

STATUTORY INSTRUMENTS

2003 No. 419

The Energy (Northern Ireland) Order 2003

**PART VI
ENFORCEMENT**

Introductory

Introductory

41.—(1) This Part has effect in relation to the enforcement of—

- (a) relevant conditions of gas and electricity licences [^{F1}and exemptions]; [^{F2} and]
- (b) relevant requirements [^{F3}.]
- (c) ^{F4}

(2) In this Part—

[^{F5}“regulated person” means any person who is—

- (a) a licence holder; ^{F6}...
- (b) an exemption holder [^{F7};or]
- (c) [^{F8}a regional co-ordination centre;]

[^{F9}“relevant conditions” means—

- (a) in relation to any licence holder, any condition of his licence;
- (b) in relation to any exemption holder, any condition of his exemption.]

[^{F10}“relevant requirement” has the meaning given to it in Articles 41A and 41B.]

- F1** Words in art. 41(1)(a) inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 72**
- F2** Word in art. 41(1)(a) added (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), **regs. 1(2), 61, Sch. 3 para. 3(a)** (with transitional provisions in Pt. IV)
- F3** Words in art. 41(1)(b) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), **regs. 1(2), 61, Sch. 3 para. 3(a)** (with transitional provisions in Pt. IV)
- F4** Art. 41(1)(c) repealed (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), **regs. 1(2), 61, Sch. 3 para. 3(a)** (with transitional provisions in Pt. IV)
- F5** Art. 41(2): definition of "regulated person" inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 73**
- F6** Word in art. 41(2) omitted (31.12.2020) by virtue of [The Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/307\)](#), **regs. 1, 27(a)**
- F7** Word in art. 41(2) substituted (31.12.2020) by [The Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/307\)](#), **regs. 1, 27(b)**

- F8** Words in art. 41(2) added (31.12.2020) by [The Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/307\)](#), regs. 1, **27(b)**
- F9** Art. 41(2): definition of "relevant conditions" substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 74**
- F10** Art. 41(2): definition of "relevant requirement" substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 75**

Modifications etc. (not altering text)

- C1** Art. 41 modified (3.7.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(1), **13(2)** (with transitional provisions in Pt. IV)

[^{F11}Meaning of relevant requirement in relation to electricity

41A.—(1) In the case of electricity, “relevant requirement” in respect of any regulated person means any duty or other requirement imposed on that person by or under a provision—

- (a) specified in this Article; or
- (b) in the Electricity Regulation and designated under this Article, in respect of that person.

(2) In respect of any licence holders, Article 27(4)(b) is specified for the purposes of paragraph (1).

(3) In respect of holders of an electricity generation licence—

- (a) Part VII (Electricity from renewable sources);
- (b) designated provisions of the Electricity Regulation;
- (c) Articles 10C(8) and (9) of the Electricity Order (Certification procedure);
- (d) Articles 10I(11) and (12) of the Electricity Order (Monitoring and review of certification);
- (e) Articles 8C(4) and (5) of the Gas Order (Certification procedure); and
- (f) Articles 8I(11) and (12) of the Gas Order (Monitoring and review of certification),

are specified for the purposes of paragraph (1).

(4) In respect of holders of an electricity supply licence—

- (a) Article 43(3) of the Electricity Order (Overall standards of performance: electricity supply);
- (b) Article 44(3) of the Electricity Order (Promotion of efficient use of electricity);
- (c) Article 45A of the Electricity Order (Information to be given to customers about overall performance);
- (d) Article 45B of the Electricity Order (Procedures for dealing with complaints);
- (e) those in Part VII (Electricity from renewable sources);
- (f) the Electricity and Gas (Billing) (No. 2) Regulations (Northern Ireland) 2010;
- (g) Articles 10C(8) and (9) of the Electricity Order (Certification procedure);
- (h) Articles 10I(10), (11) and (12) of the Electricity Order (Monitoring and review of certification) insofar as they apply to that person;
- (i) Articles 8C(4) and (5) of the Gas Order (Certification procedure); ^{F12} . . .
- (j) Articles 8I(11) and (12) of the Gas Order (Monitoring and review of certification) ; ^{F13} ...

