

*These notes refer to the Energy Act (Northern Ireland) 2011  
(c.6) which received Royal Assent on 10 February 2011*

# Energy Act (Northern Ireland) 2011

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

These Explanatory Notes relate to the Energy Act (Northern Ireland) 2011 (the **Act**) which received Royal Assent on 10 February 2011. They have been prepared by the Department of Enterprise, Trade and Investment (the **Department**) in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.

The notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require any explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

In 2008, the Department was asked by both the Northern Ireland Authority for Utility Regulation (the **Utility Regulator**) and representatives of the gas and electricity industry to consider introducing legislation that would update current legislation applying to the natural gas (**gas**) sector in Northern Ireland, to enable that sector to benefit from policies that had already been successfully implemented in the electricity sector; the Department was also asked to consider introducing legislation to create a special administration regime applicable to both the gas and electricity sectors.

The policy objectives in relation to the major measures contained in the resulting Act are set out below.

#### *Special administration regime for the electricity and gas sector*

A special administration regime is a mechanism designed to ensure the uninterrupted operation of gas and electricity networks essential to security of supply in the event of actual or threatened insolvency of a network company.

In the normal course of events, the duties of a receiver or administrator appointed under the Insolvency (Northern Ireland) Order 1989 (the **Insolvency Order**) include obtaining the best possible price for the company assets on behalf of the creditors and shareholders. In the case of an energy network company, there is a risk that this might require the company to cease operating the relevant network. This would be against the wider public interest, especially if the

security of electricity or gas supply to thousands of consumers were to be threatened.

The Act therefore introduces a 'special energy administration regime' for the energy sector. This safeguards the provision of essential electricity and gas supplies from the local networks, by providing that the relevant network shall continue to be maintained and developed as an efficient and economic system.

#### ***Guaranteed standards of performance by gas companies***

The Gas (Northern Ireland) Order 1996 (the **Gas Order**) contains measures designed to provide consumer protection within the gas market. The Act enhances these consumer protection measures by introducing legislative provisions that allow the Department and the Utility Regulator to determine standards of performance in connection with the activities of licensed gas suppliers and those who are licensed convey gas. There is a similar regime in operation in the electricity industry.

Individual standards are applicable in relation to each customer separately and failure to meet individual standards will give rise to a duty to pay compensation. Overall standards are typically percentage targets to be achieved by companies over all their customers or classes of customers. Gas licence holders are subject to a duty to conduct their businesses with a view to achieving overall standards of performance which will be published.

#### ***Provision for deemed contracts between gas companies and customers***

In the gas industry, supplies of gas are often taken without the customer having first agreed contractual terms with the supplier (for example, where a tenant moves into premises and immediately starts taking a supply of gas). The Act introduces a deemed contracts regime, which provides that a supply contract will be 'deemed' to have arisen between the supplier and the customer in such circumstances. It provides a sound and binding basis upon which suppliers can supply customers. As the terms and conditions of a deemed contract have not been expressly agreed between suppliers and customers they are subject to regulation. The regime broadly replicates the regime that is already in place in the electricity industry.

#### ***Extension of existing powers of entry into premises for gas companies***

At present, the Gas Order provides a mechanism for gas companies to enter premises in certain circumstances. Such powers are specifically limited to situations concerning entry where there may be a danger to life or property (such as a gas leak). The equivalent regime in electricity goes further, by enabling electricity companies to legally enter customers' premises in situations that are not conditional on there being a danger to life or property (for example, where they wish to take a meter reading or where suspect that a customer has been tampering with an electricity meter). The Act therefore extends the gas

companies' existing powers of entry so that they broadly align with the powers available to electricity companies.

### ***Other policy objectives***

The Act also implements a number of other policy objectives as follows.

Until now, there has been no criminal offence in gas legislation equivalent to the 'damage to electrical plant' provided by electricity legislation. The Act creates a new criminal offence to bring the gas industry in line with the position in the electricity industry.

Similarly, there was no provision in gas legislation equivalent to that in electricity legislation which exempts electrical equipment belonging to local electricity companies from judgment and bankruptcy processes. The Act therefore contains provisions to bring the gas industry in line with the position in the electricity industry.

The Act also makes a minor clarification in respect of the Gas Order provisions relating to the offence of storing gas without the requisite authorisation or exemption.

