
STATUTORY INSTRUMENTS

2003 No. 419

The Energy (Northern Ireland) Order 2003

PART VIII

MISCELLANEOUS AND SUPPLEMENTARY

Miscellaneous

[^{F1}Financial assistance for energy purposes

61.—(1) The Department may give financial assistance to any person if, in the opinion of the Department—

- (a) the form and amount of the assistance is reasonable having regard to all the circumstances; and
- (b) the giving of the assistance is likely to achieve one or more of the purposes set out in paragraph (2).

(2) Those purposes are—

- (a) to secure a diverse and viable long-term energy supply;
- (b) to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland;
- (c) to promote efficiency and economy on the part of persons engaged in the generation, production, transmission, distribution or supply of energy;
- (d) to promote the efficient use of energy;
- (e) to promote the development or the bringing into use of—
 - (i) energy from renewable sources, or
 - (ii) technologies for the production of energy from such sources;
- (f) to promote research and development in relation to other matters connected with energy supply;
- (g) to promote the generation, production, transmission, distribution or supply of energy from renewable sources;
- (h) to promote the production, distribution or use of renewable transport fuels;
- (i) to limit or reduce emissions of greenhouse gases, or other effects on the environment, resulting from the generation, production, transmission, distribution, supply or use of energy;
- (j) to conduct research, or to raise awareness, about matters referred to in sub-paragraph (i);
- (k) any other purpose prescribed by regulations made by the Department with the approval of the Department of Finance and Personnel.

(3) Financial assistance under this Article may be given—

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- (a) in respect of particular activities carried on or supported by the recipient; or
 - (b) generally in respect of all or some part of the activities carried on or supported by the recipient.
- (4) Financial assistance under this Article shall be given—
- (a) in such form, and
 - (b) subject to such conditions,
- as the Department considers appropriate.
- (5) Without prejudice to the generality of paragraph (4), financial assistance under this Article may be given in one or more of the following forms—
- (a) by making grants (whether or not repayable) or loans;
 - (b) by giving indemnities;
 - (c) by making investments in bodies corporate;
 - (d) by incurring expenditure for the benefit of a person;
 - (e) by providing services, staff or equipment for the benefit of a person.
- (6) Without prejudice to the generality of paragraph (4), financial assistance under this Article may be given subject to conditions—
- (a) as to repayment;
 - (b) requiring payments to be made to the Department (which need not be limited by reference to the value of the assistance given).
- (7) In this Article—
- “greenhouse gases” has the meaning given by section 82(9) of the Energy Act 2004;
- “renewable sources” means sources of energy other than fossil fuel, peat or nuclear fuel, and includes waste (and for this purpose, “fossil fuel” and “peat” have the meaning given by Article 52(7));
- “renewable transport fuel” means—
- (a) liquid or gaseous fuel that is produced wholly or mainly from biomass; or
 - (b) any other description of fuel specified in an order made by the Department;
- and for this purpose “biomass” means the biodegradable portion of a specified product, waste or residue.]

F1 [Art. 61](#) substituted (25.7.2006) by [Northern Ireland \(Miscellaneous Provisions\) Act 2006 \(c. 33\)](#), [ss. 24, 31\(1\)\(e\)](#)

Reasons for decisions

62.—(1) This Article applies to the following decisions of the Authority, the Department or the Secretary of State, namely—

- (a) the revocation of an electricity licence or a gas licence;
- (b) the modification of the conditions of an electricity licence or a gas licence;
- (c) the giving of any directions or consent in pursuance of a condition included in a licence by virtue of—
 - (i) Article 11(3)(a) or (b) of the Electricity Order; or
 - (ii) Article 10(3)(a) or (b) of the Gas Order;

- (d) the determination of a question referred in pursuance of a condition included in a licence by virtue of —
 - (i) Article 11(3)(c) of the Electricity Order; or
 - (ii) Article 10(3)(c) of the Gas Order;
- (e) the determination of a dispute referred under Article 26(1) of the Electricity Order;
- (f) the making of a final order (within the meaning of Part VI), the making or confirmation of a provisional order (within the meaning of that Part) or the revocation of a final order or of a provisional order which has been confirmed.

