
STATUTORY INSTRUMENTS

1996 No. 275

The Gas (Northern Ireland) Order 1996

PART II

GAS SUPPLY AND ASSOCIATED ACTIVITIES

Enforcement of preceding provisions

Orders for securing compliance

19.—(1) Subject to paragraphs (2) and (5) and Article 20, where the Director is satisfied that a licence holder is contravening, or is likely to contravene, any relevant condition, he shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition.

(2) Subject to paragraph (5), where it appears to the Director—

- (a) that a licence holder is contravening, or is likely to contravene, any relevant condition; and
- (b) that it is requisite that a provisional order be made,

he shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him requisite for the purpose of securing compliance with that condition.

(3) In determining for the purposes of paragraph (2)(b) whether it is requisite that a provisional order be made, the Director shall have regard, in particular—

- (a) to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition, is likely to be done, or omitted to be done, before a final order may be made; and
- (b) to the fact that the effect of the provisions of this Article and Article 21 is to exclude the availability of any remedy (apart from under those provisions or for negligence) in respect of any contravention of a relevant condition.

(4) Subject to paragraph (5) and Article 20, the Director shall confirm a provisional order, with or without modifications, if—

- (a) he is satisfied that the licence holder to whom the order relates is contravening, or is likely to contravene, any relevant condition; and
- (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition.

(5) The Director shall not make a final order or make or confirm a provisional order in relation to a licence holder if he is satisfied—

- (a) that the duties imposed on him by Article 5 preclude the making or, as the case may be, the confirmation of the order;
- (b) that the licence holder has agreed to take and is taking all such steps as it appears to the Director for the time being to be appropriate for the licence holder to take for the purpose of securing or facilitating compliance with the condition in question; or

- (c) that the contraventions were, or the apprehended contraventions are, of a trivial nature.
- (6) Where the Director is satisfied as mentioned in paragraph (5), he shall—
 - (a) serve notice that he is so satisfied on the licence holder; and
 - (b) publish the notice in such manner as he 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.
- (7) A final or provisional order—
 - (a) shall require the licence holder 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 Director.
- (8) Without prejudice to the generality of the power conferred by paragraph (1), the provision that may be made in a final order includes, in particular, the imposition by the Director on the licence holder to whom the order relates of a requirement to pay to the Director a monetary penalty of such amount as may be appropriate, in all the circumstances of the case, in respect of the contravention in question.
- (9) In this Article and the following provisions of this Part—
 - “final order”, means an order under this Article, other than a provisional order;
 - “provisional order” means an order under this Article which, if not previously confirmed under 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;
 - “relevant condition”, in relation to a licence holder, means any condition of his licence.
- (10) Any sums received by the Director by way of monetary penalty under this Article shall be paid into the Consolidated Fund.

Procedural requirements

- 20.**—(1) Before he makes a final order or confirms a provisional order, the Director shall give notice—
- (a) stating that he proposes to make or confirm the order and setting out its effect;
 - (b) setting out—
 - (i) the relevant condition for the purpose of securing compliance with which the order is to be made or confirmed;
 - (ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition; and
 - (iii) the other facts which, in his 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 Director 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 licence holder to whom the order relates.
- (3) The Director 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 licence holder to whom the order relates; or
 - (b) after complying with the requirements of paragraph (4).
- (4) The requirements mentioned in paragraph (3) are that the Director shall—
- (a) serve on the licence holder to whom the order relates such notice as appears to him requisite of his 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 a final order or making or confirming a provisional order, the Director shall—
- (a) serve a copy of the order on the licence holder to whom the order relates; and
 - (b) publish the order in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (6) Before revoking a final order or a provisional order which has been confirmed, the Director shall give notice—
- (a) stating that he 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 Director decides not to revoke the order to which the notice relates, he shall give notice of his decision.
- (8) A notice under paragraph (6) or (7) shall be given—
- (a) by publishing the notice in such manner as the Director 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 licence holder to whom the order relates.

Validity and effect of orders

- 21.**—(1) If the licence holder to whom a final or provisional 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 19; or
 - (b) that any of the requirements of Article 20 have not been complied with in relation to it,
- he may, within 42 days from the date of service on him of a copy of the order, make an application to the High Court under this Article.

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

- (a) may quash the order or any provision of the order; or
- (b) if and to the extent that the application related to so much of an order as imposes a monetary penalty, may substitute a monetary penalty of such lesser amount as the High Court considers appropriate in all the circumstances of the case.

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

(4) The obligation to comply with a final or provisional order shall be a duty owed to any person who may be affected by a contravention of the order. P

(5) Where a duty is owed under paragraph (4) 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.

(6) In any proceedings brought against a licence holder under paragraph (5), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

(7) Without prejudice to any right which any person may have under paragraph (5) to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the Director for an injunction or for any other appropriate relief.