Finally, the Act makes an amendment to the Gas Order so that the Utility Regulator is not required to appoint meter examiners solely from members of its staff.

## **CONSULTATION**

Public consultation on the Act took place over the normal 12 week period and ended on 25 September 2009.

Fourteen organisations responded. Eight responses were received from the energy industry; five from the public sector; and one comment was also received from the Citizens Advice Bureau. Respondents offered a wide range of opinions on the best approach on how to implement each of the proposals into Northern Ireland legislation.

As a result of the consultation exercise, a number of changes were made to the proposals. Copies of the responses, together with a summary of the outcome of the Department's consideration of the issues raised can be accessed by referencing the Department's website at [www.detini.gov.uk](http://www.detini.gov.uk)

## **OVERVIEW**

The Act is divided into three parts, containing thirty-seven sections and one schedule.

In summary, Part 1 of the Act (sections 1 to 16) relates specifically to the gas industry, Part 2 (sections 17 to 33) relates to both the gas and electricity industries and Part 3 (sections 34 to 37) contains supplementary provisions.

Sections 1 to 8 of the Act provide gas customers in Northern Ireland with an enhanced level of consumer protection, primarily by empowering the Utility Regulator and the Department to determine standards of performance in connection with the activities of those companies that convey (transport) gas and those companies that supply it to end-users.

Section 9 of the Act makes certain amendments to the Energy (Northern Ireland) Order 2003. These amendments are consequential to the new provisions on standards of performance.

Sections 10 to 16 concern miscellaneous provisions relating to gas. Section 10 establishes a criminal offence in respect of persons who intentionally or recklessly damage or allow to be damaged gas equipment used for conveying, storing or supply gas; it also allows gas companies to disconnect premises and/or remove gas meters where the offence is committed. Section 11 exempts gas plant owned by gas companies from certain legal processes, e.g. where a customer in possession of that gas plant is subject to judgment or bankruptcy processes. Sections 12 and 13 create a regime to provide for deemed contracts to arise in situations where customers take a supply of gas without having first agreed a supply contract with a supplier. Section 14 extends gas companies existing powers of entry to customer premises. Section 15 clarifies the meaning of gas storage for the purposes of the Gas Order. Section 16 amends the Gas Order so that the Utility Regulator does not have to appoint meter examiners from members of its staff.

Part 2 of the Act creates a special administration regime for licensed energy network companies. Where a gas conveyance or an electricity transmission or distribution company faces actual or threatened insolvency, the new regime will seek to ensure the continuance of the operation of the relevant network.

Part 3 of the Act contains supplementary provisions concerning regulations made under the Act, and the interpretation, commencement and title of the Act.

## **COMMENTARY ON SECTIONS**

Comments are not given where the wording is self-explanatory.

### **Part 1 – Gas**

Part 1 of the Act (sections 1 to 16) specifically relates to the gas industry.

#### **Standards of performance**

Sections 1 to 8 concern standards of performance.

Section 1 concerns standards of performance in individual cases. Subsection (1) gives the Utility Regulator the power (with the consent of the Department) to make regulations prescribing such standards of performance in connection with the activities of gas suppliers and gas conveyors, affecting customers (or potential customers) in individual cases. Subsection (2) provides that the gas supplier or conveyor must pay the prescribed compensation where it fails to

meet the relevant standard of performance. Subsections (3) and (4) provides that the regulations may contain rules relating to provision of information to customers, how compensation is to be made, which persons may be exempt from the regulations and how some suppliers (and conveyors) may be treated differently from other suppliers (and conveyors). Subsection (5) clarifies that payment of compensation does not prejudice any other remedy that may be available in respect of the failure to meet the prescribed standard of performance.

Section 2 provides that any dispute relating to standards of performance in individual cases shall be determined (on reference to it) by the Utility Regulator. The Department may make regulations concerning the practice and procedures to be followed when the Utility Regulator makes its determination in any dispute.

Section 3 concerns overall standards of performance for gas suppliers and conveyors and gives the Utility Regulator the power to determine (and arrange for the publication of) standards of overall performance in connection with the provision of gas supply services by gas suppliers and in connection with the activities of gas conveyors. Different standards may be determined for different suppliers, if the Utility Regulator thinks it will not cause undue disadvantage in competition. Under subsection (4), each gas supplier and gas conveyor is required to conduct its business in such a way as can reasonably be expected to lead to the achievement by that gas supplier or gas conveyor of the overall standards of performance determined by the Utility Regulator.