[paragraph 2(1) and 3(4) of Schedule 7 to the Electricity Order (individual meters),]

^{F14}(k)

[section 6(2) of the Energy Prices Act 2022, except section 6(2)(c) insofar as non-^{F15}(1) compliance with the terms of the designated scheme involves the amounts payable by or to the Secretary of State under the scheme; and

(m) section 22 of the Energy Prices Act 2022,]

are specified for the purposes of paragraph (1).

(5) In respect of holders of an electricity distribution licence—

- (a) Article 12(1) of the Electricity Order (General duties of electricity distributors and transmission licence holders);
- (b) Articles 19 to 26 of the Electricity Order (Duty to connect on request);
- (c) Article 43A of the Electricity Order (Overall standards of performance: electricity distributors); and
- (d) Article 45A of the Electricity Order (Information to be given to customers about overall performance),

are specified for the purposes of paragraph (1).

(6) In respect of holders of an electricity transmission licence—

- (a) Article 12(2) of the Electricity Order (General duties of electricity distributors and transmission licence holders);
- (b) Article 10B(1) or (2) and Article 10C(3) of the Electricity Order insofar as they apply to that person; ^{F16}...
- (c) Articles 10C(7) or (8) and (9) and 10I(10), (11) and (12) of the Electricity Order insofar as they apply to that person [^{F17}; and]

[Article 53A(2) of the Electricity Order insofar as it applies to that person,]
^{F18}(d)

are specified for the purposes of paragraph (1).

[
^{F19}(6A) In respect of a regional co-ordination centre,

- (a) Article 53A(2) of the Electricity Order insofar as it applies to that person; and
- (b) Article 53A(3) and (4) of the Electricity Order (regional coordination centres),

are specified for the purposes of paragraph (1).]

(7) The Department shall for the purposes of paragraph (1) designate those provisions of the Electricity Regulation which impose a duty or requirement on any or on any particular regulated person in respect of such persons and shall publish any such designation in the Belfast Gazette

[
^{F20}(8) In paragraphs (1) and (3)(b), the references to provisions in the Electricity Regulation designated under this Article are to be treated as including provisions of the 2009 Electricity Market Regulation that were designated under this Article before the coming into force of the Electricity and Gas (Internal Markets) Regulations 2020.]

F11 Arts. 41A, 41B inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 76](#)

F12 Word in art. 41A(4)(i) omitted (25.7.2014) by virtue of [Energy Efficiency Regulations \(Northern Ireland\) 2014 \(S.R. 2014/198\)](#), [reg. 6\(a\)](#)

F13 Word in art. 41A(4)(j) omitted (25.10.2022) by virtue of [Energy Prices Act 2022 \(c. 44\)](#), s. 30(6), [Sch. 7 para. 10\(a\)](#) (with s. 29)

- F14** Art. 41A(4)(k) inserted (25.7.2014) by Energy Efficiency Regulations (Northern Ireland) 2014 (S.R. 2014/198), **reg. 6(c)**
- F15** Art. 41A(4)(l)(m) inserted (25.10.2022) by Energy Prices Act 2022 (c. 44), s. 30(6), **Sch. 7 para. 10(b)** (with ss. 6, 29)
- F16** Word in art. 41A(6) omitted (31.12.2020) by virtue of The Electricity (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/307), regs. 1, **28(a)(i)**
- F17** Word in art. 41A(6) substituted (31.12.2020) by The Electricity (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/307), regs. 1, **28(a)(ii)**
- F18** Art. 41A(6)(d) added (31.12.2020) by The Electricity (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/307), regs. 1, **28(a)(ii)**
- F19** Art. 41A(6A) inserted (31.12.2020) by The Electricity (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/307), regs. 1, **28(b)**
- F20** Art. 41A(8) inserted (25.2.2020) by The Electricity and Gas (Internal Markets) Regulations 2020 (S.I. 2020/96), regs. 1, **7(7)**

Meaning of relevant requirement in relation to gas

41B.—(1) In the case of gas, “relevant requirement” in respect of any regulated person means any duty or other requirement imposed on that person by or under a provision

- (a) specified in this Article; or
- (b) in the Gas Regulation and designated under this Article,

in respect of that person.