(2) As soon as reasonably practicable after making such a decision the Authority, the Department or the Secretary of State shall publish a notice stating the reasons for the decision in such manner as it or he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested.

(3) The Authority shall send a copy of a notice published in respect of a decision mentioned in sub-paragraph (a), (b), (c), (d) or (f) of paragraph (1) to the licence holder to whose licence, or to whom, the decision relates.

(4) In preparing a notice under paragraph (2) the Authority, the Department or the Secretary of State shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where it or he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

(5) This Article does not apply to a decision resulting in any provision which the Department has directed the Authority not to enter in a register under—

- (a) Article 52(4) of the Electricity Order; or
- (b) Article 29(4) of the Gas Order.

General restrictions on disclosure of information

63.—(1) Information which—

- (a) has been obtained under or by virtue of the provisions of this Order, Part II of the Electricity Order [^{F2}, the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007] or Part II of the Gas Order; and
- (b) relates to the affairs of any individual or to any particular business,

shall not be disclosed during the lifetime of the individual or so long as the business continues to be carried on, except as provided below.

(2) Paragraph (1) does not apply to a disclosure made with the consent of the individual or the person for the time being carrying on the business.

(3) Paragraph (1) does not apply to a disclosure if—

- (a) it is made for the purpose of facilitating the performance of any functions of the Department, the Authority, the Council or the Competition Commission under the Electricity Order [^{F3}, the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007], the Gas Order or this Order;
- (b) it is required by a notice under Article 31 or 59 of the Electricity Order, Article 30(1) or (2) of the Gas Order or Article 51 or the information has been obtained in pursuance of a notice under Article 30(2) of the Gas Order;
- (c) it is made by a licence holder and is required to be made by a condition of his licence; or

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- (d) it is made by one licence holder to another and is required by that other licence holder for purposes connected with the carrying on of activities which he is authorised by his licence to carry on.

[^{F4}(3A) In paragraph (3)(c) and (d)—

- (a) references to a licence holder include references to a holder of a licence under the law of Ireland corresponding to Part II of the Electricity Order; and
(b) references to a licence include references to such a licence.]

(4) Paragraph (1) does not apply to any disclosure of information made—

- (a) for the purpose of facilitating the performance by a person or body mentioned in paragraph (5) of any function under a statutory provision specified in paragraph (6);

[^{F5}(aa) for the purposes of facilitating the performance by the Irish Minister or CER (within the meaning of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007) of any function under the law of Ireland corresponding to the Electricity Order, this Order or that Order.]

- (b) for the purpose of facilitating the performance by the Comptroller and Auditor General for Northern Ireland or the Health and Safety Executive for Northern Ireland of any of his or its functions;
- (c) for the purpose of facilitating the exercise by the Secretary of State of any power conferred by the Financial Services and Markets Act 2000 (c. 8) or by the statutory provisions relating to companies, insurance companies or insolvency;
- (d) for the purpose of facilitating the performance by the Department or the Department of Finance and Personnel of any functions conferred by the statutory provisions relating to companies or insolvency or for the purposes of facilitating the performance of the functions of an inspector appointed under the statutory provisions relating to companies;
- (e) for the purpose of facilitating the performance by the official receiver for Northern Ireland of his functions under the statutory provisions relating to insolvency or by a recognised professional body for the purposes of Article 350 of the Insolvency (Northern Ireland) Order 1989 (NI 19) of its functions as such a body;
- (f) for the purposes of facilitating the performance by a district council of its functions under the Consumer Protection Act 1987 (c. 43);
- (g) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- (h) for the purposes of any civil proceedings brought under or by virtue of the Electricity Order, the Gas Order, this Order or any statutory provision specified in paragraph (6); or
- (i) in pursuance of a Community obligation;

and sections 17 and 18 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) apply to this paragraph as if it were listed in Schedule 4 to that Act.

