

Financial Penalties – The Process

10/03

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1. Introduction

Background

1.1 Under section 30A of the Gas Act 1986 and section 27A of the Electricity Act 1989 (the statutes) the Gas and Electricity Markets Authority (The Authority) has powers to impose financial penalties on licence holders.

1.2 The Authority is able to impose financial penalties on a licence holder where it is satisfied that it has contravened or is contravening any relevant condition of its licence or relevant requirement of the statutes, or has failed to achieve certain standards of performance. Penalties may not exceed 10% of the turnover of the licence holder.

1.3 The statutes require the Authority to prepare, consult on and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.

1.4 In January 2001, the Authority consulted on a draft statement of policy on the imposition of financial penalties. Following that consultation, the Authority agreed its statement of policy which was published in April 2001.

Purpose of document

1.5 This guidance sets out, for information, the procedural steps that the Authority will follow in exercising its power to impose financial penalties. It replaces the guidance published in April 2001.

2. Procedural Guidance

2.1 The statutes set out a number of procedural steps that must be taken during the exercise of the Authority's power to impose financial penalties. This guidance sets out how those procedural steps will operate. A flowchart setting out the various steps is annexed to this guidance.

Decision on Breach

2.2 Before deciding whether it is satisfied that the company concerned has contravened or is contravening any relevant condition of its licence or relevant requirements of the statutes, or has failed to achieve certain standards of performance, the Authority will write to the company setting out the basis on which it is "minded to" to make such a decision. The company will have an opportunity to make representations (in writing and orally), which the Authority will consider in making its final decision.

2.3 A "minded to" letter will only be issued in cases where the imposition of a financial penalty is an option. If the Authority has issued a final order or confirmed a provisional order in relation to the particular breach then the Authority would not issue a "minded to" letter.

Oral Hearings

2.4 All licensees receiving a "minded to" letter from the Authority will be offered the opportunity to have an oral hearing at the stage when the Authority is considering the question of breach. Such a licensee should indicate, in its response to the "minded to" letter, whether it wishes to exercise the option of having an oral hearing.

2.5 It is not intended that the licensee should introduce any new material at the oral hearing which was not raised at the stage of the written submission. The licensee should limit its oral submissions to the clarifications of, or the highlighting of issues which were addressed in the written submissions and which it wishes to draw to the attention of the decision-maker.

2.6 The form and duration of such a hearing will be determined by the Authority taking into account all the circumstances of the case.

Statutory notice of intention to impose a financial penalty

2.7 If having considered the representations made to it, the Authority decides that a failure or contravention has occurred and that it is appropriate to impose a financial penalty it must serve a statutory notice on the licence holder explaining that the Authority intends to impose a financial penalty¹. The notice will state the amount of the intended penalty and will set out the relevant conditions, relevant requirements or standards of performance in question and will explain which acts or omissions, in the opinion of the Authority, constitute the contravention or failure.

2.8 A minimum of 21 days must be allowed for the making of written representations and objections. The precise timeframe will depend on the circumstances of the case.

Imposition of a financial penalty

2.9 Following the close of the statutory notice period the Authority will consider all the representations and objections that have been made and will decide whether or not to impose, vary or withdraw the proposed financial penalty. Where a licence holder has exercised his option to have an oral hearing, only those members of the Authority who were present at the oral hearing will be involved in the Authority's final decision on whether to impose the proposed financial penalty.

2.10 The timescales within which the Authority must impose a financial penalty are laid out in section 30C of the Gas Act 1986 and section 27C of the Electricity Act 1989.

2.11 Once the Authority has considered all representations, one of three options will be followed:

- . a financial penalty will be imposed; or
- . the penalty notice will be withdrawn; or
- . a further penalty notice will be issued, varying the penalty.

¹ In addition, the Authority must serve a copy of the notice on energywatch and must publish the notice in such manner as it considers appropriate to bring the matter to the attention of persons who are likely to be affected.

Imposition of a penalty

2.12 If the Authority imposes a financial penalty, a further statutory notice must be served on the licence holder stating that it has imposed a financial penalty and setting out the amount of that penalty². The notice will set a date by which the licensee must pay the penalty. The statutes provide that a minimum period of 42 days is to be allowed for payment. However, the length of time allowed for payment will depend on the circumstances of each individual case.

2.13 Once notice of the imposition of a penalty has been served, the licensee can apply to the Authority for it to specify different dates by which different portions of the penalty are to be paid. The licensee has 21 days from the date on which the notice was served in which to do so.

Withdrawal of the penalty notice

2.14 If the Authority decides that it is not appropriate to impose a financial penalty, it will withdraw the penalty notice.

Varying a penalty

2.15 If the Authority decides to vary the level of the penalty, it must issue a notice setting out the reasons for the variation and specifying the period within which representations or objections might be made. As at paragraph 2.3, the minimum period for representations and objections will be 21 days but the actual time allowed will depend on the circumstances of the case.

Payment of a financial penalty

2.16 The licensee has a minimum of 42 days from the date on which the final notice is served upon it to pay the penalty³. The licensee may, within 21 days of the notice being

² Again, the Authority must serve a copy of the notice on energywatch and must publish the notice.

³ Please note, that this timescale does not start to run if the licensee has made an application to the court under section 30E of the Gas Act 1986 or section 27E of the Electricity Act 1989 regarding the imposition of the penalty, the amount of the penalty or the payment arrangements set by the Authority.

served, apply to the Authority for it to specify different dates by which different portions of the penalty are to be paid⁴.

2.17 If the licensee fails to pay the penalty, or any part of the penalty, within the prescribed time period the Authority may recover the penalty, and any interest which has not been paid, as a civil debt. In addition, the Authority has the power to revoke a licence for non-payment of a penalty.

⁴ Similarly, the statutory timescales for payment do not start to run until the application has been determined.

