- (a) within 42 days from the date of service on the licence holder of a notice under Article 45(6), or
- (b) where the application relates to a decision of the Authority on an application by the licence holder under Article 45(7), within 42 days from the date the licence holder is notified of the decision.

(3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within paragraph (4), the court—

- (a) may quash the penalty;
- (b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or
- (c) in the case of an application under paragraph (1)(c), may substitute for the date or dates imposed by the Authority an alternative date or dates.

(4) The grounds falling within this paragraph are—

- (a) that the imposition of the penalty was not within the power of the Authority under Article 45;

- (b) that any of the requirements of paragraphs (4) to (6) or (8) of Article 45 have not been complied with in relation to the imposition of the penalty and the interests of the licence holder have been substantially prejudiced by the non-compliance; or
 - (c) that it was unreasonable of the Authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.
- (5) If an application is made under this Article in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this Article it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.
- (8) Except as provided by this Article, the validity of a penalty shall not be questioned by any legal proceedings whatever.

Recovery of penalties

50. Where a penalty imposed under Article 45(1) or (2), or any portion of it, has not been paid by the date on which it is required to be paid and—

- (a) no application relating to the penalty has been made under Article 49 during the period within which such an application can be made, or
- (b) an application has been made under that Article and determined,

the Authority may recover from the licence holder, as a civil debt due to it, any of the penalty and any interest which has not been paid.