Section 4 sets out the procedure for determining and prescribing standards of performance. The Utility Regulator must arrange for appropriate research to be conducted, and consult with persons or bodies it thinks are likely to be affected. In respect of overall standards of performance, it must also consult the Consumer Council and gas suppliers and conveyors, publish a notice of its proposals (together with reasons) and consider representations received (after giving not less than 28 days for such representations to be made).

Section 5 gives the Utility Regulator the power to determine standards of performance in connection with the promotion of the efficient use of gas by consumers. Before doing so, it must first consult gas suppliers and other persons it considers are likely to be affected. Different standards may be determined for different suppliers, if the Utility Regulator thinks it will not cause undue disadvantage in competition. Gas suppliers must take steps to inform its customers of the applicable standards of performance, and the level of performance achieved by the supplier. The Utility Regulator may determine the frequency and manner of the provision of such information.

Section 6 requires the Utility Regulator to collect information with respect to compensation paid under section 1, the level of overall performance achieved by suppliers and conveyors and the level of performance achieved by suppliers in respect of the promotion of the efficient use of gas by consumers. Gas suppliers and conveyors are required to provide the Utility Regulator with information concerning the levels of compensation paid and the levels of performance

achieved, and subsection (3) creates a criminal offence for failing to provide the relevant information. Under subsections (4) and (5), the Utility Regulator must arrange for this information to be published (at least once a year), although it may decide not to publish certain information if to do so would seriously and prejudicially affect the interests of a person or body.

Section 7 requires each gas supplier and gas conveyor to take steps to inform customers of suppliers of the applicable overall standards of performance, and the level of performance achieved by the supplier and conveyor. The Utility Regulator can determine how often this should be done, although it cannot specify a frequency of less than once every 12 months.

Section 8 places each gas supplier under a duty to establish a procedure for dealing with complaints made by customers (or potential customers) and to publish that procedure (and also to send it free of charge upon request). Before doing so, the Consumer Council must be consulted, and the procedure cannot be established until approved by the Utility Regulator. The Utility Regulator has the power to give a direction requiring the gas supplier to review its procedures and provide a report to the Utility Regulator, following which it may require modifications to be made to the procedure.

Section 9 of the Act makes certain amendments to the Energy (Northern Ireland) Order 2003. These amendments are consequential to the new provisions on standards of performance. Subsection (2) extends the gas functions of the Department and the Utility Regulator under the Energy Order, to include those functions under the Act. Subsection (3) extends the definition of "relevant requirement" in Article 41(2) of the Energy Order, so that it captures the new provisions relating to standards of performance. This has the effect of extending the enforcement powers of the Utility Regulator under the Energy Order, so that the Utility Regulator is able to issue an order for compliance, where necessary. Subsection (4) concerns Article 45(2) of the Energy Order. That Article gives the Utility Regulator the power to impose a financial penalty on an electricity supply licensee it believes is failing to achieve a standard of performance (in individual cases) that have been prescribed by regulations under the Electricity Order. Subsection (4) amends Article 45(2) to extend the Utility Regulator's powers, so that it can impose a financial penalty where a gas supply or conveyance licence holder is failing to meet standards of performance (in individual cases) prescribed by regulations. Subsection (5) concerns Article 51(1)(a) of the Energy Order. That Article gives the Utility Regulator the power to require information from a licensee suspected of contravening relevant conditions or requirements. Subsection (5) extends the scope of Article 51(1) with the effect that the Authority is given information gathering powers where a gas supply or conveyance licence holder is failing to meet standards of performance (in individual cases) prescribed by regulations.

### **Miscellaneous provisions**

Sections 10 to 15 concern miscellaneous provisions relating to gas.

Section 10 establishes a criminal offence in respect of persons who intentionally or recklessly damage or allow to be damaged gas equipment used for conveying, storing or supplying gas or who tamper with a gas meter; it also allows gas companies to disconnect premises and/or remove gas meters in those circumstances.

Section 11 provides that certain gas plant belonging licensed gas conveyors and suppliers is exempt from certain enforcement processes. The purpose of section 11 is to protect licensed gas companies against the loss of gas equipment that has been let for hire or lent to a customer, by exempting such equipment from judgment and bankruptcy processes against that customer. The provision also clarifies that such equipment shall continue to be the property of the licensed gas company.

