



Utilities Act 2000

2000 CHAPTER 27

PART V

AMENDMENT OF THE GAS ACT 1986

Enforcement of obligations

95 Financial penalties

(1) After section 30 of the 1986 Act there is inserted—

“30A Penalties

- (1) Where the Authority is satisfied that a licence holder—
 - (a) has contravened or is contravening any relevant condition or requirement; or
 - (b) has failed or is failing to achieve any standard of performance prescribed under section 33A or 33AA,the Authority may, subject to section 30C, impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case.
- (2) The Authority shall not impose a penalty on a licence holder under subsection (1) where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.
- (3) Before imposing a penalty on a licence holder under subsection (1) 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

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- 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- and shall consider any representations or objections which are duly made and not withdrawn.
- (4) Before varying any proposal stated in a notice under subsection (3)(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- and shall consider any representations or objections which are duly made and not withdrawn.
- (5) 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.
- (6) The licence holder may, within 21 days of the date of service on him of a notice under subsection (5), make an application to the Authority for it to specify different dates by which different portions of the penalty are to be paid.
- (7) Any notice required to be given under this section 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.
- (8) No penalty imposed by the Authority under this section may exceed 10 per cent. of the turnover of the licence holder (determined in accordance with provisions specified in an order made by the Secretary of State).
- (9) An order under subsection (8) shall not be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (10) Any sums received by the Authority by way of penalty under this section shall be paid into the Consolidated Fund.

- (11) The power of the Authority under subsection (1) is not exercisable in respect of any contravention or failure before the commencement of section 95 of the Utilities Act 2000.

30B Statement of policy with respect to penalties

- (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 section 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.

30C Time limits on the imposition of penalties

- (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 section 30A(3) relating to the penalty is served on the licence holder under section 30A(7), or
 - (b) a notice relating to the contravention or failure is served on the licence holder under section 38(1).
- (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 section 30A(3) was served on the licence holder under section 30A(7)—
- (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.

30D Interest and payment of instalments

- (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 specified in section 17 of the Judgments Act 1838.
- (2) If an application is made under subsection (6) of section 30A in relation to a penalty, the penalty is not required to be paid until the application has been determined.

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- (3) If the Authority grants an application under that subsection 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 subsection, the Authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

30E Appeals

- (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 court under this section.
- (2) An application under subsection (1) must be made—
- (a) within 42 days from the date of service on the licence holder of a notice under section 30A(5), or
 - (b) where the application relates to a decision of the Authority on an application by the licence holder under section 30A(6), 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 subsection (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 subsection (1)(c), may substitute for the date or dates imposed by the Authority an alternative date or dates.
- (4) The grounds falling within this subsection are—
- (a) that the imposition of the penalty was not within the power of the Authority under section 30A;
 - (b) that any of the requirements of subsections (3) to (5) or (7) of section 30A 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 section 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 section 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 section, the validity of a penalty shall not be questioned by any legal proceedings whatever.
- (9) In this section “the court” means—
 - (a) in relation to England and Wales, the High Court; and
 - (b) in relation to Scotland, the Court of Session.

30F Recovery of penalties

Where a penalty imposed under section 30A(1), 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 section 30E during the period within which such an application can be made, or
 - (b) an application has been made under that section 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.”

- (2) In section 28 of the 1986 Act (orders for securing compliance with certain provisions)
 - (a) subsection (7A) (power to impose financial penalty in a final order under section 28) and subsection (9) (payment of sums received by way of financial penalty under section 28 to be paid into the Consolidated Fund) shall cease to have effect;
 - (b) in subsection (8) (interpretation) for “and 30” there is substituted “to 30F”.
- (3) Section 30(2)(b) of the 1986 Act (power of court to quash or substitute a monetary penalty on an application under section 30) shall cease to have effect.
- (4) In section 36 of the 1986 Act (keeping of a register)—
 - (a) in subsection (1), for “and final and provisional orders” there is substituted “, final and provisional orders and penalties imposed under section 30A(1)”;
 - (b) in subsection (2), after paragraph (e) there is inserted “; and
 - (f) every notice under section 30A(5).”
- (5) In section 38(1) of the 1986 Act (power to require information, etc.)—
 - (a) for “Director” in each place where it appears, there is substituted “Authority”;
 - (b) after “requirement” there is inserted “or may be failing, or may have failed, to achieve any standard of performance prescribed under section 33A or 33AA,”;
 - (c) for the words from “his functions” to “signed by him” there is substituted “its functions under section 28 or 30A to 30F in relation to that matter, by notice in writing”;
 - (d) for “him” there is substituted “it”.