
STATUTORY INSTRUMENTS

2006 No. 3336

The Water and Sewerage Services
(Northern Ireland) Order 2006

PART III

APPOINTMENT AND REGULATION OF UNDERTAKERS

CHAPTER II

ENFORCEMENT AND INSOLVENCY

Financial penalties

Financial penalties

35.—(1) Where the Authority is satisfied in the case of any company holding an appointment under Chapter I that the company—

- (a) has contravened or is contravening any condition of the appointment; or
- (b) has failed or is failing to achieve any standard of performance prescribed under Article 66(2) or 150(2),

the Authority may, subject to Article 37, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

(2) Where an enforcement authority is satisfied in the case of any company holding an appointment under Chapter I that the company has contravened or is contravening any statutory or other requirement which is enforceable under Article 30 and in relation to which it is the relevant enforcement authority, the enforcement authority may, subject to Article 37, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

(3) Before imposing a penalty on a company under paragraph (1) or (2) an 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 relevant condition or requirement or the 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 a penalty and the amount of the penalty proposed; and
- (d) 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 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and shall consider any representations or objections which are duly made and not withdrawn.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 paragraph (3)(a) 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 28 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 enforcement authority shall give notice—

- (a) stating that 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 42 days from the date of service of the notice on the company, by which the penalty is required to be paid.

(6) The company may, within 28 days of the date of service on it of a notice under paragraph (5), make an application to the enforcement 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 by an enforcement authority under this Article 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 to which it relates;
- (c) by serving a copy of the notice on the Council; and
- (d) by serving a copy of the notice on the other enforcement authority.

(8) Any sums received by an enforcement authority by way of penalty under this Article shall be paid into the Consolidated Fund.

(9) The power of an enforcement authority to impose a penalty under this Article is not exercisable in respect of any contravention or failure before the coming into operation of this Article.

(10) No penalty imposed by an enforcement authority under this Article may exceed 10 per cent. of the turnover of the company (determined in accordance with provisions specified in an order made by the Department subject to negative resolution).

(11) An enforcement authority shall not impose a penalty under this Article where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998 (c. 41).

Statement of policy with respect to penalties

36.—(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 the enforcement authority shall have regard to its statement of policy most recently published at the time when the contravention or failure occurred.

(3) An enforcement authority may revise its statement of policy and where it does so shall publish the revised statement.

(4) Publication under this Article 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 it considers appropriate when preparing or revising its statement of policy.

Time limits on the imposition of financial penalties

37.—(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 12 months from the time of the contravention or failure, unless before the end of that period—

- (a) the notice under Article 35(3) relating to the penalty is served on the company under Article 35(7); or
- (b) a notice relating to the contravention or failure is served on the company under Article 261(2).

(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 Article 35(3) was served on the company under Article 35(7)—

- (a) within 3 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 6 months from the making of the provisional order.

Interest and payment of instalments

38.—(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 prescribed under Article 127 of the [Judgments Enforcement \(Northern Ireland\) Order 1981 \(NI 6\)](#).

(2) If an application is made under paragraph (6) of Article 35 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 paragraph 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 paragraph, that authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

Appeals

39.—(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 High Court under this Article.

(2) An application under paragraph (1) must be made—

- (a) within 42 days from the date of service on the company of a notice under Article 35(5); or

- (b) where the application relates to a decision of an enforcement authority on an application by the company under Article 35(6), within 42 days from the date the company is notified of the decision.
- (3) On any such application, where the High 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 paragraph (4), that Court—
 - (a) may quash the penalty;
 - (b) may substitute a penalty of such lesser amount as that Court considers appropriate in all the circumstances of the case; or
 - (c) in the case of an application under paragraph (1)(c), may substitute for the date or dates imposed by the enforcement authority an alternative date or dates.
- (4) The grounds falling within this paragraph are—
 - (a) that the imposition of the penalty was not within the power of the enforcement authority under Article 35;
 - (b) that any of the requirements of paragraphs (3) to (5) or (7) of Article 35 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 Article in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (6) Where the High 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 High 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 Article 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 Article, the validity of a penalty shall not be questioned by any legal proceedings whatsoever.

Recovery of penalties

- 40.** Where a penalty imposed under Article 35(1) or (2), 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 Article 39 during the period within which such an application can be made; or
 - (b) an application has been made under that Article and determined,

the enforcement authority may recover from the company, as a civil debt due to it, any of the penalty and any interest which has not been paid.