Sections 12 and 13 create a deemed contracts regime for gas supplies. Specifically, subsection (1) of section 12 deems a contract to arise when a gas supplier supplies gas to a consumer otherwise than in pursuance of a contract (for example, when an existing supply contract has expired, but the supplier continues to supply the gas to the consumer). Subsection (2) deems a contract to arise where an owner or occupier of premises takes a supply of gas without making a formal contract with a supplier (but where a supplier has previously supplied gas to those premises) (for example, when a person moves into a house and the previous occupier had been supplied by a supplier). Subsection (3) clarifies that a deemed contract arising under (2) above is not intended to legitimise any illegal activity used to obtain the supply (for example, tampering with a gas meter or pipeline). Subsection (4) requires the Utility Regulator to publish procedures for determining who the relevant gas supplier will be where a deemed contract arises in the situation detailed at subsection (2). Subsection (6) requires each supplier to publish (in advance) a scheme that sets out the terms which are to be incorporated into deemed contracts. Under subsection (7), the scheme may include terms determining what quantity of gas was treated as supplied (or taken) during the relevant period. Subsection (8) allows a supplier to vary the terms and conditions of a scheme, for different cases or classes of cases for different areas. Subsection (9) obliges a supplier to publish its scheme, send it to the Utility Regulator, and to the Consumer Council (and also to send it free of charge upon request).

Section 13 contains provisions that have the effect of enabling the Utility Regulator to modify the conditions of supply licences (both individually and generally) in order to regulate the terms and conditions of deemed contracts. The Utility Regulator must first obtain the Department's consent, and conduct appropriate consultation.

Section 14 concerns licensed gas companies' statutory powers to enter premises. This supplements their existing powers contained in paragraphs 2, 3 and 4 of Schedule 5 of the Gas Order. Section 14 authorises licensed gas companies legally to enter customers' premises in the following circumstances: where a customer has damaged, or the gas conveyor suspects a customer of

damaging, equipment provided by the relevant gas company; where a gas supplier wishes to ascertain the register of any gas meter and, in the case of a pre-payment meter, remove any money or tokens or cards belonging to the gas supplier; where a gas conveyor wishes to disconnect premises or remove equipment in the event that a supply of gas is no longer required at the relevant premises; and where a gas conveyor wishes to place new gas plant in the place of, or in addition to, existing gas plant at the relevant premises. Consistent with the provisions on existing powers of entry in the Gas Order, the relevant person requiring entry must produce evidence of authority on request. Subsection (8) clarifies that 5 to 8 of Schedule 5 to the Gas Order apply to the new powers of entry.

Section 15 clarifies the meaning of 'store', for the purpose of the gas storage provisions in the Gas Order. Specifically a new paragraph (6) is inserted in Article 6 of the Gas Order, to clarify that it is only the operator of a gas storage facility that stores gas for the purposes of the Gas Order (rather than, for example, the user of a gas storage facility).

Section 16 relates to the appointment of gas meter examiners. Under Article 22 of the Gas Order, the Utility Regulator is responsible for appointing meter examiners. Article 22 currently operates on the basis that meter examiners are members of the Utility Regulator's staff. The new provision removes the restriction and will allow the Utility Regulator to arrange with an appropriate body for the appointment of meter examiners from wider sources.

## **Part 2 – Special administration regime for protected energy companies**

Part 2 of the Act (sections 17 to 33) creates a special administration regime for gas conveyance and electricity transmission and distribution companies facing actual or threatened insolvency. Usual insolvency arrangements would mean that, in the unlikely event that a utility becomes insolvent, the primary responsibility is towards creditors. However, the Act provides for gas and electricity networks to remain in place and operational to ensure gas and electricity supply to customers can continue. Responsibility for a utility which becomes insolvent will be transferred to a Special Administrator appointed by the High Court. The Special Administrator will put the interests of energy consumers above those of creditors and shareholders.

