



# Coal industry Act 1994

## 1994 CHAPTER 21

### PART II

#### LICENSING OF COAL-MINING OPERATIONS

##### *Enforcement*

### **31 Enforcement orders**

(1) Subject to subsections (2) and (5) and section 32 below, where the Authority is satisfied—

- (a) that any person is carrying on any coal-mining operations in contravention of section 25(1) above, or is likely so to carry on any coal-mining operations, or
- (b) that any person is contravening, or is likely to contravene, any of the conditions of a licence under this Part,

the Authority may, by a final enforcement order, make such provision in relation to that person as is requisite for the purpose of securing that there is no contravention of section 25(1) above or, as the case may be, that that condition is complied with.

(2) Subject to subsection (5) below, where—

- (a) it appears to the Authority as mentioned in subsection (1)(a) or (b) above, and
- (b) it appears to the Authority that it is appropriate that a provisional enforcement order be made,

the Authority may (instead of taking steps towards the making of a final enforcement order) by a provisional enforcement order make such provision in relation to the person in question as appears to it requisite for the purpose of securing that there is no contravention of section 25(1) above or, as the case may be, that the condition is complied with.

(3) In determining for the purposes of subsection (2)(b) above whether it is appropriate that a provisional enforcement order be made, the 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 section 25(1) above or the

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condition in question, is likely to be done, or omitted to be done, before a final enforcement order may be made.

- (4) Subject to subsection (5) and section 32 below, where a provisional enforcement order has been made, the Authority shall consider whether, for the purpose of giving it final effect, it should be confirmed and shall be entitled to confirm it, with or without modifications, if—
- (a) it is satisfied that the person to whom the order relates—
    - (i) is carrying on any coal-mining operations in contravention of section 25(1) above, or is likely so to carry on any coal-mining operations; or
    - (ii) is contravening, or is likely to contravene, any of the conditions of a licence under this Part;
  - and
  - (b) the provision made by the order (with any modifications) is requisite for the purpose of securing that there is no contravention of section 25(1) above or, as the case may be, that that condition is complied with.
- (5) The Authority shall not make a final enforcement order or make or confirm a provisional enforcement order in relation to any person if it is satisfied—
- (a) that that person has agreed to take, and is taking, all such steps as it appears to the Authority for the time being to be appropriate for him to take for the purpose of securing that there is no contravention of section 25(1) above or that the condition in question is complied with; or
  - (b) that the contraventions of section 25(1) above or of that condition were, or the apprehended contraventions are, of a trivial nature.
- (6) An enforcement order—
- (a) shall require the person to whom 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 Authority.
- (7) In this Part—
- “enforcement order” means a final enforcement order or a provisional enforcement order;
  - “final enforcement order” means an order under this section other than a provisional enforcement order; and
  - “provisional enforcement order” means an order under this section which, if not previously confirmed under subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.
- (8) This section and sections 32 and 33 below shall be without prejudice to the right of the Authority, where the conditions of any licence under this Part contain provision for a sum determined by or under those conditions to be paid to the Authority, to enforce that condition in proceedings for the recovery of the sum as an amount due to the Authority by virtue of an enactment.

## **32 Procedural requirements for enforcement orders**

(1) Before making a final enforcement order or confirming a provisional enforcement order, the Authority shall give notice—

- (a) stating that the Authority proposes to make or confirm the order and setting out its effect;
- (b) setting out—
  - (i) any condition of a licence for the purpose of securing compliance with which the order is to be made or confirmed;
  - (ii) the acts or omissions which, in the Authority’s opinion, constitute or would constitute contraventions of section 25(1) above or, as the case may be, that condition; and
  - (iii) any other matters which, in the Authority’s opinion, justify the making or confirmation of the order;

and

- (c) specifying the period (not being less than twenty-eight days from the date of the service of the notice on the person to whom it relates) within which representations or objections with respect to the proposed order or proposed confirmation may be made;

and, before making or confirming the order, the Authority shall consider any representations or objections which are duly made and not withdrawn.

(2) A notice under subsection (1) above shall be given—

- (a) by serving it, together with a copy of the proposed order or of the order as proposed to be confirmed, on the person to whom the order relates; and
- (b) by taking such steps (if any) for publishing a copy of the notice 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 and of enabling them to make representations and objections within the period specified in the notice.

(3) The Authority, having given notice under subsection (1) above, shall not make the final enforcement order with modifications that are not contained in the notice or confirm the provisional enforcement order with any such modifications, except—

- (a) with the consent to the modifications of the person to whom the order relates; or
- (b) after complying with the requirements of subsection (4) below.