(2) In respect of any licence holders, Article 27(4)(b) is specified for the purposes of paragraph (1).

(3) In respect of holders of a gas supply licence—

- (a) Section 3(4) of the Energy Act (Northern Ireland) 2011 (Overall standards of performance);
- (b) Section 5(3) of the Energy Act (Northern Ireland) 2011 (Standards for promoting efficient use of gas);
- (c) Section 7 of the Energy Act (Northern Ireland) 2011 (Information to be given to customers about overall performance);
- (d) Section 8 of the Energy Act (Northern Ireland) 2011 (Procedures for dealing with complaints);
- (e) the Electricity and Gas (Billing) (No. 2) Regulations (Northern Ireland) 2010;
- (f) Articles 10C(8) and (9) of the Electricity Order (Certification procedure);
- (g) Articles 10I(11) and (12) of the Electricity Order (Monitoring and review of certification);
- (h) articles 8C(4) and (5) of the Gas Order (Certification procedure); ^{F21} . . .
- (i) Articles 8I(11) and (12) of the Gas Order (Monitoring and review of certification) [^{F22}; ^{F23} ...]

[Article 21A of the Gas Order (individual meters).]

^{F24}(j)

[section 7(2) of the Energy Prices Act 2022, except section 7(2)(c) insofar as non-compliance with the terms of the designated scheme involves the amounts payable by or to the Secretary of State under the scheme; and

^{F25}(k)

(l) section 22 of the Energy Prices Act 2022,]

are specified for the purposes of paragraph (1).

(4) In respect of holders of a gas conveyance licence —

- (a) Section 3(4) of the Energy Act (Northern Ireland) 2011 (Overall standards of performance);
- (b) Section 7 of the Energy Act (Northern Ireland) 2011 (Information to be given to customers about overall performance),

are specified for the purposes of paragraph (1).

(5) In respect of holders of a gas conveyance licence involved in gas transmission—

- (a) Article 8B(1) or (2) of the Gas Order and Article 8B(1) or (2) of the Electricity Order insofar as they apply to that person; and
- (b) Article 8C(3), (4) and (5) and 8I(10), (11) and (12) of the Gas Order insofar as they apply to that person,

are specified for the purposes of paragraph (1).

(6) The Department shall for the purposes of paragraph (1) designate those provisions of the Gas Regulation which impose a duty or requirement, on any or on any particular, regulated person in respect of such persons and shall publish any such designation in the Belfast Gazette.]

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| F11 | Arts. 41A, 41B inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155) , reg. 76 |
| F21 | Word in art. 41B(3)(h) omitted (25.7.2014) by virtue of Energy Efficiency Regulations (Northern Ireland) 2014 (S.R. 2014/198) , reg. 7(a) |
| F22 | Word in art. 41B(3)(i) substituted (25.7.2014) by Energy Efficiency Regulations (Northern Ireland) 2014 (S.R. 2014/198) , reg. 7(b) |
| F23 | Word in art. 41B(3)(i) omitted (25.10.2022) by virtue of Energy Prices Act 2022 (c. 44) , s. 30(6), Sch. 7 para. 11(a) (with s. 29) |
| F24 | Art. 41B(3)(j) inserted (25.7.2014) by Energy Efficiency Regulations (Northern Ireland) 2014 (S.R. 2014/198) , reg. 7(c) |
| F25 | Art. 41B(3)(k)(l) inserted (25.10.2022) by Energy Prices Act 2022 (c. 44) , s. 30(6), Sch. 7 para. 11(b) (with ss. 7, 29) |

Orders for securing compliance

Orders for securing compliance

42.—(1) Subject to paragraphs (2) [^{F26}and (5) to] (6) and Article 43, where the Authority is satisfied that a [^{F27}regulated person] 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 [^{F28}(5) to] (6), where it appears to the Authority—

- (a) that a [^{F27}regulated person] 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 [F29(5) to] (6) and Article 43, the Authority shall confirm a provisional order, with or without modifications, if—
- (a) it is satisfied that the [F27regulated person] 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 [F27regulated person] if it is satisfied—
- (a) that the duties imposed on it by Article 12 or 14 [F30or Article 9 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.] preclude the making or, as the case may be, the confirmation of the order;F31 . . .
 - (b) F31
- [F32(5A) Before making a final order or making or confirming a provisional order in relation to a licence holder, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (5B) The Authority shall not make a final order or make or confirm a provisional order in relation to a licence holder if it considers that it would be more appropriate to proceed under the Competition Act 1998.]
- (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 [F27regulated person] 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 [F27regulated person] 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) [F33or decides that it would be more appropriate to proceed under the Competition Act 1998], it shall—
- (a) serve notice that it is so satisfied [F34or has so decided] on the [F27regulated person]; 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 [F27regulated person] 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.

