
STATUTORY INSTRUMENTS

2003 No. 419

The Energy (Northern Ireland) Order 2003

PART VI

ENFORCEMENT

Orders for securing compliance

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42.—(1) Subject to paragraphs (2), (5) and (6) and Article 43, where the Authority is satisfied that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement, it shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

(2) Subject to paragraphs (5) and (6), where it appears to the Authority—

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

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

(3) In determining for the purposes of paragraph (2)(b) whether it is requisite that a provisional order be made, the Authority 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 or requirement, 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 44 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 or requirement.

(4) Subject to paragraphs (5) and (6) and Article 43, the Authority shall confirm a provisional order, with or without modifications, if—

- (a) it is satisfied that the licence holder to whom the order relates is contravening, or is likely to contravene, any relevant 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) The Authority shall not make a final order or make or confirm a provisional order in relation to a licence holder if it is satisfied—

- (a) that the duties imposed on it by Article 12 or 14 preclude the making or, as the case may be, the confirmation of the order; or
- (b) that the most appropriate way of proceeding is under the Competition Act 1998 (c. 41).

(6) The Authority is not required to make a final order or make or confirm a provisional order if it is satisfied—

- (a) that the licence holder has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for the licence holder to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
- (b) that the contraventions were, or the apprehended contraventions are, of a trivial nature.

(7) Where the Authority is satisfied as mentioned in paragraphs (5) and (6), it shall—

- (a) serve notice that it is so satisfied on the licence holder; and
- (b) publish 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.

(8) 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 Authority.

(9) In 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 in accordance with paragraph (4), will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.

Procedural requirements

43.—(1) Before it makes a final order or confirms a provisional 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) 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 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 21 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 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 licence holder to whom the order relates.

(3) The 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 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 Authority shall—

- (a) serve on the licence holder to whom the order relates such notice as appears to it requisite of its proposal to make or confirm the order with modifications;
- (b) in that notice specify the period (not being less than 21 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 Authority 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 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 order or a provisional order which has been confirmed, the Authority shall give notice—

- (a) stating that the Authority 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 Authority decides not to revoke the order to which the notice relates, it shall give notice of its decision.

(8) A notice under paragraph (6) or (7) 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; and
- (b) by serving a copy of the notice on the licence holder to whom the order relates.

Validity and effect of orders

44.—(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 42; or
- (b) that any of the requirements of Article 43 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 may, 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, 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 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.

(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 Authority for an injunction or for any other appropriate relief.