(5) The persons and bodies specified for the purposes of paragraph (4)(a) are—

- (a) a Minister of the Crown;
- (b) a Northern Ireland department;
- (c) the Competition Commission;
- (d) the Office of Fair Trading;
- (e) the Director General of Telecommunications;
- (f) the Director General of Water Services;
- (g) the Gas and Electricity Markets Authority;

- (h) the Water Appeals Commission for Northern Ireland;
 - (i) the Civil Aviation Authority;
 - (j) the Financial Services Authority.
- (6) The statutory provisions specified for the purposes of paragraph (4)(a) and (h) are—
- (a) the Trade Descriptions Act 1968 (c. 29);
 - (b) the Fair Trading Act 1973 (c. 41);
 - (c) the Water and Sewerage Services (Northern Ireland) Order [^{F6}2006] ;
 - (d) the Consumer Credit Act 1974 (c. 39);
 - (e) the Estate Agents Act 1979 (c. 38);
 - (f) the Competition Act 1980 (c. 2);
 - (g) the Telecommunications Act 1984 (c. 12);
 - (h) the Airports Act 1986 (c. 31);
 - (i) the Gas Act 1986 (c. 44);
 - (j) the Audit (Northern Ireland) Order 1987 (NI 5);
 - (k) the Consumer Protection (Northern Ireland) Order 1987 (NI 20);
 - (l) the Consumer Protection Act 1987 (c. 43);
 - (m) the Control of Misleading Advertisements Regulations 1988 (SI 1988/915);
 - (n) the Water Act 1989 (c. 15), the Water Industry Act 1991 (c. 56) and any of the other consolidation Acts (within the meaning of section 206 of the Water Industry Act 1991);
 - (o) the Electricity Act 1989 (c. 29);
 - (p) Part IV of the Airports (Northern Ireland) Order 1994 (NI 1);
 - (q) the Water (Northern Ireland) Order 1999 (NI 6);
 - (r) the Competition Act 1998 (c. 41);
 - (s) the Financial Services and Markets Act 2000 (c. 8);
 - (t) the Utilities Act 2000 (c. 27);
 - (u) the Enterprise Act 2002 (c. 40).
- (7) The Department may by order modify paragraph (3), (4), (5) or (6).
- (8) Nothing in paragraph (1) is to be construed either as limiting the matters which may be—
- (a) published under Article 45 of the Electricity Order or Article 7, 18, 19, 21, 25 or 27;
 - (b) made public by the Authority as part of a notice under Article 26; or
 - (c) included in, or made public as part of, a report of the Authority, the Council or the Competition Commission under any provision of this Order, Part II of the Electricity Order or Part II of the Gas Order,
- or as applying to information which has been so published or has been made public as part of such a notice or such a report.
- (9) A person who discloses any information in contravention of this Article is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

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(10) Information obtained by the Authority in the exercise of functions which are exercisable concurrently with the Office of Fair Trading under Part I of the Competition Act 1998 (c. 41) is subject to Part 9 of the Enterprise Act 2002 (information) and not to paragraphs (1) to (9) of this Article.

- F2** Words in art. 63(1)(a) inserted (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 12(2)**; S.R. 2007/303, **art. 2**, Sch.
- F3** Words in art. 63(3)(a) inserted (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 12(3)**; S.R. 2007/303, **art. 2**, Sch.
- F4** Art. 63(3A) inserted (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 12(4)**; S.R. 2007/303, **art. 2**, Sch.
- F5** Art. 63(4)(aa) inserted (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 12(5)**; S.R. 2007/303, **art. 2**, Sch.
- F6** Words in art. 63(6)(c) substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(18)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Modifications etc. (not altering text)

- C1** Art. 63(6) modified by Wireless Telegraphy (Pre-Consolidation Amendments) Order 2006 (S.I. 2006/1391), arts. 1, 2, **Sch. para. 7(3)(j)** (the said S.I. coming into force immediately before the commencement of the Act resulting from the Wireless Telegraphy Bill introduced in the House of Lords on 20.4.2006 - the **Wireless Telegraphy Act 2006 (c. 36)** came into force on 8.2.2007, see s. 126 of the said Act)