- F26** Words in art. 42(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 51(5), 103(3), **Sch. 14 para. 25(2)**; S.I. 2014/416, **art. 2(1)(e)** (with Sch.)
- F27** Words in art. 42 substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 71**
- F28** Words in art. 42(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 51(5), 103(3), **Sch. 14 para. 25(3)**; S.I. 2014/416, **art. 2(1)(e)** (with Sch.)
- F29** Words in art. 42(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 51(5), 103(3), **Sch. 14 para. 25(3)**; S.I. 2014/416, **art. 2(1)(e)** (with Sch.)
- F30** Words in art. 42(5) inserted (1.11.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 11**; S.R. 2007/444, **art. 2**, Sch. 1
- F31** Art. 42(5)(b) and preceding word omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 51(5), 103(3), **Sch. 14 para. 25(4)**; S.I. 2014/416, **art. 2(1)(e)** (with Sch.)
- F32** Art. 42(5A)(5B) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 51(5), 103(3), **Sch. 14 para. 25(5)**; S.I. 2014/416, **art. 2(1)(e)** (with Sch.)
- F33** Words in art. 42(7) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 51(5), 103(3), **Sch. 14 para. 25(6)(a)**; S.I. 2014/416, **art. 2(1)(e)** (with Sch.)
- F34** Words in art. 42(7)(a) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 51(5), 103(3), **Sch. 14 para. 25(6)(b)**; S.I. 2014/416, **art. 2(1)(e)** (with Sch.)

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 [F35 regulated person] 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 [F35regulated person] 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 [F35regulated person] 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 [F35regulated person] 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 [F35regulated person] to whom the order relates.

<p>F35 Words in art. 43 substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), reg. 71</p>
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Validity and effect of orders

44.—(1) If the [F36regulated person] 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 [F36regulated person] 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 [^{F36}regulated person] 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.

F36 Words in art. 44 substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 71](#)

Financial penalties

Financial penalties

45.—(1) Where the Authority is satisfied that a [^{F37}regulated person] has contravened or is contravening any relevant condition or requirement[^{F38} or any provision of [^{F39}a Community Regulation]], the Authority may, subject to Article 47, impose on the [^{F37}regulated person] a penalty of such amount as is reasonable in all the circumstances of the case.

(2) Where the Authority is satisfied

[^{F40}(a)] that an electricity licence holder who is a public electricity supplier has failed or is failing to achieve any standard of performance prescribed under Article 42 of the Electricity Order[^{F41} or

(b) that a gas licence holder has failed or is failing to achieve any standard of performance prescribed under section 1 of the Energy Act (Northern Ireland) 2011.]

, the Authority may, subject to Article 47, impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case.

[^{F42}(3) Before imposing a penalty under paragraph (1) or (2) the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(3A) The Authority shall not impose a penalty under paragraph (1) or (2) if it considers that it would be more appropriate to proceed under the Competition Act 1998.]

(4) Before imposing a penalty on a [^{F37}regulated person] under paragraph (1) or (2) the 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[^{F38} the condition, requirement or prohibition] or the standard of performance in question;

(c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed; and

- (d) 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 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 paragraph (4)(a) the Authority shall give notice—

- (a) setting out the proposed variation and the reasons for it; and
 (b) 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 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 Authority shall give notice—

- (a) stating that it has imposed a penalty on the [F37regulated person] and its amount;
 (b) setting out[F38 the condition, requirement or prohibition] or the standard of performance in question;
 (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the 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 [F37regulated person], by which the penalty is required to be paid.