Section 17 provides that a court may make an energy administration order appointing an energy administrator in relation to a protected energy company i.e. a company which holds a gas conveyance licence or an electricity transmission licence. Subsections (1), (2) and (3) explain the terms "energy administration order" and "energy administrator" and how the energy administrator is to perform its duty. Subsection (4) establishes that an energy administration order can only apply to the affairs and business of a non-NI company (i.e. a company incorporated outside Northern Ireland) which are carried out in Northern Ireland and to its property in Northern Ireland. Subsection (5) sets out which licence holders may be subject to an energy administration order (i.e. all regulated natural monopolies in the energy sector).



Section 18 establishes that the objective of the energy administrator in performing its duty is (i) to secure that the company's system is maintained and developed as an efficient, economical and co-ordinated system; and (ii) to render the continuation of the energy administration unnecessary for this purpose by one of the means in subsection (2). Subsection (2) defines the means by which energy administration may be rendered unnecessary. These are either the rescue of the company as a going concern or transfers which satisfy subsection (3).

Subsection (4) provides examples of the types of transfer which may satisfy subsection (3). Subsection (5) provides that rescue is to be preferred to transfer in achieving the objective of energy administration. Transfers are only to be effected when rescue is not reasonably practicable without transfers, where the objective of the energy administration cannot be achieved through rescue without transfers or where such transfers would produce a better result for the creditors or members of the company.

Section 19 provides that an application for an energy administration order can only be made by the Department or by the Utility Regulator with the consent of the Department. It also requires the applicant to give notice to relevant persons, listed in subsection (2), as soon as reasonably practicable after the making of the application.

Section 20 sets out the powers of the court in relation to an energy administration order. Subsection (1) sets out the court's powers on hearing an application for energy administration. Subsection (2) provides that the court can only make an energy administration order if it is satisfied that the company is insolvent, facing insolvency or that on a petition from the Department under Article 104A of the Insolvency Order it would be just and equitable (aside from the objective of energy administration) to wind up the company in the public interest. Subsections (3) and (4) provide that in certain circumstances the court cannot make an energy administration order. Subsection (6) provides that an interim order made under subsection (1)(d) may, amongst other things, restrict the exercise of a power of the company or its directors or confer a discretion on a qualified insolvency practitioner in relation to the protected energy company.

Subsection (8) provides that the company will be deemed to be insolvent in accordance with Articles 103 or 186 to 188 of the Insolvency Order.

Section 21 defines the status of the energy administrator. It further provides that the administrator must exercise its management functions for the purpose of achieving the objective of the energy administration as quickly and efficiently as is reasonably practicable and that it must exercise and perform its powers and duties in the manner which, insofar as it is consistent with the objective of the energy administration, best protects the interests of the creditors of the company as a whole and, subject to those interests, the interests of the members of the company as a whole.

Section 22 gives the Department the power to make regulations for the purpose of applying provisions of the Insolvency Order (with or without modifications) in relation to an energy administration order or an application for such an

order. It also gives effect to the Schedule, which makes provision for transfer schemes to achieve the objective of an energy administration.

Sections 23 to 27 prevent an energy administration being frustrated by prior orders of various types being granted before the Department or the Utility Regulator have been given an opportunity to apply for an energy administration order or by other steps being taken when an energy administration order has been made or an application is outstanding.

Section 23 provides that a winding up order sought by a person other than the Department in respect of a protected energy company cannot be made unless notice has been served on the Department and the Utility Regulator and at least fourteen days have passed since the last of those notices was served. It also provides that if an application for an energy administration order is received before the winding up order is made; the court can consider that application instead of making the winding up order.

Section 24 prevents a protected energy company voluntarily winding itself up without the permission of the court and prevents the court from granting permission unless notice has been served on the Department and the Utility Regulator and at least fourteen days have elapsed since the service of the last of those notices. It also provides that if an application for an energy administration order is received before such permission is given, the court can consider that application instead of granting the permission.

Section 25 prevents a protected energy company entering ordinary administration if it is already in energy administration, or an energy administration order has been made but is not yet in force. It also provides that an ordinary administration order must not be granted by the court and the court must not exercise its powers under paragraph 14 of Schedule B1 to the Insolvency Order (including its powers to make interim orders) unless notice has been served on the Department and the Utility Regulator, fourteen days have elapsed since the service of the last of those notices, and no energy administration order is outstanding.

