

*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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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

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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.