
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

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.