Section 26 provides that an administrator cannot be appointed for a company by its secured creditors, directors or the company itself, if an energy administration order in relation to the company is in force, has been made but is not yet in force, or has been applied for. An administrator cannot be appointed to a protected energy company unless none of the above conditions apply and, additionally, the Department and the Utility Regulator have been served with copies of all relevant documents filed or lodged with the court and at least 14 days have elapsed since the service of the last of these copies.

Section 27 provides that security over the property of a protected energy company cannot be enforced unless the Department and the Utility Regulator have been notified of the intention to enforce the security and at least 14 days have elapsed since the service of the last of those notices.

Section 28 enables the Department, with the consent of the Department of Finance and Personnel, to give a grant or loan to a company in energy administration where this appears to the Department to be appropriate to achieve the objective of energy administration. Specifically, subsections (2), (3), (4) and (5) enable the Department to set the terms of a grant or loan including: requiring whole or part of a grant to be repaid if other terms on which the grant is made are breached and setting terms for the grant of any loan - i.e. terms for repayment of a loan, the rates of interest due on it and changing these loan terms by direction. Subsection (6) requires the Department to secure Department of Finance and Personnel consent before giving grants or loans and giving any directions in respect of the terms on which any loan is granted under subsection (5) of this section.

Section 29 enables the Department, with the consent of the Department of Finance and Personnel, to indemnify persons in respect of liabilities incurred or loss or damage sustained in connection with the exercise of the energy administrator's powers and duties. Specifically, subsections (2), (3), (4) and (5) enable the Department to set the terms of an indemnity. Where any sums are paid out by the Department (in respect of the indemnity) to the energy administrator, the Department can direct that the protected energy company make a payment towards the repayment of those sums, together with interest. Subsection (6) provides that subsection (4) does not apply if the sums paid out by the Department are paid to the company in energy administration. Subsection (7) requires the Department to secure Department of Finance and Personnel consent before setting any of the terms of an indemnity under subsections (2), (4) and (5). Paragraph (b) of subsection (8) enables the Department to agree to indemnify persons who subsequently become relevant to the energy administration e.g. persons who become employees of the energy administrator in the course of the energy administration. Subsection (9) specifies the categories of person who may be indemnified under the terms of this section.

Section 30 enables the Department, with consent of the Department of Finance and Personnel, to provide guarantees in relation to a protected energy company in energy administration. Specifically, subsections (2) and (3) set out that the Department may guarantee sums borrowed by the protected energy company, the payment of interest on those sums and the discharge of any other related financial obligation, and that the Department may set the terms of the guarantee as it sees fit. Subsection (4) requires the Department to lay a statement before the Assembly as soon as practicable after any guarantee is made. Subsections (5) and (6) enable the Department, where any sums are paid out by him in respect of the guarantee to direct that the protected energy company pay such amounts as are directed towards the repayments and interest on those amounts whilst they are outstanding. Subsections (7) and (8) require the Department to lay a statement before the Assembly about any sum paid out under such a guarantee as soon as practicable after the end of the first financial year in which a payment is made and at the end of every subsequent year until the company has discharged the liability. Subsection (9) requires the Department to obtain Department of

Finance and Personnel consent before giving any guarantee or direction under subsection (5) or (6) of this section.

Sections 31 and 32 enable the Department to modify the conditions of gas and electricity licences. It outlines that such modifications can provide for circumstances where there is a shortfall in the property of a protected energy company, which is or has been in energy administration, for meeting the costs of energy administration. In particular, the Department can require that in such circumstances the protected energy company or its successor raises a levy on other energy companies and uses the sums raised to discharge debts incurred during energy administration. These will include sums paid by the Department under sections 28, 29 and 30.

Specifically, in section 31, subsection (1) enables the Department to modify the conditions of any one particular licence and the standard conditions of gas and electricity licences in relation to the new regime for energy administration. Subsection (2) extends the power under subsection (1) to include the making of incidental, consequential or transitional modifications. Subsection (3) and (4) require the Department to consult the holder of any licence being modified and anyone else it thinks appropriate before making a modification. Subsections (5) and (6) require the Department to publish modifications made under this section. Subsection (8) requires the Utility Regulator to incorporate any modification of standard conditions made by the Department into new licences it grants and to publish these modifications.

Subsection (9) limits the exercise of the powers under this section to the eighteen months after commencement of this section.