(4) The requirements mentioned in subsection (3) above are that the Authority shall—

- (a) serve on the person to whom the order relates such notice as appears to the Authority requisite of its proposal to make or confirm the order with modifications;
- (b) in that notice specify the period (not being less than twenty-eight days from the date of its service on the person to whom the order relates) within which representations or objections with respect to the proposed modifications may be made;
- (c) take such steps (if any) for publishing a copy of the notice as it considers appropriate for the purpose of bringing the proposal to the attention of persons likely to be affected by it and of enabling them to make representations and objections within the period specified in the notice; and

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- (d) consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after making a final enforcement order or making or confirming a provisional enforcement order, the Authority shall—
- (a) serve a copy of the order or, as the case may be, of the order as confirmed on the person to whom it relates; and
  - (b) take such steps (if any) for publishing notice of the order and, where the case so requires, of its confirmation and any modifications subject to which it is confirmed as the Authority considers appropriate for the purpose of bringing the matters contained in the notice to the attention of persons likely to be affected by them.
- (6) Before revoking an enforcement order, other than an unconfirmed provisional enforcement order, the Authority shall give notice—
- (a) stating that it proposes to revoke the order and setting out the effect of the order; and
  - (b) specifying the period (not being less than twenty-eight days from the date of the service of the notice on the person to whom the order relates) within which representations or objections with respect to the proposed revocation may be made;
- and, before revoking the order, the Authority shall consider any representations or objections which are duly made and not withdrawn.
- (7) If, after giving a notice under subsection (6) above, the Authority decides not to revoke the order to which the notice relates, it shall give notice of its decision.
- (8) A notice under subsection (6) or (7) above shall be given—
- (a) by serving it on the person to whom the order relates; and
  - (b) by taking such steps (if any) for publishing a copy of the notice as the Authority considers appropriate for the purpose of bringing the matters contained in the notice to the attention of persons likely to be affected by them and, in the case of a notice under subsection (6) above, of enabling them to make representations and objections within the period specified in the notice.

### **33 Validity and effect of enforcement orders**

- (1) If the person to whom 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 conferred by section 31 above, or
  - (b) that any of the requirements of section 32 above have not been complied with in relation to it,
- he may, within forty-two days from the date of service on him of a copy of the order or, as the case may be, of the order as confirmed, make an application to the court under this section.
- (2) On any such application the court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the applicant 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 section, the validity of an enforcement order shall not be questioned by any legal proceedings whatever.
- (4) 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.
- (5) Where a duty is owed by any person to another person by virtue of subsection (4) above, any breach of the duty which causes that other person to sustain loss or damage shall be actionable against the person in breach at the suit or instance of that other person.
- (6) In any proceedings brought against any person in pursuance of subsection (5) above, it shall be a defence for him to show that he took all reasonable steps and exercised all due diligence to avoid the contravention of the order.
- (7) Without prejudice to any right which any person may have by virtue of subsection (4) or (5) above 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 by the Authority for an injunction or for interdict or for any other appropriate relief.
- (8) In this section and section 34 below “the court” means the High Court in relation to England and Wales and the Court of Session in relation to Scotland.

#### **34 Power to require information for the purposes of enforcement**

- (1) Where it appears to the Authority—
  - (a) that there is or may have been a contravention of section 25(1) above, or
  - (b) that any person is contravening, or may have contravened, any condition of a licence under this Part,the Authority may, for any purpose connected with such of its functions under section 31 above as are exercisable in relation to that matter, serve a notice under subsection (2) below on any person.
- (2) A notice under this subsection is a notice which—
  - (a) requires the person on whom it is served to produce, at a time and place specified in the notice, to the Authority or to any person appointed by the Authority for the purpose, any documents which are specified or described in the notice and are in that person’s possession or under his control; or
  - (b) requires that person, if he is carrying on a business, to furnish the Authority, at a time and place and in the form and manner specified in the notice, with such information as may be specified or described in the notice.
- (3) No person shall be required under this section to produce any documents which he could not be compelled to produce in civil proceedings in the court or, in complying with any requirement for the furnishing of information, to disclose any information which he could not be compelled to give in evidence in any such proceedings.
- (4) A person who without reasonable excuse fails to do anything required of him by a notice under subsection (2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

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- (5) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under subsection (2) above to produce shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (6) If a person makes default in complying with a notice under subsection (2) above, the court may, on the application of the Authority, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (7) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Authority or the Director of Public Prosecutions.