(7) The [F37regulated person] may, within 21 days of the date of service on him of a notice under paragraph (6), make an application to the Authority for 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 Article 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;
 (b) by serving a copy of the notice on the [F37regulated person]; and
 (c) by serving a copy of the notice on the Council.

[F43(9) No penalty imposed by the Authority under this Article may exceed—

- (a) subject to sub-paragraph (b), 10 per cent of the turnover of the regulated person; or
 (b) where the regulated person is or is part of a vertically integrated undertaking and the relevant condition or requirement to which the contravention relates is imposed on a vertically integrated undertaking pursuant to the Electricity Directive [F44or [F45by or under a provision referring to a provision of] the 2009 Electricity Directive] or the Gas Directive, 10 per cent of the turnover of the vertically integrated undertaking,

in each case determined in accordance with provisions specified in an order made by the Department.]

(10) Any sums received by the Authority by way of penalty under this Article shall be paid into the Consolidated Fund.

[F46(11) “Community Regulation” means—

- (a) the Gas Regulation;
 (b) the Electricity Regulation, in the case of a contravention which occurred on or after the date on which the Electricity and Gas (Internal Markets) Regulations 2020 came into force; or

- (c) the 2009 Electricity Market Regulation, in the case of a contravention which occurred before the date referred to in sub-paragraph (b).]

- F37** Words in art. 45 substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 71**
- F38** SR 2005/335
- F39** Words in art. 45(1) substituted (8.3.2010) by virtue of [Electricity and Gas \(Billing\) \(No. 2\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/27\)](#), **reg. 8(a)**
- F40** Words in art. 45(2) inserted (21.3.2011) by [Energy Act \(Northern Ireland\) 2011 \(c. 6\)](#), **ss. 9(4)(a)**, [36\(1\)](#); S.R. 2011/95, **art. 2**
- F41** Art. 45(2)(b) and preceding word inserted (21.3.2011) by [Energy Act \(Northern Ireland\) 2011 \(c. 6\)](#), **ss. 9(4)(b)**, [36\(1\)](#); S.R. 2011/95, **art. 2**
- F42** Art. 45(3)(3A) substituted (1.4.2014) for art.45(3) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 51(5)**, [103\(3\)](#), **Sch. 14 para. 26**; S.I. 2014/416, **art. 2(1)(e)** (with Sch.)
- F43** Art. 45(9) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 77**
- F44** Words in art. 45(9)(b) inserted (31.12.2020) by [The Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/307\)](#), **regs. 1, 29**
- F45** Words in art. 45(9)(b) inserted (31.12.2020) by S.I. 2019/530, **reg. 140(1)** (with **reg. 140(2)**) (as substituted by [The Electricity and Gas etc. \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1016\)](#), **regs. 1(2)**, **3(51)(a)**)
- F46** Art. 45(11) substituted (25.2.2020) by [The Electricity and Gas \(Internal Markets\) Regulations 2020 \(S.I. 2020/96\)](#), **regs. 1, 7(8)**

Modifications etc. (not altering text)

- C2** Art. 45 applied (with modifications) (3.7.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), **regs. 1(1)**, **56(2)** (with transitional provisions in Pt. IV)

Statement of policy with respect to penalties

46.—(1) The 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 Authority shall have regard to its statement of policy most recently published at the time when the contravention or failure occurred.

(3) The 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 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) The Authority shall undertake such consultation as it considers appropriate when preparing or revising its statement of policy.

Modifications etc. (not altering text)

- C3** Art. 46 applied (with modifications) (3.7.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), **regs. 1(1)**, **56(2)** (with transitional provisions in Pt. IV)

Time limits on the imposition of financial penalties

47.—(1) Where no final or provisional order has been made in relation to a contravention or failure, the 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 45(4) relating to the penalty is served on the [F47 regulated person] under Article 45(8), or
- (b) a notice relating to the contravention or failure is served on the [F47 regulated person] under Article 51(2).

(2) Where a final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under Article 45(4) was served on the [F47 regulated person] under Article 45(8)—

- (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.

[F48(3) This Article shall not apply in relation to a penalty imposed for a contravention of any provision of the Community Regulation within the meaning of Article 45(11).]