Section 32 outlines how the Department can amend the conditions of gas and electricity licences to secure the funding of energy administration. Subsection (1) specifies that the modifications that the Department can make to gas and electricity licences include requiring the holder of the licence to raise the charges imposed by him so as to raise such amounts as may be determined and to pay the amounts raised to specified persons for the purpose of making good a "shortfall" (as defined in subsection (3)) in the property of a protected energy company available to meet the expenses of energy administration, or for contributing to the making good of such a shortfall. Subsection (2) provides that the modifications may require a licence holder to which the sums raised under subsection (1) are paid to apply those sums towards discharging the "shortfall". Subsection (3) defines a "shortfall" in meeting the expenses of energy administration as the property of the company being insufficient to meet the costs of energy administration. It also defines making payment to make good the shortfall as discharging "relevant debts" which cannot otherwise be met out of the available property. Subsection (4) defines "relevant debts". These include obligations to repay the grants, loans, sums paid out under an indemnity and sums paid out under guarantees under sections 28, 29 and 30.

Section 33 defines the terms used in Part 2, and how certain references are to be interpreted.

### **Part 3 – Supplementary**

Part 3 of the Act contains supplementary provisions.

Section 34 of the Act requires regulations made by the Department and the Utility Regulator under the Act to be subject to negative resolution (and, in the case of regulations made by the Utility Regulator, such regulations must be laid before the Assembly by the Department). Regulations under the Act may also make any necessary transitional provisions and amendments.

Sections 35 to 37 deal with interpretation, commencement and the title of the Act. The provisions of the Act will come into force on such day (or days) as the Department may by order appoint.

#### ***Schedule***

The Schedule covers the content and effect of transfer schemes which can be made as described in section 18(3) i.e. transfers to another company or companies as a going concern of so much of the protected energy company's assets as are necessary to ensure that the objective of the energy administration is met. The transfer may include assets other than the network system (vehicles, for example) but must include enough assets to constitute a going concern as a conveyance, transmission or distribution company. It may be the case that all of the protected energy company's assets will be transferred to one company but the protected energy company may also be separated into several going concerns; for example in the case of an electricity distribution company it might be possible to separate the assets on geographical lines creating several smaller regional distribution networks. All transfers are subject to veto or amendment by the Department.

Paragraphs 1 to 4 of the Schedule enable a protected energy company (through its energy administrator) to make a scheme or schemes for the transfer of property, rights and liabilities to a new company subject to the approval of the Department, who in turn must consult the Utility Regulator. Paragraph 5 provides that all or part of a licence can be included in a transfer scheme, whilst paragraph 6 provides that powers and duties which fall to the old energy company (i.e. the protected energy company in respect of which the energy administration order was made) under statutory provisions can be transferred to the extent that they are exercisable or required by the new energy company given the extent of the transfer of the business to it. The Department is given the power to modify the scheme before giving approval although it will require the consent of the old energy company and the new energy company to the modifications (paragraph 3). Similarly it may modify it subsequently with the consent of those parties and after consulting the Utility Regulator (paragraph 9).

Paragraph 7 of the Schedule deals with a number of matters which provide for the smooth transition of property, rights etc from the protected energy company to the new energy company.

Paragraphs 10 to 11 of the Schedule provide for cases where the energy company is a foreign company or foreign property, rights and liabilities are being transferred.

### **HANSARD REPORTS**

The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly.

<i>STAGE</i>	<i>DATE</i>
Introduction of the legislation to the Committee for Enterprise, Trade and Investment	29 March 2010
First Stage – Introduction to the Assembly	1 June 2010
Second Stage debate	15 June 2010
Committee Stage – general consideration of sections and schedules	9 September 2010
Committee Stage – evidence from Consumer Council NI and the Northern Ireland Authority for Utility Regulation	23 September 2010
Committee Stage – consideration of sections 10, 14 and 35 of Act	14 October 2010
Committee Stage – formal section by section scrutiny of the Act; agreement given to sections 10, 14 and 35 to be brought forward at Consideration Stage and agreement for Committee to recommend the amendment to Section 10 of the Act	4 November 2010
Committee Stage – consideration of Committee's draft report	11 November 2010
Committee's report on the Act – Report number 12/10/11R	19 November 2010
Consideration Stage in the Assembly	13 December 2010
Further Consideration Stage	17 January 2010
Final Stage	25 January 2010
Royal Assent	10 February 2011