

2005 No. 287

ELECTRICITY

GAS

The Electricity and Gas (Determination of Turnover for Penalties) Order (Northern Ireland) 2005

Made - - - - - 7th June 2005

Coming into operation 20th July 2005

To be laid before Parliament under paragraph 7(3) of the Schedule to the Northern Ireland Act 2000

The Department of Enterprise, Trade and Investment, in exercise of the powers conferred on it by Article 45(9) of the Energy (Northern Ireland) Order 2003(a) and of every other power enabling it in that behalf, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Electricity and Gas (Determination of Turnover for Penalties) Order (Northern Ireland) 2005 and shall come into operation on 20th July 2005.

Interpretation

2. In this Order –

“applicable turnover” means the amounts, ascertained in conformity with normal accounting practice in Northern Ireland, which are –

- (a) derived by the licence holder from the provision of goods and services falling within all the licence holder’s ordinary activities (whether or not such activities are authorised by a licence); and
- (b) computed on an accruals basis so that the amounts referred to in paragraph (a) relating to the period for which applicable turnover is being determined are taken into account, without regard to the date of invoice or receipt of payment, after deduction of trade discounts, value added tax and any other taxes based on such amounts;

“business year” means a period of more than six months in respect of which a licence holder publishes accounts or, if no such accounts have been published for the period, prepares accounts;

“date of the notice” means the date on which the Authority(b) gives notice under Article 45(4) of the Energy Order;

(a) S.I. 2003/419 (N.I. 6)

(b) The Authority was established under Article 3(1) of the Energy (Northern Ireland) Order 2003

“the Energy Order” means the Energy (Northern Ireland) Order 2003; and
“licence” means a gas or an electricity licence.

Determination of turnover for the purposes of Article 45(9) of the Energy Order

3.—(1) Subject to paragraphs (2) to (4), for the purposes of Article 45(9) of the Energy Order the turnover of the licence holder shall be the applicable turnover for the business year preceding the date of the notice.

(2) Where the business year preceding the date of the notice does not equal 12 months the turnover shall be the amount which bears the same proportion to the applicable turnover during that business year as 12 months does to the period of that business year.

(3) Where there is no preceding business year the turnover shall be the applicable turnover of the licence holder for the period of 12 months ending on the last day of the month preceding the month in which the date of the notice falls.

(4) Where in the application of paragraph (3) the licence holder has applicable turnover for a period of less than 12 months the turnover shall be the amount which bears the same proportion to the applicable turnover during the period for which he has applicable turnover as 12 months does to that period.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 7th June 2005.

(L.S.)

Jenny Pyper

A senior officer of the Department of Enterprise, Trade and Investment

EXPLANATORY NOTE

(This note is not part of the Order)

Article 45 of the Energy (Northern Ireland) Order 2003 (“the Energy Order”) provides that where the Northern Ireland Authority for Energy Regulation (“the Authority”) is satisfied that –

- (a) a gas or electricity licence holder has contravened or is contravening any licence condition or certain requirements imposed on him by the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231, N.I. 1), the Gas (Northern Ireland) Order 1996 (S.I. 1996/275, N.I. 2) or the Energy Order; or
- (b) an electricity licence holder who is a public electricity supplier is failing or has failed to achieve any standard of performance prescribed under Article 42 of the Electricity (Northern Ireland) Order 1992,

the Authority may impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case but not exceeding 10 per cent of the turnover of the licence holder.

This Order makes provision for the determination of the turnover of the licence holder for those purposes.

A regulatory impact assessment was carried out on the parent legislation (the Energy Order) and is available and can be obtained from Energy Division, Department of Enterprise, Trade and Investment, Netherleigh, Massey Avenue, Belfast, BT4 2JP.

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