F47 Words in art. 47 substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 71**

F48 SR 2005/335

Modifications etc. (not altering text)

C4 [Art. 47](#) applied (with modifications) (3.7.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), **regs. 1(1), 56(2)** (with transitional provisions in **Pt. IV**)

Interest and payment of instalments

48.—(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 (7) of Article 45 in relation to a penalty, the penalty is not required to be paid until the application has been determined.

(3) If the 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 Authority under that paragraph, the Authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

Modifications etc. (not altering text)

C5 [Art. 48](#) applied (with modifications) (3.7.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), **regs. 1(1), 56(2)** (with transitional provisions in **Pt. IV**)

Appeals

49.—(1) If the [F49 regulated person] on whom 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 [F49regulated person] 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 [F49regulated person] of a notice under Article 45(6), or
- (b) where the application relates to a decision of the Authority on an application by the [F49regulated person] under Article 45(7), within 42 days from the date the [F49regulated person] 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 paragraph (4), 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 paragraph (1)(c), may substitute for the date or dates imposed by the 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 Authority under Article 45;
- (b) that any of the requirements of paragraphs (4) to (6) or (8) of Article 45 have not been complied with in relation to the imposition of the penalty and the interests of the [F49regulated person] have been substantially prejudiced by the non-compliance; or
- (c) that it was unreasonable of the 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 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 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 whatever.

F49 Words in art. 49 substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 71**

Modifications etc. (not altering text)

C6 [Art. 49](#) applied (with modifications) (3.7.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), **regs. 1(1), 56(2)** (with transitional provisions in Pt. IV)

Recovery of penalties

50. Where a penalty imposed under Article 45(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 49 during the period within which such an application can be made, or
- (b) an application has been made under that Article and determined,

the Authority may recover from the [^{F50}regulated person], as a civil debt due to it, any of the penalty and any interest which has not been paid.

F50 Words in art. 50 substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 71**

Modifications etc. (not altering text)

C7 [Art. 50](#) applied (with modifications) (3.7.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), **regs. 1(1), 56(2)** (with transitional provisions in Pt. IV)

Power to require information

Power to require information

51.—(1) Where it appears to the Authority that a [^{F51}regulated person]—

- (a) may be contravening, or may have contravened, any relevant condition or requirement, or
- (b) (in the case of an electricity licence holder who is a public electricity supplier) may be failing or may have failed to achieve any standard of performance prescribed under Article 42 of the Electricity Order,^[F52] or
- (c) (in the case of a gas licence holder) may be failing or may have failed to achieve any standard of performance prescribed under section 1 of the Energy Act (Northern Ireland) 2011,]

the Authority may, for any purpose connected with such of its functions under this Part as are exercisable in relation to that matter, serve a notice under paragraph (2) on any person.

^[F53](1A) The Authority may, for the purposes of its monitoring functions under Article 50 of the Electricity Order and Article 27 of the Gas Order, serve a notice under paragraph (2) on any regulated person, but only where the activities being monitored are the activities set out in paragraph (3B) of Article 50 of the Electricity Order and paragraph (3B) of Article 27 of the Gas Order, as the case may be.]

(2) A notice under this paragraph is a notice signed on behalf of the Authority and—

- (a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the Authority or to any person appointed by the Authority for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
- (b) requiring that person, if he is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Authority such information as may be specified or described in the notice.

(3) No person shall be required under this Article to produce any documents which he could not be compelled to produce in civil proceedings in the High Court or, in complying with any requirement

for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.

(4) A person who without reasonable excuse fails to do anything required of him by notice under paragraph (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under paragraph (2) to produce shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(6) If a person makes default in complying with a notice under paragraph (2), the High Court may, on the application of the Authority, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs of and incidental to the application shall be borne by the person in default or by any officers of a company or other body or association who are responsible for its default.

- F51** Words in art. 51 substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 71**
- F52** Art. 51(1)(c) and preceding word inserted (21.3.2011) by [Energy Act \(Northern Ireland\) 2011 \(c. 6\)](#), **ss. 9(5)**, 36(1); S.R. 2011/95, **art. 2**
- F53** Art. 51(1A) inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 79**

Changes to legislation:

There are currently no known outstanding effects for the The Energy (Northern Ireland) Order 2003, PART VI.