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DRAFT STATUTORY INSTRUMENTS

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**2003 No.**

**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.