Assignment of wayleaves

64.—(1) In Schedule 4 to the Electricity Order (powers of licence holders) after paragraph 10 there shall be inserted —

“Assignment of necessary wayleave

10A.—(1) Subject to the following provisions of this paragraph, a necessary wayleave granted under paragraph 10 shall be capable of being assigned if (and only if)—

- (a) in the case of a wayleave granted after the coming into operation of Article 64 of the Energy (Northern Ireland) Order 2003, a term to that effect is included in the wayleave;
 - (b) in the case of a wayleave granted before that time, it is designated by the Department on an application made by the relevant licence holder.
- (2) A necessary wayleave shall not be assigned—
- (a) without the consent of the Department; or
 - (b) to a person other than a licence holder.
- (3) The relevant licence holder shall—
- (a) give notice of an application under sub-paragraph (1)(b) to—
 - (i) the occupier of the land; and
 - (ii) where the occupier is not also the owner of the land, the owner; and

- (b) send a copy of that notice to the Department, together with the name and address of each person to whom that notice has been given.
- (4) The notice under sub-paragraph (3) shall—
 - (a) identify the wayleave and state that an application in respect of it has been made to the Department under sub-paragraph (1)(b); and
 - (b) specify a period (not being less than 28 days from the date on which the notice is given) during which representations or objections concerning the application may be made to the Department.
- (5) Before determining whether to designate a wayleave in pursuance of an application under sub-paragraph (1)(b), the Department shall consider any representations or objections which are duly made as mentioned in sub-paragraph (4)(b) and not withdrawn .
- (6) The Department shall give notice of its decision on an application under sub-paragraph (1)(b) to—
 - (a) the licence holder; and
 - (b) each person mentioned in sub-paragraph (3)(b).
- (7) In this paragraph—
 - “assign” includes transfer by any means;
 - “relevant licence holder”, in relation to a necessary wayleave, means the licence holder to whom the wayleave was granted or to whom it has been assigned.
- (8) In paragraphs 11 and 12 references to a licence holder include references to a licence holder to whom a wayleave has been assigned.”.
- (2) In Schedule 3 to the Gas Order (powers of licence holders) after paragraph 10 there shall be inserted—

“Assignment of necessary wayleave

- 10A.**—(1) Subject to the following provisions of this paragraph, a necessary wayleave granted under paragraph 10 shall be capable of being assigned if (and only if)—
- (a) in the case of a wayleave granted after the coming into operation of Article 64 of the Energy (Northern Ireland) Order 2003, a term to that effect is included in the wayleave;
 - (b) in the case of a wayleave granted before that time, it is designated by the Department on an application made by the relevant licence holder.
- (2) A necessary wayleave shall not be assigned—
- (a) without the consent of the Department; or
 - (b) to a person other than a licence holder.
- (3) The relevant licence holder shall—
- (a) give notice of an application under sub-paragraph (1)(b) to—
 - (i) the occupier of the land; and
 - (ii) where the occupier is not also the owner of the land, the owner; and
 - (b) send a copy of that notice to the Department, together with the name and address of each person to whom that notice has been given.
- (4) The notice under sub-paragraph (3) shall—

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- (a) identify the wayleave and state that an application in respect of it has been made to the Department under sub-paragraph (1)(b); and
 - (b) specify a period (not being less than 28 days from the date on which the notice is given) during which representations or objections concerning the application may be made to the Department.
- (5) Before determining whether to designate a wayleave in pursuance of an application under sub-paragraph (1)(b), the Department shall consider any representations or objections which are duly made as mentioned in sub-paragraph (4)(b) and not withdrawn.
- (6) The Department shall give notice of its decision on an application under sub-paragraph (1)(b) to—
- (a) the relevant licence holder; and
 - (b) each person mentioned in sub-paragraph (3)(b).
- (7) In this paragraph—
- “assign” includes transfer by any means;
 - “relevant licence holder”, in relation to a necessary wayleave, means the licence holder to whom the wayleave was granted or to whom it has been assigned.
- (8) In paragraphs 11 and 12 references to a licence holder include references to a licence holder to whom a wayleave has been assigned.”.

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