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Water Act 2003

2003 CHAPTER 37

PART 2

NEW REGULATORY ARRANGEMENTS, ETC

VALID FROM 01/10/2004

Enforcement of obligations

48 Financial penalties

(1) After section 22 of the WIA there is inserted—

“Financial penalties

22A Penalties

(1) Where the Authority is satisfied—

- (a) in the case of any company holding an appointment under Chapter 1 of this Part, that the company—
 - (i) has contravened or is contravening any condition of the appointment;
 - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding a licence under Chapter 1A of this Part of any condition of the licence; or
 - (iii) has failed or is failing to achieve any standard of performance prescribed under section 38(2) or 95(2) below;or
- (b) in the case of any company holding a licence under Chapter 1A of this Part, that the company—

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- (i) has contravened or is contravening any condition of the licence; or
- (ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any condition of the appointment,

the Authority may, subject to section 22C below, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

- (2) Where the Authority, the Secretary of State or the Assembly is satisfied—
- (a) in the case of any company holding an appointment under Chapter 1 of this Part, that the company—
 - (i) has contravened or is contravening any statutory or other requirement which is enforceable under section 18 above and in relation to which he or it is the enforcement authority; or
 - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding a licence under Chapter 1A of this Part of any such requirement; or
 - (b) in the case of any company holding a licence under Chapter 1A of this Part, that the company—
 - (i) has contravened or is contravening any statutory or other requirement which is enforceable under section 18 above and in relation to which he or it is the enforcement authority; or
 - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any such requirement,

he or it may, subject to section 22C below, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

- (3) In a case in which—
- (a) subsection (1) above applies by virtue of paragraph (a)(ii) or (b)(ii) of that subsection, or
 - (b) subsection (2) above applies by virtue of paragraph (a)(ii) or (b)(ii) of that subsection,

references in the following provisions of this section and sections 22B and 22C below to a contravention include references to causing or contributing to a contravention.

- (4) Before imposing a penalty on a company under subsection (1) or (2) above the Authority, the Secretary of State or the Assembly (the “enforcement 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 condition, requirement or standard of performance in question;
 - (c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement

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- authority, justify the imposition of a penalty and the amount of the penalty proposed; and
- (d) specifying the period (not being less than twenty-one 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.
- (5) Before varying any proposal stated in a notice under subsection (4)(a) above the enforcement authority shall give notice—
- (a) setting out the proposed variation and the reasons for it; and
- (b) specifying the period (not being less than twenty-one 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.
- (6) As soon as practicable after imposing a penalty, the enforcement authority shall give notice—
- (a) stating that he or it has imposed a penalty on the company and its amount;
- (b) setting out the condition, requirement or standard of performance in question;
- (c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of the penalty and its amount; and
- (d) specifying a date, no earlier than the end of the period of forty-two days from the date of service of the notice on the company, by which the penalty is required to be paid.
- (7) The company may, within twenty-one days of the date of service on it of a notice under subsection (6) above, make an application to the enforcement authority for him or it to specify different dates by which different portions of the penalty are to be paid.
- (8) Any notice required to be given under this section shall be given—
- (a) by publishing the notice in such manner as the enforcement 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 company;
- (c) by serving a copy of the notice on the Council; and
- (d) where the notice is given by the Secretary of State or the Assembly, by serving a copy of the notice on the Authority.
- (9) Any sums received by the enforcement authority by way of penalty under this section shall be paid into the Consolidated Fund.
- (10) The power of the enforcement authority to impose a penalty under this section is not exercisable in respect of any contravention or failure before the commencement of this section.

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- (11) No penalty imposed by an enforcement authority under this section may exceed 10% of the turnover of the company (determined in accordance with provisions specified in an order made, after consulting the Assembly, by the Secretary of State).
- (12) The power of the Secretary of State to make an order under subsection (11) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (13) An enforcement authority shall not impose a penalty under this section where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.

22B Statement of policy with respect to penalties

- (1) Each enforcement 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 an enforcement authority shall have regard to his or its statement of policy most recently published at the time when the contravention or failure occurred.
- (3) An enforcement authority may revise his or its statement of policy and where he or it does so shall publish the revised statement.
- (4) Publication under this section shall be in such manner as the enforcement 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) An enforcement authority shall undertake such consultation as he or it considers appropriate when preparing or revising his or its statement of policy.

22C Time limits on the imposition of financial penalties

- (1) Where no final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty in respect of the contravention or failure later than the end of the period of twelve months from the time of the contravention or failure, unless before the end of that period—
 - (a) the notice under section 22A(4) above relating to the penalty is served on the company under section 22A(8) above; or
 - (b) a notice relating to the contravention or failure is served on the company under section 203(2) below.
- (2) Where a final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under section 22A(4) above was served on the company under section 22A(8) above—

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- (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.

22D 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 (7) of section 22A above in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (3) If the enforcement 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 enforcement authority under that subsection, the enforcement authority may where he or it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

22E Appeals

- (1) If the company on which 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 company may make an application to the court under this section.
- (2) An application under subsection (1) above must be made—
 - (a) within forty-two days from the date of service on the company of a notice under section 22A(6) above; or
 - (b) where the application relates to a decision of an enforcement authority on an application by the company under section 22A(7) above, within forty-two days from the date the company 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) below, 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) above, may substitute for the date or dates imposed by the enforcement authority an alternative date or dates.
- (4) The grounds falling within this subsection are—

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- (a) that the imposition of the penalty was not within the power of the enforcement authority under section 22A above;
 - (b) that any of the requirements of subsections (4) to (6) or (8) of section 22A above have not been complied with in relation to the imposition of the penalty and the interests of the company have been substantially prejudiced by the non-compliance; or
 - (c) that it was unreasonable of the enforcement 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 the High Court.

22F Recovery of penalties

Where a penalty imposed under section 22A(1) or (2) above, 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 22E above during the period within which such an application can be made; or
 - (b) an application has been made under that section and determined, the enforcement authority may recover from the company, as a civil debt due to him or it, any of the penalty and any interest which has not been paid.”
- (2) In section 195 of the WIA (keeping of a register), in subsection (2), the “and” at the end of paragraph (d) is omitted, and after paragraph (e) there is inserted—
- “(f) every penalty imposed under section 22A(1) or (2) above and every notice under section 22A(6) above;”.

49 Enforcement of certain provisions

- (1) The WIA is amended as follows.
- (2) In section 18 (orders for securing compliance with certain provisions)—
- (a) in subsection (1)(b), for “has contravened any such condition or requirement and is likely to do so again” there is substituted “ is likely to contravene any such condition or requirement ”,
 - (b) for subsection (4)(a)(ii) there is substituted—

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“(ii) is likely to contravene any such condition or requirement;”.

(3) In section 20 (procedure for orders made under section 18), in subsections (1)(c) and (4)(b), for “twenty-eight” there is substituted “ twenty-one ”.

(4) Subsection (3) does not have effect in relation to—

- (a) a provisional order which has been made before the commencement of that subsection, or
- (b) a final order in respect of which notice has been given under section 20(1) of the WIA before the commencement of that subsection.

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